KEY INSIGHTS

The Laws of Fashion: What's Trending in 2026

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Head to Toe, Foley Has You Covered

As we enter 2026, the fashion, apparel, and beauty industry stands at a pivotal moment. Market normalization after years of disruption, renewed supply chain activity, intensifying regulatory oversight, and rapid technological adoption are reshaping competitive dynamics across the sector. At the same time, consumer behavior — from "self-duping" culture to heightened scrutiny of brand authenticity — continues to test traditional assumptions about value, loyalty, and growth. Together, these forces are creating a more complex operating environment defined by both opportunity and risk.

Foley & Lardner's Fashion, Apparel & Beauty 2026 Outlook brings together multidisciplinary perspectives on the developments most likely to shape the year ahead. This report examines key cases influencing industry strategy, the rebound in global supply chains and related brand-manufacturer disputes, and evolving drivers of value in fashion and beauty M&A. It also explores bankruptcy trends affecting fashion companies, and the growing strategic importance of trademark and design protection in beauty.

We analyze the expanding regulatory landscape — including compliance challenges under the FTC's Care Labeling Rule and CPSC oversight of jewelry, as well as implementation of MoCRA and its impact on FDA oversight of cosmetics. In parallel, we address data privacy risk and the tension between innovation and brand integrity as AI adoption accelerates across design, marketing, and operations.

Drawing on cross-disciplinary experience across litigation, regulatory, transactional, and compliance matters, Foley's Fashion, Apparel & Beauty industry team remains closely aligned with evolving market conditions and enforcement priorities. We welcome the opportunity to discuss these issues with you in further detail.

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Cases to Watch in 2026

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As we enter 2026, we turn our attention to litigation within the fashion, apparel, and beauty industries that is expected to influence the legal and commercial landscape in the year ahead. The cases discussed below raise critical issues, including the extent to which the increasingly popular minimalist aesthetic may be protected under intellectual property law, the legal boundaries of "duping culture" and when competitive practices cross the line into infringement, and the importance of thorough legal due diligence for emerging companies seeking to navigate complex markets. In addition to examining the cases poised to shape 2026, we provide updates on select matters from 2025 that continue to establish significant precedent and offer insights into ongoing industry trends.

WHOOP, Inc. v. Shenzhen Lexqi Electronic Technology Co., Ltd., Case No. 1:25-cv-12690 (D. Mass)

Whoop, Inc., a Boston-based wearable technology company, sued Shenzhen Lexqi, a Chinese manufacturer of wearable technology devices for making and selling knockoffs of its wearable fitness tracker.[1] The Complaint was filed in Massachusetts federal court, in which Whoop sued for trade dress, unfair competition, and false designation or origin under the Lanham Act (15 U.S.C. § 1125 Trademark Infringement).[2] This case is based on Shenzhen's online sales of wearable fitness trackers on Amazon under names such as "SGJIK" and "EGQINR".[3] Wearable fitness trackers such as watches have been gaining popularity in recent years, but Whoop claims to be distinct in its distinctive minimalist strap-and-clasp screenless design. Whoop is seeking to protect elements of its design such as the U-shaped clasp mechanism, the hinged sides, the rectangular sensor module, and the strap and sensor configuration.[4] This will require Whoop to show that its minimalist design is both meaningfully distinctive from other designs in the wearable tech space and non-functional. This begs the question — is such minimalist design sufficient to warrant trade dress protection? Whoop argues that the copied design is a source identifier and misleads consumers into thinking that they are buying Whoop products, which as a result, tarnishes the brand's reputation for quality. Whoop is seeking monetary damages, disgorgement of profits, and injunctive relief to prevent future sales.[5]

This case is receiving a lot of attention, as it highlights service of process issues with a foreign defendant. Further, it emphasizes the increasing tension between U.S. brands and foreign manufacturers regarding intellectual property protection. As the "minimalist aesthetic" trend continues, this case will serve as an important precedent for whether minimalism should receive trade dress protection.

1 https://www.thefashionlaw.com/looking-ahead-the-cases-set-to-shape-retail-in-2026/#:~:text=WHOOP%2C%20Inc.&text=At%20the%20core%20of%20the,to%20all%20of%20our%20content.

2 https://www.thefashionlaw.com/looking-ahead-the-cases-set-to-shape-retail-in-2026/#:~:text=WHOOP%2C%20Inc.&text=At%20the%20core%20of%20the,to%20all%20of%20our%20content.

3 https://www.thefashionlaw.com/looking-ahead-the-cases-set-to-shape-retail-in-2026/#:~:text=WHOOP%2C%20Inc.&text=At%20the%20core%20of%20the,to%20all%20of%20our%20content.

4 https://the5krunner.com/2025/10/19/why-whoop-is-suing-a-chinese-rival-over-a-wholesale-imitation-tracker-design/

5 https://the5krunner.com/2025/10/19/why-whoop-is-suing-a-chinese-rival-over-a-wholesale-imitation-tracker-design/

Lululemon USA Inc v. Costco Wholesale Corp., Case No. 2:25-cv-05864 (C.D. Cal.) [6]

In the summer of 2025, Lululemon USA Inc., a notorious athletic apparel company, sued Costco Wholesale Corp., accusing the multinational membership-only warehouse club of selling unauthorized "dupes" of its bestselling athleticwear.[7] Specifically, Lululemon stated that Costco's Kirkland brand replicas of Lululemon's trademarked SCUBA hoodies, DEFINE jackets, and ABC pants constitute trademark and trade-dress infringement, arguing that the items were so visually similar that they posed a risk of confusion to consumers.[8] Lululemon further alleges that the dupes violate their US.. Design Patents, which protect ornamental aspects of their clothing such as the stitching in the DEFINE Jacket and aspects of their SCUBA hoodie.[9] As a result, Lululemon is claiming that Costco has diluted their trademarks and confused customers.[10] Therefore, Lululemon has sued in the US District Court for the Central District of California on June 27, 2025, seeking damages, injunctive relief, and destruction of the infringing inventory.[11] Lululemon's Complaint states that through these dupes, Costco has chosen to "copy rather than compete" which has ultimately damaged Lululemon's "hard-earned reputation and immense goodwill" which has been fostered as a result of their high quality, innovation, and extensive marketing.[12]

"Dupe culture", or the low-cost lookalike products that mimic a premium original, has been on the rise; and is specifically active in the beauty and fashion space.[13] As "dupe culture" continues to gain popularity through social media, certain companies such as Lululemon have been negatively impacted more than others. In fact, there is a viral "Lululemon Dupes" hashtag circulating throughout social media platforms such as Tiktok and Instagram, as consumers show off products that resemble Lululemon's signature pieces at significant discounts.

Further, *The Washington Post* has published multiple articles highlighting the similarities between Lululemon and Costco apparel. One article was titled "Is That Hoodie a Lululemon or a Costco Dupe? No One Has to Know But You" and the other "Are These $20 Costco Pants a Lululemon Dupe? We Investigated." While knockoff versions of products used to be frowned upon, Gen Z consumers have embraced the more accessible and affordable versions of products and have taken their favorite "dupes" to social media platforms to spread the word.[14] As a result, the aspirational quality of Lululemon's apparel is being diluted, and the company has lost some of their market share to knockoff versions. "Dupe culture" does not only hurt established brands, but it comes with ethical production issues as well. Many dupes come from fast fashion brands with unethical labor practices. It is reported that 93% of fast fashion brands underpay their workers and outsource production to cut expenses, which is why these dupes can be so affordable.[15]

As "duping" continues to become more popular, this case will serve as an important precedent in the fashion industry for testing the line between competition and intellectual property infringement, and how far "duping" can go.

6 https://storage.courtlistener.com/recap/gov.uscourts.cacd.976424/gov.uscourts.cacd.976424.1.0.pdf

7 https://brionraffoul.com/2025/trademarks/the-cost-of-a-dupe-lululemons-lawsuit-the-power-of-ip-protection/#:~:text=Lululemon%20USA%20Inc.,of%20intellectual%20property%20(IP).

8 https://brionraffoul.com/2025/trademarks/the-cost-of-a-dupe-lululemons-lawsuit-the-power-of-ip-protection/#:~:text=Lululemon%20USA%20Inc.,of%20intellectual%20property%20(IP).

9 https://storage.courtlistener.com/recap/gov.uscourts.cacd.976424/gov.uscourts.cacd.976424.1.0_2.pdf

10 https://storage.courtlistener.com/recap/gov.uscourts.cacd.976424/gov.uscourts.cacd.976424.1.0_2.pdf

11 https://storage.courtlistener.com/recap/gov.uscourts.cacd.976424/gov.uscourts.cacd.976424.1.0_2.pdf

12 https://storage.courtlistener.com/recap/gov.uscourts.cacd.976424/gov.uscourts.cacd.976424.1.0_2.pdf

13 https://www.nrfbigshoweurope.com/en/industry-trends/the-rise-of-dupe#:~:text=The%20popularity%20of%20dupes%20is,accessing%20desirable%20aesthetics%20or%20functionality.

14 https://trademarklawyermagazine.com/the-rise-of-dupe-culture-designers-struggle-to-protect-their-designs/

15 https://trademarklawyermagazine.com/the-rise-of-dupe-culture-designers-struggle-to-protect-their-designs/

Palas v. Le Domaine, Case No. 2:25-cv-11953-AB-PVC (C.D. Cal.)

Brandon Palas, owner, and founder of "Beau D.," skincare line for men, initiated a lawsuit in the United States District Court for the Central District of California against French company, Le Domaine, Brad Pitt's luxury skincare line for men. The December 18, 2025 complaint alleges that Palas registered the Beau D. mark with the USPTO in connection with various cosmetic products in International Class 3 based on continuous use since December 2020. While Pitt's skincare line for men was initially named "Le Domaine," it underwent rebranding as recently as 2022 when it obtained a federal registration for the newly minted name for the product line, "Beau Domaine" in connection with cosmetic preparations, non-medicated body and face care preparations, hair care preparations and essential oils in 2024. Palas alleges that, because he was first to use the Beau D. mark in connection with skincare, and because the Beau Domaine mark incorporates 100% of Palas's mark, Le Domaine's mark necessarily causes a likelihood of confusion. Palas asserted claims for trademark infringement, false designation of origin, and common law unfair competition.

The lawsuit allegedly comes after failed attempts to settle the trademark dispute. Palas allegedly offered Le Domaine three options: that Le Domaine rebrands, that it enters into a co-existing agreement with Palas, or that it funds Palas's rebranding efforts.[16]

The dispute underscores a key lesson: trademark clearance and legal due diligence are essential, even for well-funded, celebrity-backed brands. In Le Domaine's case, the company may have chosen to move forward with its rebrand before fully resolving potential conflicts with the Beau D. mark — a decision that may have seemed risk-averse in one sense, but nonetheless carried significant legal consequences. For emerging businesses, bypassing or rushing these early legal steps can be particularly costly, resulting in litigation, forced rebranding mid-launch, and the erosion of substantial investments in packaging, marketing assets, and promotional campaigns. Reliance on the USPTO to identify potentially conflicting marks is not a reliable substitute for thorough clearance, as demonstrated here by the registration of the "Beau Domaine" mark despite the absence of any cited conflicting marks during prosecution.

16 https://www.ibtimes.co.uk/brad-pitt-lawsuit-shock-beau-domaine-trademark-battle-revealed-amid-miraval-winery-war-1767510

Richemont Int'l SA, et al., v. Malidani Jewelry Corp., Case No. 1:25-cv-06284-LAP (S.D.N.Y.)

On July 30, 2025, Richemont International SA, joined by its flagship luxury maisons Cartier and Van Cleef & Arpels, filed a lawsuit in the U.S. District Court for the Southern District of New York against Malidani Jewelry Corp. The complaint alleges counterfeiting, trademark and trade dress infringement, unfair competition, design patent infringement, and related state law claims.

The plaintiffs assert that Malidani has been selling jewelry pieces that are substantially similar to several protected world famous designs: the Cartier LOVE collection in bracelets, rings, and earrings; the Cartier Juste un Clou collection for bracelets and other jewelry; and Van Cleef's Alhambra Guilloche design – a signature quatrefoil ornament with beaded outer edges and a flat inner portion—protected by trade dress and design patents.

According to the complaint, Richemont representatives visited Malidani's store and found bracelets, rings, and pendants mimicking these designs, priced between $1,500 and $9,000, with many in the $2,800–$6,000 range. In one instance, a store representative allegedly encouraged the plaintiffs' agent to visit a Cartier boutique to compare prices and confirm that the differences are undetectable.

Based on the docket, no scheduling order has been entered, but a protective order was filed on November 6, 2025, seemingly in connection with limited discovery focused on the defendant's accounting which could suggest an upcoming settlement.

This litigation stands out because it involves alleged counterfeit goods positioned at the higher end of the market with the accused products being priced in the thousands-of-dollar range. The elevated price points and close similarity to Cartier and Van Cleef's iconic designs appear to create a stronger likelihood of consumer confusion, potentially influencing how courts assess a class of "premium" counterfeits in luxury goods cases. The outcome, if the case proceeds, may shape enforcement strategies for design-heavy brands seeking to protect distinctive trade dress and patented designs from copycat sellers operating in upscale markets.

***Sol De Janeiro USA, Inc. et al v. MCoBeauty Pty Ltd et al.*, Case No. 1:24-cv-08862 (S.D.N.Y.)**

In another "dupe culture" dispute, beauty brand, Sol de Janeiro, filed suit in 2024 against MCoBeauty, alleging that certain of MCoBeauty's fragrance mists infringe the trade dress of Sol de Janeiro's Cheirosa body mist line. Sol de Janeiro also claims that MCoBeauty falsely advertises its products as "smelling exactly like" the original Sol Janeiro line.

The 38-page complaint features numerous side-by-side comparisons of the two brands' packaging: Sol de Janeiro's elongated bottles with white caps, numbered names in oval labels, and stylized fonts appear next to MCoBeauty's similar bottles that mimic these elements. According to Sol de Janeiro, MCoBeauty intentionally adopted its trade dress and similar scents to evoke its original products, even while marketing them as alternatives to the original. In support of its false advertising claim, Sol De Janeiro alleges that the "cheap knock offs" do not "smell exactly the same" because they differ in ingredients, scent intensity, and dissipation rate. The complaint also asserts violations of the FTC Act related to MCoBeauty's use of influencer endorsements and customer testimonials.

On January 6, 2026, the court granted MCoBeauty leave to file a motion to dismiss. In its January 27, 2026, motion, MCoBeauty contended that Sol de Janeiro is improperly trying to stop lawful "dupe" competition. Specifically, the defendant argued that (i) Sol de Janeiro lacked Article III standing because it had not shown lost sales or reputational injury and has recently touted exceptional growth and revenue increases; (ii) Sol de Janeiro's false advertising claims fail to satisfy the elements required by the Lanham Act because third parties other than MCoBeauty made the statements, the statements were subjective opinions or puffery, and Sol de Janeiro has not shown how these statements caused harm; (iii) the plaintiff's New York General Business Law § 349 claim should fail because Sol de Janeiro did not allege harm to the public as the statute requires; and (iv) Sol de Janeiro's trade dress infringement claim should be dismissed for failing to provide (1) a sufficiently specific description of its dress, (2) facts showing how consumers link the described dress elements to Sol de Janeiro, and (3) facts demonstrating the likelihood of confusion created by the defendant. *See* Memorandum of Law in Support of Defendants MCoBeauty Pty Ltd and MCoBeauty, Inc.'s Motion to Dismiss the Amended Complaint, *Sol D\de Janeiro USA, Inc. v. MCoBeauty Pty Ltd et al.*, No. 1:24-cv-08862-ER (S.D.N.Y. Jan. 27, 2026), ECF No. 49.

This case underscores the tension between "dupe" products and fair use in comparative advertising: how far can a competitor go in imitating the look and feel of a product to draw a direct comparison, while clearly stating it is not the original? The court's eventual ruling may offer important guidance for brands navigating this area.

***Whaleco Inc. v. Shein Technology LLC*, Case No. 1:23-cv-03706-TJK (D.D.C.) and *Roadget Business PTE. Ltd. v. PDD Holdings Inc.*, et al., Case No. 1:24-cv-02402-TJK (D.D.C.)**

The ongoing legal disputes in the ultra-fast fashion market between rivals Temu and Shein appear to be nowhere near resolution. Foley reported on these cross lawsuits last year (linked here), but recent rulings in both cases have clarified which claims will shape the next phase of litigation.

Temu, operated by Whaleco Inc., entered the U.S. market in 2022 and quickly gained traction with a gamified shopping experience and aggressive low pricing. In December 2023, it sued Shein and its parent company, alleging an extensive campaign to stifle Temu's growth. Temu accused Shein of weaponizing U.S. intellectual property law through unfounded copyright takedown notices, blocking Temu's access to specialized Chinese suppliers, misappropriating commercial and financial data, and copying core aspects of Temu's online platform and customer-engagement strategies.

On September 30, 2025, the U.S. District Court for the District of Columbia issued a ruling on Shein's motions to dismiss, significantly narrowing the case while leaving several claims intact. The court dismissed Temu's trade secret misappropriation, antitrust, tortious interference, and abuse-of-process claims and removed Shein's foreign parent from the case for lack of personal jurisdiction.

However, five central claims survived against Shein itself, keeping the litigation very much alive. Specifically, the case will proceed with Temu's DMCA claims under Section 512, copyright infringement of Temu's gamified promotions, fraud on the copyright office, trade dress infringement of Temu's arcade style online shopping experience characterized by vibrant orange themes and arcade game style graphics, and unfair competition.

In August 2024, while Shein's motion to dismiss was pending in Temu's lawsuit, Shein filed its own lawsuit against Temu, asserting a sweeping set of federal and state law claims including trade secret misappropriation, multiple forms of copyright and trademark infringement, trademark dilution, unfair competition, false advertising, and product disparagement.

On January 7, 2026, the court issued its ruling on Temu's motion to dismiss, removing several claims but leaving others standing. Specifically, the court dismissed Shein's trademark dilution claim for failure to sufficiently plead the fame requirement and dismissed the product disparagement claim. Shein's cross lawsuit will proceed on its copyright infringement claims, trade secret misappropriation claims, counterfeit and trademark infringement claims, as well as its unfair competition and false advertising claims.

Shein's false advertising claims are rooted in allegations that Temu distributed influencer guidelines instructing them to claim, falsely, that Temu's products are cheaper and of far better quality than Shein's. Influencer posts allegedly followed these instructions. While a close call, the court found the claim plausible at this stage. On contributory false advertising, the court relied on Eleventh Circuit precedent (and noted Second Circuit recognition) to hold such a claim viable.

With both cases advancing on important IP and competitive conduct claims, the dispute exemplifies how rivalry in the online, ultra-fast fashion market has moved beyond simple price competition and can implicate foreign supply chain competition, and wars in online marketing.

***Lashify, Inc. v. Int'l Trade Comm'n*, 130 F. 4th 948 (Fed. Cir.)**

Lashify, Inc. is an American company that sells artificial eyelash extensions and related accessories. While Lashify designs and sells its products in the United States, their products are manufactured abroad. Lashify owns U.S. utility and design patents, and in 2021, the company filed a complaint with the International Trade Commission (ITC) under Section 337 of the Tariff Act of 1930, Inv. No. 337-TA-1226, alleging that other importers of false eyelashes had infringed upon such patents. The ITC determined that while respondents infringed, Lashify had failed to satisfy the domestic industry requirement of Section 337; which provides relief against infringing imports "only if an industry in the United States, relating to the articles protected by the patent…exists or is in the process of being established." This requirement consists of two prongs—1) the "economic prong" which demands a showing of an industry and 2) the "technical" prong which shows a relation to the patented articles. The Commission determined that Lashify failed to satisfy the economic prong entirely due to its purported failure to establish significant employment and labor capital by its warehouse, quality control, distribution, and sales and marketing expenses. Rather, the Commission determined that these expenses were insufficient, standing alone, because there were no additional steps required to make Lashify's products saleable upon arriving in the U.S. and the quality control measures were no more than that of a normal importer. The Commission also determined that Lashify only satisfied the technical prong for two out of three of the asserted patents. Lashify appealed these findings to the Federal Circuit along with one of the ALJ's claim constructions.

The Federal Circuit vacated the Commission's determination that Lashify's warehouse, quality control, distribution, sales, and marketing expenses should be insufficient, standing alone, and remanded for a redetermination of the economic prong. In combing through the history of Section 337(a)(3)(B) and its amendments, the Federal Circuit held that the Commission's decision to exclude Lashify's expenses in the employment and labor capital analysis was based on an incorrect interpretation of the statute and wholly contrary to its language. The Federal Circuit affirmed the Commission's findings that one of Lashify's patents had failed to satisfy the technical prong and affirmed the ALJ's claim construction.

The *Lashify* case is significant because it squarely addresses the scope of the "economic prong" of the domestic industry requirement under Section 337. The Federal Circuit's interpretation of Section 337(a)(3)(B) can be viewed as a signal to companies whose manufacturing occurs primarily abroad but whose operational infrastructure is located in the United States, and who may have hesitated to initiate an ITC investigation for fear of failing to meet the economic prong threshold. On remand, the Commission's treatment of Lashify's expenditures will likely serve as either a roadmap or a cautionary tale for similarly situated import-dependent businesses seeking to use Section 337 to protect their intellectual property in the coming years. Given the increasing globalization of supply chains, the final resolution of *Lashify* has the potential to influence patent-related trade enforcement strategy far beyond the beauty products sector.

Navigating the FTC Care Labeling Rule in the Modern Age

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Over the past few years, the Federal Trade Commission's (FTC) Care Labeling Rule[17] has created new challenges for global apparel manufacturers operating in the modern digital-first world. Issued in 1971, the FTC intended the Care Labeling Rule to ensure consistent and clear written instructions for the regular care of textile wearing apparel. The Care Labeling Rule, with its rigid standards, however, is showing its age over 50 years later. As a result, the industry has been forced to navigate the friction between differing standards for care labeling across borders and weigh the risks of potential noncompliance with the benefits of modernization.

What Does the FTC Care Labeling Rule Require?

The FTC's Care Labeling Rule requires that textile wearing apparel[18] labels state the regular care needed for ordinary use of the product, including washing, drying, ironing, bleaching, and warning instructions on a printed, permanent "care label" affixed to the product.[19] This care information may be indicated by "[a]ny appropriate terms . . . so long as they clearly and accurately describe regular care procedures and otherwise fulfill the requirements of this regulation,"[20] including, but not limited to, specified terms identified by regulation.[21]

Care labels may also include "[a]ny appropriate symbols . . . *in addition to the required appropriate terms* so long as the terms fulfill the requirements of this part."[22] Many apparel companies develop proprietary care icons or adopt international sets, such as International Organization for Standardization (ISO)-based symbols, to provide clear, easy-to-read visual instructions. Under the Rule, however, these additional icons must be supplemented with corresponding written terminology—creating redundancy on labels—regardless of their clarity or practical utility. Self-created or internationally recognized symbols are not accepted as a substitute for text.

As an alternative to written care instructions, the Care Labeling Rule, as amended in 1997, does permit manufacturers and importers to permanently affix certain symbols from ASTM D5489-96c to care labels as a means of describing apparel care requirements without additional text.[23] Thus, while the Rule permits companies to use symbols without terms, this is only allowed if the symbols are those identified in ASTM D5489-96c:

17 The Care Labeling of Textile Wearing Apparel & Certain Piece Goods Rule can be found at 16 C.F.R. Part 423.

18 "Textile wearing apparel" is "any finished garment or article of clothing made from a textile product that is customarily used to cover or protect any part of the body, including hosiery, excluding footwear, gloves, hats or other articles used exclusively to cover or protect the head or hands." 16 C.F.R. § 423.1(g).

19 16 C.F.R. §§ 423.1(a), 423.3; see FTC, Care Labeling of Textile Wearing Apparel & Certain Piece Goods, https://www.ftc.gov/legal-library/browse/rules/care-labeling-textile-wearing-apparel-certain-piece-goods-text#:~:text=In%20addition%2C%20symbols%20from%20the,%2C%20N.W.%2C%20Washington%2C%20DC.

20 16 C.F.R. § 423.2(a).

21 16 C.F.R. § 423.2(c); 16 C.F.R. Part 423, App'x A.

22 16 C.F.R. § 423.2(b) (emphasis added).

23 16 C.F.R. § 423.8(g).

The FTC considers noncompliance with these requirements, including the failure to permanently affix a care label with printed care instructions to textile wearing apparel, unfair or deceptive acts or practices subject to civil penalties and other enforcement mechanisms.[24]

The Care Labeling Rule Creates Challenges for Global Companies

The Care Labeling Rule's strict requirements for written care terminology and/or the use of symbols from ASTM D5489-96c, but no allowance for the use of other internationally recognized or company-created symbols, create unexpected problems for global companies that are also balancing international requirements, including the European Union (EU) General Product Safety Regulation (GPSR).

While the FTC framework focuses primarily on clarity and truthfulness of care instructions, the EU's GPSR mandates that instructions be provided "in a language which can be easily understood by consumers, as determined by the Member State in which the product is made available on the market."[25] This has been interpreted to mean that written instructions must be provided in the official language(s) of the member states where the product is marketed and/or sold. In practice, this means apparel labels balloon in size with multiple translations to comply across twenty-seven EU member states or companies create separate labels for different regions, increasing potential logistics headaches and costs. If a company fails to comply, it risks fines, sales bans, or the implementation of other enforcement tools from impacted member states. This duplication burden and the risk of enforcement actions and other costs could be avoided, however, if information and instructions were moved to a QR code or online resource, accessible in multiple languages.

24 16 C.F.R. § 423.5.

25 *EU General Product Safety Regulation, Regulation (EU)* 2023/988, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32023R0988.

Bridging Apparel Labeling Requirements in a Digital-First World

The FTC has made few changes to the Care Labeling Rule since its creation in 1971, one being the permitted use of certain symbols from ASTM D5489-96c in lieu of care labeling terminology in 1997. Unfortunately, other efforts to modernize the Rule over the past several years have largely been unsuccessful, including: 1) a 2012 proposal that was never implemented, which included, among other things, an update to allow the use of ISO 3758:2005(E) symbols in addition to the approved ASTM symbols; and 2) a contemplated full repeal of the Rule in 2020/2021.[26] Most recently, in late February 2025, the American Apparel and Footwear Association (AAFA) submitted a petition to the FTC to digitize care labels.[27] The FTC opened public comment on the petition and received many responses until the comment period closed on April 18, 2025.[28]

As of 2023, 60% of shoppers globally see value in the ability to scan a QR code for detailed garment care instructions.[29] From the commentary to the AAFA petition, it seems that many in the industry feel the same.[30] As companies seek to streamline labels, reduce clutter, and adopt more flexible digital communication methods, global regulatory misalignment adds complexity, cost, and inefficiency to the process. As the AAFA noted in its FTC petition, allowing the use of URLs or QR codes could also make it easier for global companies to meet EU Digital Product Passport supply chain and sustainability requirements.[31]

26 FTC, *FTC to Host Roundtable on Proposed Changes to its Care Labeling Rule for Clothing* (Feb. 11, 2014), https://www.ftc.gov/news-events/news/press-releases/2014/02/ftc-host-roundtable-proposed-changes-its-care-labeling-rule-clothing#:~:text=The%20Rule%2C%20officially%20called%20the,labels%20providing%20a%20wetcleaning%20instruction; FTC, *Statement of the Federal Trade Commission on the Proposed Repeal of the Care Labeling Rule* (July 21, 2021), https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-federal-trade-commission-proposed-repeal-care-labeling-rule.

27 *Petition for Rulemaking Concerning the Digital Labeling of Apparel* (posted by the FTC on Mar. 19, 2025), https://www.regulations.gov/document/FTC-2025-0024-0002.

28 *Comment From Italian Footwear Manufacturers' Association*, Docket FTC-2025-0024-0011 (Apr. 7, 2025) ("The introduction, by law, of a digital system should be an important opportunity to align criteria and facilitate the task of exporting and importing companies in the sector. In the European Union we will soon have the Digital Product Passport. There are three requirements that drive this need: to simplify information flows between the production chain and the consumer, to make processes more sustainable by reducing the environmental impact generated by labelling materials, and to adopt common standards between economic partner areas."); *Comment from Consumer Technology Association*, Docket FTC-2025-0024-0015 (Apr. 11, 2025) ("In today's digital era, consumers increasingly rely on electronic means to access product information. Digital labeling or e-labeling, utilizing tools such as QR codes or URLs, offers manufacturers a dynamic platform to convey comprehensive and up-to date information to consumers. This approach, which CTA has encouraged regulators to embrace across all product categories for more than a decade, not only enhances transparency but empowers consumers to make informed product purchasing decisions."); *Comment from American Association of Importers and Exporters*, Docket FTC-2025-0024-0019 (Apr. 16, 2025) (AAEI "is writing to express our support for the petition (FTC-2025-0024) submitted by the American Apparel and Footwear Association (AAFA) requesting the modernization of the Care Labeling of Textile Wearing Apparel & Certain Piece Goods Rule to allow for digital labeling as an alternative to the current labels mandated by the Rule. As detailed in the petition, the current regulatory framework is outdated and does not align with today's technological advancements or consumer expectations. . . . The current care labeling requirements have led to label creeping as small text in multiple languages with confusing symbols proliferating on large and uncomfortable tags. This is not only inconvenient for consumers and manufacturers, but wasteful. Allowing digital labels, such as a QR code or URL placed on a small tag, offers a sustainable alternative to the millions of miles of labeling tape produced annually and enables consumers to access care instructions and additional product information in a more convenient and accessible format."); *Comment from U.S. Fashion Industry Association*, Docket FTC-2025-0024-0001 (Apr. 18, 2025) ("USFIA is in full agreement with the regulatory language proposed by AAFA. We emphasize that textiles and apparel is a global business. USFIA members market their products throughout the world. Different markets have different labeling requirements and different language requirements. This has led to ever larger and more complicated care labels. These extensive labels are wasteful and uncomfortable for consumers. Digital labels would effectively reduce trade barriers for global companies. Digital labeling would allow firms to provide detailed product information for multiple countries in a readily accessible manner, such as using a simple QR code or other digital tools, resulting in reduced labels and label size. This approach also would enable firms to provide updated information to consumers, something which is not realistically available under the current system. Finally, it is sometimes the case that over time labels become illegible. The likelihood of that happening with a digital label is diminished. Allowing the use of digital labels would establish a more harmonized approach to labeling as other countries, such as the EU, Singapore and Australia, have proposed or enacted digital labels.").

29 Avery Dennison, *Digital Consumer Behavior Report 2.0* (2023), https://brand.averydennison.com/share/Fi56GgtiKCqw6ajutmFY/assets/44198.

30 *See* n. 11, *supra*; *but see Comment from National Cotton Council of America*, Docket FTC-2025-0024-0022 (Apr. 17, 2025) ("Relying on digital-only formats would leave some consumers without easy access to essential product information, which they use to determine clothing care and allergy information and to understand better what they are buying. While smartphone usage is high, 30% of adults over 65 and 43% of low-income consumers lack broadband access at home. Privacy concerns, digital fatigue, and technology limitations further discourage scanning QR codes." (internal citations omitted)).

31 *Petition for Rulemaking Concerning the Digital Labeling of Apparel* (posted by the FTC on Mar. 19, 2025), https://www.regulations.gov/document/FTC-2025-0024-0002.

Increasingly, companies are taking a global sales approach, meaning they must comply with several often-conflicting regulatory schemes. But the practical result is a lengthy, itchy, and confusing label. For example, apparel sold in both the U.S. and EU must comply with the FTC Care Labeling Rule requirements and the GPSR requirements, meaning the garments must include both ASTM-approved symbols or written terms (or text in English if non-ASTM symbols are used) *and* text in each official language of the EU states of sale. Modernizing the Care Labeling Rule could lessen some of these difficulties.

Replacing these problematic labels with QR codes or digital links could convey extended care information, enable reduced textile waste in label production,[32] result in space-saving designs that avoids clutter, and allow companies to update information in real time without reprinting labels. Given the Care Labeling Rule predates the internet and thus does not recognize digital delivery as a substitute for required on-label text or ASTM symbols, the Rule's static approach creates a compliance barrier for companies seeking hybrid labeling models — where basic care instructions might be provided via internationally recognized symbols on the label with detailed instructions (and translations) accessible through a QR code.

As a result, though QR code use in the apparel industry is increasing, QR codes and digital content remain underutilized.

Recommendations for Simplification and Modernization

The FTC's Care Labeling Rule has served consumers well in ensuring clarity and accuracy for garment care instructions. However, it has not aged well, and its inflexibility with respect to the use of symbols, language, and digital tools has created compliance inefficiencies and confusion, especially in the context of global trade. Companies and consumers alike would benefit from the use of QR codes and links to convey information, harmonizing compliance while also improving the consumer experience. The following policy updates could help simplify labels and bring everyone into the modern age:

1. **Acceptance of international care symbols.** Allow equivalent non-ASTM symbol sets such as ISO standard icons to substitute for text instructions.
2. **Digital labeling flexibility.** Recognize QR codes or digital resources as compliant carriers of instructions and care content.
3. **Harmonization with global language requirements.** Explore cross-recognition with international laws and standards, including the EU GPSR's multilingual mandate, to avoid duplication.
4. **Clear distinction between "essential" and "non-essential" care instructions.** Update guidance to permit non-essential recommendations to appear without triggering written-text obligations.

32 *Comment from U.S. Chamber of Commerce*, Docket FTC-2025-0024-0001 (Apr. 15, 2025) ("Digital technologies offer an efficient and economical alternative to traditional care labels. By adopting digitized care labels such as QR codes, the U.S. can reduce labeling waste and aid decarbonization efforts, potentially eliminating at least 343,000 metric tons of CO2e from supply chains.").

Where Premiums Will Be Paid: Fashion & Beauty M&A Trends from 2025 to 2026

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Introduction: The 2025 M&A Landscape

From Prada's headline-grabbing purchase of Versace to e.l.f. Beauty's $1 billion bet on Rhode, 2025 reshaped dealmaking across fashion and beauty, with momentum poised to carry into 2026. For brand operators, investors, and strategics, the message is clear: scale, supply chain resilience, and digital and AI capabilities are no longer differentiators. They are table stakes, directly influencing valuation, deal structure, and long-term viability.

Amid post-pandemic recovery, rapid digital adoption, and shifting consumer behavior, dealmaking centered on two priorities: platform consolidation to drive efficiency and acquisitions that unlock innovation. A sharper focus on operational risk (including supply chain dynamics, regulation, and geopolitical factors) reframed diligence and integration. Tech-driven deals such as Browzwear–Lalaland.ai and Perfect Corp.–Wannaby underscored growing demand for platforms that boost engagement, reduce development costs, and accelerate product cycles.

Overall, 2025 clarified where premiums will be paid: tech-enabled, culturally resonant, and operationally scalable brands. Expect ongoing competition for Gen Z-focused assets, increased emphasis on affordable luxury, and continued portfolio optimization in 2026.

Key Themes

1. **Gen Z + Social Media as Value Drivers** – Social-native relevance materially shapes valuation and brand velocity.
2. **Affordable Luxury Momentum** – Buyers favor high-value, margin-positive brands with accessible price points and strong cultural traction.
3. **Brand Optimization, Resource Efficiency, and Strategic Resilience** – Buyers prioritize assets that strengthen operational efficiency, supply chain control, sustainability, and scale.

Major Deals of 2025

1. Prada Acquires Versace for €1.25B

What Happened

Prada acquired Versace in a €1.25 billion transaction, bringing together two Italian luxury houses with distinct yet complementary aesthetics. The deal reframes Versace's valuation relative to its 2018 sale and expands Prada's exposure to younger, fashion-forward consumers.

Why It Matters

- Adds a globally influential brand that remains culturally relevant even as the industry emphasizes "quiet luxury."
- Unlocks operational synergies through integration into Prada's vertically integrated Italian manufacturing platform.
- Enhances scale, cost efficiency, and supply chain resilience across the combined platform.

Key Takeaways

- Highlights continued consolidation in luxury as groups broaden consumer reach and price points.
- Reinforces the strategic value of manufacturing control, efficiency, and sustainability in M&A.
- Demonstrates how acquirers are using M&A to optimize operating platforms and margins, as well as acquiring brands.

2. Caleres Acquires Stuart Weitzman for $105M

What Happened

Caleres acquired the Stuart Weitzman brand from Tapestry for approximately $105 million, adding a heritage, design-led footwear brand with strong cultural cachet to its portfolio. The acquisition complements Caleres's existing brands while expanding its presence in premium women's footwear.

Why It Matters

- Strengthens Caleres's premium portfolio with a globally recognized brand tied to celebrity and pop-culture relevance.
- Creates meaningful synergy opportunities across distribution, logistics, media buying, and back-office functions beginning in 2026.
- Supports Caleres's strategy to scale premium offerings and expand direct-to-consumer channels.
- Allows Tapestry to sharpen focus on core brands and reallocate capital more efficiently.

Key Takeaways

- Highlights continued consolidation in footwear around scaled, operationally efficient platforms.
- Demonstrates how acquirers are repositioning heritage luxury brands to drive price-accessible growth.
- Shows M&A increasingly focused on operational optimization, using existing infrastructure and platform leverage to turn premium brands into scalable, profitable assets.

3. e.l.f. Beauty Acquires Rhode for $1B

What Happened

e.l.f. Beauty acquired Rhode, the fast-growing beauty brand founded by Hailey Bieber, in a $1 billion transaction consisting of $800 million at closing and a $200 million earnout tied to performance. The deal adds a culturally resonant, digitally native brand to e.l.f.'s portfolio.

Why It Matters

- Aligns two value-driven brands focused on affordability, authenticity, and prestige-quality products in the 'affordable prestige' segment.
- Accelerates Rhode's growth by leveraging e.l.f.'s scale, supply chain expertise, and retail relationships.
- Enables expansion beyond direct-to-consumer, including Rhode's launch in Sephora.
- Strengthens e.l.f.'s relevance with Gen Z consumers through a creator-led, social-first brand.

Key Takeaways

- Highlights Gen Z as a primary value driver in beauty M&A, where brand equity is built through cultural relevance and social platforms.
- Reinforces the momentum behind "affordable prestige" and price-accessible growth.
- Demonstrates how platform scale and portfolio optimization can unlock outsized growth for digitally native brands.
- Signals continued strong demand for social-first, Gen Z–native brands as premium M&A targets.

Indications for 2026 M&A Activity in Fashion, Apparel, and Beauty

The major 2025 transactions signal clear direction for 2026: buyers are prioritizing cultural relevance, price accessibility, platform efficiency, and technology-enabled scale. Three themes will shape dealmaking in the year ahead.

1. Social Media and Gen Z as Value Drivers

Gen Z's $360 billion in spending power and social-first behavior continue to redefine discovery, loyalty, and brand velocity. Creator-led influence often outperforms traditional advertising, making cultural relevance and social-native traction critical valuation drivers. Deals like e.l.f.–Rhode show buyers are willing to pay premiums for brands embedded in Gen Z ecosystems.

2026 implication: Buyers will target brands with authentic creator networks, strong social engagement, and proven resonance with Gen Z.

2. Price-Accessible Growth and "Affordable Luxury"

Evolving macro conditions and shifting expectations have accelerated demand for products that deliver premium aesthetics at accessible prices. Social media amplifies this trend by accelerating cycles and elevating high-value, mid-priced brands.

2026 implication: Expect continued activity between premium and mass-market players as brands broaden reach, reposition offerings, and use accessibility as a growth lever while maintaining brand equity.

3. Brand Optimization, Resource Efficiency & Strategic Resilience

Scale and operational resilience are increasingly essential. Buyers are consolidating brands onto shared platforms with unified manufacturing, distribution, technology, and back-office infrastructure. Recent integrations, such as Prada's use of its Italian manufacturing system, highlight the focus on cost control, sustainability, and supply chain strength.

2026 implication: M&A will emphasize platform optimization and tech-driven capabilities (AI-assisted design, virtual try-on, demand forecasting, transparency) that mitigate risk and speed product cycles.

Conclusion: Industry Implications

The M&A activity of 2025 highlights an industry adapting quickly to cultural, technological, and economic change. As fashion, apparel, and beauty companies recalibrate around Gen Z consumers, price-accessible growth, and operational resilience, both organic and inorganic growth strategies will require greater precision and intentionality.

Looking ahead to 2026, dealmakers should expect intensified competition for culturally relevant, tech-enabled brands; continued portfolio reshaping around affordability and scale; and sustained focus on efficiency, sustainability, and platform leverage. Foley remains committed to guiding clients through this evolving landscape, providing strategic advice across acquisitions, divestitures, digital integration, and brand optimization to help them capture opportunity and manage risk in the year ahead and beyond.

How AI, Digital Doubles, and New Laws Are Rewriting Fashion and Beauty

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Artificial intelligence (AI) has gone from buzzword to backstage workhorse in the fashion, apparel, and beauty (FAB) industries. When Foley previewed this space in 2024, AI was already being used to power recommendation engines, searches, and personalization. Since then, AI now drives design tools, virtual try-on experiences, synthetic models, and even the digital "resurrection" of fashion and beauty icons — and lawmakers have noticed.

Across the industry, AI can swap outfits in lookbooks, generate virtual fabrics and prints, and build campaigns around synthetic models. Virtual try-on tools help consumers test lipstick shades, match foundation, and visualize outfits, while beauty apps offer skin diagnostics and product recommendations. Behind the scenes, these tools rely on vast training datasets: fashion photography, runway imagery, influencer content, scraped social media, and e-commerce catalogs. Increasingly, they also depend on full digital capture of models, including 3D body scans, face mapping, voice cloning, and digital replicas.

The Business of Beauty Bots: Why Brands Should Care

For brands, the appeal is obvious. AI cuts costs, speeds creative cycles, allows assets to be generated and localized quickly, and promises highly personalized shopping experiences. Generative systems can produce new imagery in hours rather than days, while AI styling engines curate outfits and beauty routines based on individual consumers.

The catch is that these systems often rely on real people's images, bodies, voices, and performances, or on creative works never meant to be used as training material. The same tools that let brands "do more with less" also make it easy to reuse a model's likeness in ways they never agreed to.

Rights on the Runway: Publicity, Digital Doubles, and Deepfakes

Because there is no comprehensive federal AI statute, FAB brands operate within a patchwork of legacy doctrines and emerging AI-specific laws. Right of publicity and name, image, and likeness (NIL) laws in states such as California, New York, Tennessee, Florida, and Arkansas have long protected commercial use of a person's identity, often even after death. A brand that "brings back" a beloved fashion or beauty icon in an AI campaign without the estate's permission may be inviting litigation.

New York has become the main runway for AI-and-model legislation. The New York Fashion Workers Act,[33] effective June 19, 2025, directly addresses AI use involving fashion models. The required consent must specify scope, purpose, duration, and compensation; however, routine retouching is excluded. The New York Digital Replica Law,[34] effective January 1, 2025, goes after "rights-grab" contracts. A digital replica agreement is void if it (i) allows a replica to be used instead of work the person would have done in person, (ii) fails to give a reasonably specific description of the intended use, and (iii) was negotiated when the individual did not have legal counsel or a union to consult. Brands and agencies can no longer rely on vague language to lock up a model's digital double indefinitely.

33 N.Y. Lab. Law Art. 36 (Fashion Workers Act), S.9832 (2024); See N.Y. S.B. S9832, 2023-2024 Leg., Reg. Sess. (N.Y. 2023), https://www.nysenate.gov/legislation/bills/2023/S9832.

34 N.Y. Gen. Oblig. Law § 5-302 (Digital Replica Law), 2024 N.Y. S.B. 7676-B.

New York's AI Transparency in Advertising and Synthetic Performer Disclosure Law,[35] effective June 9, 2026, moves to the consumer side. If a commercial ad uses an AI-generated synthetic performer, or a realistic digital person created by AI, that fact must be clearly disclosed, with civil penalties for failing to label the ad. A separate New York posthumous right of publicity law[36] requires consent from heirs or executors before using a deceased person's name, image, voice, or likeness in campaigns, which directly affects launches or collections built around "resurrected" icons.

Other states are moving in parallel. Tennessee's ELVIS Act[37] and Arkansas's HB 1071[38] explicitly extend publicity rights to AI-generated likenesses and voices, banning unauthorized commercial use, and imposing civil (and in Tennessee, some criminal) penalties. At the federal level, the proposed NO FAKES Act[39] would create a nationwide right against unauthorized digital replicas of a person's likeness, voice, or performance. The Deepfake Liability Act, the Take It Down Act, and PADRA aim to make platforms and creators more accountable for harmful deepfakes and to streamline takedowns, both for influencers and models whose images are misused and for brands that distribute AI-heavy content.[40]

Advertising, Privacy, and Biometrics

Traditional advertising and consumer protection rules apply even when content is created by AI. A synthetic model or AI-generated endorsement that misleads consumers can trigger the same false advertising and unfair or deceptive practices claims as any other campaign.

Privacy and biometric laws add further constraints. Statutes like Illinois's Biometric Information Privacy Act (BIPA) and California's CCPA/CPRA regulate how brands collect and use face scans for virtual try-on services, body scans for size and fit tools, and voiceprints for voice-based experiences. Failures in obtaining consent or handling this data can lead to statutory damages and class actions.

New transparency and detection proposals point to where law is heading. California's proposed AI Transparency Act[41] would require detection tools for AI-modified media. New York's proposed synthetic content provenance bill[42] would push AI systems to embed cryptographic provenance data, creating a verifiable trail of how an asset was generated. These proposed laws signal a future in which watermarking and provable origin information for AI content are expected rather than optional.

Copyright Catwalk: Training Data and AI-Made Designs

In *Thaler v. Perlmutter*,[43] the D.C. Circuit confirmed that purely AI-generated works without human authorship are not copyrightable under current U.S. law. Brands using AI to generate prints, patterns, or imagery need meaningful human creative input to claim protection.

At the same time, AI training data is under increasing scrutiny. The proposed Generative AI Copyright Disclosure Act[44] would require AI developers to disclose their use of copyrighted works in training data. California's AB 412,[45] which has stalled, would required AI developers to obtain permission and pay licensing fees to use copyrighted works for training. Pennsylvania's HR 81[46] urges Congress to exclude predominantly AI-generated works from copyright protection and to clarify how copyright and fair use apply to the use of copyrighted works in AI training.

Outside the United States, the European Union's Artificial Intelligence Act[47] introduces a risk-based framework with transparency obligations for AI-

35 2024 N.Y. S.8420-A/A.8887-B (AI Transparency in Advertising and Synthetic Performer Disclosure) (signed Dec. 11, 2025; effective June 9, 2026).

36 2024 N.Y. S.8391/A.8882 (posthumous right of publicity).

37 Tenn. Code Ann. § 47-25-1101 (2024) (Ensuring Likeness, Voice, and Image Security Act, "ELVIS Act").

38 Ark. H.B. 1071, 94th Gen. Assemb., Reg. Sess. (2023) (amending Arkansas publicity-rights law to cover AI-generated likenesses and voices).

39 See, e.g., Nurture Originals, Foster Act, and Keep Entertainment Safe ("NO FAKES") Act, discussion draft, 118th Cong. (2023).

40 Deepfake Liability Act, H.R. 6334, 118th Cong. (2023); Take It Down Act, S.4569, 118th Cong. (2023); Protecting All Digital Realities Act (PADRA), H.R. 10550, 118th Cong. (2023).

41 Cal. Assemb. B. 853, 2023-24 Leg., Reg. Sess. (Cal. AI Transparency Act).

42 2023-24 N.Y. S.6954 (synthetic content provenance and watermarking).

43 *Thaler v. Perlmutter,* 130 F.4th 1039 (D.C. Cir. 2025).

44 Generative AI Copyright Disclosure Act, H.R. 7913, 118th Cong. (2023) (proposed by Rep. Adam Schiff).

45 Cal. Assemb. B. 412, 2023-24 Leg., Reg. Sess. (Generative AI: Training Data).

46 Pa. H.R. 81, 2025 Gen. Assemb., Reg. Sess. (clarifying AI and copyright).

47 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 21 May 2024 on Artificial Intelligence (Artificial Intelligence Act).

generated and deepfake content. Multinational FAB brands using virtual try-on tools, recommendation engines, and synthetic models in Europe will need to align with those standards, even if U.S. law continues to evolve more slowly.

Contract Couture

Talent and vendor contracts need to match how AI is actually being used. Agreements should spell out whether the brand will create digital replicas, scans, or 3D models; where and how those assets may be used, including specific campaign names, channels, territories, and time periods; and whether talent imagery may be used to train internal or third-party AI systems. Compensation for AI-related uses should be addressed separately from standard day rates or flat fees, rather than assuming unlimited synthetic reuse is included.

Legal drafting is only one part of the solution. FAB brands also need internal guardrails. Many are forming cross-functional AI committees that bring together legal, marketing, HR, and IT to inventory tools; map how they touch talent images, third-party content, consumer data, and creative IP; and flag higher-risk uses before launch. Vendor management is becoming more rigorous, with brands asking their business partners how tools are trained, whether they support watermarking and provenance, and demanding indemnification for claims related to use of AI. Workflows that include obtaining informed consent, especially for biometric scans, and for labeling AI-generated or heavily altered content where required by law or expected by consumers, are becoming standard operating procedures.

Done thoughtfully, AI can deliver meaningful efficiencies: fewer returns, better fit and shade matching, faster campaign production, smarter inventory decisions, and more relevant product recommendations. The difference between a competitive advantage and a public relations crisis often lies in how a company treats the humans behind the data, including having clear and transparent contractual provisions.

The Rise of AI and the Expanding Risk to Talent Likeness

While brands adopt AI to streamline campaigns, reduce costs, and extend creative output, these technologies pose unique and often underappreciated risks to models and other creative talent. Chief among them is the unauthorized or overextended use of a model's likeness beyond the scope of the original engagement.

When AI tools are used to replicate or manipulate those attributes without clear consent, models may lose control over how, where, and for how long their likeness appears.

"As a content creator, I often deliver UGC [user generated content] or campaign assets to brands, and I don't always track how or where my content gets used afterwards. Sometimes I unexpectedly see my image on a website, in paid ads, or reposted without any heads-up."

— Anya Li (@annyalii)

A Common Scenario: From Single Campaign to Synthetic Expansion

A model is hired to appear in a single campaign or to model a specific garment. The agreement contemplates traditional photography and a defined scope of use. After the campaign concludes, the brand uses AI tools to digitally replicate the model's likeness and place it into additional outfits, campaigns, or promotional formats that were never discussed or approved.

From the brand's perspective, this may feel like an efficient extension of licensed content. From the model's perspective, it represents a fundamental expansion of use, one that may affect future bookings, dilute exclusivity, or associate the model with products or messaging they did not choose to endorse.

This disconnect often arises because AI-generated content blurs the line between "use of existing images" and the creation of entirely new representations. While the original photographs may have been authorized, the resulting AI-generated images may depict scenarios, garments, or branding that never existed at the time of the shoot.

Contractual Gaps in Traditional Modeling Agreements

Currently, there's a discrepancy between legacy modeling contracts and modern AI capabilities. Many agreements were drafted at a time when campaigns were limited to physical photographs and clearly defined deliverables. As a result, contracts frequently grant rights to use "images," "photographs," or "recordings," but do not contemplate synthetic media, digital replicas, or AI-generated derivatives.

In the absence of express language addressing AI, brands may rely on broadly drafted usage clauses to justify expanded use, while models may reasonably assume that consent to appear in a single campaign does not authorize the creation of unlimited digital versions of their likeness.

This ambiguity creates legal and commercial uncertainty for both sides. For talent, it raises concerns about consent, compensation, and control.

"For creators and models, it raises questions about ownership, compensation and long-term usage. If a brand can keep using an AI version of you after a contract ends, it could affect your ability to work with other brands or control your own image."

— Anya Li (@annyalii)

Potential Legal Claims Available to Talent

Depending on the jurisdiction and the specific contractual language at issue, models may have several potential legal avenues if their likeness is used beyond the agreed scope. These may include right of publicity claims, particularly where AI-generated content exploits a model's identity for commercial gain without consent.

Models may also assert breach of contract claims where AI use exceeds the defined scope of permitted use, or where the contract implicitly limits usage to specified campaigns or formats. In certain circumstances, claims based on false endorsement or unfair competition may arise if AI-generated imagery implies an ongoing relationship or approval that does not exist.

While these claims may provide leverage, litigation is often an imperfect solution. AI-generated content can be deployed quickly and at scale, making it difficult to contain once released.

Proactive Contractual Protections for Models and Influencers

Given these challenges, preventative strategies are increasingly critical. Models and their representatives should focus on addressing AI-related risks at the contracting stage, before any images are captured or content is created.

Key contractual protections may include explicit prohibitions on AI-generated replicas or derivatives absent separate written consent. Separate compensation structures for synthetic or extended uses can help ensure that talent is fairly compensated for the ongoing exploitation of their likeness.

Approval rights are also an important consideration. Models may seek the right to review and approve AI-generated content before it is published, particularly where such content could affect brand alignment or public perception.

Monitoring, Enforcement, and Ongoing Oversight

Beyond initial contracting, talent should consider mechanisms for monitoring and enforcement. Audit rights, notice requirements for new uses, and contractual takedown provisions can provide meaningful leverage without immediate resort to litigation.

For higher-profile talent, additional carve-outs may be appropriate. These can include restrictions on sensitive product categories, protections against political or controversial uses, and provisions addressing moral rights or reputational harm.

Looking Ahead: Protecting Likeness in a Synthetic Marketplace

As AI continues to reshape creative industries, the imbalance of bargaining power between brands and individual models is likely to increase. The key to navigating this evolving landscape lies in proactive contract drafting, informed negotiation, and early legal review.

By addressing AI-related risks upfront, brands and talent can better protect the integrity, value, and longevity of their likeness in an increasingly synthetic marketplace, while allowing innovation to proceed in a manner that respects consent and creative ownership.

Global Supply Chain Rebound Brings Brand-Manufacturer Disputes in 2026

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Persistent disruption across the global supply chain has turned supply chain performance into a central litigation risk for beauty and fashion companies. Yet very few disputes in this space generate published decisions. To anticipate how to navigate missed delivery windows, upstream failures, and excuse defenses, in-house teams can glean valuable lessons from suppliers and manufacturers in other product categories.

Post-Disruption Supply Chain Conflicts: Placeholder POs, Minimum Order Quantity, and When a Deal Is Binding

The first lesson is that courts are closely scrutinizing whether placeholder purchase orders and email exchanges create binding commitments, especially where minimum order quantity and capacity decisions are at stake.

In *Just. Funky, LLC v. Think 3 Fold, LLC*, 142 F.4th 1022 (8th Cir. 2025), a toy company won a bid to supply plush toys to Walmart and issued purchase orders to its supplier for more than 250,000 plush toys at $7 per unit, but each purchase order stated that pricing was "not finalized." The parties then negotiated by email: the buyer said it could go up to $7.50, the supplier countered at $9.50, and both sides linked their willingness to proceed to resolving that price gap. The supplier ultimately stated that it would treat the purchase orders as cancelled and would "proceed with other avenues to sell the product" unless revised orders were issued. On these facts, the Eighth Circuit held there was no contract for the "larger plush" deal. There was no meeting of the minds on an essential term—price—and the court refused to apply UCC gap-filling, emphasizing that the disagreement was explicit rather than an "open term." The court concluded that large purchase orders combined with ongoing negotiations did not create a binding contract where the parties' communications demonstrated that neither intended to proceed without agreement on price.

Azer Scientific LLC v. Quidel Corp., 2025 U.S. App. LEXIS 20387 (3d Cir. 2025), presents the mirror image. A diagnostics company sought a partner to fill tubes for at-home test kits. Azer proposed to supply 10 million tubes per month for a year at specified pricing. On March 25, 2025, the buyer emailed Azer requesting an updated quote for that volume and stating it would send "written approval to place orders for equipment today." Azer responded with the updated quote and asked the buyer to "confirm to me in writing that we are approved to order the equipment and that we have your commitment." The buyer replied: "Please use this note as confirmation that we will be moving forward with the 2.5M/week (10M/month) commitment and to support Azer's order of equipment. We are working on the purchase order now." In reliance, Azer wired roughly $290,000 to purchase custom filling equipment and began preparing to perform, with the buyer's knowledge. A draft long-form supply agreement followed, but it was never executed. When demand softened, the buyer decided to "ramp down" and did not honor the twelve-month volume.

The Third Circuit nonetheless affirmed summary judgment, holding that a binding contract was formed in the March 25 exchange. Under the governing state law, the essential terms — product, quantity, price, and duration — were sufficiently definite even though secondary terms such as quality control, insurance, and termination fees were still being negotiated for a more formal agreement. The court focused on outward manifestations. Azer explicitly requested written confirmation of the buyer's "commitment," the buyer provided it, followed it up with a signed purchase order consistent with that commitment, and Azer ordered equipment and began performance with the buyer's knowledge and approval. The parties' intent to draft a more formal contract later did not negate the binding effect of the email deal they had already made.

Beauty and fashion companies routinely face both scenarios. Brands frequently issue "placeholder" purchase orders to secure production slots or retailer space while price is still being negotiated over email. Those purchase orders often lock in a minimum order quantity that factories rely on when planning capacity and spend. Suppliers may receive emails from brands saying they are "moving forward" with a specific minimum order quantity and price, enabling factories to justify tooling, molds, special fabrics, or dye lots, while legal teams work on a long-form MSA and quality agreement. *Just Funky* suggests that where correspondence shows the parties are still deadlocked on an essential term such as price, courts are unlikely to enforce those preliminary orders. *Azer* suggests that when the correspondence shows explicit agreement on core terms and both sides act in reliance, courts are prepared to enforce the commitment even when the formal contract never materializes.

Force Majeure and Supply Chain Disruption: Courts Are Narrowing Excuse

The second lesson is that courts are tightening the standards for force majeure and are reluctant to treat broad "supply chain disruption" narratives as a free-floating excuse for nonperformance.

In *Mieco L.L.C. v. Targa Gas Marketing L.L.C.*, 161 F.4th 828 (5th Cir. 2025), a seller invoked force majeure after a severe winter storm, pointing to significant supply chain disruption and force majeure declarations by its affiliates. The underlying standard-form contract required the seller to make "reasonable efforts" to avoid or overcome a force majeure event and expressly excluded "economic hardship," including the ability to sell at a higher price, as a basis to excuse performance. The court reversed summary judgment for the seller. holding that the seller bore the burden of proving it actually lost the supply it normally relied on, not merely that one category of source had failed. If the seller had historically purchased some portion of that supply on the open market, the fact that prices spiked during the storm was economic hardship, not force majeure, so long as supply remained available. General references to "storm" and "supply chain disruption" were insufficient to excuse nonperformance.

For beauty and fashion suppliers and brands, that reasoning points in the same direction. A manufacturer facing surging prices for materials cannot assume that a generic "supply-chain crisis" plus higher costs will excuse performance under a clause that excludes economic hardship and requires mitigation. Courts are increasingly likely to ask what alternative sources existed, how those compared with what the supplier normally used, and what concrete steps the supplier took to use them. Brands that want predictability should define force majeure tightly, carve foreseeable volatility and price spikes out of its scope, and specify what "reasonable efforts" must include before performance can be suspended.

Component Shortages and Late Delivery Claims in the Global Supply Chain

The third lesson is that courts view timing and upstream component failures as commercially material, and they are wary of letting suppliers shift those risks downstream without clear contractual language.

In *Habas Sinai Ve Tibbi Gazlar Istihsal A.S. v. Int'l Tech. & Knowledge Co., Inc.*, 2025 U.S. Dist. LEXIS 15555 (W.D. Pa. Jan. 29, 2025), a buyer agreed to purchase a defined quantity of goods from a seller under a United Nations Convention on Contracts for the International Sale of Goods (CISG) governed arrangement documented mainly through emails and a pro forma invoice. The contract set out a clear month-by-month delivery schedule and pricing, and the buyer planned its operations around those deliveries. The seller, in turn, planned to source the goods from a particular upstream manufacturer. When that upstream manufacturer cancelled its orders, the seller failed to deliver and later argued that its obligation to the buyer was implicitly contingent on the upstream party's acceptance and performance.

The court held that a binding contract existed on the terms reflected in the emails and invoice, and declined, at the summary-judgment stage, to treat the upstream manufacturer's role as a condition precedent to the seller's obligations where the contract did not say so. The buyer was allowed to pursue damages based on the higher prices it paid to cover in a tighter market. The court was not willing to let the seller recast its own sourcing decision as the buyer's problem after the fact.

Beauty and fashion agreements are often built on similar structures: brands rely on specific fragrance houses, mills, component makers, or packaging suppliers that sit upstream in the global supply chain of their direct suppliers. Launch calendars and buying plans depend on agreed delivery windows. The logic of *Habas* suggests that courts will treat those delivery windows as commercially meaningful, even where the documentation is minimal, and will resist treating upstream failures as automatic excuses unless the contract clearly shifts that risk to the buyer. Brands forced to re-source at higher cost, or to pay premiums to hit a season or retailer window, may have a credible basis to seek the difference where they can show reliance on the original schedule.

Practical Implications for Beauty and Fashion Brands

Across all of these cases, procedure and renegotiation tactics have a quiet, but important, role. In *Habas*, lack of clear written notice of cancellation, a long silence, and later references to the original schedule, created factual disputes about waiver and excuse that were enough to defeat summary judgment. In *Just Funky*, the parties' own emails about "not finalized" pricing and cancelled orders became the decisive evidence that no contract for the larger deal had ever been formed. In *Azer*, the parties' written and practical behavior — explicit email confirmation, issuance of a purchase document, and substantial reliance expenditures — became decisive evidence that a binding commitment existed despite the absence of a signed master supply agreement.

For beauty and fashion companies that live on short product cycles and seasonal pressure, the practical message is clear: courts are willing to enforce email commitments and sparse documentation where there is clear agreement on core terms and reliance, but they will not rescue deals where the parties' own communications show that essential terms were unsettled. Courts are narrowing excuse defenses based on supply chain disruption and price movements, treating delivery timing linked to production and launch as material, and hesitating to shift upstream risk away from the supplier absent clear language. Brands that draft and operate as though disruption and re-trading are now permanent features of the landscape — by being explicit about when email commitments are binding, tightening force-majeure language, allocating upstream risk clearly, and using disciplined notice and amendment practices — will be far better positioned when the next fulfillment failure becomes a dispute.

Beyond the Label — Trademark and Design Protection as a Competitive Edge in Beauty

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Brand identity is one of the most powerful assets a beauty company has, and one of the hardest to protect. In an industry where product aesthetics carry as much weight as formulas, the overall look and feel of a brand plays a central role in shaping consumer loyalty. But that same visual focus makes beauty brands particularly vulnerable to imitation. Copycat packaging, brand dilution, and fast-shifting design trends all raise the stakes for companies trying to maintain a distinctive presence in this market. Competitors and copycats appear overnight, often drawing inspiration from successful brands and blurring the lines between "trend" and "trade dress." As consumers scroll through endless product recommendations online, the risk of confusion grows.

Today, protecting a brand requires more than securing a name or logo. It means looking holistically at every element that signals a product's source, from color stories and typography to packaging layouts and signature visual cues, and understanding how those elements function as trademarks or trade dress. The beauty landscape is now shaped by social media storytelling, viral aesthetics, sustainability initiatives, and omnichannel retail experiences, all of which influence how consumers perceive and identify a brand. As expectations evolve and new entrants crowd the field, beauty companies that take a proactive, thoughtful approach to brand protection are best positioned to preserve their identity and market credibility.

Protecting Names, Sub-Brands, and Brand Architecture

The first line of defense is, of course, trademark protection. But in a beauty brand, even this foundational step has become more complicated. The vocabulary of beauty is rich with descriptive terms — bright, clean, glow, plump, smooth — all of which may sound appealing but often fall short of strong trademark protection. When a market is driven by claims (e.g., brightening, firming, clarifying) and aspirational outcomes, marketers naturally gravitate toward names that evoke those results. Yet those names rarely clear easily.

And clearance is just the beginning. Even once a name is legally available, the question becomes whether it is strategically strong enough to differentiate the brand over time. With consumers expecting clever, on-trend naming, and with product lines expanding in every direction, finding a distinctive brand or product name requires more effort and planning than ever. House marks, line extensions, seasonal capsules, limited editions, and co-branded collaborations all require their own naming strategy and trademark analysis.

Clearance is critical. A name that feels clever or "perfect" may already be in use, especially as more brands launch globally. The risk is not just legal conflict. It is also the risk of looking indistinguishable in a crowded marketplace. Companies that build strong naming frameworks, plan for line extensions, and treat trademark clearance as a non-negotiable step tend to avoid costly rebrands or conflicts down the line. They also futureproof their brand, ensuring that new products can slot seamlessly into an existing naming hierarchy without causing consumer confusion.

Beyond words, more brands are also developing non-traditional identifiers such as signature colors and custom typefaces, that help them stand out visually. With consistent use and strong consumer association, these elements can sometimes function as protectable trademarks. A brand's shade of blue, a unique pattern on outer packaging, or a consistent typographic style used across marketing and product displays can all become part of the brand's identity in the minds of consumers. These visual cues also make up the building blocks of a recognizable aesthetic.

Many beauty brands use these design choices intentionally to reinforce their story, and when these choices become signature to the company and are consistently used, they strengthen both marketing ROI and legal protection.

Trade Dress and the Fight Against Copycat Packaging

Trade dress protects the visual identity of a beauty brand, and this is where some of the most pressing challenges lie. Beauty packaging is central to a brand's appeal. A distinctive bottle silhouette, cap shape, palette layout, or box design can become instantly recognizable, sometimes even more so than the name itself. The rise of "shelf presence" on social media (e.g., flat lays, GRWM videos, bathroom counter shots) means that packaging is no longer just a container; it is part of the brand's visual narrative.

But when a design catches consumers' attention, it often catches copycats' attention too. Lookalike packaging has become increasingly sophisticated, a lot of times echoing the "vibe" or overall aesthetic of a product without directly copying any one element. This is particularly common in dupe culture, where lower-priced products intentionally mimic the look of prestige brands to capitalize on consumer recognition. Instead of copying a name, they may mimic the color palette, the silhouette, the finishing material, or the layout of the packaging.

Trade dress can be a powerful tool for pushing back against lookalike packaging, but only when the design is distinctive enough that consumers associate it with a single brand. That's not always easy to show in a beauty brand, where trends move quickly and many brands lean into similar aesthetics at the same time. What may begin as a signature design choice, like a certain color palette, finish, or silhouette, can become commonplace across the industry within a season. When that happens, the design risks blending into the broader trend rather than signaling a specific source, making trade dress protection harder to establish. This challenge often surprises creative teams. Designers may adopt emerging trends to keep a brand visually current, not realizing that widespread adoption of those trends can dilute the distinctiveness needed for legal protection. The result is a landscape, where multiple products share similar looks, even without intentional copying, which complicates the argument that consumers link a particular design to a particular brand.

To overcome this, brands must think intentionally about their design identity. What makes the brand's packaging unique? Is it the combination of elements? The layout? The interplay of colors? The way components are open or displayed? Consistency across SKUs strengthens the argument that these design choices are part of a unified brand expression rather than a one-off creative decision.

Documenting this consumer association through marketing history, media coverage, sales success, and consistent design use is essential. This documentation also helps brands assess how recognizable their trade dress has become over time. Brands that invest early in building that record are in a much stronger position when imitation surfaces.

The Impact of Dupe Culture, Social Media, and Rapid Trends

The modern beauty landscape is shaped heavily by social media, and that influence cuts both ways. A product's design can go viral overnight, cementing it in the minds of consumers far more quickly than traditional marketing ever could. A single TikTok video can define a product's visual identity to millions. But viral visibility also accelerates imitation.

"Dupe culture" celebrates cheaper lookalikes, often positioning them directly next to the original product to highlight similarities. While some dupe comparisons are innocent or purely consumer-driven, others are marketing strategies in disguise. When lookalike packaging confuses consumers or implies a false association, brands risk losing control over their identity and diluting the visual cues they've invested in building.

This has become especially challenging as two parallel consumer trends emerge: a desire for high-end aesthetics at accessible price points, and a fascination with viral "aesthetic categories" (e.g., clean girl, glazed, latte makeup, etc.). Brands that achieve popularity within one of these visual trends often find that their packaging, and even their broader brand aesthetic, is copied under the guise of belonging to the trend rather than copying the brand.

At the same time, sustainability and refillability are initiatives that reshape packaging design. As brands experiment with streamlined materials, reduced plastics, or modular refill systems, distinctiveness must come from more subtle elements. The industry's push toward clean packaging can make it harder to stand out, especially when many companies adopt similar eco-inspired styles. For some brands, this shift is prompting a reevaluation of what makes their packaging memorable.

Trends are also accelerating. What was considered a "signature look" five years ago may be ubiquitous today. This places pressure on brands to balance innovation with consistency. The challenge is ensuring that any evolution in packaging still maintains the brand's identity so that consumers can easily recognize it, even if the look is updated.

As trends move faster, a clear, early, and consistent protection strategy becomes even more important. The brands that succeed are those that stay attuned to how their aesthetic is being received in the marketplace and take proactive steps to protect it.

Beyond the Label: Practical Steps to Strengthen Brand Protection

- While every brand has its own design language and risk profile, there are several core practices that can help companies safeguard their identity in a crowded and fast-moving market:
- Treat trademark clearance as an early-stage requirement, especially when naming new lines or expanding internationally. This prevents conflicts and avoids the need for rebranding after launch.
- Maintain consistent design elements across packaging, marketing, and digital materials so trade dress arguments rest on solid ground. Consistency communicates to consumers that these visual cues belong to the brand.
- Document design development, consumer recognition, and brand evolution. These records are invaluable if enforcement becomes necessary. Screenshots, sales data, campaign history, and even social media engagement can help build the case for distinctiveness.
- Monitor the marketplace, especially online platforms where lookalike products often appear first. Early detection allows brands to move quickly with takedowns, complaints, or communications to prevent confusion.
- Evaluate non-traditional brand elements, such as colors, textures, and motifs, as potential protectable trademarks with strategic value. These elements often become the most recognizable aspects of a brand over time.
- Establish internal brand guidelines to ensure teams stay aligned on what makes the brand visually distinctive. This helps maintain consistency even as design teams innovate.

Taken together, these actions create a stronger foundation for preventing brand dilution, challenging and confusingly similar designs, and preserving the brand's identity as the business grows. They also help companies communicate internally about what is "on brand," making it easier to build long-term visual equity.

Looking Ahead: A Brand Landscape That Won't Slow Down

Beauty's pace shows no signs of slowing. New competitors, new aesthetics, and new consumer expectations continue to reshape the market. With these shifts come new vulnerabilities: faster imitation, broader distribution channels, and increasingly sophisticated lookalike products. But they also create new opportunities.

Brands that invest in a layered, proactive trademark and trade dress strategy, one that looks beyond the label to the full spectrum of visual identity, are better equipped to navigate these changes. They strengthen the connection with consumers, reinforce the uniqueness of their aesthetic, and maintain the integrity of the brand experience that sets them apart.

Ultimately, protecting a beauty brand today is not just about avoiding infringement disputes. It's about ensuring that the elements that make a brand recognizable, memorable, and trusted remain firmly under the brand's control, even as the industry and its customers evolve around it.

2026 Privacy Landscape: What to Watch for and How to Build a Resilient Data Privacy Compliance Program

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Fashion, beauty, and wearable technology companies are entering 2026 amid a rapidly evolving data privacy landscape that will shape how brands design products, personalize customer experiences, and process personal information. 2026 brings new U.S. state omnibus consumer privacy laws, increasingly prescriptive regulations governing the use of AI, and stricter rules regarding health and biometric data, and children's privacy. Privacy is no longer just a legal box to check; it is becoming a competitive advantage that builds consumer trust and mitigates enforcement and litigation risk. To lean into this competitive advantage, brands should consider promoting transparent data practices to stand out in a crowded market.

U.S. State Comprehensive Consumer Privacy Laws

Comprehensive consumer privacy laws and regulations that went into effect in January

Three new comprehensive consumer privacy laws took effect on January 1, 2026, in Indiana, Kentucky, and Rhode Island, bringing the total number of states with such laws to 20. We expect additional states to enact comprehensive privacy legislation in 2026, as well as further amendments to existing laws, following recent updates in Colorado, Connecticut, Montana, and Utah. Significant updates to the California Consumer Privacy Act ("CCPA") implementing regulations also went into effect on January 1, 2026. These amendments cover automated decision-making technology, risk assessments, and cybersecurity audits, as well as revisions to the definition of sensitive personal information, privacy notice requirements, and consumer rights.

To track these fast-moving developments, check out Foley's U.S. State Comprehensive Consumer Privacy Laws Comparison chart that is updated quarterly.

Biometric Data

Biometric and body-related data, such as facial mapping, body scanning, and skin analysis tools used in virtual dressing rooms, wearables, and beauty devices remain a top-risk category in 2026. This data generally meets the statutory definition of sensitive personal information under state comprehensive consumer privacy laws.

Most state comprehensive consumer privacy laws limit the definition of biometric data to data that is used to uniquely identify an individual. By contrast, the Connecticut Data Privacy Act ("CTDPA") considers biometric data to be sensitive personal information regardless of whether biometric data is processed for the purpose of uniquely identifying an individual. Processing biometric data under these privacy laws therefore triggers heightened requirements, such as opt-in consent requirements, additional consumer rights, and disclosure requirements.

Under the CCPA, consumers have the right to limit the use of their sensitive personal information, which requires additional disclosures and certain links on a company's website, such as a "Your Privacy Choices" link depending on the categories of personal information a company collects. Accordingly, a clear understanding of the categories of personal information collected and the purposes for which it is collected, used, and disclosed is essential to assessing a company's compliance obligations.

Consumer Health Data Privacy Laws

Consumer health and wellness data will also remain a key risk area in 2026. Wearable devices and health-adjacent apps that infer stress, sleep, menstrual cycle patterns, or skin conditions are increasingly regulated by state privacy laws that govern such consumer health data outside of HIPAA. As discussed in a prior blog, the CTDPA was recently amended to cover consumer health data, and Washington and Nevada have implemented laws that specifically govern consumer health data privacy. Companies that develop wearable devices that collect consumer health- and wellness-related data must understand their obligations under these laws, as regulators have made clear that protecting consumer health-related data is an enforcement priority.

A Rapidly Evolving Children's Privacy Landscape

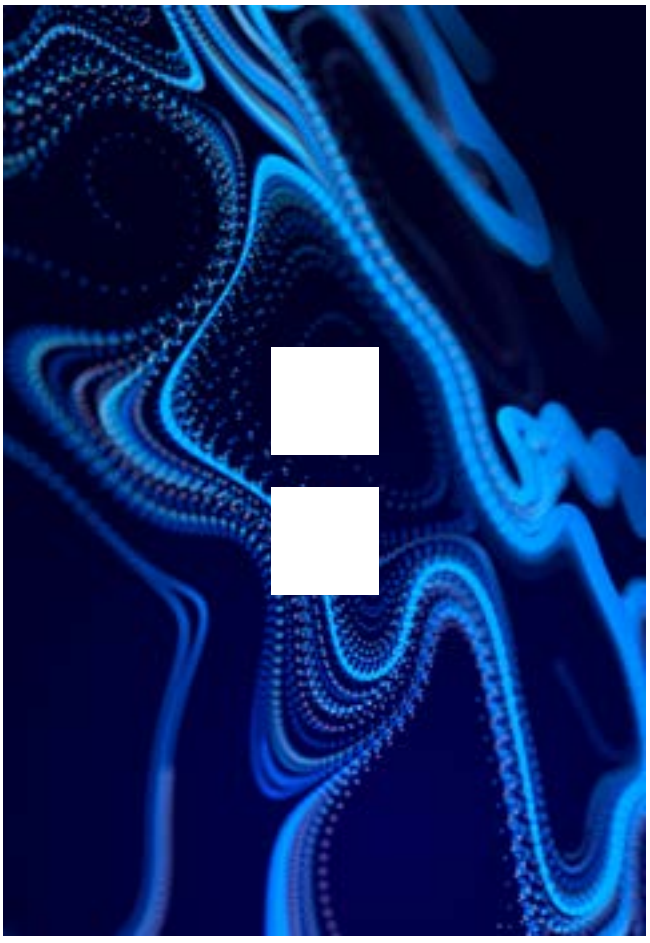
Brands that intend to collect children's personal information (e.g., youth-focused fashion apps, gamified beauty tutorials, and wearables) will be expected to comply with stronger protections in 2026. Various state laws governing children's privacy and the protection of children and teens in online spaces will go into effect in 2026. These laws generally govern social media platforms, children's and teens' use of AI, and app stores and app developers, often imposing age-verification and parental consent requirements. This remains a rapidly developing space, as many of these laws are frequently challenged in court and states continue to enact new legislation designed to withstand such legal challenges.

At the federal level, children's privacy is also a high priority. In early 2025, the FTC finalized rules regarding the Children's Online Privacy Protection Act ("COPPA"), focused on opt-in consent for targeted advertising, limits on data retention, and COPPA's self-regulatory Safe Harbor Program. The FTC has indicated that it plans to begin enforcing these rules in 2026. In addition, the FTC has focused on age verification and age estimation technologies and hosted a workshop on January 28 to gather input from key stakeholders as age verification is becoming a key compliance requirement under various laws. Brands should closely monitor these developments at the state and federal levels.

Artificial Intelligence

The use and regulation of artificial intelligence is unlikely to slow down in 2026. Companies deploying AI for personalization, AI-generated models and virtual fitting rooms, dynamic pricing, and similar use cases, will be required to comply with heightened transparency standards. For example, the EU Artificial Intelligence Act ("EU AI Act") classifies certain biometric systems that infer personal attributes as prohibited AI systems, which could have an impact on the retail industry as the use of AI continues to develop. Enforcement of the EU AI Act begins later this year.

In the United States, states continue to enact AI-related legislation. In 2025, California passed multiple AI-focused laws and the CCPA's implementing regulations now address the use of automated decision-making technologies. Given the rapid adoption of AI and the broad commercial benefits, states are likely to continue regulating its use. These developments underscore the growing importance of robust AI governance to help companies monitor and meet evolving compliance obligations.

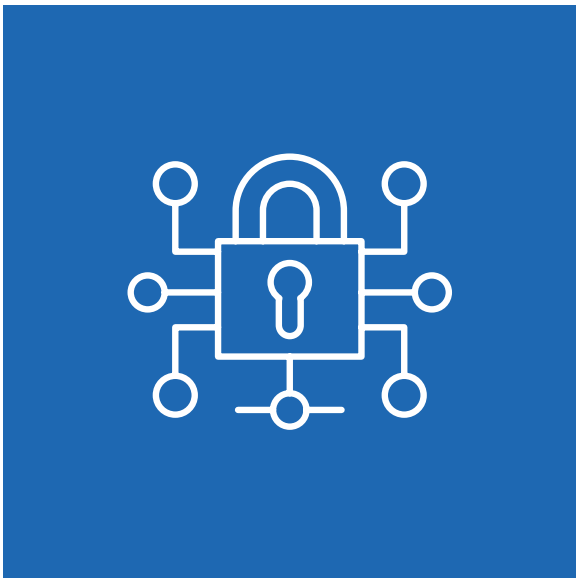


Targeted Advertising, Cookies and Tracking Technologies, and Class-Action Litigation

Fashion, beauty, and wearable companies will continue to leverage data, cookies, and other tracking technologies for the purposes of targeted advertising and analytics. In recent years, class-action litigation under state wiretap laws, such as California Invasion of Privacy Act ("CIPA") has surged, challenging the use of cookies and tracking technologies without proper consent. Plaintiffs allege that the use of cookies and tracking technologies, such as pixels, constitute illegal wiretapping under these laws. Further, there has also been a surge in litigation under the Video Privacy Protection Act ("VPPA"), a law enacted in 1989, drafted to protect a consumer's video rental history. However, recently, plaintiffs allege that disclosures of video-viewing data through the use of tracking technologies violates the VPPA. Earlier this year, the Supreme Court granted certiorari in a case involving the definition of "consumer" under the VPPA to resolve a circuit split. The Supreme Court's decision will inevitably have an effect on the future of privacy litigation and is one to watch in the coming months.

To mitigate the risk of being named in a class action suit, companies should review their cookie consent configurations to ensure that cookies and other tracking technologies do not load until a website visitor affirmatively consents. Further, companies will need to ensure that such cookies and tracking technologies do not deploy after a user rejects the use of cookies and tracking technologies. Companies should also review their privacy policies and disclosures to ensure they accurately reflects the ways in which the company uses such cookies and tracking technologies.

While reviewing consent procedures, companies should also ensure that their interfaces are not designed in a way that includes dark patterns. Under state comprehensive consumer privacy laws, dark patterns are generally defined as design practices that impair consumer autonomy and manipulate a consumer's decision-making. One common example of a dark pattern is making it easier to consent to the collection of personal information, such as by including only an "Accept All Cookies" button on a cookie consent banner, without a clear option to reject or opt out of tracking. To mitigate these risks, companies should implement "symmetry-in-choice," as required by the CCPA. A best practice is to include both an "Accept All Cookies" and "Reject All Cookies" option on a cookie consent banner, to help ensure that the cookie consent banner complies with applicable law and industry standard practices.



Developing a Comprehensive Data Privacy Compliance Program to Mitigate Risk

Given the growing number of laws and regulatory requirements, companies should continuously monitor legislative developments and regularly assess their data privacy program and policies to ensure they reflect the latest legal obligations and their current data collection practices. In 2026, companies should review their privacy program, including but not limited to, the following:

- Integrate privacy by design from development to implementation. Companies that combine personal expression with advanced technology that collects sensitive personal information about consumers, implementing privacy by design at the outset reduces redesign costs and helps to mitigate the risk of breaches, misuse, and reputational damage.
- Conduct data mapping exercises with key stakeholders to understand the categories of personal information collected, the purposes for which such personal information is collected, and to whom such personal information is disclosed. This will enable companies to understand the categories of personal information that are being collected and what obligations they have under state comprehensive consumer privacy laws and consumer health data privacy laws.
- Establish a formal AI and automated decision-making governance framework that inventories AI and automated decision-making systems, classifies risk, and aligns with applicable legal requirements.
- Implement consent procedures, particularly with respect to the collection of sensitive personal information, and the use of cookies and tracking technologies.
- Conduct due diligence on vendors and standardize vendor agreements to ensure that each vendor complies with a data processing agreement that complies with applicable legal requirements.
- Conduct regular audits, risk assessments, and employee training.
- Build specific children's privacy controls, including age assurance verification, parental consent, profiling and targeted advertising limitations, and content moderation on relevant products to align with state children and teen privacy laws.

With new state laws, expanding AI regulations, and evolving children's privacy obligations, 2026 will demand disciplined data governance and proactive risk management. Companies that invest in comprehensive data privacy compliance programs will not only reduce litigation and regulatory risk but also enhance their brand reputation and build consumer trust.

How MoCRA Is Reshaping FDA Oversight of Cosmetics in 2026

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The Modernization of Cosmetics Regulation Act of 2022 (MoCRA) is the most significant change to U.S. cosmetic regulation since the Federal Food, Drug, and Cosmetic Act (FD&C Act) was enacted in 1938. MoCRA broadens FDA's authority, expands industry obligations, and is reshaping how cosmetics are brought to market, monitored, and, when necessary, removed from shelves.

Since MoCRA's passage in 2022, FDA has been phasing in new requirements and issuing guidance documents to help companies comply. This rollout will continue over the next few years. At the same time, FDA is sharpening its focus on "high-risk" cosmetic ingredients and using public communications and databases to drive transparency and, indirectly, enforcement.

We expect that FDA will continue to increase its attention on cosmetics throughout 2026 and beyond.

Facility Registration and Product Listing

MoCRA added mandatory registration and product listing for cosmetics. As of December 29, 2023 (one year after MoCRA's enactment), both domestic and foreign manufacturers and processors of cosmetics distributed in the U.S. must register each facility with FDA, ensure foreign facilities designate a U.S. agent, and register new facilities within 60 days of starting manufacturing or processing. Facility registrations must be renewed every two years.

FDA also requires product listings for each cosmetic product, including certain key information about ingredients and where the product is manufactured. These listings must be updated if and when product information changes. As of January 6, 2026, FDA's system reflects: 14,299 unique, active facility registrations and 992,907 unique, active product listings.[48] These figures highlight that FDA now has much greater visibility into who is manufacturing what, and where. Incomplete or inaccurate product listings risk not only FDA enforcement action, but also — in the case of imported products — possible delayed (or rejected) product entries, as FDA (and by extension, Customs and Border Patrol ("CBP") will likely increasingly rely on product listing data during random import compliance screenings.

Serious Adverse Event Reporting and Public Transparency

On September 12, 2025, FDA launched the FDA Adverse Event Reporting System (FAERS) Public Dashboard for Cosmetic Products, giving the public real-time access to adverse event data associated with cosmetic products.[49] While adverse event reporting itself is not new, this dashboard makes cosmetic safety issues more visible to consumers, salon professionals, and health care providers, and provides a direct window into product-specific safety concerns that plaintiffs' lawyers, retailers, and investors can see as easily as regulators. Moving forward, cosmetic manufacturers and brand owners should regularly monitor the FAERS cosmetic dashboard for trends involving their products and key competitors, and develop internal procedures to investigate, trend, and respond to public adverse event data.

48 *See* FDA Registration and Listing Reports (last accessed Jan. 21, 2026), available at https://www.fda.gov/cosmetics/registration-listing-cosmetic-product-facilities-and-products.

49 *See* FDA Launches Real-Time Adverse Event Reporting Dashboard for Cosmetic Products (Sep. 12, 2025), available at https://www.fda.gov/news-events/press-announcements/fda-launches-real-time-adverse-event-reporting-dashboard-cosmetic-products.

Good Manufacturing Practices (GMP)

MoCRA requires FDA to establish Good Manufacturing Practice (GMP) regulations for cosmetic facilities. These rules will set minimum standards for manufacturing, processing, packing, and holding cosmetics. As of January 2026, FDA has not yet issued final GMP regulations for cosmetics; however, draft regulations or guidance are expected, and once they appear, the comment period will be the industry's best opportunity to shape the final rules. Final GMP requirements are likely to become a cornerstone of FDA's inspection and enforcement efforts for cosmetics, similar to FDA's approach for foods and drugs. FDA has already begun to signal (via Warning Letters to facilities that manufacture both drug and cosmetic products[50]) that it will expect strict compliance with MoCRA's GMP requirements once finalized.

Therefore, we recommend that companies use this interim period to assess existing quality systems (particularly if they were not built around drug- or food-grade GMPs) and identify where processes, documentation, and training may need to be raised to a more formal, auditable standard. Companies should also consider submitting comments when FDA issues draft guidance to ensure operational realities are reflected in the final regulations.

Mandatory Recalls

Historically, FDA did not have the authority to mandate the recall of cosmetic products. MoCRA changed that by giving FDA explicit authority to mandate recalls of cosmetics that are adulterated or misbranded and present a serious risk of adverse health consequences. On December 18, 2025, FDA issued a draft guidance document titled "Questions and Answers Regarding Mandatory Cosmetics Recalls: Guidance for Industry."[51] The draft guidance explains how FDA will decide when a mandatory recall is warranted, describes the process for implementing such a recall, and outlines FDA's expectation for industry cooperation and communication. Once finalized, the draft guidance will reflect FDA's current thinking on when it will use its mandatory recall power and what it expects companies to do. Manufacturers and brand owners should review and, as necessary, update internal recall plans now so they align with FDA's emerging expectations.

Safety Substantiation

Notably, MoCRA requires that a responsible person (defined as the manufacturer, packer, or distributor of a cosmetic product whose name appears on the label of such cosmetic product) maintain records demonstrating adequate substantiation of safety of the cosmetic product. "Adequate substantiation of safety" is defined as "tests or studies, research, analyses, or other evidence or information that is considered, among experts qualified by scientific training and experience to evaluate the safety of cosmetic products and their ingredients, sufficient to support a reasonable certainty that a cosmetic product is safe."

The "experts qualified by scientific training and experience" aspect of this substantiation standard should not be overlooked, as FDA considers certain types of studies to be more reliable than others, and companies should not assume that existing literature is always adequate to substantiate safety in lieu of specific product testing. Further, consumer class action plaintiffs that challenge allegedly false or misleading claims on cosmetics products labeling often argue that terms such as "all natural," "non-toxic," or "organic" are implicit claims that a product is safe to use. For these reasons, we recommend seeking the advice of qualified counsel on substantiation issues at the initial stages of development for a new cosmetic product. Because FDA is simultaneously increasing transparency around adverse events and high-risk ingredients, gaps in safety substantiation are more likely to be exposed and to attract regulatory and litigation attention.

50 *See, e.g.,* Warning Letter to CDL Services, Inc. d/b/a Technichem, Nov. 24, 2025, available at https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/cdl-services-inc-dba-technichem-713877-11242025.

51 *See* FDA Questions and Answers Regarding Mandatory Cosmetics Recalls: Guidance for Industry (Dec. 2025), available at https://www.fda.gov/media/190625/download.

"High Risk" Ingredients

In parallel with MoCRA implementation, FDA has demonstrated interest in increasing scrutiny of certain cosmetic ingredients it views as higher risk, either because of toxicity concerns or broader environmental/health debates. MoCRA directs FDA to examine several specific topics, and FDA is also using testing and public notices to flag issues.

PFAS Report

Under MoCRA, Congress mandated FDA to evaluate the use of perfluoroalkyl and polyfluoroalkyl substances (PFAS) in cosmetic products. On December 29, 2025, FDA issued its long-awaited assessment of PFAS in cosmetic products.[52] The PFAS report stated that FDA's evaluation did not reach definitive safety determinations, and that significant uncertainty remains regarding the safety of PFAS due to gaps in existing data of PFAS exposure through cosmetics. FDA Commissioner Martin Makary, M.D., M.P.H. confirmed that FDA will continue working with the Centers for Disease Control and Prevention (CDC) and U.S. Environmental Protection Agency (EPA) to update and strengthen recommendations on PFAS. Despite the absence of clear safety conclusions, PFAS remain under governmental, industry, and consumer scrutiny. Companies using PFAS in cosmetics should inventory where PFAS appear in their portfolio, evaluate substitution or reformulation options, and monitor evolving federal and state actions that may indirectly impact cosmetic uses.

Fragrance Allergens

Under MoCRA, FDA is required to promulgate regulations to identify fragrance allergens that must be disclosed on cosmetic product labels and establish threshold levels for required disclosure while considering international, state, and local requirements. As of January 2026, FDA has not yet issued fragrance allergen regulations. When it does, many products will likely require labeling changes and, in some cases, reformulation or marketing strategy adjustments. Companies should track ingredient profiles and pay attention to known fragrance allergens to prepare for labeling changes.

Asbestos in Talc-Containing Cosmetics

MoCRA directs FDA to issue regulations establishing standardized testing methods for detecting and identifying asbestos in talc-containing cosmetic products. FDA issued a proposed rule titled "Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products" on December 27, 2024, but later withdrew it on November 28, 2025, citing agency priorities and public comments received.[53] FDA indicated it will issue a revised proposed rule, but timing is uncertain. Given ongoing litigation involving talc and asbestos, companies that manufacture or market talc-containing cosmetics face elevated risk even in the absence of final FDA testing rules. Considering both scientific and litigation risk, companies should evaluate reliance on talc and review testing methods and supplier controls.

52 *See* PFAS Report (December 2025), available at https://www.fda.gov/media/190319/download?attachment; FDA Finds Insufficient Data to Determine Safety of PFAS in Cosmetic Products (Dec. 29, 2025), available at https://www.fda.gov/news-events/press-announcements/fda-finds-insufficient-data-determine-safety-pfas-cosmetic-products.

53 *See* Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products; Withdrawal, 90 Fed. Reg. 54603 (Nov. 28, 2025).

Hair Smoothing Products and Formaldehyde

FDA has been evaluating whether to propose a rule prohibiting formaldehyde (including formaldehyde-releasing ingredients such as methylene glycol) in hair smoothing or straightening products applied to the hair and heated under typical use. FDA missed its own December 2025 target for issuing a notice of proposed rulemaking, and it is not yet clear if or when a proposal will be published.[54] However, concerns about formaldehyde emissions from heated hair products have already led to increased scrutiny from regulators, occupational safety agencies, and plaintiffs' counsel. Companies should closely track FDA's rulemaking plans and consider reformulation and occupational exposure controls (such as increased ventilation in salons) even before a formal prohibition is in place.

Methylene Chloride in Gel Nail Polish Remover

Under 21 C.F.R. § 700.19, methylene chloride is prohibited as an ingredient in all cosmetic products at any level. Despite that clear prohibition, FDA testing of imported gel nail polish removers in 2024 and 2025 detected methylene chloride in several products, prompting a public notice in April 2025.[55] The notice states that cosmetics containing methylene chloride often fail to identify it as an ingredient on the cosmetic product label and that the ingredient is sometimes listed under other names such as dichloromethane or methyl bichloride. For example, FDA discovered that the gel nail polish removers imported from China contained methylene chloride only via testing. Therefore, companies should track ingredient profiles and pay attention to the use of ingredients FDA has identified as unsafe due to the public health, regulatory, and litigation risks of marketing such products.

Strategic Takeaways from FDA's 2026 Cosmetics Agenda

MoCRA and FDA's broader policy priorities are turning cosmetics into a more regulated and more transparent industry. Facility registration, product listing, safety substantiation, and adverse event reporting now create a data-rich environment that regulators, consumers, retailers, and litigants can all see and use. Over the next few years, companies should expect additional FDA guidance and rulemaking and continued use of public dashboards, safety alerts, and press releases to highlight "high risk" products and ingredients.

If you are operating in this space — or planning to expand into the U.S. cosmetic market — now is the time to build a proactive regulatory strategy that keeps pace with FDA's rapidly evolving approach to cosmetics. Companies should take the time to map MoCRA requirements to existing operations and identify gaps, build compliance systems that can scale as FDA issues new rules, and anticipate ingredient-specific scrutiny and potential labeling or formulation changes.

54 *See* Hair Smoothing Products That Release Formaldehyde When Heated, available at https://www.fda.gov/cosmetics/cosmetic-products/hair-smoothing-products-release-formaldehyde-when-heated; RIN: 0910-AI83, available at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=0910-AI83.

55 *See* Cosmetic Products Containing Methylene Chloride, available at https://www.fda.gov/consumers/health-fraud-scams/cosmetic-products-containing-methylene-chloride.

Restructuring the Runway: How Chapter 11 363 Sales Are Reshaping Fashion and Beauty

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Recent Chapter 11 bankruptcy filings by Saks Global Holdings, LLC on January 13, 2026, and Eddie Bauer LLC on February 9, 2026, underscore the continued financial stress facing companies across the fashion and beauty sector. Consumer inflation, financial uncertainty, reduced discretionary spending, tariff exposure, inventory and supply chain disruptions, shifts in customer behavior driven by the growth of ecommerce, and higher borrowing costs have placed sustained pressure on traditional operating models. As these challenges intensify, distressed brands are increasingly turning to court-supervised asset sales under Section 363 to monetize intellectual property and going-concern value, streamline operations, and facilitate ownership transitions. In the past year alone, multiple well-known fashion and beauty companies have pursued or completed Section 363 transactions as part of broader restructuring efforts.

Why 363 Sales Remain Attractive for Fashion and Beauty Debtors

Section 363 of the Bankruptcy Code allows a debtor, after notice and court approval, to sell assets outside the ordinary course of business, free and clear of liens, claims, and encumbrances. This restructuring structure allows a buyer to start the company anew with a clean balance sheet and new financing, free from many legacy debts and obligations. The buyer retains broad discretion to select the assets it wishes to purchase, assume only those contracts and leases necessary or desired to operate the business, and leave behind assets, leases, and obligations deemed unprofitable or otherwise undesirable within the bankrupt seller entity.

For fashion and beauty companies, whose value is often concentrated in brand equity, trademarks, proprietary formulas, and customer relationships, a Section 363 sale process offers a path to preserve core assets and value even when the operating business is over-levered or burdened by unfavorable leases or prior trade or other debt. The ability to cleanse assets through a court order continues to attract both strategic buyers and financial sponsors seeking to redeploy established brands with reduced risk.

Section 363 transactions also align closely with the industry's emphasis on speed and continuity. Traditional Chapter 11 plan-based exits can require lengthy court approval periods, creditor solicitations and voting requirements, and multiple statutory confirmation standards before a company can emerge from bankruptcy. These factors can increase execution risk, elevate costs, and undermine acquiror or investor confidence in financing a go-forward business. By contrast, Section 363 sales can often be completed quickly and early in a case, and the standard for bankruptcy court approval of such a sale is comparatively streamlined and debtor-friendly, requiring a showing that the transaction represents a sound exercise of the debtor's reasonable business judgment.

The speed and decreased execution risk of a Section 363 sale can significantly limit disruption to supply chains, licensing arrangements, and consumer goodwill. This consideration is particularly important for beauty brands and fashion labels, whose market relevance, financing sources, and supplier relationships can erode quickly during prolonged insolvency proceedings.

Recent Examples from the Fashion and Beauty Sector

One of the most prominent recent examples is the Avon Products transaction, where a Chapter 11 filing led to a court-approved sale process for substantially all assets of the international beauty business. The case illustrates how Section 363 sales can be structured alongside negotiated settlements among debtors, lenders, and creditor committees to achieve a going-concern transfer while resolving intercompany and legacy claim issues. This approach preserved brand continuity across global markets while allowing the bankruptcy estates to proceed toward liquidation of remaining assets.

Beyond Avon, a steady pipeline of fashion and beauty companies has entered Chapter 11 with the stated intent to pursue asset sales. In its recently filed Chapter 11 case, Eddie Bauer LLC proposed a Section 363 sale aimed to maximize value by selling desirable store locations. The watch distributor and fashion brand licensee E. Gluck also recently obtained an order of a Bankruptcy Court approving a Section 363 sale of certain critical assets to support the continuation of its business after suffering liquidity and debt issues. These cases span fashion and accessories, beauty, mid-market apparel, and specialty retail, reinforcing that distress is not confined to any single segment. Many such filings pursue dual-track processes, where debtors market assets while simultaneously evaluating plan alternatives, with Section 363 sales often emerging as the most practical and value-preserving outcome.

Emerging Themes in Fashion and Beauty Section 363 Transactions

Several consistent themes have emerged across recent Section 363 transactions in the fashion and beauty sector.

Intellectual Property as the Primary Value Driver

Intellectual property is frequently the primary source of value. Buyers are often less inclined to assume expansive brick-and-mortar footprints or long-term lease obligations, and are more focused on acquiring trademarks, licenses, formulations, customer lists, and digital infrastructure. As a result, disputes in Section 363 sales increasingly center on IP rights, and license and distribution agreements. Fashion and beauty brands commonly operate through complex licensing and regional distribution models, raising legal questions about assignability and contract assignment and cure obligations. Accordingly, asset purchase agreements, diligence processes, and license negotiations must be carefully executed to delineate assumed liabilities and ensure that IP transfers are clearly authorized by the sale order and any necessary consent, to avoid post-closing surprises or litigation. Depending on the governing agreements and IP at issue, licensors may possess statutory or contractual rights to object to a sale, which must be identified and addressed early in the process.

Continued Use of Stalking Horse Structures

"Stalking horse" bid structures remain prevalent, even in cases where the stalking horse buyer is an existing stakeholder or affiliate. Establishing a baseline bid helps debtors demonstrate value maximization and provides procedural protection against later challenges, particularly from unsecured creditors. Bankruptcy courts continue to scrutinize stalking horse bidder protections, such as breakup fees, sale timelines, and reimbursements of the buyer's expenses, but generally approve them where supported by marketing efforts and evidentiary records.

Complementary Bankruptcy Tools to Support Sale Execution

Debtors increasingly deploy Section 363 sales in combination with other bankruptcy tools to enhance transaction certainty. These include critical vendor orders to stabilize supply chains, store-closing procedures to liquidate inventory and exit unprofitable locations or business units, and structured financing orders incorporating milestones tied to the sale process. Together, these measures improve the likelihood that a restructured business will exit bankruptcy on an accelerated and economically viable timeline.

Implications for Buyers and Brand Owners

For acquirers, recent fashion and beauty Section 363 sales reinforce both the opportunity and the risk inherent in distressed transactions. While the "free and clear" protections of Section 363 remain powerful, buyers must conduct diligence with an eye toward financial performance and profitability improvements, successor liability theories, foreign regulatory regimes, and ongoing brand stewardship obligations. In global beauty and fashion transactions, coordination with non-U.S. proceedings and licensees is often essential.

For brand owners and sponsors, these cases serve as a reminder that early planning matters. Companies that engage insolvency and bankruptcy advisors and commence marketing efforts before liquidity fully erodes are better positioned to execute value-maximizing sales. Conversely, delayed filings can compress timelines, limit bidder participation and decrease value, particularly in brand-driven businesses where momentum is critical.

Looking Ahead

In an environment marked by volatility in consumer spending, persistent supply-chain pressures, and a higher cost of capital environment, Section 363 sales are likely to remain a fixture in fashion and beauty restructurings. Whether used to bridge to new ownership or as part of an orderly wind-down and liquidation, these transactions continue to shape how iconic brands are repositioned or reinvented or exit the market.

Innovation in Fashion — AI Adoption vs. Brand Integrity

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Three trends mark the tensions around innovation with AI in the Fashion Industry.

- AI is trained on data. Debates around the sources of that data and whether or how data permissions should be secured continue to evolve.
- Sustainability in the fashion industry has been a major focus for years. But the larger picture of how AI and sustainability efforts may intersect is still emerging.
- Designers range in their acceptance of AI. Some actively use AI for design, while others take a strong position that AI undermines craftsmanship and creativity.

In 2026, we expect there to be frequent developments in these trending areas. And given the dynamic way designers, models, and insiders are already responding to these tensions, it is clear the fashion industry is the one to watch as AI usage continues to evolve globally.

Protecting Brand and Image Integrity: Intellectual Property Challenges in AI Training

AI "learns" by using training data. However, in creative industries like fashion, that data may include intellectual property.[56] As the debate over whether this data should be "fair use" unfolds, some creatives are making decisions for their own brands.[57] The Fabricant has taken a position against using copyrighted runway images for data training, publishing an AI Ethics FAQ where they forecast that AI regulations in the future may require copyright permissions for data training.[58] Some runway models are also taking note, expressing concerns about how their readily available images can lead to their likenesses being manipulated or manufactured by AI.[59] To address this, in 2025, New York State passed legislation that prohibits model management companies from creating, altering or manipulating "a model's digital replica without clear written consent."[60] As ongoing litigation, such as *Getty Images v. Stability AI*[61] may establish legal parameters surrounding data training and permissions, the fashion industry continues to engage with AI around sustainability efforts as well as design.

Balancing AI-Driven Sustainability

The tensions around sustainability and AI in the fashion industry are complex. AI offers efficiencies that can be scaled, including in product development, manufacturing and distribution, and leading to reductions of waste.[62] However, AI also carries an environmental footprint. As the United Nations Environment Programme has documented, the data

56 Adam Buick, Copyright and AI training data—transparency to the rescue?, *Journal of Intellectual Property Law & Practice*, Volume 20, Issue 3, March 2025, Pages 182-92, https://doi.org/10.1093/jiplp/jpae102.

57 Roomy Khan, AI Training Data Dilemma: Legal Experts Argue for 'Fair Use', *Forbes*, October 4, 2024, https://www.forbes.com/sites/roomykhan/2024/10/04/ai-training-data-dilemma-legal-experts-argue-for-fair-use/.

58 The Fabricant Editorial Team, AI-Ethics FAQ for AI-generated Fashion Images, *The Fabricant*, August 7, 2025, https://www.thefabricant.com/post/ai-ethics-faq-for-ai-generated-fashion-images.

59 Andy Hirschfeld, The Latest Industry Upset with the use of AI: Fashion, *Al Jazeera,* February 23, 2024, https://www.aljazeera.com/economy/2024/2/23/the-latest-industry-upset-with-the-use-of-ai-fashion.

60 Department of Labor, Prohibited Actions by Model Management Companies or Model Management Groups, https://dol.ny.gov/responsibilities-fashion-management-and-clients; S9832/A5631.

61 Getty Images (US), Inc. & Ors v. Stability AI Ltd [2025] EWHC 3343 (Ch); *see also Getty Images (US), Inc. v. Stability AI, Inc.* 2005, 1:23-cv-00135, (D. Del).

62 Maximilien Abadie, The Impact of AI on the Fashion Industry, *Forbes*, January 16, 2026, https://www.forbes.com/councils/forbestechcouncil/2026/01/16/the-impact-of-ai-on-the-fashion-industry/; Neil Sahota, Future of Fashion Has AI As the New Must And Your Personal Consultant, *Forbes*, June 4, 2024, https://www.forbes.com/sites/neilsahota/2024/06/04/future-of-fashion-has-ai-as-the-new-muse--your-personal-consultant/.

centers that power AI consume large amounts of water, require significant energy resources to operate, and produce electronic waste.[63] The trade-off in efficiencies between reduced waste in the fashion design cycle versus the environmental costs of AI is a tension fashion houses are navigating as they seek to prioritize sustainability. But these trade-offs are not garnering exclusively black-and-white responses. AI has also been intentionally used to advocate for conservation efforts. Stella McCartney has taken a unique approach by marrying sustainability concerns and AI into a campaign. By featuring AI-generated birds, alongside the words "SAVE WHAT YOU LOVE," the campaign highlighted the nearly 50% of all bird species in decline. The AI-generated birds serve as a conservation warning, and "urges viewers to rethink their relationship with nature."[64] As we learn more about the sustainability implications of AI in fashion, designers like Stella McCartney are at the vanguard, highlighting new forms of innovation that marry sustainability efforts and AI.

63 UN Environment Programme, AI Has an Environmental Problem. Here's What the World Can Do About That., November 13, 2025, https://www.unep.org/news-and-stories/story/ai-has-environmental-problem-heres-what-world-can-do-about.

64 Stella McCartney's AI Birds Are a Warning in the Summer 2025 Campaign, *The Fashionography*, February 19, 2025, https://thefashionography.com/fashion/fashion-campaigns/stella-mccartneys-ai-birds-are-a-warning-in-the-summer-2025-campaign/.

Human Creativity in the Age of AI: Safeguarding Artistry and Heritage Craftsmanship in Fashion Design

Fashion houses are embracing AI to every degree possible. Some designers, like Tommy Hilfiger, have developed an AI styling game, while others, like Gucci, have used AI to develop new lines.[65] From a design perspective, Gucci has been able to train AI models on their past designs, allowing them to develop design iterations more quickly, and tighten design cycles. The Fabricant has taken AI-design one step further, creating a digital collection that sold a virtual dress for $9,500.[66] Meanwhile, other designers worry that something fundamental may be lost, and have taken a position against using AI for any artistic or design functions. VETEMENTS, for example, created a collection of "Anti-AI" garments designed to look as if they were AI-designed, while utilizing craftsmanship techniques that can only be executed with human hands.[67] And Momifa has argued that because AI is trained on existing data, it is less capable of innovating, whereas their human-designed fashion focus retains important aspects of craftsmanship and creativity.[68] Despite these wide-ranging reactions, what is incontestable is the level of innovation AI is sparking within the industry, even among some of those with critiques.

These major tensions and trends in the fashion industry are likely to continue to unfold and develop over the coming year. Of particular interest are the dynamic and creative responses the fashion industry has brought to AI — demonstrating this is the industry to watch as AI-use continues to expand. The innovations thus far highlight how humans are creating unexpected new possibilities for how this technology can be harnessed.

65 Maghan McDowell, Tommy Hilfiger on AI and His New Fashion Game, *Vogue Business*, December 19, 2023, https://www.vogue.com/article/tommy-hilfiger-on-ai-and-his-new-fashion-game; Team DigitalDefynd, 8 Ways Gucci is Using AI [Case Study] [2026], *DigitalDefynd*, https://digitaldefynd.com/IQ/ways-gucci-using-ai/.

66 Neil Sahota, Future of Fashion Has AI As the New Must And Your Personal Consultant, *Forbes*, June 4, 2024, https://www.forbes.com/sites/neilsahota/2024/06/04/future-of-fashion-has-ai-as-the-new-muse--your-personal-consultant/.

67 Jascmeen, Vetements Delivers 'Anti-AI' Collection, *Goodfeed*, https://www.goodfeed.com/jascmeen/story/vetements-delivers-anti-ai-collection.

68 Momifa, Why Designers Are Fighting Back, *Medium*, June 10, 2025, https://medium.com/@momifa.official/why-designers-are-fighting-back-32a5ac4287df.

Cut, Clarity… and Compliance: How the CPSC Regulates Jewelry and Accessories

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The U.S. Consumer Product Safety Commission (CPSC) regulates consumer products sold in the United States, and jewelry and accessories are no exception. Whether your business offers costume jewelry, fine jewelry, watches (including smartwatches), or children's accessories, all these products must meet certain safety standards and regulations. Compliance obligations exist even if your company does not manufacture the items it sells. Importers, brand owners, and distributors selling directly to U.S. consumers all bear responsibility for ensuring compliance.

While jewelry and accessories may seem low risk compared to products like toys or electronics, they present distinct hazards based on how they are designed, worn, and handled. Certain key considerations are highlighted below.

Failure to address identified risks (and report to the CPSC when they meet the Consumer Product Safety Act threshold) can have real world consequences, including recalls, penalties, and reputational harm. For example, in January 2025, Fitbit agreed to pay a $12.25 million civil penalty for failure to immediately report a burn hazard with respect to certain of its smartwatches.

Heightened Requirements for Children's Products

Of the fourteen jewelry- and accessories-related recalls since July 2020, over half involved products marketed to children. *See, e.g.*, LaRose Industries Recall of Cra-Z-Art Gemex/Gel2Gem Jewelry Kits from Mar. 27, 2025; Newmemo Recall of Children's Jewelry Sets from Sept. 19, 2024. This is unsurprising given children's products are subject to heightened regulation, including third-party testing, Children's Product Certificates (CPCs), and compliance with small parts rules to prevent choking hazards. Even companies focused on adult products must meet these requirements when producing youth-oriented designs.

Magnets and Button Cell Batteries

Magnetic clasps and button cell batteries can pose serious health risks if these items (or other small decorative elements) detach and are swallowed. Design and quality controls should ensure that all small parts, including magnets and batteries, are properly secured and tested for compliance. Batteries can also overheat, posing a risk of burns. *See, e.g.*, Fitbit Recall of Ionic Smartwatches from Mar. 2, 2022. Companies should regularly test for compliance and thoroughly investigate potential reports of overheating and burns related to "smart" accessories and other battery-operated products.

Sharp Edges and Pinch Points

Common features such as prongs, pointed shapes, and rigid components can present sharp edges and pinch points. Jewelry and accessories should be evaluated in both new and worn conditions to identify potential burrs, edges that are or may become sharp, and loose parts that could cause injury.

Packaging Hazards and Compliance

Packaging is also subject to scrutiny. Items with treated cleaning cloths (e.g., chemical treatments subject to the Federal Hazardous Substances Act) may require certain labels and/or child-resistant packaging and larger plastic bags must include suffocation hazard warnings. Compliance reviews should be holistic, covering both the product and its packaging.

Lead and Heavy Metal Content, Including in Coatings, Paints, and Enamels

Many jewelry recalls over the past six years have related to impermissibly high levels of lead and cadmium content, particularly in products intended for children. *See, e.g.*, Yaomiao Recall of Children's Jewelry Sets from Jan. 2, 2025; H&M Recall of Men's Clasp Beaded Bracelets from Sept. 21, 2023; Boy Scouts of America Recall of Cub Scout Activity Pins from July 1, 2020. Federal regulations set strict permissible limits for lead in children's products (generally 100 ppm or lower, depending on the material), and the CPSC has also scrutinized cadmium and other toxic metals that can cause harm if ingested. Enamel finishes and painted surfaces must also meet requirements. Wear and abrasion testing is important to ensure that hazardous base materials are not exposed during normal use. Further, certain metals (e.g., nickel) can cause allergic contact dermatitis and other skin reactions in sensitive consumers. Materials disclosure, transparent labeling, and the use of hypoallergenic alloys can reduce complaints and help meet safety obligations.

Recall Preparation

Jewelry and accessories recalls can be logistically complex, as these products are commonly gifted, worn, or stored in personal collections. Companies should have a recall plan that aligns with the CPSC's recall guidance, including tracking sales across various channels and clear consumer outreach.

Supply Chain Transparency

Jewelry and accessories production often involves multiple countries for sourcing, manufacturing, and assembly. The CPSC's import safety requirements place responsibility on importers and brand owners to verify compliance. This includes obtaining supplier certifications, conducting periodic independent testing, and maintaining accurate records.

Compliance with CPSC requirements for jewelry and accessories goes well beyond metal content limits. Allergic reactions, magnet and battery safety, sharp edges, packaging hazards, and material durability are all areas of regulatory focus. Because jewelry and accessories are oftentimes worn directly on the body, safety issues can quickly escalate into health risks and reputational damage. Addressing these considerations in design, sourcing, and quality control processes helps protect both consumers and brands. If you have questions about how CPSC regulations can impact your business, Foley is here to help.

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