

## Studies and comments

### Fashion law. Concept and beginnings in European Union and Romania

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#### **Abstract**

*The present study aims to present the right of fashion as a distinct branch of law. The idea I started from was that law of fashion is a complex branch of law that brings together issues related to intellectual property, commerce, advertising, competition, labour relations, customs, advertising and modelling. I appreciate that this new branch of law will become more and more visible and will include those legal rules that, although belonging to other branches of law, distinct and self-governing, have come to be closely linked to the field of fashion, and fashion-inspired legal norms devoted exclusively to this field in order to help develop this industry, protect those who play the role of market players in the fashion market, or regulate certain new situations arising from the natural evolution of a such domain.*

**Keywords:** *fashion law, intellectual property, trade, advertising, modelling, fashion industry.*

**JEL Classification:** K22, K23, K29

#### **1. Introduction**

The notion of fashion law is extremely new in our country, so the subject has not been touched until now, only, at most, tangentially. However, we can not ignore the fact that it is beginning to impose itself as a branch of law in other countries, including at the level of the European Union, subject to more detailed analyses and studies, both in the curricula of universities and among theoreticians and practitioners in the field of law.

My goal in this article was to identify, first of all, his genesis, then to make a brief analysis of straightforward rules of law. Towards the end of the article I referred to some special rules applicable only to this new branch of law.

#### **2. Fashion Law**

##### **2.1 General Aspects. Historic. Appearance**

The fashion industry has been generating considerable revenue for many years not only in EU Member States, but also in countries outside the EU, such as the United States of America, Russia or China. So it was only a matter of time until such an important field as fashion is to be regulated by some specific rules.

A first express mention of fashion law as a distinct domain was made in a

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paper published in 2002 at the University of Geneva entitled International Fashion Law.<sup>2</sup>

In May 2004, a group of French lawyers headed by Annabelle Gauberti published a supplement entitled "Droit du luxe" in the French legal magazine *Revue Lamy Droit des Affaires*. This supplement explored various legal and tax issues specific to the fashion and luxury goods sectors and it was the second to analyse the interactions between the legal and fashion industries and luxury goods. In 2006, the teacher Susan Scafidi offered her first course in Fashion Law at the Fordham Law School.

The road had already been opened, so institutions dedicated to fashion law began to emerge as well.

In 2010, the first fashion center dedicated to fashion, the Fashion Law Institute,<sup>3</sup> was set up. And there is an increasing number of institutions that make available to those interested in courses or programs about fashion law: the University of Milan, the Brazilian Business Institute and Fashion Law, University of New York, Howard University Fashion Week.

Fashion law has also taken place in practice, so the New York Bar has a fashion law committee. At the same time, lawyers specialized in fashion law began to be formed.

Neither has the European Union been left behind, but has begun to develop plans and strategies, to create and adapt legal rules dedicated to the fashion industry, which it has considered one of the most vibrant and creative sectors in Europe. The interest shown in this area was natural, given that fashion is present in millions of people every day and acts as an ambassador of European values such as culture, creativity, innovation and craftsmanship.<sup>4</sup>

## 2.2 What is fashion law

In the United States, Fordham University, it is considered that the 4 pillars of fashion law are:

- intellectual property
- business and finance, including in areas such as investment, labour law and real estate
- international trade and government regulations, including sustainability, privacy, and easy-to-wear technology issues
- consumer culture and civil rights<sup>5</sup>.

Starting from these 4 pillars, taking into account other views on the

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<sup>2</sup> Belhumeur, Jeanne, *Le Droit International de la Mode*, Canova Società Libreria Ed., 2000, the document is available online at: [https://en.wikipedia.org/wiki/Fashion\\_law#cite\\_note-8](https://en.wikipedia.org/wiki/Fashion_law#cite_note-8), date of last visit: 31.10.2017.

<sup>3</sup> <http://fashionlawinstitute.com/about>, date of last visit: 31.10.2017.

<sup>4</sup> *Fashion and high-end industries in the EU*, the document is available online at: [https://ec.europa.eu/growth/sectors/fashion/high-end-industries/eu\\_en](https://ec.europa.eu/growth/sectors/fashion/high-end-industries/eu_en), date of last visit: 31.10.2017.

<sup>5</sup> The document is available online at: [https://www.fordham.edu/info/23599/fashion\\_law](https://www.fordham.edu/info/23599/fashion_law), date of last visit: 31.10.2017.

subject,<sup>6</sup> we appreciate that fashion law brings together legal rules, especially from the following branches of law: intellectual property law, labour law, trade law, including international trade and online trade, consumer law, competition law and advertising, and, last but not least, textiles legislation.

These are those legal rules that, although belonging to other distinct and stand-alone branches of law, have come to be closely related to the field of fashion. In addition, there are already existing legal norms inspired by fashion and dedicated exclusively to this field, with the aim of helping to develop this industry, protect those who play the role of fashion market players, or regulate certain new situations arising from the natural evolution of such a field.

This paper aims to analyse the fashion law and legal norms with direct implication on it, both from the European and the local perspective, although this field is still in the beginning in our country. We can not, however, ignore the fact that the evolution of the domain in question is significant and constant, being justified and imposed by the practical reality.

At the European Commission level, there is an increasing and stated interest in the development of areas such as fashion, considering that any creative industry is the heart of the creative economy: Intensive knowledge, based on individual creativity and talent, generates tremendous economic wealth and preserves identity, culture and European values<sup>7</sup>

To this end, the European Commission drew up an action plan for the fashion industry and high-end products in 2012, which is a first official recognition of the economic, social and cultural importance of the two industries. This document refers to measures that need to be taken at European level to ensure the development and competitiveness of fashion and high-end products, with direct reference to intellectual property and counterfeit products, international trade, consumer protection, and market surveillance.<sup>8</sup>

In Romania, even if there are no institutions designed to achieve a distinct legal framework, the situations generated by the practice involuntarily lead to the formation or grouping of legal norms which will have as a definite result the emergence of this new field of law.

We will then look at some legal norms that find a clear and meaningful applicability in fashion law.

### ***2.2.1 Intellectual property***

Fashion law is perhaps most closely related to intellectual property rights, including copyrights, trademarks, patents, industrial secrecy, the use of religious or traditional patterns, etc.

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<sup>6</sup> *Fashion Law: what exactly it is*, 30.11.2014, the document is available online at: <http://www.fashiondocket.com/single-post/2014/11/30/Fashion-Law-What-Exactly-Is-It>, date of last visit: 31.10.2017.

<sup>7</sup> The document is available online at: <http://ec.europa.eu/growth/sectors/fashion/>, date of last visit: 31.10.2017.

<sup>8</sup> The document is available online at: [https://ec.europa.eu/growth/sectors/fashion/high-end-industries/eu-support\\_en\\_date](https://ec.europa.eu/growth/sectors/fashion/high-end-industries/eu-support_en_date) date of last visit: 01.11.2017.

Whether we are talking to great fashion designers, already established, or smaller, national or local creators, they all want the models they create in fashion not to be copied, which is why they are trying to protect them through intellectual property rules and even take action, through court actions, against those who use it unjustly.

There are numerous lawsuits in which famous brands have been involved, and not only have they gained a recognition of the market's image, but have also achieved considerable moral damage.

At both European Union and national level, there is complex legislation governing intellectual property and its protection.

Thus, Community legislation includes: Directive (EU) 2015/2436 of 16 December 2015 on the approximation of the laws of the Member States relating to trademarks; Regulation (EU) 2015/2424 amending Regulation (EC) no. 207/2009 of 26 February 2009 on the Community trade mark<sup>9</sup> Regulation (EC) no. 2868/95 of 13 December 1995 implementing Council Regulation (EC) no. 40/94 on the Community trade mark, Regulation (EC) no. 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed upon certain intellectual property rights.

According to art. 16 of Regulation (EC) no. 1383/2003, goods which are recognized as goods which infringe an intellectual property right following the procedure laid down in Article 9 may not: be brought into the customs territory of the Community and released for free circulation; withdrawn from the customs territory of the Community; exported; placed under a suspensive regime or placed in a free zone or in a free warehouse. It is blocked in this way any possibility of capitalizing the goods that affect the intellectual property right, a particularly important issue, when trying to introduce counterfeit goods within the community space, and a significant part of these goods is represented clothing, footwear, accessories and cosmetics.

In Romania, intellectual property is protected by legal norms such as Law no. 84 of 1998 on trademarks and geographical indications, republished and Law no. 8 of 1996 on copyright and related rights.

According to art. (2) of Law no. 84 of 1998, may constitute any sign capable of being represented graphically, such as words, including names of people, drawings, letters, figures, figurative elements, three-dimensional shapes and, in particular, the shape of its product of its packaging, colour combinations, holograms, sound signals, and any combination thereof, provided that these signs to distinguish the goods or services of an undertaking from those of other undertakings.

In the fashion industry, words, including the names of people, are often used, as well as drawings, letters and figurative elements and colour combinations.

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<sup>9</sup> Regulation (EU) 2015/2424 amending Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark published in the Official Journal of the European Union (OJEU) L series No 78 of 24 March 2009.

Used more and more frequently and on an ever-increasing scale, they become more common in the minds of users and collaborators, so they are associated with a clothing style, product category or even a particular person - usually the designer. Sometimes it's enough to just visualize a graphic representation consisting of a figurative element, and to know exactly what the mark is about, without having to see its name.

According to art. 36 of the Law no. 84 of 1998, registration of the mark confers on its proprietor an exclusive trade mark. It may require the court to prohibit third parties from using, in their commercial activity, without their consent, identical or similar signs.

The protection afforded by law is important because it guarantees the trademark owner not only the individualization of the products that are created under that trademark, but can also secure an increase in revenues from its distinct creation or the obtaining of damages if the exclusive right is violated. That is why it is preferable for the trademark to be registered as soon as possible, because only in this way can the necessary legal protection be obtained.

It is true that many designers have not paid sufficient attention to intellectual property and trademark registration in our country, but this situation is changing, perhaps because of foreign influences, and designers are becoming more aware of the value and profit of a protected creation bring their works and career.

Any brand recognized nationally or internationally, and at the same time legally protected, is in itself a business that can generate profit both in the short and long term.

Moreover, the definition given to the economic value of a trademark in a European Union study published in 2016 is as follows: the monetary value of a registered mark is given by the net present value of expected future revenues attributable to the mark, minus the cost of keeping it. According to the same survey, conducted in 2014, the top 15 products are more likely to be counterfeit and almost exclusively found in the fashion industry<sup>10</sup>.

That is why intellectual property legislation has a close link with the fashion industry, aiming to protect those who create fashion products, whether we are talking about great designers or small creators who are at the beginning of the road or that continue at the level local, family business in fashion.

### **2.2.2 Labour law**

Labour law also has strong implications in fashion, even if we refer to labour contracts or life and health insurance rules.

Working relationships in the fashion industry are not necessarily classical in terms of working day, hours or rest time.

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<sup>10</sup> *Trade in counterfeit and protected goods, Mapping the economic impact*, EUIPO, Paris, 2016, the document is available online at: [http://www.keepeek.com/Digital-Asset-Management/occd/governance/trade-in-counterfeit-and-pirated-goods\\_9789264252653-en#\\_Waig8v197IU#page65](http://www.keepeek.com/Digital-Asset-Management/occd/governance/trade-in-counterfeit-and-pirated-goods_9789264252653-en#_Waig8v197IU#page65), date of last visit: 31.10.2017.

Many times, these working activities take place early in the morning or in the evenings, on Saturdays and Sundays, or on holidays: photo sessions, fashion presentations, modelling-activity involving hair stylists, make-up artists-they do not take into account the 8-hour work program that starts in the morning and ends mid-afternoon.

Furthermore, labour relations are not static, often transnational.

However, fashion relationships also place a lot of emphasis on other aspects, such as confidentiality, non-competition or mobility clauses, which are also found in domestic law. Fortunately, this legislation, at national level, through its way of thinking, has the capacity to adapt on more atypical working relationships, as are some of the things that are found in fashion.

The confidentiality clause is the one by which the parties agree that, during the entire duration of the individual labour contract and after the termination of the contract, not to transmit data or information that they have become aware of during the performance of the contract, otherwise they are obliged to pay moral damages.

It is inevitable that employees will not be aware of confidential information about materials, suppliers, products, visions, and strategies in the fashion industry. Keeping this information is essential, given the fashion competition, the need and desire of each player to innovate, improve their products and strengthen their position. The element of novelty is the one that often guarantees its success. That is why any leak of information to competition must be avoided, and when it occurs, drastically sanctioned. It is therefore important that a confidentiality clause is clearly outlined, including in terms of the amount of damages owed by the infringer.

The non-compete clause is the one whereby the employee is obliged, after the termination of the contract, not to perform, for his own benefit or for a third party, an activity which is in competition with that provided to his employer in return for a monthly non-compete indemnity which the employer undertakes to pay for the entire period of non-competition. The non-competition clause is effective only if the individual employment contract specifically provides for activities prohibited to the employee at the date of termination of the contract, the amount of the monthly non-compete indemnity, the period for which it produces the effects of the non-compete clause, the third parties in favour of whom prohibits the performance of the activity, as well as the geographical area where the employee may be in real competition with the employer.

This prevents the employee from using his or her own experience with the employer or for the benefit of another competitor.

As regards the mobility clause, it assumes that, given the specificity of the work, the employee's performance of the service obligations is not achieved in a stable place of work. It is a common clause in this area, especially for models that are employed with an individual labour contract, as well as hair stylists and make-up artists who accompany them on models at fashion shows and photo sessions.

Salary negotiations, which do not include just the salary itself - with all bonuses and allowances, but also other benefits in kind, are very important - even

in Romania. All those who contribute to the success of a collection - but especially designers - can negotiate percentages of their proceeds.

The attention paid to the conclusion of an individual labour contract, the knowledge of rights and the conscious assumption of obligations can lead to a successful working relationship or, on the contrary, to litigations in court that can adversely affect both the employee and the employer, as the world of fashion is more exposed to the public than other areas.

Not only in the European Union, but also in Romania, all employees, including those working in the fashion sector, enjoy legal protection, payroll and pension and health insurance contributions, which is hardly neglected in the world context in which there are so many voices claiming that, including famous brands, violate employees' rights and hundreds of workers working in Asian and African clothing factories have lost their lives.<sup>11</sup> Moreover, according to ILO, 170 million children work in the garment and textile industry to meet consumer demand in Europe, the US and other countries.<sup>12</sup>

### ***2.2.3 Trade. Consumers. Imports and exports***

Essentially, fashion is the trade, that is, the sale of fashion products, whether it is within the boundaries of a state or a common market, or outside of them.

The sale can be made both for clothing and footwear, accessories, or cosmetics, both wholesale and retail, both through stores and online. The sale of fashion products often takes place outside the borders of a state, the intent of each trader being that its products reach as many markets as possible.

Many products that are marketed worldwide, including under the brand name of famous fashion houses, are manufactured in other countries-such as in Asia or Africa, but also in Romania, and are then delivered to the shops or directly to the final recipients virtual stores. With one click, a Romanian customer purchases clothing, footwear or cosmetics from another EU country or even from countries such as the United States of America or China.

But trade is closely linked to consumers. One of the most important aspects of commercial activity today is to ensure proper relationships with consumers - as potential buyers. The ever-increasing demands of the contemporary world, as well as a series of phenomena specific to the market economy, make the stakes of trade, or rather of its changes and modernization, bring to the forefront a series of new precepts that contribute to the reshaping of its relations with audience.<sup>13</sup> Fashion

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<sup>11</sup> Kristin Reinhard, Deirdre Schmidt, Florian Rützel, Marius Zentgraf, *Working conditions in the global fashion industry*, 30.04.2013. the document is available online at: <https://laboureconomics.wordpress.com/2013/04/30/working-conditions-in-the-global-fashion-industry/>, date of last visit: 31.10.2017.

<sup>12</sup> Josephine Moulds, *Child labour in the fashion supply chain: Where, why and what can be done*, the document is available online at: <https://labs.theguardian.com/unicef-child-labour/>, date of last visit: 31.10.2017.

<sup>13</sup> *Relațiile cu consumatorii în ansamblul activității comerciale*, the document is available online at:

law is no exception, being an area where consumer claims are also growing. This has two consequences: on the one hand, fashion designers must respond to, and rise to, the ever changing demands of consumers and, on the other hand, they also have to respect the internal and international legislation that protects them on consumers.

National and Community legislation is also complex in this case and includes: at Community level: EU Customs Code: Regulation no. 952/2013 of the European Parliament and of the Council of the EU applicable from 1 June 2016, Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC of Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council transposed into Romanian law by Government Emergency Ordinance no. 34 of 4 June 2014 on consumer rights in contracts concluded with professionals, as well as for amending and completing some normative acts, and at national level: Law no. 365 of 7 June 2002 on electronic commerce, Law no. 449 of 12 November 2003 on the sale of products and associated guarantees.

OUG no. 34/2014 includes: consumer information for contracts other than distance or off-premises contracts, formal terms for distance contracts, contract withdrawal rights.

Considering the fact that Romania ranks fourth among the European countries with the largest increase in online commerce, with a 24% increase in sales, reaching € 1.49 billion in 2015, according to E-commerce Europe and that in Romania the most marketed B2C (business to consumer) products are in the areas of fashion, IT, media, entertainment and services.<sup>14</sup> It is obvious that legislation was needed to regulate this area (which, as mentioned, was adopted in Romania since 2002).

In fact, the online sale of fashion products, especially clothing, has reached a new level, with the online store competing with the real store and providing as close to reality as possible from the information presented, pictures, videos, cabs virtual evidence, increased return period etc.<sup>15</sup>

Increasing access to fashionable products (only) in online stores has led to the adaptation of legislation to this reality and, from this perspective, we appreciate that at both European and national level the legislator answered with promptness of the needs of reality.

In addition to the contracts between fashion designers - as traders - and consumers, fashion law also takes into account contracts between categories of

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<http://conspecte.com/Comert/relatiile-cu-consumatorii-in-ansamblul-activitatii-comerciale.html>, date of last visit: 31.10.2017.

<sup>14</sup> *Romania - pe locul patru in randul tarilor europene cu cea mai mare crestere a comertului online*, 10.06.2016, the document is available online at: <http://www.startupcafe.ro/stiri-ecommerce-21068971-statistici-ecommerce-romania-locul-patru-europa-comert-online.htm>, date of last visit: 31.10.2017.

<sup>15</sup> *Vanzarile online de haine in Romania sunt pe un trend ascendent*, the document is available online at: <http://www.inhabitat.ro/vanzarile-online-de-haine-in-romania-sunt-pe-un-trend-ascendent/>, date of last visit: 31.10.2017.



people who play a role in the path that a raw material follows in order to become a fashion product: contracts between manufacturers/suppliers of raw materials and fashion houses, contracts between fashion houses and carriers, etc., as well as import and export contracts for fashion products. In the analysed context, import and export play an essential role.

From this perspective, at European Union level, it has been attempted, especially in recent years, to remove barriers that could hinder the import and export of fashion products and, in particular, textile and footwear in and out of the EU.

Thus, the European Commission is working to ensure a level playing field in international trade, both at multilateral level through the implementation of World Trade Organization agreements and at bilateral level through FTA negotiations, as well as through dialogues on the Euro-Mediterranean dialogue on the textile and clothing industry, as well as bilateral dialogues with China and Colombia.

The textile and clothing industry is a global industry with steady growth in trade flows all over the world. This is why the development of the sector is of significant importance and, as a result, bilateral discussions are taking place to develop FTAs with countries such as the United States of America (Transatlantic Trade and Investment Partnership), Japan and Vietnam. The EU has recently signed free trade agreements with Canada, South Korea, Ukraine and Moldova.

Tariff, technical barriers, regulatory standards and conformity assessment procedures are all obstacles to trade development.

The Commission aims to implement the World Trade Organization (WTO) Agreement on technical barriers to trade and fight to remove unnecessary technical barriers in non-EU countries in the context of the WTO.<sup>16</sup>

All these steps and legislative changes have a direct impact on trade in fashion products, facilitating it significantly. Directions that go to the European Union are therefore favourable, and some measures that are taken, including at the legislative level, are directly related to fashion and, implicitly, to fashion law.

#### ***2.2.4 Textile legislation***

Fashion also means clothing, footwear and accessories, and these mostly come from textile products.

That is precisely why textiles legislation also influences the fashion industry, as textiles are, as I have mentioned, most of the time raw material.

In fact, the development of European design law goes hand in hand with the history of the textile industry. In the 15th century, the French King granted exclusive rights or privileges to the textile industry. A government ordinance penalized counterfeiting of tissue patterns for the first time in 1711 in Lyon.

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<sup>16</sup> The document is available online at: [https://ec.europa.eu/growth/sectors/fashion/textiles-clothing/international-trade\\_ro](https://ec.europa.eu/growth/sectors/fashion/textiles-clothing/international-trade_ro), date of last visit: 31.10.2017.

In England and Scotland, the first statute on design protection was initiated by textile manufacturers in 1787. In 1876, Germany issued a law on copyright on models and models, again mainly due to the demands of the textile industry.<sup>17</sup>

Textile legislation is complex, it can look at the composition of textile products, the technological process, their name or labelling. That is why, at EU level, there is a strong legislation, already transposed into national legislation, on textile products: Regulation (EU) no. 1.007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fiber names and the related labelling and marking of fiber composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council, transposed by Government Decision no. 699 of 11 July 2012.

The Regulation lays down rules on the use of textile fiber names and the appropriate labeling and marking of fiber composition of textile products, rules on the labelling or marking of products containing non-textile parts of animal origin and rules for determining the fiber composition of textile products, the way in which it can be formulated a request for new textile fiber names, market surveillance, etc. The Regulation also contains an appendix containing the name of the textile product and its composition.

It is a comprehensive, unitary legislation, some of which it would call a strict one, and which ensures that fair and uniform information is made available to all consumers in the Union.

### ***2.2.5 Competition law and advertising***

Surely, fashion is an area where competition is fierce, especially due to the large, growing number of participants. However, the competitive environment may be adversely affected by anticompetitive activities - which are the object or consequences of agreements or concerted practices between different players, the abuse of the dominant position of some - in the present case: fashion houses known, with a strong position, established designers, cosmetic companies with a long history, etc.

In view of the above, it is obvious that the competitive environment must be governed by laws that ensure fair competition at national, European and international level.

In the field of competition, in Romania, Law no. 11 of 29 January 1991 on combating unfair competition. According to her, it constitutes an offence and is punished by imprisonment from 3 months to 2 years or by fine:

a) the use of a company, emblem or packaging that could cause confusion with those legitimately used by another merchant;

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<sup>17</sup> Fridolin Fischer, *Design law in the European fashion sector*, 02.2008, the document is available online at: [http://www.wipo.int/wipo\\_magazine/en/2008/01/article\\_0006.html](http://www.wipo.int/wipo_magazine/en/2008/01/article_0006.html), date of last visit: 31.10.2017.

b) the disclosure, acquisition or use of commercial secrets by third parties as a result of a commercial or industrial espionage activity if the interests or activity of a legal person are thereby affected;

c) the disclosure or use of commercial secrets by persons empowered by the legitimate holders of such secrets to represent them before public authorities or public institutions if the interests or activity of a legal person are thereby affected;

d) the use by a person (...) of commercial secrets he has gained knowledge of in the exercise of his / her job duties if the interests or activity of a legal person are affected thereby;

e) producing in any way the import, export, storage, offering for sale or sale of goods or services bearing false patents, patents for plant varieties, trademarks, geographical indications, designs or industrial designs, semiconductor topographies, other types of intellectual property, such as the appearance of the firm, the design of showcases or clothing, advertising and the like, the origin and characteristics of the goods, as well as the name of the manufacturer or the trader, in order to induce misleading the other traders and the beneficiaries.

The legislator thus tried to sanction all positive or negative conduct through which competition could be freely affected, precisely to ensure a fair and free competition.

At the same time, the aforementioned law defines as unfair competition as follows:

- the denigration of a competitor or his products/services by communicating or spreading information or dissenting information to a competitor or his employee representative about the activity of a competitor or his products that could harm his interests;

- dismantling an enterprise's customers by a former or current employee/representative or by any other person using commercial secrets for which that undertaking has taken reasonable steps to ensure their protection and the disclosure of which may harm the interests of that undertaking;

- any other commercial practices that contravene honest practices and the general principle of good faith and which produce or cause damage to any market participants.

As far as the rules of European Union law are concerned, the Treaty on the Functioning of the European Union (TFEU) provides that one of the aims pursued by the European Union is to create a system ensuring a non-distorted competitive environment within the internal market. In this respect, Art. 101 and 102 of the same Treaty prohibit agreements and concerted practices which have as their object or effect the restriction or distortion of competition on the European market and the abuse of a dominant position.

Because in the field of fashion competition is high, almost every participant tries to reach the consumer by advertising: on radio, television, magazines, however, especially through the online environment.

Advertising is the way a product is introduced and promoted to potential customers, it is an effective way to promote new fashion products or already established fashion-houses with a well-known name and well-known history as well as newly launched fashion houses. Advertising is closely related to competition.

The rule that the advertisement is the soul of commerce also applies in Romania without exception. Considerable amounts of money are being invested in advertising, with the great players on the fashion market often paying fabulous amounts for both studies that set the most effective advertising method and effective advertising.

It was therefore necessary to regulate this aspect as well, since advertising must be fair, so that, on the one hand, fashioners and consumers are properly informed and, on the other hand, the advertising of a designer or a product not aiming at denigrating others.

In Romania there is Law no. 158 of 18 July 2008 on misleading advertising and comparative advertising. The Romanian legal act fully transposed the provisions of Directive 2006/114/EC of the European Parliament and of the Council of the European Union of 12 December 2006<sup>18</sup>.

The law defines what advertising means - any form of presentation of a commercial, industrial, craft or liberal activity, in order to promote the sale of goods or services, including immovable property, rights and obligations; misleading advertising - advertising which in any way, including by way of presentation, induce or mislead the persons to whom it is addressed or who come into contact with it and which, because of its misleading nature, may affect their economic behavior or which, for this reason, adversely affect or adversely affect a competitor; and comparative advertising - advertising that explicitly or implicitly identifies a competitor or goods or services offered by him; the ban on misleading advertising, on what conditions comparative advertising is admitted and what sanctions can be applied in case of violation of the law.

There are rules to keep the advertising, often aggressive, that also exists in the fashion field. It is also important that, in the field of advertising, Community legislation is unitary.

### ***2.2.6 Specific rules related to modeling***

Fashion also means modelling. In view of recent trends in this area, to some extremely poor models, in some countries, a desire to protect their health has been imposed on them with a minimum mandatory weight.

So, France,<sup>19</sup> Italy<sup>20</sup> and Israel<sup>21</sup> voted laws whereby the models were imposed a minimum weight, determined according to several criteria. Models will be required to provide a medical certificate stating that they meet the weight conditions, and violation of the law may result in imprisonment or payment of a fine for agencies employing too weak models.

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<sup>18</sup> published in the Official Journal of the European Union (OJEU) no. L376 of 27 December 2006.

<sup>19</sup> Laura Stampler, *France Just Banned Ultra-Thin Models*, 03.04.2015, the document is available online at: <http://time.com/3770696/france-banned-ultra-thin-models/>, date of last visit: 31.10.2017.

<sup>20</sup> Barbara McMahon, *Catwalk ban on the skinny model in Italy*, 03.12.2006, the document is available online at: [www.theguardian.com/world/2006/dec/03/italy.barbaramcmahon](http://www.theguardian.com/world/2006/dec/03/italy.barbaramcmahon), date of last visit: 31.10.2017.

<sup>21</sup> *Israel passes law banning use of underweight models*, 20.03.2012, the document is available online at: <http://www.bbc.com/news/world-middle-east-17450275>, date of last visit: 31.10.2017.

These are laws that are designed exclusively for the fashion industry and have arisen as a result of the fact that some models have had serious health problems or even died in an attempt to weaken and remain weak.

In Romania, even if there is no such law on the minimum compulsory weight of the models, a normative act that sets out under what conditions children can carry out modelling activities was recently adopted in 2015. This is the Government Decision no. 75/2015 regarding the regulation of children's remuneration for remunerated activities in the fields of culture, arts, sports, advertising and modelling.

This normative act clearly establishes the conditions under which a minor can perform modelling, the time interval, the number of hours, whether or not to be accompanied and by whom, as well as the obligation to inform the public service by submitting an information note before the actual start of the activity by the parents or legal representatives of the minor.

This normative act is intended to protect the child carrying out such activity and to avoid exploitation by both the family and third parties and to ensure a harmonious physical and mental development, the continuation of school education, the level and type of education started.

The law also provides sanctions for violating it, either by the organizer or by an attendant or parent or legal representative.

It is another example of a normative act that contains regulations specific to the domain of fashion.

### **3. Conclusions**

As mentioned in the introductory part, the right of fashion in Romania is at the beginning - perhaps some have not heard of it or have not posed its existence as a distinct field of law.

However, the first steps have been taken: both at national level and at Community level - with the influence on national legislation.

I firmly believe that it is only a matter of time until the law of fashion recognizes the place it deserves, and until specialized lawyers appear in this new branch of law.

The opening of Europeans, and especially Romanians for fashion products, including fashionable luxury products, designers' desire to protect their intellectual property rights and, last but not least, European and international influences have accelerated the adaptation of legislation to this new reality.

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