

2012

Tearing at the Seams of (In)visibility: Anti-counterfeiting, Harper's Bazaar, and the Project of Neocolonization

Jessica A. Solyom

Arizona State University, jsolyom@asu.edu

Follow this and additional works at: <http://opensiuc.lib.siu.edu/kaleidoscope>

Recommended Citation

Solyom, Jessica A. (2012) "Tearing at the Seams of (In)visibility: Anti-counterfeiting, Harper's Bazaar, and the Project of Neocolonization," *Kaleidoscope: A Graduate Journal of Qualitative Communication Research*: Vol. 11 , Article 5.
Available at: <http://opensiuc.lib.siu.edu/kaleidoscope/vol11/iss1/5>

This Article is brought to you for free and open access by OpenSIUC. It has been accepted for inclusion in Kaleidoscope: A Graduate Journal of Qualitative Communication Research by an authorized administrator of OpenSIUC. For more information, please contact opensiuc@lib.siu.edu.

Tearing at the Seams of (In)visibility: Anti-counterfeiting, Harper's Bazaar, and the Project of Neocolonization

Cover Page Footnote

Jessica A. Solyom is a Ph.D. student in the department of Justice & Social Inquiry at Arizona State University; she holds a Masters in Communication from the University of Utah. Jessica is deeply grateful to the anonymous reviewers and editors of this piece. She wishes to thank Jeremiah A. Chin, Lacy L. Cooper, Gwendolyn Spotted Elk, Cristobal Martinez, Brittani A. Benally, Lisa Flores, Charles Lee, Gray Cavendar, Debby Chadwick and Bryan McKinley Jones Brayboy for their generous support and thoughtful comments and suggestions on this piece.

Tearing at the Seams of (In)visibility: Anti-counterfeiting, *Harper's Bazaar*, and the Project of Neocolonization

Jessica A. Solyom
Arizona State University
jsolyom@asu.edu

This essay examines the role of the fashion industry in shaping democracy, citizenship, and human rights ideals in the United States. Using Harper's Bazaar's "Fakes are Never in Fashion" anti-counterfeiting advertisement campaign, this case study explores how race, class, gender, law, and human rights discourse coalesce to systematically maintain exploited garment workers voiceless and rights-less while promoting the material interests of a White, capitalist, patriarchal, hegemonic global order. This study presents important implications for larger discussions of rights and justice. Findings show that through the creation of a self-regulatory system that seeks to control how consumers and people of color participate in the counterfeit fashion industry, and by appealing to domestic law to police global practices, elite fashion leaders are obfuscating concerns for human and labor rights violations to maintain a global monopoly on luxury fashion goods production.

Keywords: Fashion; Anti-counterfeiting; Human rights; Labor; Neocolonization; Garment workers; Globalization

In an economy where average U.S. consumers find themselves stretching their dollars, the idea of buying luxury fashion items for a fraction of the price is seductive. The lure of obtaining catwalk looks for sidewalk prices can be overwhelming for some. After all, who has not admired the glamour associated with coveted high-end fashion? Those looking for a good bargain may find themselves having increasing luck: as globalized distribution and production operations continue to expand, the ability of counterfeiters to market inauthentic goods has become faster and easier than before (Hilton, Choi, & Chen, 2004; Weller, 2004). This means consumers now have greater access to inexpensive imitation luxury items. Yet these lower priced knock-offs have industry leaders worried. This is because, according to them, counterfeiting creates unfair competition, endangers the future creative contributions of designers, and victimizes both the consumers and the

Jessica A. Solyom is a Ph.D. student in the department of Justice and Social Inquiry at Arizona State University. She is deeply grateful to the anonymous reviewers and editors at *Kaleidoscope* for their thoughtful feedback and suggestions on this piece. Jessi also wishes to thank Jeremiah A. Chin, Lacy L. Cooper, Gwendolyn Spotted Elk, Cristóbal Martínez, Brittani A. Benally, Lisa Flores, Charles Lee, Gray Cavendar, Debby Chadwick, Kristi Ryujin, and Bryan Brayboy for supporting her on this project.

countries that support it (Adamson, 2012; Counterfeiting Intelligence Bureau, 2008; Cox & Jenkins, 2005; Hilton, Choi, & Chen, 2004; International Anti-Counterfeiting Coalition, 2005; Jackson, 2011; Pezzi & Faggioni, 2011; Salembier, 2007; Tasker, 2011). While fashion leaders struggle against the injustices presented by counterfeiting, garment workers have pointed to an additional challenge facing the industry: human rights violations. Concerned with the larger social, economic, and legal conditions making it possible for fashion goods production firms to exploit them, garment workers believe wage disparities, subjection to unsafe working conditions, and the denial of basic labor rights are among the key injustices facing the industry (Bonacich, Appelbaum, & Chin, 2000; Bullman, 2003; Dumas, 2012; Ehrenreich, 2008; Hilton, Choi, & Chen, 2004; Louie, 1992; Ross, 2004; Salembier, 2007; Scheer, 1995; Su, 1998; Thomas, 2009).

These diverging viewpoints present complexity in how the struggle for justice plays itself out in the industry and who ultimately gets framed as victim. The positionality, rank, and role of an individual within the industry influences whether s/he will support the efforts of industry leaders or whether s/he will advocate for garment workers. In these struggles there seems to be little, if any, room for overlap. Elite fashion leaders believe they are victims and call for legal reform that protects their individual and material interests. They advocate further criminalizing domestic counterfeiting practices and strongly enforcing existing anti-counterfeiting laws. Garment workers, on the other hand, believe laborers are the primary victims of unscrupulous fashion industry practices. They call for reform that provides redress for workplace abuses and they advocate for stronger protections against labor exploitation. Each group advocates for their respective solution in a political and legal system that disproportionately distributes power, rights, and benefits to its members. And although the current legal system offers some protections for designers, fewer protections exist for garment workers.

In this essay, I use critical race theory to explore the ways in which the existing fashion and democratic systems allocate power and visibility to industry members along racial lines and the implications this presents for human and labor rights violations. Using *Harper's Bazaar's*¹ "Fakes are Never in Fashion" (FANIF) anti-counterfeiting advertisement campaign as a case study, I examine the ways in which globalized market practices converge with race, class, gender, and human rights discourse to systematically maintain garment workers voiceless and rights-less. This case

1 *Harper's Bazaar* is a women's specialty magazine established in 1867 and is considered "[U.S.] America's first fashion magazine" (Hearst Corporation, 2009b). The Hearst Corporation, one of the nation's largest media corporations, acquired the magazine in 1912. Hearst controls and operates diverse media and publications outlets including: magazines, newspaper and business publishing; cable networks, television, and radio broadcasting; Internet businesses, TV production and distribution; as well as newspaper distributions and real estate on a national and global scale (Hearst Corporation, 2009a).

was selected for its unique position in championing justice efforts against counterfeiting; *Harper's Bazaar* (*HB*) is currently the only U.S. fashion magazine to undertake such a comprehensive social awareness campaign. This essay reflects the findings of a content analysis conducted on FANIF campaign materials from a six-year period: as the fashion elite² work toward responding to counterfeiting, their approach increasingly calls for legal reform that polices global market practices at the expense of domestic and global human and labor rights reform. Although *HB* editors recognize the harmful and exploitative conditions faced by garment workers outside the U.S., they ignore similar instances of exploitative working conditions faced by workers within the nation. Ultimately, their solutions to counterfeiting call for greater individual, intellectual property rights protections for designers, and this call is justified through the skillful appropriation of the experiences of exploited garment workers in Asia. The solutions promoted by the FANIF campaign serve only to protect the interest of a White, capitalist, patriarchal, hegemonic global world order, reifying existing social and racial inequalities while simultaneously projecting those inequalities onto the global context.

Counterfeiting and the Law

Counterfeiting refers to “making a copy without authority or right and with the view to deceive or defraud by passing the copy as original or genuine” (Ballentine, 2010). Those responsible for the production, distribution, and sale of counterfeit³ goods often engage the process with deliberate intent to profit from the imitation of another’s work (Pezzi & Faggioni, 2011). Just as the process of producing, distributing, and selling a counterfeit involves intent, *purchasing* a counterfeit involves some degree of consumer awareness. The price and location of sale of an item serves as an indicator to the consumer that s/he is purchasing a counterfeit; furthermore, knowingly purchasing cheap imitation products is considered supporting product piracy (Pezzi & Faggioni, 2011). For example, buying a name-brand purse for a fraction of the price from a street vendor or nameless mall kiosk should serve as indication that an item may be inauthentic. If the price is too good to be true, it is because the item is more than likely fake.

2 The term “elite” throughout the remainder of this essay refers to those who occupy the highest levels of leadership and influence within the industry. Due to their status, these individuals enjoy vast amounts of social and material influence. This group is generally comprised of fashion and media executives and editors (or their carefully selected representatives) who dictate and control what occurs within the industry as well as the industry’s influence on larger society. Generally power, wealth, and/or pedigree automatically confer an “elite” status, such as for the descendants of Hearst and other influential media productions corporations; however, increased professional success for (high-end) designers has allowed some to enjoy temporary elite group membership.

3 A counterfeit can be “identical or substantially indistinguishable from a registered mark” (Pezzi & Faggioni, 2011, p. 199).

Consumer demand for imitation goods has turned counterfeiting into a lucrative practice. Global yearly proceeds from counterfeiting have been estimated at \$600 billion and have grown over 10,000 percent in the past two decades (International Anti-Counterfeiting Coalition, 2005). In 2006, European Union customs authorities reported having seized more than 128 million counterfeit and pirated articles (Counterfeiting Intelligence Bureau, 2008), with France alone reporting the attempted sale and distribution of counterfeit products up from 2.3 million in 1998 to 8.9 million in 2011 (Adamson, 2012). Across the Atlantic, the U.S. has experienced losses from the sale of counterfeit goods estimated at \$110.2 million at the mid-year point, up 141% from 2006 (Counterfeiting Intelligence Bureau, 2008). U.S. customs and border protection officials reported having seized over \$260 million worth of counterfeit goods at U.S. ports in 2009 (International Anti-Counterfeiting Coalition, 2010). With so much growth in the past decade, experts believe counterfeiting practices will continue to expand unless more is done to stop them (Counterfeiting Intelligence Bureau, 2008; International Anti-Counterfeiting Coalition, 2005).

Today counterfeiting remains rife as a source of vast and instantaneous profit. Because of its illegality, producers of counterfeit goods do not pay taxes or duties, are not required to comply with basic manufacturing standards for the health and safety of workers, and are not required to test product quality and performance (Counterfeiting Intelligence Bureau, 2008; International Anti-Counterfeiting Coalition, 2005). Alas, the benefits of counterfeiting affect largely the owners and distributors of counterfeit goods production firms. Producers of fashion goods experience large financial gain while consumers, who are attracted to the lower prices afforded by counterfeit goods, may be subjected to dangerous or faulty products. Additionally, since producers of counterfeit goods do not observe industry product safety practices, laborers are more likely to be exposed to potentially dangerous products, chemicals, and production processes.

Current U.S. Legal Protections against Counterfeiting

In the world of fashion, copying and imitating designs has historically played an important role in design innovation (Raustiala & Sprigman, 2006). As copies, trends, and imitations saturate the market each season, designers are forced to create new styles while consumers are driven to make new purchases (Raustiala & Sprigman, 2006; Tasker, 2011). Still, some designers believe copying has created unfair competition and is hurting the reputation of design houses and the products sold. Many leading industrial nations including France, Japan, and India have passed copyright protections to curtail counterfeiting (Jackson, 2011). In the U.S., stringent copyright protections exist for the technology, science, music, art, and pharmaceutical industries. Yet the fashion industry does not enjoy the same level of legal protection, despite the billions of dollars in revenue it generates annually

(Raustiala & Sprigman, 2006). The lack of legal protections for designs affects all types of fashion production, from off-the-rack fashion to couture design, leading industry leaders to believe counterfeiting is the greatest problem facing luxury goods firms in a globalizing market (Adamson, 2012; Counterfeiting Intelligence Bureau, 2008; Cox & Jenkins, 2005; Hilton, Choi, & Chen, 2004; International Anti-Counterfeiting Coalition, 2005; Jackson, 2011; Pezzi & Faggioni, 2011; Salembier, 2007; Tasker, 2011). Today, high-end clothing and accessories remain among the most counterfeited products in the world (Hilton, Choi, & Chen, 2004).

In the U.S., fashion designs remain largely unprotected under trademark, copyright, or patent law (Cox & Jenkins, 2005; Gertler, 2002; Hilton, Choi, & Chen, 2004; Santiago, 2008; Weller, 2004). Nevertheless some designers have successfully adapted these laws to protect their designs and wrangle a small number of legal victories. For example, trademark law provides “legal compensation for brands whose products have aesthetic particularities that identify their source” (Santiago, 2008). This includes fashion symbols such as the interlocking LV associated with Louis Vuitton merchandise, the C and inverted C associated with Coco Chanel merchandise, and the Nike “swoosh.” In 1991, Coco Chanel sued the company Italian Activewear for marketing and brokering a shipment containing counterfeit merchandise. The court found Italian Activewear in violation of the Lanham Act (15 U.S.C. §1051), which “prohibits, among other things, the use in commerce of a counterfeit trademark in a manner likely to cause confusion... [and] provides that anyone using a counterfeit trademark in such manner shall be liable in a civil action to the registrant of the trademark” (*Chanel, Inc. v. Italian Activewear of Florida, Inc.*, 1991, pp. 1474-1475). Unfortunately, this type of win is rare within the context of fashion, since trademarks protect brand names and logos only, and not the overall design of the garment itself (Cox & Jenkins, 2005; Hughes, 1999).

Beyond trademark law, designers have sought legal recourse through copyright law, which “protect[s] the expression of ideas in books, articles, artistic works, and so forth” (Dukeminer, Krier, Alexander, & Schill, 2010, p. 64). Under copyright law, aesthetic elements of a “useful article” (i.e., clothing) can be protected if they are works of art that “can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article” (Cox & Jenkins, 2005, p. 7). In other words, the draft of a design and its individual artistic features can be protected, while the functional properties of an article of clothing cannot. Some belt buckles, for example, have been protected under this law (see *Kieselstein-Cord v. Accessories*, 1980).

Finally, in 1929, designers at Cheney Brothers sought protection for their original silk designs under design patent law (*Cheney Brothers v. Doris Silk Corp.*, 1929).⁴ The company asked the court for special seasonal protection

4 Design patents protect the new, original, and ornamental design for an article of manufacture (U.S. Patent and Trademark Office, 2012).

for their designs, since fashion moves too quickly for designers to file and receive patent protection in time under the traditional patent process. The court denied their request but not before recognizing the difficult context designers find themselves in. Since trends change quickly, designs must be released to the public before designers know which designs will sell best and thus which designs will warrant patent protection. Yet once designs are released, a trend may change, making the patented design no longer profitable and rendering the patent useless. Thus designers find themselves in a legal and fashion paradox. Additionally, in *Millinery Creators' Guild v. Federal Trade Commission* (1941), the court held that fashion designs were not inherently protected by patent law because the "originality involved in the production of a new [...] design does not reach the level of novelty and non-obviousness required for patent protection" (Krieger, 1982, p. 383). Thus "original clothing designs may be copied freely by competitors, leaving their creators without recourse" (Krieger, 1982, p. 383).

As these cases illustrate, intellectual property law in the U.S. has declined to encompass the unique context of the fashion industry. Since fashion operates on a seasonal schedule, legal protections may last too long for the industry's needs and take too long to be granted. However, recent legislation may offer broader protections for fashion designers through the Innovative Design Protection and Piracy Prevention Act (ID3PA, H.R. 2511). Proposed in 2011, ID3PA places the onus on fashion designers to prove their design is original and the counterfeit is copying the design in question (Tasker, 2011).⁵ However, Congress has not yet voted on the bill.

As discussions about the legal, economic, and social implications of counterfeiting continue, larger questions regarding how justice struggles are defined and who has the right to have rights remain ever salient. For example, the concerns of designers raise questions about who owns the artistic rights to an article and who has the right to profit materially from a design. Do consumers even have a right to purchase articles at a fraction of the cost of the original item? The answers to these considerations depend, of course, upon the perspective of who is answering.

Designers respond to these queries by insisting the rising popularity of counterfeiting affects their right to material and financial profit (Hilton, Choi, & Chen, 2004; Weller, 2004). They believe counterfeiting lowers the credibility and reputation of both the designer and product (Hilton, Choi, & Chen, 2004; Weller, 2004). From this perspective, counterfeiting practices have far-reaching implications for society as they could potentially curtail future artistic expression (Raustiala & Sprigman, 2006). In this perspective, rights are framed as entitlement to profit from one's artistic work. For designers, justice includes the right to profit from the efforts of laborers who work to create tangible results from their designs, as well as the right to profit from the sale and distribution of ideas or goods associated with their designs.

⁵ Damages are capped at \$50,000 in the aggregate, or \$1 per copy (Tasker, 2011).

Garment workers see things differently. Rather than focus exclusively on perceived loss of profit, aesthetic rights, or intellectual property associated with counterfeiting, they view practices that mass produce copied designs as serving an important function in creating jobs for people who desperately need work (Adamson, 2012). Unfortunately, the benefits of globalized fashion trade may end there as counterfeiting practices have provided fertile ground for the proliferation of national and global abuses. Globalization has been identified as a major contributing reason for the reemergence of harmful and exploitative practices and conditions including the use of sweatshops (Bonacich, Applebaum & Chin 2000; Ehrenreich, 2008; Louie, 1992; Ross, 2004; Scheer, 1995; Su, 1998). Sweatshop operators, often employing immigrant labor, subject workers to poor working conditions, various health and safety hazards, absence of a living wage or benefits, and/or arbitrary punishment (Hilton, Choi, & Chen, 2004). Additionally, garment workers often lack fringe benefits, knowledge of their rights in hiring and firing procedures, paid sick leave, paid vacation leave, salary increases, overtime pay, paid holidays, health insurance coverage, break time, and workers' compensation (Su, 1998). Use of sweatshop labor within the U.S. has surfaced from ready-to-wear fashion lines to high-end fashion houses affiliated with elite designers. Gap, Kathy Lee Gifford, Jessica McClintock, and Alexander Wang have all been accused of utilizing sweatshop practices (Bonacich, Applebaum & Chin, 2000; Dumas, 2012; Louie, 1992; Ross, 2004; Scheer, 1995; Su, 1998).

Preying upon the fear of deportation to wield their cruel and unlawful practices, sweatshop conditions have emerged in states with large populations of immigrant and undocumented Latino/a and Asian workers, including California and New York (Louie, 1992; Su, 1998). In 1996 a group of workers brought suit against several garment manufacturers and retailers of off-the-rack fashion, including Mervyn's, L.F. Sportswear, New Boys, Inc., Bigin, Inc., Italian Club, and B.U.M. International, Inc. (see *Bureerong v. Uvawas*, 1996). The workers, who had emigrated from Thailand, claimed they had been "falsely imprisoned" and "employed in a system of involuntary servitude" by their employer (*Bureerong v. Uvawas*, 1996, p. 1458). Less than a decade later, in March 2012, a \$450 million lawsuit was brought against high-end fashion designer Alexander Wang and his brother for operating a sweatshop in New York's Chinatown. Workers claimed they were forced to work for up to 25 hours at a time in unsafe conditions, not paid overtime, and "threatened with losing their jobs if work in the 'windowless' room was not completed" (Dumas, 2012, para. 10). The group also reported a lack of sleep, illnesses, injuries, and missed days brought on by the hard labor of producing luxury goods (Dumas, 2012). According to Ming Hai, one plaintiff's lawyer, sweatshop-like conditions are rampant among working-class minority workers in the U.S.: "There are around 20 garment factories in Chinatown—and the conditions reported at Alexander Wang are far from unique: 'Bad labor conditions are everywhere in

the Asian garment community.” (Dumas, 2012, para. 15). Hai describes this phenomenon as “a new kind of slavery” whereby workers “are made to work long hours because they ‘are new immigrants and they don’t speak English’” (Dumas, 2012, para. 16).

In addition to race, class, and immigration-based discrimination, some legal scholars have begun to explore the mistreatment of garment workers as a form of sex-based discrimination. That the majority of garment workers are *female* illustrates important aspects of oppression tied to their unique intersectionality (Bullman, 2003; Su, 1998).⁶ Workers report feeling forced to forgo pregnancy because of fear of losing their job, having inadequate time from work for maternity leave, and being verbally chastised or mistreated “to reinforce the women’s position of inferiority at the workplace” (Bullman, 2003, p. 1029).

Unlike fashion designers who control the means of production, garment workers rarely speak about their individual right to profit from producing fashion items. Instead, they are concerned about receiving consistent and adequate pay for producing such goods, ensuring safe working conditions within the industry, and ensuring equitable employer practices. Perhaps, then, it is not so surprising that garment workers’ concerns for legal protections are not centered on intellectual property law. Rather, garment workers seek justice by calling for economic redress for exploitative employer practices and by advocating for labor and human rights protections.

Resisting Counterfeiting: The Case of *Harper’s Bazaar*

Elite representatives of the fashion industry have responded to counterfeiting by launching an extensive public education campaign. In 2005, *HB* launched its “Fakes are Never in Fashion” anti-counterfeiting advertisement campaign, initiated and led by Valerie Salembier. Salembier, who served in the capacity of Senior Vice President and Publisher of *HB* from 2003 to 2011, was responsible for overseeing the entire FANIF initiative, website, and annual anti-counterfeiting summits (Hearst Corporation, 2011). Glenda Bailey, *HB* Editor-in-Chief, also provided a large source of support for the campaign (Smith, 2010). Led by elite White women and featured in a women’s luxury fashion magazine, the campaign’s target audience appears to be elite White women. Demographic reports for the magazine reveal *HB* readership is 90% female and middle-aged with a median age of 45 (MRI

6 Intersectionality was initially introduced as a theoretical means to capture Black women’s racial and gendered experiences (Crenshaw, 1994; Su, 1998). Today the term has evolved to include the unique blending of two or more political identities; intersectionality recognizes that the *combination* of these identities can create interstices of oppression. These interstices have presented challenges for legal practitioners seeking to defend victims of crime as sex-based protections and race-based protections do not always recognize the unique discrimination faced by individuals who experience oppression as a result of their unique intersectionality. In this paper, I argue that the intersection of race, citizenship status, and gender appears to influence exploitation within the fashion industry.

Doublebase, 2011). Over 78% of readers report attending college and reader annual average household income exceeds \$90,000 (MRI Doublebase, 2011). Although the magazine does not provide race-based reader demographics, by combining existing reader demographics data with data on larger U.S. education, race, and class-based demographics, we can conclude *HB*'s readership is predominantly wealthy White females. For example, in 2009, the U.S. census reported that 76% of enrolled college students were White (U.S. Census Bureau, 2012a, p. 181). Moreover, Whites represented the highest percentage of household income between \$75,000-\$99,999 (U.S. Census Bureau, 2012b, p. 452).

Harper's Bazaar is a publication that is exclusively devoted to promoting high-end women's fashion (as opposed to women's rights). With the exception of its annual "luxury reports," which report findings from the magazine's personal editorial investigation into anticounterfeiting, or the rare feature article, issues of the magazine do not generally discuss women's struggles for justice. What makes FANIF remarkable is its overtly political stance on U.S. law and global business practices. FANIF is multi-tiered and includes print, online, and activist components. Its purpose is to (1) lower the number of counterfeit luxury fashion products purchased in the U.S., and (2) advocate for intellectual property reform that better protects the work of high-end fashion designers. In addition to public education efforts, the editors of *HB* strive to accomplish this through aggressive lobbying efforts.

The FANIF print component includes monthly advertisements, occasional feature articles, and annual exclusive reports. Prominently proclaiming the campaign's FANIF slogan, advertisements range in size from half- to full-page layouts and can cost anywhere between \$84,435 for a half-page layout up to \$127,875 for a full page (Hearst Magazines, 2012a). Yearly reports, referred to as "Luxury Reports," are published in the January issue and detail first-hand accounts of the dangers related to counterfeiting and current domestic (U.S.) legal and justice efforts to stop or mitigate its effects. FANIF has also led the magazine to extend its online presence to include a separate website, fakesareneverinfashion.com, independent from the magazine's central site. The FANIF site hosts a blog and links to previously published *HB* articles and resources on the subject.

Supplementing online and print media, *HB* editors advocate daily acts of resistance against counterfeiting. Readers are encouraged to (1) cease purchasing inauthentic goods, (2) report those involved in counterfeit import or export activities, and (3) support the magazine's political efforts to lobby Congress for reform (Thomas, 2005, 2007, 2009). Larger activist components, however, are limited to members of the magazine editorial board and other high-powered industry members. For example, *HB* editors co-host yearly anti-counterfeiting summits, sponsored by the International Trademark Association, where fashion and beauty executives, intellectual property rights attorneys, and law enforcement officials gather together to

share their experiences with counterfeiting (Hearst Communications Inc., 2011). At these events, *HB* magazine editors implore attendees to aid in (1) educating consumers of the dangers associated with the purchase of counterfeit goods; (2) enforcing current anti-counterfeiting laws; and (3) aggressively pursuing intellectual property law reform (Salembier, 2007).

Methodology & Methods

General readership magazines and specialist industry media like *HB* provide critical commentary on fashion as well as information about current dilemmas in the world of high fashion (Weller, 2004). As such, *HB* plays an increasing role in influencing the larger national and global dialogue surrounding counterfeiting. In 2011, *HB* reported having “over 12 million readers, with nearly 3 million issues sold each month” (Hearst Magazines, 2012b, p. 1). Offshoots of *HB* are circulated globally amid countries that participate in the globalized fashion market. Today *HB* has 26 international editions in 42 countries. FANIF is currently the only example of a large-scale, long-term public effort against fashion counterfeiting that includes a public mobilization component. In other words, the magazine seeks to galvanize its readership by arming them with information necessary to actively participate in the fight against counterfeiting. Readers are encouraged to participate to their level of comfort. Whether by desisting from purchasing inauthentic goods, reporting counterfeiters to criminal agencies, or contacting legislative representatives to vote in favor of legal reform, FANIF seeks to mobilize readers to aide its anti-counterfeiting mission. Although *HB*'s first anti-counterfeiting summit was held in 2004, its advertisement and print media campaign did not start until 2005. Because its print and online media resources are such a large component of the campaign, and the only ones allowing for reader participation, I selected 2005 as the starting point for data collection.

In the next section, I provide a content analysis (Lindlof & Taylor, 2011) of FANIF beginning with FANIF's inception in 2005 through December 2011. Content analysis involves “coding and categorizing text and identifying relationships among content identified in the text” (Schutt, 2006, p. 428). Identified descriptive codes were used to extract themes and patterns inherent to the framing of this campaign. Additionally, critical race theory (CRT) was used to analyze the findings. CRT provides a lens through which to understand the influence of race, racism, and racial power in U.S. society on the lives of those who are marginalized. Challenging mainstream notions of race, racism, and racial power in U.S. society, CRT questions the “neutrality” of law and policy (Delgado & Stefancic, 2000; Nunn, 2000). CRT rejects the idea that color-blindness to race will eliminate racism and instead situates race at the center of its critique (Matsuda, 1987). The goal of CRT research is to understand how race and racism influence the creation of law and policy, which in turn can serve to uphold a structure of inequality for historically, oppressed communities (Delgado & Stefancic, 2000).

Findings

The FANIF campaign articulates human and labor rights abuses, threats of drug trafficking, and national terrorism with the sale and production of counterfeit goods. Human rights struggles, though never explicitly referred to by FANIF as such, are represented in the campaign's various featured reports on the indignities and abuses experienced by youth and female garment workers. Focusing exclusively on the conditions of garment workers in Asia, FANIF campaign materials provide general descriptions of the poor work environments and physical abuses faced by foreign women and children employed in the counterfeit production industry. Additionally, the campaign presents data on the rampant nature of counterfeiting's effects on film, pharmaceutical, food, and fragrance industries.

The 2009 Luxury Report featured in FANIF by editorial investigator Dana Thomas encapsulates the overall gist of the campaign. Thomas employs a fear framework (Altheide & Michalowski, 1999) to explain the pervasiveness and dangers associated with the counterfeit industry. Readers are informed of the vast economic implications of counterfeiting: \$600 billion of annual world trade is counterfeit or pirated; moreover, counterfeiting is responsible for the loss of 750,000 American jobs (Thomas, 2009). Additionally, Thomas connects counterfeiting with threats of national violence by pointing out that those involved in counterfeiting have also been found to be involved in human trafficking, child labor, and gang warfare. Thomas connects counterfeiting with terrorism, explaining that counterfeiters use the industry to launder money for these purposes (Thomas, 2009). The report then shifts its focus to the global oppressive child labor practices associated with the production of fakes. During a raid in China, Thomas (2009) reports several small children "all under 10 years old, sitting on the floor assembling counterfeit leather handbags" (p. 69). On a later trip to Thailand, "the owners had broken the children's legs and tied the lower leg to the thigh so the bones wouldn't mend. They did it because the children said they wanted to go outside and play" (Thomas, 2009, p. 70). The report concludes by offering information on the progress that designers and law enforcement investigators, with help from *HB*, have made in obtaining justice. Readers are then encouraged to join *HB* in their efforts to fight against counterfeiters.

Throughout the FANIF campaign, justice appears to be framed differently for designers, workers, and enforcement officials. For example, Thomas suggests that designers experience justice when law enforcement officials confiscate counterfeit items or when designers receive financial compensation for the sale of unauthorized merchandise. Investigators and law enforcement officials, on the other hand, experience justice when they have the legal means and material resources to arrest those involved in the manufacturing and/or sale of counterfeit goods. However, readers are left to wonder what constitutes justice for the exploited workers, as the article

makes little mention of what happens to them after the raids have ended. Do they go back to working for another counterfeiting operation? Are they compensated for their labor when authorities shut down these operations during raids? Why do they find themselves working in the counterfeit industry to begin with? Thomas does not delve too deeply into the lives or stories of the workers. Instead, her sensational eyewitness accounts of child labor and exploited female garment workers become a story arc to seek readership endorsement for the magazine's anticounterfeiting efforts.

Accompanying the yearly luxury reports is information justifying the high cost of luxury goods. The cost of luxury textiles, supplies, and manual labor required to produce garments is presented as justification for the price of high fashion designs and products. The campaign invites individual acts of resistance by inviting readers to join them as part of the "fashion police." *HB* entreats readers to join in the "fight against fakes" by publishing information on how to identify counterfeit fashion items and how to report the sale of counterfeit goods to relevant authorities (Thomas, 2009). Both the online and print components of FANIF feature brief reports on designers' recent legal wins against counterfeiting.

Although FANIF describes, however briefly, human and labor rights abuses, it does so *without actually naming them as "human" or "labor" rights violations*. Instead, the focus is shifted almost immediately from the sensationalized hook of the exploitative conditions of workers to the implications of counterfeiting on the elite, wealthy, and insular fashion designers. Neither Thomas (2009) nor the leaders of FANIF explain how *HB's* proposed solutions will directly benefit exploited garment workers. Readers are simply discouraged from purchasing or wearing counterfeit goods and, instead, are encouraged to report counterfeiting practices to the relevant authorities. Under this framework, consumers become informants or vigilantes while ignoring the actual plight of the garment workers featured in the story.

Flanking Thomas's report is a series of images: a street vendor selling counterfeit goods to sidewalk shoppers, an Immigration and Customs Enforcement agent inspecting handbags during raids, an elected official surrounded by seized counterfeit goods who is addressing the press, and the blurred face of a woman seated at a sewing machine examining a counterfeit handbag. What is most striking about these images is the articulation of race with criminality: the vendor selling counterfeit goods is dark-skinned. Although the face of the woman producing the handbag is blurred, the image is preserved just enough for the reader to recognize her dark hair and skin. Lest readers mistake her for a domestic garment worker and potentially believe that exploitative labor practices or counterfeit goods production occurs in the U.S., the caption reassures she is in Thailand. The images of the law and elected state official, on the other hand, feature White men in their professional uniforms, seizing counterfeit goods.

Globalization, Neoliberalism, and Citizenship

The prominent aspects of race, class, gender, and citizenship in the FANIF campaign must be situated within the current social-economic context. Globalization has subjected all facets of social life to market forces by placing economics at the center of society, and in this system, the rights and values of those belonging to the polity are measured by the economic value they bring (Somers, 2008). The competitive structure of globalization has also led to the resurgence of neoliberalism (Kotz, 2002). Within the neoliberal context, goods, services, capital, and money—but not people—are free to move across national boundaries (Kotz, 2002). When workers cross U.S. national boundaries and become laborers in the domestic fashion industry, they may be subjected to social stigma as their value as human beings is lowered. The *HB* FANIF campaign is an example of how the globalized political and market context constrains the options available to individuals who have moved across national boundaries. Domestic garment workers, like their foreign counterparts, become susceptible to injustice as a result of being disenfranchised within the fashion industry. The fashion social hierarchy maintains the conditions for the status, wealth, and dominance of the fashion elite and replicates existing social stratification among fashion industry members—effectively disempowering immigrant garment laborers.

(Global) Market Forces and the Law: What's Race and Gender Got to Do with It?

Markets and market practices are neither self-regulating nor free from social and political pressures. Markets are influenced by the context in which they operate and are vulnerable to replicating existing social hierarchies based on gender, race, and class (Somers, 2008). The subjugation of garment workers in the U.S. fashion industry reflects the historic race, class, and gender stratification inherent in the larger U.S. social-political-economic context. The extensive colonial past of the U.S. includes a legacy where market interests have been used to create, justify, and/or sustain the conditions necessary for “citizens” to exploit the labor and lands of disenfranchised peoples (Deloria, 1969; Harris, 1993; Tsosie, 2005; Williams, 1986). Factors such as race, class, gender, sexuality, immigration status/citizenship, and religion have all been used to disproportionately allocate rights and benefits to some groups while effectively maintaining the subordination of others (Delgado & Stefancic, 2000; Deloria, 1969; Ngai, 1999). The fashion industry’s unequal distribution of material wealth, benefits, rights, and privileges reflects the legacy of past racist and discriminatory practices that have led people of color to be clustered at the bottom (Bonacich, 1990).

FANIF places Whites as protectors and defenders of not only humanity but also global trade practices. Whites are not positioned as criminals; rather, they protect innocent consumers from the Brown and Black criminals who

produce and sell counterfeit goods. In so doing, Whites may even be depicted as indirectly protecting vulnerable (foreign) Brown women and children from being victimized by dangerous Brown and Black men. Under this framing, the concern for rights shifts from a concern for civil and human rights abuses to advocating for the rights of designers to compete in a global, neoliberal market designed to maximize their personal profit.

Focusing on the exploitation of women and child workers in Asia, *HB* frames counterfeiting as primarily rampant and driven by *foreign* countries, leaving FANIF free to ignore the U.S. legacy of systemic disenfranchisement that manifests in existing market and industry practices. This oversight on the part of the U.S. legal system allows elite leaders to maintain domestic social and racial inequalities and projects them in the global context. Under the ruse of advocating for more equitable market practices, fashion leaders coopt the experiences of foreign exploited communities, and use them, instead toward their own end. The plight of exploited domestic laborers, who may have ties to the same foreign communities FANIF presumes to defend, is ignored while the material and property interests of the elite are promoted. A focus on foreign garment workers obfuscates the ways in which race, gender, and, in some cases, citizenship, intersect to sustain historical forms of oppression domestically. The exclusive focus on foreign laborers appears to dismiss or simply presume that readers do not question the presence of exploitative labor practices within the U.S.

Spotlighting global counterfeiting practices allows editors to focus on how foreigners are victimizing the nation. Within FANIF, identifying victims is important for creating a campaign frame that promotes fear. Victimization as a status relies on pervasive fear because this is what makes it meaningful and plausible to audiences (Altheide, 2002, p. 41). FANIF depicts victimization by referring to the U.S. and its consumers as the unsuspecting victims of unfair fashion market practices. Foreigners are used to ensure reader commitment to FANIF's call for domestic legal reform by evoking either sympathy for exploited workers or ire toward those involved in counterfeiting. Such a frame places readers on the defensive, freeing editors from having to discuss the actual victimization of domestic workers and the employment needs of Brown and Black working class communities. Editors also do not have to discuss the magazine's complicity in promoting a vapid and superficial consumer-driven culture that articulates owning and wearing social goods with heightened social capital. This consumerism, which fills the coffers of the fashion elite, simultaneously causes desperate consumers to become dependent on the counterfeit industry. Ultimately, editors are freed from acknowledging that their exclusive focus on the experiences of foreign (outsourced) laborers means ignoring the exploitation of domestic workers who produce goods within the States. Ultimately, nothing in FANIF or its public action component addresses the concerns of domestic workers or the complicity of readers or fashion elite in promoting a consumer-driven culture.

Instead, the fashion elite continue to ignore, and thus legitimate, the history of discriminatory practices that saturate U.S. law and policy and permeate the counterfeit industry.

FANIF describes the struggles faced by foreign female garment workers, but its authors are careful to avoid delving too deeply into a discussion of workers' lives. Perhaps this is because the women most directly and immediately affected by counterfeit practices are not relatable to the readers of the magazine. Garment workers may not be able to fully appreciate that a rise in counterfeit luxury goods leads to a decrease in the social value of owning an authentic piece. Moreover, given rampant under- and non-payment practices in the garment production industry, garment workers are unlikely to afford authentic pieces of any of the coveted items featured in the magazine.

Ignoring how race, gender, and citizenship status intersect to sustain oppression uniquely experienced by those who have been disenfranchised serves two purposes. First, it reifies existing social stratifications within larger society. Second, it maintains the conditions for subordination of garment workers that have allowed counterfeit and fashion designers to thrive. Refusing to highlight the important gender and racial aspects of counterfeit production processes reflects the hegemonic social stratification inherent in the industry. While men of color are positioned as those driving the sinister practices associated with counterfeiting, designers and lines featured in the magazine belong to houses or corporations that are primarily White and/or male-owned or operated. Additionally, the majority of high fashion and media executive positions in the U.S. remain the exclusive occupation of elite White men who stand to benefit the most from a legal and justice system historically created to protect and defend the rights of persons like them. Women of color are represented as primarily responsible for producing counterfeit luxury goods while the *HB* advertisements and magazine leaders depict White women as their primary consumers. Occasionally, like the editors of this magazine, White women come to occupy positions of leadership within the publishing industry. Unfortunately, perhaps also because of their rare elite role or rank within the fashion hierarchy, the women driving the FANIF campaign are complicit in ignoring the voices, experiences, and efforts of domestic garment workers. This could be because domestic garment workers stand in direct opposition to the majority of consumers and elite leaders within the industry (i.e., they are female, non-White, and working-class). Advocating for solutions that would protect the interests of garment workers is counterintuitive to the magazine's real mission of protecting the material interests of their employers: male (fashion) business leaders.

The portrayal and classification of counterfeiters as foreign and non-White reifies existing U.S. racial stratification by placing the predominantly White, upper class readership in the role of savior while people of color are criminalized and marginalized. FANIF depicts people of color and immigrants as the primary violators of labor, human, and civil rights; as

producers of counterfeit goods; and as those directly responsible for the counterfeit industry. The campaign further classifies criminals by gender. Brown and Black males are depicted as being in control of, and driving, illegal counterfeit practices, while women and children of color are represented as dominated by Brown and Black males and subjugated to the position of producing counterfeit goods.

Democratic Rights, Citizenship, and Bare Life

Through FANIF, *HB* editors become exemplars of the power and benefits that accompany having citizenship in the globalized fashion democracy. As elite citizens they possess employment opportunities that provide them with easy access to resources which allow them to engage in sustained justice advocacy efforts with minimum threat to themselves or their families. Unfortunately, garment workers do not share that power. Instead they face dehumanizing practices that endanger their ability to earn a living wage and jeopardize their health and well-being. Moreover, the threat of employment termination or deportation affects not just the garment workers themselves—it affects their families. Fear of deportation means workers are less likely to report or complain about oppressive workplace practices, perhaps contributing to ongoing exploitation. On the other hand, elite fashion leaders may rarely, if ever, experience the type of fear associated with wage disparities and labor violations faced by garment workers. While designers may experience occasional economic loss from counterfeiting, none have reported the same fears or sense of loss reported by garment workers (e.g., under- or non-payment of wages, earning less than minimum wage, lack of paid overtime, etc.).

In the context of FANIF and the U.S. fashion democracy, garment workers gain visibility only *after they have been made to suffer indignity*. This is because they do not have the economic means to solicit legal intervention against workplace injustice or the means and access for sustaining efforts that publicize their struggles over long periods of time. Unlike *HB* editors, whose rank or role within the industry affords them both the opportunity and means to represent the fashion elite, garment workers must struggle to represent themselves in the workplace. They cannot afford to lobby or pay for the type of advertising rates *HB* calls for and rarely do they have the support and knowledge necessary to sustain media and public attention over time. Workers may lack the ability to recount their experience in English, may not desire individual media visibility (especially if undocumented), and, unlike *HB* editors, do not have the luxury to devote personal work hours to rallying support for their struggles (Su, 1998). Moreover, because garment workers toil for many hours and/or may work more than one job, they may be exhausted when they arrive home and may not have the personal energy necessary to sustain a preemptive justice campaign. These factors create the conditions for fashion leaders, as elite citizens of the fashion democracy, to coopt the experiences of garment workers toward their own selfish ends.

FANIF is a means for elite fashion leaders to disseminate propaganda, propose legislation that is preemptive in nature, and, for many designers, serve as a *supplement* to legal recourse. Albeit limited in scope, FANIF is intended to mitigate the personal, individual effects of counterfeiting suffered by designers and retailers. Citizenship within the U.S. fashion democratic polity plays an important part in raising awareness of rights violations and subsequently ensuring that rights are secured and enforced. Citizenship not only safeguards the ability of elite citizens to maintain the minimum economic conditions to survive comfortably, it also affords them the visibility to voice their struggles and advocate for justice in the form of capital gain. Similar to U.S. democracy, fashion democracy is characterized by boundaries demarcating who belongs to the polity and, thus, who has the “right” to readily participate in and influence rights discourse. Given that garment workers are limited from participating in the discourse shaping garment production practices, we must ask: how might workers go about seeking protection from workplace abuses? The answer requires an investigation of the larger functioning U.S. democracy and how power and visibility function within it.

According to social and political philosopher Margaret Somers (2008), the “fragile project of sustaining socially inclusive democratic rights requires the counteracting powers of a social state, *a robust public sphere to hold it accountable*, and a relationally sturdy civil society” (p. 5, emphasis mine). Advocating for rights requires an understanding of what kinds of rights and protections are being sought by designers and garment workers—whether civil, labor, or human. It also requires having a collective of citizen-subjects in the public sphere willing to hold the state accountable. Citizenship, or political inclusion, includes the right to social inclusion, or participation, in civil society (Somers, 2008). Citizenship is contextual—it has meaning only within the particular polity and/or social body that confers it (Somers, 2008).

In the U.S., rights are classified by type and scope. Civil rights are included under citizenship rights. Labor rights, which regulate labor practices within the nation-state, also fall under citizenship rights, are context-dependent, and can vary from industry to industry. Human rights, which are possessed by all humans for the simple reason of their being human, are a crucial part of politics and international relations. Pheng Cheah (2006) describes human rights as the “right” to have rights (p. 190). Under this framework, the right to rights is unconditional because it transcends all specific historical, cultural, or political contexts. A violation of human rights as the result of inhumanity can manifest itself in myriad ways, including individual cruelty, institutional violence, or “the vicissitudes of global capitalism” (Cheah, 2006, p. 191). Under this framework, being forced to labor under sweatshop conditions is certainly a violation of human rights.

Overcoming human rights violations entails either appealing to existing human rights protections to redress social injustice, or creating, adopting, and honoring protections under human rights law for all members within

the polity. Because human rights recognize and respect human dignity, they transcend all relative value and have no equivalence or market price. Human rights present a paradox. Although they are fundamental to the recognition of the dignity of humans, advocacy and/or recognition of human rights within the neoliberal nation-state is largely limited to those in possession of citizenship. Thus, although immigrants and their descendants have become permanent denizens of advanced industrial societies, the status of full citizenship remains either beyond reach or available in a less than complete form, making it difficult for them to advocate for human or any other kind of rights (Ong, 2003). Incomplete citizenship becomes marked as time progresses through racial or ethnic markers. This presents a dilemma for immigrant workers who do not possess citizenship and who may be forced to labor under conditions that violate civil and human rights protections.

By focusing on garment workers outside the U.S., FANIF presents this group of laborers as foreign from the U.S. democratic context. This foreignness becomes a marker for exclusion in the campaign and renders workers invisible or silent within its justice struggles. Political philosopher Bonnie Honig (2001) defines foreigners as those who are not considered to meet the requirements for social and political inclusion into the polity and thus are denied citizenship and belonging. Honig believes democratic citizens feel threatened by foreigners and respond in one of two ways: either immigrants are valued for what they can add to society (e.g., diversity, talents, industry) or they are feared for what they might take (e.g., welfare benefits) or what they might do (e.g., fragment politics, or undermine the existing democratic culture). This cost/benefit analysis determines whether the foreigner will be embraced and accepted and thus become eligible for full citizenship rights, or whether s/he will be denied admission and stripped of civil and/or human rights protections. Unwanted foreigners become publically and politically (re) presented or perceived as “symbolically violent [...] powerful and dangerous [and, therefore, a threat to our nation]” (Honig, 2001, p. 77). FANIF depicts men of color under this category. Desired immigrants, on the other hand, may be represented or perceived as “weak and wretched and therefore possessed of a claim on humanitarian sentiments” (Honig, 2001, p. 77). Such is the case for the (foreign) female and child garment workers presented in FANIF.

Fear of what foreigners may bring, take, or do to the polity can lead democratic nations to deny them political and legal rights. Political philosopher Giorgio Agamben (1998) refers to this as “bare life.” Garment workers exist within Agamben’s framework of bare life, which renders individuals susceptible to violence and/or exploitation by nation-state citizens who have no fear of legal or ethical reprisal from their governing body. Viewing garment workers as bare life may be what allows citizens within the U.S. fashion democratic system to exploit garment workers under sweatshop conditions: “For Agamben, the subjects [considered to be bare life] are ‘so completely deprived of their rights and prerogatives that no act

committed against them could appear any longer a crime' ... the zone of bare life is not only juxtaposed to the democratic order, but is necessary for its continuing function" (Lee, 2010, p. 60). Agamben's framework highlights the assumption that "rights *belong* to those definite or permanent subjects (i.e., citizens), with the implication that those without rights cannot act, but must be saved by others, as in humanitarian intervention where charity is given to the poor" (Lee, 2010, p. 64, emphasis in original). Fortunately, citizenship for garment workers may extend beyond the simple recognition of "rights" accorded by the nation-state.

Neoliberalism is an embodiment of an infiltration of economic logic into the domain of government (Ong, 2006). This infiltration shifts the mode of governing from "duties and obligations to the nation" to one that is based on individual possessions of "human capital or expertise" (Lee, 2010, p. 68); this becomes the central criteria in state distributions of rewards and benefits of citizenship. Charles Lee (2010) believes that a full-blown cultural script of citizenship is embedded in the modern (neo)liberal world order. This script interpellates the "proper" ways for humans to be citizens in different social spheres to (re)produce domesticated subjects who will be kept in place. According to Lee (2010), the liberal cultural script is articulated by a wide array of subscripts that govern different fields of social life, including membership, political, economic, and life scripts. The *membership* script interpellates human subjects as belonging to a singular national status and gender binary. The *political* script denotes periodic civil participation in a political community within predetermined parameters. The *economic* script figures the ideal citizen-worker as an honest law-abiding subject who works and consumes and who generally works to contribute to the productive cycle of capitalism. The *life* script nurtures a civil and proprietary citizen-subject governed by the right to life, liberty, and the pursuit of happiness (Lee, 2010).

In a neoliberal, globalized economy, the notion of bare life applies to refugees and immigrant workers. Immigrant workers are not simply excluded, they are deliberately brought in, sought after, and tolerated by the capitalist regime to play a critical part as the disposable and compliant labor of the state operation, while their membership is deliberately left suspended as "undocumented" individuals who have no official resort to participate politically in the state as citizens. (Lee, 2010, p. 62)

In the U.S., "citizenship has functioned as a modern biopolitical instrument and ideological script that facilitates liberal governance" (Lee, 2010, p. 66). Citizenship serves as a political and democratic expression of belonging for some, and is simultaneously used to silence and render invisible the presence and voices of others. Within the existing fashion democracy, FANIF appears to only acknowledge the suffering of foreign garment workers while remaining locked into scripts useful to the maintenance of power of the fashion elite.

Seeking Redress and Protection against Exploitation

Since the FANIF campaign is dedicated to exposing illegal acts, a reasonable solution would be to call for a legal remedy. In the U.S., race has historically served as a factor in law to benefit some while effectively disenfranchising others. Elite White males have benefited the most as legal measures have served to advance their personal accumulation of material wealth (Harris, 1993; Nunn, 2000). The legacy of racial and economic stratification advanced by legal policies remains today:

Law works to legitimate White institutions...[and] champion the desirability and inevitability of White dominance...[thus] whenever the European American majority in the United States desires to ostracize, control or mistreat a group of people perceived as different, it passes a law—an immigration law, a zoning law, or a criminal law. (Nunn, 2000, p. 433)

Law plays an important role in the maintenance of race, class, and gender-based inequity. Given the extensive history of using legal tactics to marginalize and disenfranchise the bodies, lands, and labor of people of color (Crenshaw, 1994; Harris, 1993), perhaps it is not so ironic that the experiences of garment workers become visible only when their exploitation can be used to promote and uphold the legal and economic interests of the fashion elite.

Interest in protecting the rights of elite Whites is demonstrated in the print materials included in the FANIF campaign. None of the articles or reports present information on the efforts of *HB* or the fashion elite to alleviate the physical and social harms endured by garment workers. This is because these efforts do not exist. Instead, the exploitation of workers is itself exploited as the voices of workers are silenced. This suggests that *HB* and the fashion elite are not interested in the stories of *why* workers become involved in the sale and/or production of counterfeit luxury goods nor are they not concerned with educating them about the criminality associated with their trade. The lack of regard for the personal lives and stories of garment workers leaves them vulnerable to the vices of their employers, law enforcement officials, and legal system which may someday have the power to prosecute laborers for their role in producing counterfeit fashion goods. The absence of the active voices and presence of garment workers in FANIF highlights their lack of citizenship in U.S. (fashion) democracy and maintains the conditions for them to remain stateless.

The bare life of garment workers presents an opportunity for elite citizens to take over as advocates and mouthpieces to their human and civil rights struggles, thereby appropriating those struggles for their own benefit. If “the only way Americans can claim both rights and mass sympathy is to demonstrate, not panic, anger, demand, and desire, but ethical serenity, hyperpatriotism, and proper deference” (Berlant, 1997, p. 189), then workers

cannot afford to appear angry. Moreover, “political emotions like anxiety, rage, and aggression turn out to be feelings only privileged people are justified in having” (Berlant, 1997, p. 189). *HB* appears to recognize this and encourages its citizen-readers to feel anxious and outraged by practices that threaten their individual right to authentic luxury goods as well as the safety and well being of their nation. FANIF encourages readers to react aggressively. The campaign presents designers, editors, and consumers as the only ones able to control, mitigate, and eradicate—not the market and production practices that exploit human workers, but rather those (people of color) that compete against elite fashion designers. Such a response suggests the elite believe neoliberalism, and competing in the global fashion market, are neither designed for nor intended to benefit people of color or impoverished communities around the globe.

Cast into the realm of non-citizen stateless foreigners, the struggles of garment workers present an interesting nuance for Honig’s discussion on the rights of foreigners. Although Honig (2001), like Lee (2010), believes citizenship is not entirely dependent on the recognition of the nation-state,⁷ the actions of garment workers to actively engage the polity and advocate on behalf of their rights become silenced and subverted by the campaign. Ignoring existing public, social, and political efforts of domestic garment workers creates a perversion of citizenship wherein citizenship serves as a conduit to maintain neocolonial practices that subjugate the body and labor of workers.

Honig (2001) seeks to reframe the question of law and justice regarding immigrants from “how do we solve the problem of foreignness” to “what problems does foreignness solve for us/[U.S.]?” In response to the latter query, the FANIF campaign suggests that appropriating the “problems” of foreigners serves as a valuable tactic to promote an elite agenda that reinscribes and protects existing racial, gender, class, and global divisions. Under the type of democracy promoted by the campaign, citizenship becomes a tool of subversion and cooptation that transforms human and civil rights advocacy into efforts designed to protect neoliberal interests of capitalism and colonization, while obscuring or worsening conditions for the very workers whose labor makes fashion democracy possible in the first place.

Conclusion

As the gap in income and wealth distribution between the wealthy White elite and the primarily minoritized working class widens, it is easy to understand why consumers want to own, or appear to own, luxury fashion goods for a fraction of the price. Luxury fashion goods are advertised as higher-quality stylish garments that elevate a person’s social value. The lower price of counterfeit goods means elevated social status has become

7 In this view, citizenship becomes a *process* whereby rights are subject to being asserted or taken by members of the polity.

more affordable to working class consumers. However, the growing demand for counterfeit goods presents a conundrum for garment workers. On the one hand, the demand for (counterfeit) luxury goods creates important employment opportunities for populations that desperately need it. On the other hand, the increased demand for labor and global competition, coupled with existing labor practices, creates the necessary conditions for employers to exploit workers. Exploited garment workers become dissociated from their labor, image, and voices, as well as from the fashion brand they help to produce. They are often forced to face unfair labor practices that jeopardize their financial, physical, personal, and family safety.

This essay demonstrates how, in the current U.S. fashion industry, gender, race, class, and citizenship coalesce to determine rights based on who has the most financial and political power within the existing structure. The resulting hierarchy demonstrates that citizenship places elite White consumers and designers of fashion at the top while people of color—those responsible for producing fashion merchandise goods—are denied citizenship rights and made to comprise the base of the structure. Within the U.S. fashion democracy, citizenship and its corresponding rights reflect the racial and social hierarchy that has historically defined the nation. Elite citizens possess the power, visibility, and resources to most easily respond to counterfeiting challenges amplified by globalization and neoliberalism, while garment workers struggle alone in their efforts to obtain justice against labor and workplace abuses. Evidenced by *HB's* FANIF campaign, elite fashion leaders recruit their consumers to support their efforts in advocating for reform. This allows fashion leaders to maintain a monopoly on the industry and preserve the conditions necessary to promote the neocolonialization of garment workers. Those in possession of citizenship are complicit in silencing or ignoring the labor, rights, and struggles of national and global garment workers. Their actions advance a neocolonial agenda that ensures workers remain in the same positions that have labeled them as “foreign” and rendered them bare life.

The different responses utilized by garment workers and the fashion elite in the pursuit of justice against unfair industry practices demonstrate how diverse industry stakeholders understand the intended purpose and benefit of U.S. law. Industry leaders, including designers, magazine editors, and publishers, seek to use it to regulate the global production and distribution of counterfeit goods. Workers appeal to it to advance reform that will regulate dangerous labor and employment practices, but not economic competition. Undergirding these struggles is the fact that globalization has become a springboard for promoting the interests of the fashion elite. Globalization offers designers the economic and political means to exploit vulnerable working populations while engaging in large-scale production and distribution practices that edge out their competitors and promote their creative designs over others. Under this framework, the interests of the

fashion elite appear to be two-fold: (1) to preserve the high social capital and value afforded by the ownership of exclusive luxury goods, and (2) to protect the material and creative interests of elite designers. Admittedly, these two interests are not mutually exclusive and fashion leaders believe they can be achieved through intellectual property protections.

The anti-counterfeiting arguments explored in this essay demonstrate a fundamental paradox within the fashion democracy: under the guise of wishing to protect foreign exploited workers, elite fashion leaders appropriate the experiences of foreign garment workers to advance U.S. law that would curtail the production, sale, and distribution of counterfeit goods within the country. Of notable importance is the fact that the efforts championed by elite fashion leaders stop short of advocating for international labor law reform. This approach allows fashion leaders to effectively control *both* domestic and foreign labor practices rather than advocate for larger scale reform that would protect domestic and global workers from industry exploitation. The singular focus on controlling economic and market forces obfuscates the inequalities, racism, and struggles experienced by garment workers—all for the protection of the profits and ideology of elite Whites.

HB's FANIF campaign demonstrates the ways in which those invested in preserving current, existing racial and social stratifications are using domestic law to police and control globalized labor and industry. This shifts the focus from human and labor rights abuses occurring presently in the U.S. and avoids holding high-end fashion designers responsible for their own participation in silencing and exploiting workers. *HB's FANIF* campaign suggests that U.S. fashion democracy is about protecting the vested interest of the bureaucratic elite. This fashion democracy serves as a pseudo-democracy promoted by elite leaders to enlist the support and loyalty of readers to imbue a façade of justice within the industry—keeping up appearances so everyone can sleep at night. Yet the reality is that the fashion industry actually operates as a plutocracy, intent on monopolizing and controlling labor, culture, and economies on a worldwide scale—human and labor rights abuses of exploited women notwithstanding.

References

- Adamson, T. (2012, May 31). New campaign fights counterfeit fashion. *MSNBC*. Retrieved from: <http://www.msnbc.msn.com/>
- Agamben, G. (1998). *Homo sacer: Sovereign power and bare life*. Stanford, CA: Stanford University Press.
- Altheide, D. L. (2002). *Creating fear: News and the construction of crisis*. Hawthorne, NY: Aldine de Gruyter.
- Altheide, D. L., & Michalowski, R. S. (1999). Fear in the news: A discourse of control. *The Sociological Quarterly*, 40(3), 475-503. doi:10.1111/j.1533-8525.1999.tb01730.x

- Ballentine, J. A. (2010). Counterfeit. *Ballentine's law dictionary with pronunciations* (3rd ed.). New Providence, NJ: Matthew Bender & Company.
- Berlant, L. (1997). *The queen of America goes to Washington city: Essays on sex and citizenship*. Durham, NC: Duke University Press.
- Bonacich, E. (1990). Inequality in America: The failure of the American system for people of color. In G. E. Thomas (Ed.), *Race relations in the 1980s and 1990s: Challenges and alternatives* (pp. 187-208). New York, NY: Hemisphere.
- Bonacich, E., Appelbaum, R., & Chin, K. S. (2000). *Behind the label: Inequality in the Los Angeles apparel industry*. Berkeley: University of California Press.
- Bullman, G. A. (2003). Abuse of female sweatshop laborers: Another form of sexual harassment that does fit neatly into the judiciary's current understanding of discrimination because of sex. *Indiana Law Journal*, 78, 1019-1043. Retrieved from <http://www.law.indiana.edu/ilj/volumes/v78/no3/bullman.pdf>
- Bureerong v. Uvawas, 922 F.Supp 1450 (1996).
- Chanel, Inc. v. Italian Activewear of Florida, Inc., 931 F. 2d 1472 (11th Cir. 1991).
- Cheah, P. (2006). *Inhuman conditions: On cosmopolitanism and human rights*. Cambridge, MA: Harvard University Press.
- Cheney Brothers v. Doris Silk Corp., 35 F.2d 279 (U.S. App. 1929).
- Counterfeiting Intelligence Bureau. (2008). The international anti-counterfeiting directory: Protecting the world against the plague of counterfeiting. Retrieved from [http://counterfeiting.unicri.it/database.php?sec_=R&c_="](http://counterfeiting.unicri.it/database.php?sec_=R&c_=)
- Cox, C., & Jenkins, J. (2005). Between the seams, a fertile commons: An overview of the relationship between fashion and intellectual property. *Norman Lear Center Publication*. Durham, NC: Duke University Law School.
- Crenshaw, K. W. (1994). Mapping the margins: Intersectionality, identity politics, and violence against women of color. In M.A. Fineman & R. Mykitiuk (Eds.), *The public nature of private violence* (pp. 93-118). New York: Routledge.
- Delgado, R. & Stefancic, J. (2000). *Critical race theory: The cutting edge* (2nd ed.). Philadelphia, PA: Temple University Press.
- Deloria, Jr., V. (1969). *Custer died for your sins: An Indian manifesto*. Norman: University of Oklahoma Press.
- Dukeminier, J., Krier, J. E., Alexander, G. S., & Schill, M. H. (2010). *Property* (7th ed.). New York, NY: Aspen.
- Dumas, D. (2012, March 6). Under-fire designer Alexander Wang denies claims of 'sweatshop-like conditions' at Chinatown factory. *The Daily Mail Online*. Retrieved from <http://www.dailymail.co.uk/>

- Ehrenreich, B. (2008, January 13). Slaves for fashion. *The Progressive*, 72(1), 12-13. Retrieved from Academic Search Premiere database.
- Gertler, M. (2002). Tacit knowledge and the economic geography of context, or the undefinable tacitness of being (there). *Journal of Economic Geography*, 3(1), 75-99. doi:10.1093/jeg/3.1.75
- Harris, C. I. (1993). Whiteness as property. *Harvard Law Review*, 106(8), 1707-1791. doi:10.2307/1341787
- Hearst Communications, Incorporated. (2011). Bazaar fakes are never in fashion: Summits. *Hearst Women's Network*. Retrieved from <http://www.fakesareneverinfashion.com/summits11.asp#>
- Hearst Corporation. (2009a). Our brands. *About Hearst/History*. Retrieved from <http://www.hearst.com/about-hearst/history.php>
- Hearst Corporation. (2009b). Hearst timeline: A brief history of Hearst Corporation. *Hearst at 125: 1887-2012*. Retrieved from <http://www.hearst.com/about-hearst/history.php>
- Hearst Corporation. (2011). Valerie Salembier named SVP, publisher and chief revenue officer of Town & Country; Carol A. Smith named VP publisher and chief revenue officer at *Harper's Bazaar*. Retrieved from <http://www.hearst.com/press-room/pr-20110516b.php>
- Hearst Magazines. (2012a). 2012 Advertising rates: General display rates. *Harper's Bazaar Media Kit*. Retrieved from <http://www.harpersbazaarmediakit.com/>
- Hearst Magazines. (2012b). Editorial: International editions. *Harper's Bazaar Media Kit*. Retrieved from <http://www.harpersbazaarmediakit.com/>
- Hilton, B., Choi, C. J., & Chen, S. (2004). The ethics of counterfeiting in the fashion industry: Quality, credence and profit issues. *Journal of Business Ethics*, 55, 345-354. doi:10.1007/s10551-004-0989-8
- Honig, B. (2001). *Democracy and the foreigner*. Princeton, NJ: Princeton University Press.
- Hughes, J. (1999). "Recoding" intellectual property and overlooked audience interests. *Texas Law Review*, 77(4), 923-1010. Retrieved from <http://heionline.org>
- International Anti-Counterfeiting Coalition. (2005). The negative consequences of international intellectual property theft: Economic harm, threats to the public health and safety, and links to organized crime and terrorist organizations [White paper]. Retrieved from http://counterfeiting.unicri.it/database.php?sec_=R&c_
- International Anti-Counterfeiting Coalition. (2010). IACC president to join administration officials in White House forum on consumer health & safety risks related to counterfeit goods [Press release]. Retrieved from <http://www.prnewswire.com>

- Jackson, L. J. (2011). Some designers say their work deserves copyright protection; others say it would harm the industry. *ABA Journal*, 97(7), 48-54. Retrieved from http://www.abajournal.com/magazine/article/the_genuine_article/
- Kieselstein-Cord v. Accessories by Pearl, Inc., 632 F.2d 989 (2nd Cir. 1980).
- Kotz, D. M. (2002). Globalization and neoliberalism. *Rethinking Marxism*, 14(2), 64-79. doi:10.1080/089356902101242189
- Krieger, D. J. (1982). The broad sweep of aesthetic functionality: A threat to trademark protection of aesthetic product features. *Fordham Law Review*, 51(2), 345-386. Retrieved from <http://heinonline.org>
- Lanham (Trademark) Act of 1946, 15 U.S.C. §1051 (2012).
- Lee, C. T. (2010). Bare life, interstices, and the third space of citizenship. *Women's Studies Quarterly*, 38(1&2), 57-81. doi:10.1353/wsq.0.0224
- Lindlof, T. R., & Taylor, B. C. (2011). *Qualitative communication research methods* (3rd ed.). Thousand Oaks, CA: Sage.
- Louie, M. C. (1992). Immigrant Asian women in Bay Area garment sweatshops: 'After sewing, laundry, cleaning and cooking, I have no breath left to sing.' *Amerasia Journal*, 18, 1-26. Retrieved from <http://aascpress.metapress.com/content/j3721t836775g642/>
- Matsuda, M. J. (1987). Looking to the bottom: Critical legal studies and reparations. *Harvard Civil Rights-Civil Liberties Review*, 22, 323-399. Retrieved from <http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/hcrcl22&div=21&id=&page=>
- Millinery Creators' Guild v. Federal Trade Commission, 312 U.S. 469 (1941).
- MRI Doublebase (2011). MRI Reader Profile: Harper's Bazaar. Retrieved from http://www.harpersbazaarmediakit.com/r5/showkiosk.asp?listing_id=413521&category_id=27875
- Ngai, M. (1999). The architecture of race in American immigration law: A reexamination of the Immigration Act of 1924. *The Journal of American History*, 86(1), 67-92. doi:10.2307/2567407
- Nunn, K. B. (2000). Law as a Eurocentric enterprise. In R. Delgado & J. Stefancic (Eds.), *Critical race theory: The cutting edge* (2nd ed., pp. 429-438). Philadelphia, PA: Temple University Press.
- Ong, A. (2003). *Buddha is hiding: Refugees, citizenship, the new America*. Berkeley: University of California Press.
- Ong, A. (2006). *Neoliberalism as exception: Mutations in citizenship and sovereignty*. Durham, NC: Duke University Press.
- Pezzi, A. & Faggioni, F. (2011). Preventing counterfeiting: A risk management model. *World Journal of Social Sciences*, 1(5), 197-209. Retrieved from http://wbiaus.org/table%20november2011_wjss.htm
- Raustiala, K. & Sprigman, C. (2006). The piracy paradox: Innovation and intellectual property in fashion design. *Virginia Law Review*, 92(8), 1687-1777. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=878401

- Ross, R. J. S. (2004). *Slaves to fashion: Poverty and abuse in the new sweatshops*. Ann Arbor: University of Michigan Press.
- Salembier, V. (2007, February 1). Speech presented at Harper's Bazaar Anti-Counterfeiting 2007 Summit. The Mandarin Oriental Hotel, New York. Retrieved from <http://www.fakesareneverinfashion.com/summit07.asp>
- Santiago, S. (2008). The good thief: U.S. law and the fashion design piracy loophole. Retrieved from <http://www.jmu.edu/writeon/documents/2008/Santiago.pdf>
- Scheer, C. (1995, September 11). 'Illegals' made slaves to fashion (sweatshop raid). *The Nation*, 261(7), 237-238. Retrieved from <http://www.highbeam.com/doc/1G1-17362387.html>
- Schutt, R. K. (2006). *Investigating the social world: The process and practice of research* (5th ed.). Thousand Oaks, CA: Pine Forge Press.
- Smith, E. G. (2010, May 19). Panelists at Bazaar's anticounterfeiting summit say knock-offs are scary. *Fashionista*. Retrieved from <http://fashionista.com/2010/05/>
- Somers, M. R. (2008). *Genealogies of citizenship: Markets, statelessness, and the right to have rights*. New York, NY: Cambridge University Press.
- Su, J. A. (1998). Making the invisible visible: The garment industry's dirty laundry. *The Journal of Gender, Race & Justice*, 1, 405-417.
- Tasker, K. (2011). The innovative design protection and piracy protection act: Litigation, uncertainty, and economic harm. *Public Knowledge* (Web log post). Retrieved from <http://www.publicknowledge.org/blog/innovative-design-protection-and-piracy-preve>
- Thomas, D. (2005). If you buy one of these fake bags, you are supporting child labor; organized crime, even terrorism...*Bazaar* investigates. *Harper's Bazaar*, 3518, 13-18. Retrieved from http://www.fakesareneverinfashion.com/shops_flip_popup_v2.asp?xml=content/flippers/baz05/2005/pages.xml&tit=2005
- Thomas, D. (2007). The fake trade: Wanted for stealing childhoods. *Harper's Bazaar*, 3542, 69-72. Retrieved from http://www.fakesareneverinfashion.com/shops_flip_popup_v2.asp?xml=content/flippers/baz07/2007/pages.xml&tit=2007
- Thomas, D. (2009). The fight against fakes: Child labor, terrorism, human trafficking: Buying counterfeit designer goods is hardly harmless. *Harper's Bazaar*, 3566, 69-72. Retrieved from http://www.harpersbazaar.com/magazine/feature-articles/the-fight-against-fakes-0109_
- Tsosie, R. (2005). Engaging the spirit of racial healing within critical race theory: An exercise in transformative thought. *Michigan Journal of Race & Law*, 11, 21-49. Retrieved from <http://heionline.org>

- U.S. Census Bureau (2012a). The 2012 statistical abstract, Section 4: Education. Table 281. College enrollment by sex, age, race, and Hispanic origin: 1980-2009. Retrieved from <http://www.census.gov/compendia/statab/>
- U.S. Census Bureau (2012b). The 2012 Statistical Abstract, Section 13: Income, expenditures, poverty, and wealth. Table 690. Money income of households—percent distribution by income level, race, and Hispanic origin, in constant (2009) dollars: 1990 to 2009. Retrieved from <http://www.census.gov/compendia/statab/>
- U.S. Patent and Trademark Office (2012). Patent. Retrieved from <http://www.uspto.gov/patents/index.jsp>.
- Weller, S. (2004). *Fashion's influence on garment mass production: Knowledge, commodities and the capture of value* (Unpublished doctoral dissertation). Melbourne, AU: Victoria University.
- Williams, R. A. (1986). The algebra of federal Indian law: The hard trail of decolonizing and Americanizing the white man's Indian jurisprudence. *Wisconsin Law Review*, 2, 219-299.