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HUMAN V. HOUSE: A COMBAT FOR COUTURE COMMAND OF LUXURY LABELS

Carly Elizabeth Souther*

ABSTRACT

As an industry that thrives on—rather than succumbs to—adversity, the couture corporate world demands innovation and encourages risks. When combined with successful marketing and savvy business practices, these risks can result in large payoffs, which exist, primarily, due to the nature of the global fashion market.¹ Endless consumption drives the market, rewarding fashion houses that cater to current trends with top-line growth and damning those whom fail to suffer decreased net earnings. In order to remain a viable player in the fashion industry, the house must have the resources to market and manufacture the product in a timely manner, as well as incur the costs if a collection is poorly received. Despite the clear risks, there is a large incentive to enter the highly competitive fashion industry: success guarantees millions, or billions, of dollars in profit; and, because the industry itself generates over a trillion dollars annually, the opportunity exists for hundreds of labels to each have a million dollar piece of that fashion pie.²

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1. Luisa Kroll, *Inside the 2013 Billionaires List: Facts and Figures*, FORBES (Mar. 4, 2013, 6:58 AM), <http://www.forbes.com/sites/luisakroll/2013/03/04/inside-the-2013-billionaires-list-facts-and-figures/> (“Resurgent asset prices are the driving force behind the rising wealth of the super-rich around the globe. . . Many new names made the list thanks to free-spending consumers. To name a few: Diesel jeans mogul Renzo Rosso at \$3 billion, retailer Bruce Nordstrom at \$1.2 billion and designer Tory Burch at \$1 billion.”).

2. GUILLERMO C. JIMENEZ & BARBARA KOLSUN, FASHION LAW 6 (2010) (citing MICHAEL FLANAGAN, *How Retailers Source Apparel*, JUST-STYLE (Jan. 2005)).

While extensive research documents the intellectual property concerns of the fashion industry, little research exists regarding other legal issues that arise in the industry. The present paper begins to fill that gap by assessing the employer-employee relationship between the fashion house and its top designer in order to demonstrate the importance of human capital to the house's continued success. Engaged in repeated transactions, both the house and the designer will seek to increase their respective bargaining power over time. The objective of the house is to prevent a designer from gaining excessive bargaining power and from taking actions that could negatively impact the label due to public backlash. In contrast, the objective of the designer is to promote his or her individual style, which requires retaining the maximum amount of creative license available, through the production of collections bearing the name of the house. The examination of this gap will help to develop an understanding of the unique nature of the fashion industry and will highlight the fact that broad opportunities exist to conduct future fashion law research.

I. INTRODUCTION

Over the last century, the fashion industry has become an important vehicle for economic growth and social change.³ The modern industry was shaped by iconic European fashion houses whose luxury brands made the founders and their successors' powerful and wealthy businesspersons.⁴ In March 2013, ten of

3. See ERIK RINGMAR, WHY EUROPE WAS FIRST: SOCIAL CHANGE AND ECONOMIC GROWTH IN EUROPE AND EAST ASIA 1500-2050 (Anthem Press 2007).

4. The author intends for "luxury" to be defined as specific goods, products, and services that are associated with affluence, including both haute couture (made-to-wear clothing) and prêt-à-porter (ready-to-wear clothing), as well as handbags, shoes, and accessories. The concept of "luxury" may be distinguished from the use of the term "retail," which the author intends to define as goods, products, and services that are more readily available and affordable to the masses than the particular item's luxurious counterpart. For a detailed analysis on the distinction between luxury and retail goods, see, generally, Bernard Dubois and Gilles Laurent, *Attitudes Towards the Concept of*

Forbes's 100 wealthiest people owed their fortunes to the retail industry.⁵ Bernard Arnault, "the world's most influential tastemaker," is one of these retailer billionaires, whose current net worth of \$29 billion makes him the tenth richest person in the world.⁶ Arnault is the majority stockholder and CEO of the fashion conglomerate LVMH Moët Hennessy—Louis Vuitton (LVMH), which includes publically traded luxury brands like Christian Dior and Givenchy.⁷ The LVMH portfolio is furthered diversified by controlling interests in private labels like Marc Jacobs.⁸ LVMH represents a widespread phenomenon of the 1990s, whereby large corporations acquired many small houses to create huge conglomerates.

The principal purpose of this paper is to discuss the following three risks that generally arise when a fashion house contracts with a top designer: (1) in various ways, the designer may be a liability to the fashion house during the period of employment; (2) the designer may create hold-up problems, given that his or her human capital is critical to the success of the house; and, (3) there are

Luxury: an Exploratory Analysis, 1 AP- ASIA PACIFIC ADVANCES IN CONSUMER RESEARCH, 273- 278 (1994).

5. See *The World's Billionaires*, FORBES (Mar. 2013), <http://www.forbes.com/billionaires/list/> (the following retailers are ten of the world's 100 wealthiest people: Amancio Orterga (Zara, #3); Bernard Arnault (LVMH, #10); Stefan Persson (H&M, #12); Karl Albrecht (Aldi, #18); Dieter Schwarz (Lidl, #29); Theo Albrecht (Aldi, #31); Francois Pinault (PPR, #53); Michael Otto (e-commerce, #61); Tadashi Yanai (Uniqlo, #66); Miuccia Prada (Prada, #78)).

6. See, e.g., *id.*; *Bernard Arnault & family*, FORBES (Mar. 2013), <http://www.forbes.com/profile/bernard-arnault/> (explaining that Arnault's "fortune is mostly held in Christian Dior, which has a 41% stake in LVMH and trades at a near 20% discount to the underlying shares.").

7. *FAQ*, LVMH, <http://www.lvmh.com/functionalities/faq/historical-background> (last visited May 9, 2013) (LVMH was founded in 1987, as a result of a merger between the House of Louis Vuitton, the champagne brand Moët, and the liquor brand Hennessy).

8. *Fashion & Leather Goods: Marc Jacobs*, LVMH, <http://www.lvmh.com/the-group/lvmh-companies-and-brands/fashion-leather-goods/marc-jacobs> (last visited Nov. 27, 2013) (explaining that Marc Jacobs has been majority-owned by LVMH since its founding in 1997).

contractual risks attached to designer exit.⁹ These risks arise regardless of the ownership structure of the fashion house, which may be controlled by a businessperson like Arnault, whose portfolio includes multiple labels under a large corporate umbrella, or by a smaller, closely-held business, whose portfolio includes only one label.

Part I begins by describing general human capital, which will lay a foundation on which the remainder of the paper will build. It then discusses designer- and firm-specific human capital, which are analyzed through two case studies. Part II discusses the various risks associated with human capital. It next identifies three critical factors that the fashion house will weigh in a cost-benefit analysis to determine whether the employment of the designer is worth the potential risks. Part III discusses strategic actions available to the house to minimize the risks associated with the designer's employment. Part IV concludes.

II. ROUND ONE: THE HUMAN CAPITAL

A. *Three Types of Human Capital*

To address the employment relationship, it is useful to examine three categories of human capital that are relevant to the fashion industry: (i) general human capital; (ii) designer-specific human capital; and, (iii) firm-specific human capital.¹⁰

1. *General Human Capital*

Although the term is relatively new,¹¹ the concept of human

9. See Manuel A. Utset, *Reciprocal Fairness, Strategic Behavior and Venture Survival: A Theory of Venture Capital-Financed Firms*, 2002 WIS. L. REV. 45, 168 (2002) (the risks in the fashion industry may be analogized to the problems that emerge in the transactional relationship between the entrepreneur and a venture capitalist).

10. E-mail from Manuel A. Utset, Charles W. Ehrhardt Professor, The Florida State University College of Law, to author (Apr. 25, 2013, 02:10 AM EDT) (on file with author).

11. E.g., W. Arthur Lewis, *Economic Development with Unlimited Supplies of Labour*, THE MANCHESTER SCHOOL 400, 449 (1954); Jacob Mincer,

capital—or, a person’s acquisition of intangible assets like skills, knowledge, and competencies—has long been recognized as a means of labor production.¹² A modern analysis of human capital reflects that the economic value of labor is contingent on the specific individual’s skills, abilities, and capacities. The factors of human production, including the intelligence, social capital, education, and training of an individual, are aggregated in the person’s ability to produce output. Implicit in this recognition is the acknowledgement that labor is inherently unequal. The role of human capital in the economy is critical to innovation and productivity growth; thus, it follows that as the investment in human capital increases, so does the quality of such capital.¹³ Education and experience are the two primary ways to increase human capital. Even though a firm may invest in and increase the human capital that it employs by sponsoring employee training and education programs, the firm does not actually own this intangible asset. In other words, general human capital can be described as a means of production, into which investment yields a similar rate of return; and, although human capital may be substituted, it is not transferable in the same manner as other fixed capital like land and labor.¹⁴

Unlike other factors of production, the characteristics of competence are self-generating and transferable. Competence is a broad term that refers to the aggregated abilities of an individual, including his or her talents (artistic or motoric) and mental

Investment in Human Capital and Personal Income Distribution, 66 J. POL. ECON. 281 (1958).

12. See ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS BOOK II: OF THE NATURE, ACCUMULATION, AND EMPLOYMENT OF STOCK 281 (1776) (The idea of human capital is analogous to what Smith refers to as “the acquired and useful abilities of all the inhabitants or members of the society.” Smith explains, “The acquisition of such talents, by the maintenance of the acquirer during his education, study, or apprenticeship, always costs a real expense, which is a capital fixed and realized, as it were, in his person.”).

13. See Theodore W. Schultz, *The Investment in Human Capital*, 51 AM. ECON. REV. 1 (1961).

14. Gary S. Becker, *Investment in Human Capital: A Theoretical Analysis*, 70 J. POL. ECON. 9, 49 (1962).

capacities (analytical or organizational).¹⁵ Conversely, reference to a particular skill indicates a narrow and domain-specific ability of an individual. A specialty, or a skill, is an example of how one diversifies his or her human capital. Likewise, the competence of an individual expands with use. As one's experience increases, his or her competence base responds in kind, this likewise generates more human capital. Competence is transportable in the sense that it can move between parties; this transfer is especially visible in the context of knowledge, which is easily shared.

2. Designer-Specific Human Capital

In contrast to general competence, designer-specific human capital refers to the unique set of skills that an individual designer possesses.¹⁶ These specific characteristics are the designer's most important asset; likewise, the house depends on designer-specific human capital to survive and, therefore, places substantial value on these skills. One facially important designer-specific trait is creativity. To flourish and create products that are both relevant and intriguing, a designer must possess the ability to create art in the form of clothing, shoes, handbags, watches, or other wearable items. Closely tied to creativity, a designer must have innovative abilities that enable him or her to use interesting materials to enhance the uniqueness of the collection and respond to the fluid desires of the market.

An additional component of the designer-specific human capital is the designer's "signature style." A signature style conveys the personal brand of the designer and can be thought of as a walking portfolio. A designer has successfully established a signature style once he or she is associated with words or symbols that are representative of that particular designer's style. The Second Circuit has held that legal power and protection may attach to

15. Adela Garcia-Aracil et al., *The Rewards of the Competences for Young European Higher Education Graduates*, 10 TERTIARY EDUC. MGMT. 287, 288 (2004).

16. See E-mail from Utset (Apr. 25, 2013), *supra* note 10.

certain aspects of a designer-specific style.¹⁷ In *Louboutin v. YSL*, the Court explained the concept of designer-specific style through the example of Christian Louboutin, a French footwear designer, who is known for his “trademarked, signature lacquered red outsoles [which have] acquired limited secondary meaning as [a] distinctive symbol to identify his brand, and thus that design feature was valid and protectable [under law]... to extent that red outsoles contrasted with color of shoe’s “upper” component.”¹⁸ When a designer becomes distinctly memorable to a significant segment of the public, those consumers are more likely to purchase a product solely because of *who* made it. The *Louboutin* Court refers to this idea as “acquired distinctiveness,” which is measured by “whether the public is moved in any degree to buy an article because of its source.”¹⁹

In other words, high fashion consumers are likely to purchase footwear made by Christian Louboutin for the lacquered red outsoles—and, with less regard for the upper component of the shoe—because such outsoles are iconic Louboutin. By wearing shoes with lacquered red outsoles, consumers seek to project power and status, which are characteristics associated with the Louboutin brand. Christian Louboutin footwear exemplifies a designer-specific symbol, which “was shown by [the] designer’s advertising expenditures, media coverage, and sales success over 20 years of use... [to result in the creation of a] ‘brand with worldwide recognition’ insofar...as consumers recognized contrast between color of outsole and color of upper as [a] distinctive feature of [the] designer’s footwear.”²⁰

17. *Christian Louboutin S.A. v. Yves Saint Laurent Amer. Holding, Inc.*, 696 F.3d 206, 228 (2d Cir. 2012).

18. *Id.* (explaining, that upon first sight of red soles contrasted with an upper component of a different color, the pair is immediately recognizable as shoes from Christian Louboutin. Although the Second Circuit allowed Yves Saint Laurent to continue manufacturing the specific shoe at bar—a shoe with a red sole and red upper component—the Court held that YSL would be liable for violating Louboutin’s trademark if it manufactured a shoe with a red sole and a non-red upper component.)

19. *Id.* at 226.

20. *Id.*

Designer-specific branding reaches its pinnacle when the language embodying a designer's brand is incorporated by the public to describe a type of consumer. Designers carefully craft their brands, collections, and images around particular terms and words in order to communicate a message to a targeted segment of the population. Focusing on the concept of "good taste," Ralph Lauren developed a signature brand that was "characterized by a moneyed style that evoked the look of English aristocracy, as adapted by the sporty, East-Coast American elite."²¹ The widespread preppy Americana subculture welcomed the opportunity to emulate Ralph Lauren's high-priced lifestyle by enthusiastically subscribing to his brand, which was crafted around words like "classic, effortless, WASP perfection."²² Ralph Lauren created the idea of the iconic *classic, preppy American* through strategic advertising and branding: cable-knit sweaters and croquet on Cape Cod; pearls and martinis at the country club; smoking jackets sitting next to a portrait of horses and hounds—these images, which certainly were not linked to *classic American elegance* before the 1980s, exemplify the Ralph Lauren brand. Lauren's marketing, both pervasive and effective, redefined the traditional American lifestyle.

The concept of goodwill is closely related to competence and an integral aspect of designer-specific human capital. The total value of the designer or fashion house (dependent on whom is the focus of the analysis, i.e., the *subject* whose goodwill is being measured) equals the sum of goodwill plus the equity, such as materials, products, or financial resources, that one possesses or to which one has access. For example, the overall value of a house with exceptional goodwill, whose product can be purchased in stores and online, will be higher than the total value of a house with comparable goodwill, whose product can only be purchased in stores. The difference in total value is due to the equity factor: international customers, in particular, cannot conveniently acquire

21. *Ralph Lauren*, ENCYCLOPÆDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/764668/Ralph-Lauren> (last visited Nov. 27 2013).

22. See Paul Goldberger, *American Dreamer*, VANITY FAIR (Sep. 2007), available at <http://www.vanityfair.com/culture/features/2007/09/lauren200709>.

the product of the latter house because access is limited to in-store purchases. Finally, it is important to note that certain elements of designer-specific human capital, such as personal character and the individual's network of connections, are immeasurable.

3. Firm-Specific Human Capital

Firm-specific human capital is the recognition that particular employers have specialized needs and require employees to develop non-transferable capacities. These firm-specific skills may be non-transferable in a broader sense, meaning that such qualities are useless in all other industries (and, thus, will be wasted human capital if the employee leaves that specific industry), or in a narrower sense, meaning that such qualities are useless to any other employer, even within the same industry (and, thus, access to the developed human capital depends on the employee working for a specific employer). Corporations have a strong incentive to develop firm-specific value for several reasons, including: (1) the direct benefits associated with creating a unique corporate culture (instructional details specific to the nature of the company or its management will lead to an informed, cohesive workforce, which is beneficial in and of itself); (2) the bargaining power of leverage, (the employee will incur substantial losses if he or she voluntarily leaves or is terminated); (3) the dual benefits of reduced costs and increased stability (if an employee is unwilling to market his or her competencies, then the company will not face future expenditures that are associated with employee departure, such as interviewing and training replacements).²³

This corporate incentive is evidenced by the modern trend of employing tools that are designed solely for the purpose of tying an employee to the company. The use of golden handcuffs, which are financial incentives designed to bind—or “handcuff”—the employee to the company, such as stock options that vest in the future or other delayed incentives, is perhaps the most popular and notorious way to produce firm-specific value. Likewise, companies are increasingly incorporating restrictive covenants into the employment agreements of key executives. Non-compete and

23. See E-mail from Utset (Apr. 25, 2013), *supra* note 10

non-disclosure clauses are simply another means of generating firm-specific value. Both golden handcuffs and prohibitive provisions ensure that leaving the company would, at a minimum, be disadvantageous to the employee. When human capital is specific to a single employer or industry, the investment in such knowledge or skills is inherently risky. If the firm fails or the industry suffers, then the possibility exists that the acquired human capital cannot be transferred.

The development of human capital is a vital corporate objective when human management is necessary for success. Desirable human capital is identified based on components like leadership, creativity, and personality attributes. An individual's social capital, which includes factors such as goodwill and, oftentimes, celebrity, will be an important component to predicting whether that person is capable of cultivating the interpersonal relationships required for the company to thrive. Social capital, which is similar to brand value or fame, is a distinctively separate concept from the talent an individual personally possesses.

Due to the nature and resources of large conglomerates, top designers have an incentive to invest in house-specific capital. Within the conglomerate's network, designers are given flexibility to create collections for multiple fashion houses simultaneously, which enables the pursuit of numerous, unique and creative opportunities. For example, Marc Jacobs was in the process of launching his eponymous brand when he was offered the Creative Directorship at Louis Vuitton in 1997.²⁴ After purchasing a 96% controlling interest in Marc Jacobs International, L.L.P., LVMH gave Jacobs the task of revamping the out-of-fashion Louis Vuitton brand.²⁵ This conglomerate aspect sheds light on the reason why designers, who are known to collaborate with outside labels, are not regularly sued for violating non-compete or non-disclosure provisions.²⁶

24. See Amy Larocca, *Lost and Found*, NEW YORK MAGAZINE 2 (Aug. 21, 2005), available at <http://nymag.com/nymetro/shopping/fashion/12544/>.

25. *Id.* at 3.

26. See, e.g., *Amended and Restated Employment Agreement*, PVH CORP. (Jul. 23, 2013), available at <http://www.sec.gov/Archives/edgar/data/78239/000007823913000042/ex10420>

B. Case Studies: The Employment Relationship

Clearly, the value of many fashion houses is directly linked to human capital, which oftentimes takes the form of the top designer. By examining the dynamics of the employer-employee relationship between the fashion house and the designer, insight may be developed to determine whether the investment in the intangible asset of human capital poses a substantial liability to a fashion house. When directly associated with the fashion house, the designer and brand can become synonymous. The designer is perceived as a liaison between the label and the public, a

132q10q.htm (detailing the terms of the employment agreement between Fred Gehring, CEO, and Tommy Hilfiger: “[T]he Executive may continue his directorship in TH Asia Limited and Karl Lagerfeld B.V. and support Apax Partners L.P. and/or any of its affiliates in defining a new business strategy for Karl Lagerfeld B.V.; *provided, however*, that in all such cases, such directorship and support shall not interfere with the Executive’s performance of his duties hereunder in any significant manner and any services provided to any such entity shall not directly conflict with, or bring such entity into direct competition with, any of the Company’s businesses. For the avoidance of doubt, the Executive is not allowed to perform services for Pepe Holdings Ltd.” Notably, Gehring is allowed to participate in Karl Lagerfeld BV—a subsidiary of Tommy Hilfiger—but prohibited from acting on behalf of Pepe Jeans (controlled by Spanish investment group Torreal) and 16 other “Competitive Business Entities, listed in Exhibit A, including Polo Ralph Lauren, Diesel, Hugo Boss, and Scotch and Soda); *see also* Michael Gross, *Moonlighting in Fashion for Italy’s Top Designers*, THE NEW YORK TIMES (Mar. 16, 1987), *available at* <http://www.nytimes.com/1987/03/16/style/moonlighting-s-in-fashion-for-italy-s-top-designers.html?pagewanted=all&src=pm> (listing designers who were engaged in “designer polygamy”—a practice which was well-established by the 1980s—including: “Giorgio Armani sets the styles at Erreuno. Luciano Soprani also designs for Basile. Gianni Versace’s hand is behind Genny. Last season Romeo Gigli replaced Versace as the designer of Callaghan. This season Muriel Grateau replaced Claude Montana as Complice’s designer. Karl Lagerfeld works for Fendi as well as Chanel and his own company in Paris. Gianfranco Ferre’s firm provides the manufacturers of his name-label knit and leather styles with ideas about color, lengths and shape for their non-Ferre lines. And Franco Moschino creates furs for the Matti label, as well as the Blumarine and Gianna Cassoli ready-to-wear lines.”).

continuous representative of the fashion house.²⁷ Due to the high-profile nature of the fashion industry, the scope of employment extends into all realms of a designer's life.²⁸ Regardless of a designer's intent, his or her personal actions are often attributed to the label, which can have a tremendous impact on the house.²⁹ While this is typically a positive association, a designer's dishonorable actions can disastrously affect the house's reputation and bottom line. Designer Karl Lagerfeld discussed this representative-capacity risk, explaining that the modern fashion market is "a business world where, especially today, with the internet, one has to be more careful than ever, especially if you are a publicly known person. You cannot go in the street and be drunk... it's a horrible image for fashion, because they think that every designer and everything in fashion is like this."³⁰ The following case studies assess Lagerfeld's sentiment and outline the various factors of representative-capacity liability within the employment relationship.

1. Case Study: John Galliano and the House of Dior

*"I could have asked a lot of other talented designers to work for Dior, but it's not the same. Take Marc Jacobs, he has been a fantastic success at Vuitton and he has a proximity to the Vuitton spirit, but I don't think it would have been a success with Jacobs at Dior and the other way around. If I had asked John [Galliano] to do Vuitton, it would not have worked. An essential ingredient in the success of the brand today is the real proximity of Galliano to the talent of Christian Dior."*³¹

27. See Lauren Milligan, *Karl's Take*, VOGUE (Mar. 2, 2011), <http://www.vogue.co.uk/news/2011/03/02/karl-lagerfeld-fashion-world-comment-on-john-galliano-fired-by-dior>.

28. *Id.*

29. *Id.*

30. *Id.*

31. Bernard Arnault, explaining the instrumentality of human capital to a fashion house. Charlotte Cowles, *Bernard Arnault is Glad He Chose John Galliano Instead of Marc Jacobs for Christian Dior*, THE CUT (Jan. 7, 2011),

John Galliano, acclaimed fashion designer of five labels, entered the industry in 1985, with the debut of his eponymous-named line at London Fashion Week.³² Over the next decade, Galliano would be awarded British Designer of the Year four times, launch a second line, and relocate to Paris.³³ This decade of experience, in which Galliano demonstrated his ability to captivate the public and industry, resulted in a substantial increase in designer-specific human capital. In 1995, Bernard Arnault controversially accessed this designer-specific human capital when he appointed Galliano as Creative Director for the House of Givenchy, a public subsidiary of fashion conglomerate LVMH.³⁴ The following year, LVMH bought a controlling share in Galliano's labels, which subsequently increased the conglomerate's bargaining power and created LVMH-specific human capital. LVMH's leverage increased after it acquired use rights of the designer's name. Galliano was further tied to LVMH because he was highly incentivized to comply with the conglomerate's demands in order to preserve his personal legacy of labels. During this year, Galliano's couture collection for Givenchy debuted to collective praise from fashion critics worldwide.³⁵ While Galliano was experiencing success at Givenchy (he was once again named British Designer of the Year (1996), an honor he shared with newcomer Alexander McQueen), Arnault was concerned for LVMH's overall profits on account of the decreasing popularity of the unappealing House of Dior.³⁶

In an effort to capitalize on the designer-specific human capital of both talented British designers, Arnault tapped McQueen as Creative Director for Givenchy and appointed Galliano as Creative

 10:25

AM),

http://nymag.com/thecut/2011/01/bernard_arnault_is_glad_he_cho.html.

32. *Designers: John Galliano*, VOGUEPEDIA (last visited May 9, 2013), http://www.vogue.com/voguepedia/John_Galliano (The five labels are John Galliano, Galliano's Girl, Givenchy, Galliano for Dior, and Galliano Homme).

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

Director at the House of Dior.³⁷ Wagering that Galliano's signature style of whimsical romance could revitalize Dior, Arnault publically praised the designer, comparing him to founder Christian Dior: "Galliano has a creative talent very close to that of Christian Dior. He has the same extraordinary mixture of romanticism, feminism, and modernity that symbolizes Mr. Dior. In all of his creations—his suits, his dresses—one finds similarities to the Dior style."³⁸ The world agreed with Arnault, and Galliano's designs appealed to fashion icons and consumers alike. Sparking the public's love affair with his whimsy, Princess Diana of Wales was the first person to wear Galliano for Dior.³⁹

While Galliano stimulated sales with his majestic, flowing designs, his expressive nature shocked the public. In 2000, the Dior "Clochards" Collection, which was inspired by the *clochards*—French slang for "tramps"—that Galliano observed on his morning runs by the Seine River, outraged observers and consumers.⁴⁰ Dubbed the "homeless show," Dior models walked

37. *Id.*

38. *Christian Dior S.A. History*, FUNDING UNIVERSE, <http://www.fundinguniverse.com/company-histories/christian-dior-s-a-history/> (last visited Mar. 30, 2013).

39. *Designers: John Galliano*, VOGUEPEDIA, *supra* note 32 (Diana, clothed in a lacy midnight-blue dress, attended the exhibit "Christian Dior 1947-1957" at the Met Costume Institute in December 1996).

40. *E.g., Designers: John Galliano*, VOGUEPEDIA, *supra* note 32 (The Clochards Collection "incites angry protest at the Avenue Montaigne flagship. The riot police are called in. His contract is renewed and creative control expands to accessories and advertising."); Ingrid Sischy, *Galliano in the Wilderness*, VANITY FAIR (July 2013), *available at* <http://www.vanityfair.com/style/2013/07/galliano-first-interview-dior-sober> ("Sometimes Galliano's socially minded themes backfired, as with the collection that the press dubbed the 'Clochard' (hobo or tramp) collection. . .Galliano's intentions had been well meaning: an homage to the homeless men and women he'd seen sleeping alongside the Seine wrapped in layers of newspapers. With added inspiration from Charlie Chaplin and Diane Arbus, the collection was a triumph of graphic sophistication and technical wizardry but also very easy to find patronizing."); *Christian Dior S.A. History*, FUNDING UNIVERSE, *supra* note 38 ("Galliano was instrumental in reviving Dior's image—stirring up continued controversy with such events as . . .an 'S&M show.' The resulting controversy helped stimulate sales of Dior clothing, as well as accessories and perfumes.").

the runway in newspapers and paper sacks.⁴¹ However, the publicity merely contributed to Dior's increasing profits, which grew from \$177 million in 1995 to over \$445 million in 2001.⁴² By 2010, a record year for revenues, Dior had worldwide sales of over \$1.05 Billion.⁴³ Galliano's controversial tendencies are simply another representation of his designer-specific capital. Dior became distinctly memorable because of Galliano's social capital and creativity. This acquired distinction can be seen in the form of the intense media coverage of Galliano for Dior collections and the sales success of such collections. During Galliano's first decade at Dior, consumers bought the designer's creations simply because the products were labeled "Dior." Opinions of Galliano withstanding, even critics dare not deny the designer's visionary capabilities—the consensus exists that "Galliano's whimsy revived Dior."⁴⁴

a. Litigation for Racial Insults and Assault

Not even the overall value of Galliano's-specific human capital—undeniable talent plus fifteen years as Creative Director—could help the designer survive the media-dubbed "Nazi Chic Scandal." In December 2010, a drunken Galliano was recorded insulting a couple at a Paris pub, his rant consisting of a tirade of anti-Semitic, racist remarks.⁴⁵ On Thursday, 24 February,

41. *Designers: John Galliano*, VOGUEPEDIA, *supra* note 32.

42. *Christian Dior S.A. History*, FUNDING UNIVERSE, *supra* note 38.

43. Alessandro Palombo, *Bernard Arnault, A New Communism by LVMH*, HUMORCHIC (Mar. 7, 2011), <http://humorchic.blogspot.com/2011/03/humor-chics-point-of-view-bernard.html> ("In 2010, despite the recession the year ended with record revenues of +19%").

44. Eve Troeh, *Christian Dior Fires John Galliano*, MARKETPLACE LIFE (Mar. 1, 2011), <http://ssl.marketplace.org/topics/life/christian-dior-fires-john-galliano>.

45. See, e.g., Richard White, *Film of Galliano's Racist Rant in Bar*, THE SUN (last updated Feb. 14, 2013), <http://www.thesun.co.uk/sol/homepage/news/3436757/Film-of-John-Gallianos-racist-rant-in-bar.html>; *John Galliano: 'I Love Hitler' (VIDEO)*, THE HUFFINGTON POST (Feb. 28, 2011, 12:11 AM), <http://www.huffingtonpost.com/2011/02/28/galliano-hitler-racist-rant->

2011, the couple filed charges against Galliano for using racial insults and for assault; the police arrested Galliano that evening. The following morning, Friday, 25 February, Sidney Toledano, President and CEO of the House of Dior, stated that “Dior affirms with the utmost conviction its policy of zero tolerance towards any anti-Semitic or racist words or behavior. Pending the results of the inquiry, Christian Dior has suspended John Galliano from his responsibilities.”⁴⁶ On Saturday, 26 February, Galliano filed a counter-suit against the couple, alleging defamation, injury, and menace; in addition, his lawyer publically asserted Galliano’s innocence.⁴⁷

On Monday, 28 February, *The Sun* released the recorded footage, which clearly established Galliano’s guilt. On Tuesday, 1 March, Sidney Toledano announced that Christian Dior was releasing Galliano, declaring “the ‘odious behaviour’ exhibited by Galliano in the video released yesterday was the last straw resulting in his dismissal.”⁴⁸ On Sunday, 6 March, Galliano’s eponymous label showed at Paris Fashion Week; however, the designer did not attend the show because he was receiving treatment for his addiction problems at a rehabilitation clinic. On Monday, 7 March, many retailers released statements acknowledging a storewide reevaluation to determine whether to continue carrying Galliano’s collections.⁴⁹ On Friday, 15 April, the board of directors of Galliano’s eponymous label terminated

arrest_n_828955.html (recorded footage of John Galliano’s rant may be viewed without a fee).

46. Ella Alexander, *Post-Galliano Era*, VOGUE NEWS (last updated Feb. 20, 2012), <http://www.vogue.co.uk/news/2011/06/20/john-galliano-arrested-in-paris-for-assault>.

47. *Id.*

48. *Id.*

49. *Id.* (For example, Selfridges released a statement which said, “In light of recent comments made by John Galliano. Selfridges is presently reviewing the future of John Galliano collections in all its stores.”); Sischy, *Galliano in the Wilderness*, *supra* note 39 (“Ronald Frasch, president of Saks, recalled, ‘We started getting e-mails from our stores about it, saying, ‘Hey, guys, what are you doing over there? Our customers are livid.’ It was a very easy decision for me. We couldn’t have the Galliano brand in our stores at that time.’”).

the designer's employment; subsequently, Galliano fired his attorney, who, in turn, counter-sued Galliano for defamation.⁵⁰

On Wednesday, 22 June, 2011, Galliano was tried for making "private insults of a racial nature." While the girlfriend, Geraldine Bloch, only sought damages of €1, noting that what she truly desired was "an expression of regret and an excuse for what has happened," her boyfriend, Philippe Virgitti, sought financial compensation for "moral damage," stating that "[u]nfortunately Mr. Galliano doesn't seem to have a code of honour, so . . . the only way to reach him is through his wallet."⁵¹ At the trial, Galliano admitted that he suffers from addiction and had no recollection of the videotaped incident; the designer would await the verdict, which would be delivered after the court's summer recess, at the rehabilitation clinic. The maximum penalty for conviction was six months in prison or a €22,500 fine.⁵² On 8 September 2011, the Court announced that Galliano was guilty of making "public insults based on origin, religious affiliation, race or ethnicity" and imposed a suspended fine of €6,000.⁵³

b. Litigation for Employee-Employer Contract Claims

In August 2012, Galliano filed an employee-employer dispute claim against the House of Dior and LVMH, alleging unfair dismissal and requesting millions of dollars in damages.⁵⁴ At a preliminary legal hearing on 4 February 2013, a French court refused to dismiss Galliano's claim, and transferred the case to commercial court due to the substantive nature of the various

50. *Id.*

51. *Id.*

52. Alexander, *supra* note 46.

53. *E.g., John Galliano Sues Dior for \$18M Over Firing*, THE JEWISH DAILY FORWARD (Aug. 29, 2012), <http://forward.com/articles/161970/john-galliano-sues-dior-for-m-over-firing/>; Alexander, *supra* note 46; Sischy, *Galliano in the Wilderness*, *supra* note 40 ("Galliano, who had apologized to the plaintiffs in court, was ordered to pay court costs and given suspended fines totaling 6,000 euros (about \$8,400).").

54. *John Galliano Sues Dior for \$18M Over Firing*, *supra* note 53.

contractual claims.⁵⁵ Overall, Galliano asserted that he was an employee of LVMH, not merely a sub-contractor of Dior, and because Dior fired him, rather than LVMH, his employment was wrongfully terminated.⁵⁶ While it is unclear the specific amount of damages being sought, based on his contracts with the House of Dior and his eponymous label, John Galliano claims to have suffered losses of €6 million (\$8.11 million).⁵⁷

This suit could have been prevented if the contracts between Galliano and the conglomerate clearly and unambiguously defined the term of employment. In other words, the contract would explicitly state that Galliano was an independent contractor—not an employee. An additional provision would note that the terms were subject to annual review and revision, if necessary. Further, within the employment agreement, a “for-cause” termination clause would explicitly state that either “odious behavior”—a term that would be clearly defined—or a violation of the Code of Conduct (or, workplace policy) constituted sufficient “cause” to terminate the employment.

i. Contract Between Creative Director, Galliano, and Christian Dior, subsidiary of LVMH

As Creative Director of the House of Dior, John Galliano was paid an annual salary of €1 million (approximately \$1.28

55. See Phong Luu, *John Galliano Heads to the Court of Appeal in Case Against Dior*, THE TELEGRAPH (Mar. 14, 2013), <http://fashion.telegraph.co.uk/news-features/TMG9929620/John-Galliano-heads-to-the-Court-of-Appeal-in-case-against-Dior.html> (explaining that the Conseil de prud’hommes, a Labor Relations tribunal that typically adjudicates contract disputes between employers and explorers, transferred the case to the French Court of Appeal upon Dior’s objection that Galliano was never an employee and, thus, the Conseil de prud’hommes did not have jurisdiction).

56. See Paul Gallagher, *John Galliano Ties Luxury Labels in Legal Knots*, THE INDEPENDENT (Mar. 17, 2013), <http://www.independent.co.uk/life-style/fashion/news/john-galliano-ties-luxury-labels-in-legal-knots-8537672.html>.

57. See Luu, *supra* note 55 (based on Galliano’s annual compensation. The monetary amount is based on the exchange rate as of Sept. 28, 2013).

million).⁵⁸ The contract provided for annual bonuses up to €700,000 (\$897,550), contingent on sales. Likewise, Galliano was allotted a yearly clothing allowance of €30,000 (\$38,466) and a €60,000 (\$76,932) “grooming budget for personal appearances.”⁵⁹ Such bonuses and allowances represent firm-specific capital because they are executive perks designed to incentivize Galliano to exert sufficient effort on Dior’s behalf while likewise reducing any opportunistic behavior or potential hold-up problems. Without these incentives, Galliano would be more inclined to leverage his specific human capital against Dior’s investment of time and money in the collection.

ii. Contract Between Creative Director, Galliano, and John Galliano, subsidiary of LVMH

As Creative Director at his eponymous label, John Galliano, the designer received an annual salary of €2 million (approximately \$2.56 million), “minus a percentage dependent on how much money the house lost every year, since it never made a profit.”⁶⁰ This salary subtraction shows that within the John Galliano subsidiary contract, the conglomerate has more leverage than the designer. If Galliano, the designer, does not agree to return a percentage of his salary, then LVMH may threaten to underfinance or abandon the John Galliano label, which is the designer’s personal legacy. However, within this contract, Galliano clearly has some degree of bargaining power because he receives an *additional* annual clothing allowance of €70,000 (\$89,754).

58. Dollar amounts of all the contract provisions are based on the exchange rate as of Mar. 30, 2013.

59. Charlotte Cowles, *John Galliano’s Lawsuit Against Dior is Still Happening*, THE CUT (Feb. 4, 2013, 4:44 PM), <http://nymag.com/thecut/2013/02/john-gallianos-lawsuit-against-dior-is-still-on.html>.

60. Cowles, *John Galliano’s Lawsuit Against Dior*, *supra* note 59.

2. Case Study: Karl Lagerfeld and the House of Chanel

Karl Lagerfeld, revered as the “unparalleled interpreter of the mood of the moment,” has designed collections for several major fashion houses since the beginning of his career in 1957.⁶¹ Over the last half century, Lagerfeld has gained so much experience that his specific human capital is significantly higher than any other designer, none of whom are true competition. Lagerfeld is most recognizable as the Creative Director of Chanel, S.A.,⁶² a position he has held since 1983.⁶³ Notably, the designer has diversified his human capital by designing for a private label and a conglomerate; Lagerfeld explains, “My fashion business, Chanel, is the biggest luxury ready-to-wear brand in the world. Fendi is . . . very big, too.”⁶⁴ Nothing short of a paradox, Lagerfeld’s-specific human capital is so highly sought that both Fendi, part of Arnault’s publically-traded fashion conglomerate, and privately-owned Chanel allow Lagerfeld to design for and with whomever he

61. E.g., *Karl Lagerfeld*, VOGUE, <http://www.vogue.co.uk/person/karl-lagerfeld> (last visited Mar. 30, 2013) (“In 1955, at the age of 17, Lagerfeld worked at Pierre Balmain, after winning a competition. He then worked for Jean Patou, Krizia, Charles Jourdan and Valentino. In 1967, he joined Fendi, then Chloe the following decade [in 1993, Lagerfeld would briefly return to Chloe to replace outgoing designer Martine Sitbon]. He joined Chanel in 1983. . . , returning briefly to Chloe in 1993 to replace outgoing designer Martine Sitbon. In 1984, he launched his own name Karl Lagerfeld label which, he said, would channel ‘intellectual sexiness.’”); Justin Howard, *Karl Lagerfeld—From Chloe to Chanel*, ABOUT.COM, http://fashiondesigners.about.com/od/Popular_Fashion_Designers/a/Karl-Lagerfeld.htm (last visited Mar. 30, 2013) (“Karl teamed up with fashion house Tiziani in 1963, where he started designing couture, then shifted to ready-to-wear.”).

62. S.A. is an abbreviation of the French word “Société Anonyme,” or corporation. See *Société Anonyme*, MERRIAM-WEBSTER, available at <http://www.merriam-webster.com/dictionary/soci%C3%A9t%C3%A9%20anonyme> (last visited Nov. 27, 2013) (defining “société anonyme,” as a “corporation in which liability is limited to the capital invested.” A société anonyme may be found “in civil law systems”).

63. *Karl Lagerfeld*, VOGUE, *supra* note 61.

64. Bruce LaBruce, *Karl Lagerfeld: An Interview with the Kaiser Himself*, VICE (Mar. 2010), <http://www.vice.com/read/karl-lagerfeld-369-v17n3>.

pleases. Unsurprisingly, Lagerfeld has an immense amount of social capital, countless networking connections, and an endless supply of personal character. In addition to designing for Chanel, Fendi, and his eponymous label, Lagerfeld has collaborated with tens of other companies on projects that showcase his diversity and unique talent.⁶⁵ These collaborations are coveted because of the designer's acquired distinctiveness. Past collaborations have been incredibly lucrative for his partners because customers are eager to own items from a Lagerfeld line;⁶⁶ and, the reason consumers desire Karl Lagerfeld's products is primarily attributable to his established and continuous success at Chanel.

In 1922, Pierre Wertheimer, "an avid horseman who began one of the world's greatest racing dynasties," agreed to finance a perfume developed by Coco Chanel.⁶⁷ Upon Chanel's 1971 death, the Wertheimer family acquired the remaining interest in Parfums Chanel, as well as full rights to the Chanel name.⁶⁸ In 1974, Alain

65. See, e.g., Connie Wang, *Lose 90 Pounds with Help from Karl Lagerfeld's Three New Diet Coke Bottles*, REFINERY29 (Mar. 28, 2011, 10:10 AM), <http://www.refinery29.com/lose-90-pounds-with-help-from-karl-lagerfeld-s-three-new-coke-bottles>; Karl Lagerfeld, VOGUE, *supra* note 61; *AgustaWestland and Karl Lagerfeld to Cooperate on the Development of an Exclusive AW139 VIP Interior*, AGUSTAWESTLAND (Oct. 4, 2012), <http://www.agustawestland.com/news/agustawestland-and-karl-lagerfeld-cooperate-development-exclusive-aw139-vip-interior> (Collaborations range from Lagerfeld-inspired Diet Coke bottles to Shu Uemura makeup to a helicopter for AgustaWestland).

66. See Lydia Dishman, *Why Karl Lagerfeld's Collection for Macy's Is the Retailer's Ticket to Profits*, FORBES (Jul. 21, 2011, 12:04 PM), <http://www.forbes.com/sites/lydiadishman/2011/07/21/why-karl-lagerfelds-collection-for-macys-is-the-retailers-ticket-to-profits/> (Lagerfeld's collaboration with H & M "was an undisputed success" and "sold out within minutes back in fall of 2004").

67. See, e.g., Dana Thomas, *The Power Behind the Cologne*, N.Y. TIMES (Feb. 24, 2002), *available at* <http://www.nytimes.com/2002/02/24/magazine/the-power-behind-the-cologne.html?pagewanted=all&src=pm>; see also *Chanel S.A. History*, FUNDING UNIVERSE (last visited Mar. 30, 2013), <http://www.fundinguniverse.com/company-histories/chanel-sa-history/>.

68. See *Chanel S.A. History*, FUNDING UNIVERSE, *supra* note 67 (Acquiring Coco's 10% interest gave the Wertheimer family a 100% interest in Parfums Chanel).

Wertheimer acquired control of the company. At this point, Chanel had been mismanaged for years, and was publically perceived “by many Americans as a second-rate fragrance that appealed to out-of-style women.”⁶⁹ In order to rebrand Chanel, Alain Wertheimer decreased the available supply of Chanel No. 5 in order to increase its demand.⁷⁰ This effect demonstrates the concept of scarcity-value, or the idea that rare items are more valuable than those available in abundance.⁷¹ Scarcity-value is an integral aspect of the market of supply and demand, and is commonly manipulated to drive sales and increase profits. Alain Wertheimer also attempted “to parlay the Chanel fashion division into a profit center and promotional device for Chanel’s fragrances.”⁷² In order to use Chanel’s clothing collections to increase perfume sells, the house needed to develop Chanel-specific human capital and, therefore, began to search for a creative, personable designer whose collections would be chic, while simultaneously incorporating Chanel’s signature style.⁷³

In 1983, the House of Chanel’s continued existence depended on the successful reposition of the label as a modern brand.⁷⁴ To achieve this objective, Karl Lagerfeld, who was then the Creative Director at Chloe, was hired because he was “an original” that was capable of reinvigorating Chanel.⁷⁵ Lagerfeld, under orders to resurrect the label, “quickly revitalized the fashion house with contemporary twists on Chanel’s classic dresses. He made the

69. *Id.*

70. *Id.* (Wertheimer “pulled the perfume from drugstore shelves in an effort to create a greater sense of scarcity and exclusivity.”).

71. See *Scarcity Value*, INVESTOR WORDS, available at http://www.investorwords.com/10998/scarcity_value.html (last visited Nov. 1, 2013).

72. *Chanel S.A. History*, FUNDING UNIVERSE, *supra* note 67.

73. *Id.*

74. Thomas, *supra* note 67 (In 1980, Alain hired longtime Chanel advertising executive, Kitty D’Alessio, to run the United States’ Chanel branch. D’Alessio, who had run Chanel’s campaigns for years, told Alain it was crucial for Chanel to reposition itself as a modern company—she suggested Lagerfeld).

75. *Id.* (D’Alessio notes that Lagerfeld was “brilliant and had a great sense of modernity. . . [and in] the previous work he had been doing, he had never copied Chanel or had a Chanel influence, and that attracted me at once. . . Here was an original”).

label a leading seller of haute couture and ready-to-wear clothing for women.”⁷⁶ Lagerfeld agrees that Chanel’s powerhouse status is due to his efforts: “When I took over at Chanel, it was a Sleeping Beauty; almost dead, she was snoring.”⁷⁷

Since 1983, Lagerfeld has created one successful collection of contemporary clothes after another, but at “the root of each collection is the cardigan jacket suit that Chanel herself created in 1925.”⁷⁸ Such “classically Chanel” jackets cost \$4,710.⁷⁹ While the Wertheimer family does not disclose the annual profits of its businesses, with \$4,000 coats, the estimation that Chanel generates over \$2 billion in perfume and clothing sales seems realistic.⁸⁰

a. Incitement from Individual Insults

“*Pissing everywhere isn’t very Chanel*,” reads a sign above Karl Lagerfeld’s toilet.⁸¹

Despite his undeniable brilliance, Karl Lagerfeld’s speech is chronically offensive. Lagerfeld blurts out preposterous statements and seems indifferent to—indeed, shielded from—any backlash caused by his remarks; in fact, many suggest that these

76. Patrick Cole, *Lagerfeld Tribute Lures Finance Fashionistas, Chanel Dress Fans*, BLOOMBERG (Sep. 9, 2010, 12:01 AM), <http://www.bloomberg.com/news/2010-09-09/lagerfeld-tribute-lures-finance-fashionistas-chanel-dress-fans.html>.

77. LAGERFELD CONFIDENTIAL (Pretty Pictures 2007).

78. Thomas, *supra* note 67.

79. Anne Christensen, *Go for Broke: Chanel Jacket*, N.Y. TIMES STYLE MAGAZINE (Jun. 23, 2008, 12:04 PM), <http://tmagazine.blogs.nytimes.com/2008/06/23/go-for-broke-chanel-jacket-4710/> (asserting the cardigan is worth the cost: “The Chanel jacket is the perfect transitional piece. It has been its same boxy, unstructured self since Coco first designed it in 1924 and with Karl’s updated trimmings like dark silver buttons and braided black beads, it’s not only sophisticated but it’s also cool. . . I know I will still be able to wear this jacket 10 years from now.”).

80. See Thomas, *supra* note 67 (“*Women’s Wear Daily* estimates that Chanel does over \$2 billion. . . in sales annually”).

81. LAGERFELD CONFIDENTIAL, *supra* note 77.

bizarre statements even contribute to the designer's appeal.⁸² In 1984, when asked about fellow designer and lifetime friend, Yves Saint Laurent, Lagerfeld responded "He is very middle-of-the-road French—very pied-noir, very provincial."⁸³ After parting ways with supermodel muse Inès de la Fressange in 1989, Lagerfeld announced, "I wish her all the luck in the world, just so long as I don't have to see her any more or hear her spoken about."⁸⁴ Two decades later, Lagerfeld still finds censorship valueless: "Be politically correct, but please don't bother other people with conversation about being politically correct, because that's the end of everything. You want to create boredom? Be politically correct in your conversation."⁸⁵ Never one to bore, Lagerfeld managed to insult at least seven public figures in a span of nine months (February 2012 to October 2012), such that the outspoken comments had the secondary effect of enraging millions of people around the world.⁸⁶

In an infamous interview with *Metro World News* on 6 February 2012, Lagerfeld insulted two singers, Lana del Rey and Adele, with one comment, "I prefer Adele [to Lana del Rey]... But as a modern singer she [Lana] is not bad. The thing at the moment is Adele. She is a little too fat, but she has a beautiful face and a divine voice. Lana del Rey is not bad at all... In her photos she is beautiful. Is she a construct with all her implants? She's not alone with implants."⁸⁷ In the same interview, Lagerfeld insulted a third

82. Charlotte Cowles and Sarah Frank, *A Random Collection of Karl Lagerfeld's Most Ridiculous Quotes*, NEW YORK MAGAZINE (Mar. 5, 2012, 5:50 PM), <http://nymag.com/thecut/2012/03/random-collection-of-lagerfelds-best-quotes.html> ("The man has no filter (or so it would appear), but that's part of what makes him so entertaining.").

83. John Hind, *Did I Say That?* THE GUARDIAN (Jan. 24, 2009), <http://www.guardian.co.uk/lifeandstyle/2009/jan/25/karl-lagerfeld-quotes>.

84. *Id.*

85. LaBruce, *supra* note 64.

86. Laura Donovan, *Four Famous Women Karl Lagerfeld has Insulted*, THE JANE DOUGH (Jul. 31, 2012, 12:45 PM), <http://www.thejanedough.com/karl-lagerfeld-pippa-middleton/#0>.

87. *Karl Lagerfeld on Adele, the Greek Crisis, and M.I.A.'s Middle Finger*, METRO WORLD NEWS (Feb. 6, 2012), <http://www.metro.us/newyork/news/international/2012/02/06/karl-lagerfeld-on->

singer, M.I.A. Commenting on her 2012 Super Bowl halftime performance—at which M.I.A. sparked her own controversy by flicking off the audience—Lagerfeld implied that M.I.A. was unoriginal, distasteful, and a “bimbo.”⁸⁸

In January 2012, Robin Givhan, a reporter for *Newsweek* affiliate *The Daily Beast*, published an article that asked *Is Chanel Designer Karl Lagerfeld Spread Too Thin?*⁸⁹ Givhan answered her own question with an affirmative declaration: “Karl Lagerfeld is overrated. Such a statement rings like heresy within a fashion universe where the highly acclaimed designer struts upon his lofty stage as the creative director of Chanel—but it’s true.”⁹⁰ While Givhan’s article created a buzz, the true shock came on 30 March when Lagerfeld was asked if he was “overrated.” Addressing the *Newsweek* editor, Tina Brown, rather than the author, Lagerfeld insulted a fourth woman: “Tina Brown’s magazine is not doing well at all. She is dying . . . I’m sorry for Tina Brown, who was such a success at *Vanity Fair*, to go down with a shitty little paper like this.”⁹¹

On 31 July 2012, Lagerfeld subjected a fifth woman, Pippa

adele-the-greek-crisis-and-m-i-a-s-middle-finger-updated (The internet community rose to Adele’s defense by condemning Lagerfeld as insensitive); see also Charlotte Cowles, *Karl Lagerfeld Thinks He Helped Adele Lose Weight*, *THE CUT* (Jun. 4, 2013, 12:14 PM), <http://nymag.com/thecut/2013/06/karl-lagerfeld-helped-adele-lose-weight.html> (quoting a CNN interview, in which Lagerfeld stated, “I never said that she was fat. I said that she was a little roundish; a little roundish is not fat. But for such a beautiful girl, after that she lost eight kilos [17.6 pounds]”).

88. *Karl Lagerfeld on Adele, the Greek Crisis, and M.I.A.’s Middle Finger*, *supra* note 87 (Lagerfeld said, “Nowadays people give the middle finger quite quickly – it’s not the best behavior. Everybody does that, what’s new about that? It’s just become a bad habit. People in magazines are 50% bimbo and 50% pregnant women.”).

89. Robin Givhan, *Is Chanel Designer Karl Lagerfeld Spread Too Thin?* *THE DAILY BEAST* (Jan. 30, 2012, 12:00 AM), <http://www.thedailybeast.com/newsweek/2012/01/29/is-chanel-designer-karl-lagerfeld-spread-too-thin.html>.

90. *Id.*

91. Britt Aboutaleb, *Karl Lagerfeld Slams Tina Brown*, *ELLE* (Mar. 23, 2012, 10:13 AM), <http://www.elle.com/news/fashion-style/karl-lagerfeld-slams-tina-brown-39777>.

Middleton, to his opinions, when he stated, “I don’t like the sister’s face. She should only show her back.”⁹² Lagerfeld further expressed his views on the Middleton family on 18 September 2012, commenting, “I think Carole is very sexy. I think the mother is sexier than the daughters.”⁹³ In October 2012, while showing relentless contempt for French President Francois Hollande, Lagerfeld once again offended two people with one remark: “This imbecile, he’ll be just as disastrous as [former Spanish premier José Luis] Zapatero. Hollande hates the rich . . . [and] wants to punish them . . . they’ll leave [France] and nobody will invest . . . and things will stop working Apart from fashion, jewelry, perfume and wine, France has no edge. Nothing else sells.”⁹⁴

b. Incitement from Generalizations

Although one can arguably distinguish Galliano’s insults as targeting a historically persecuted group of people, Lagerfeld has not limited his commentary to specific individuals. Lagerfeld unapologetically asserts that Russian men are “horrible;” Greeks and Italians have “really disgusting habits;” curvy women are undesirable; and, short men are “the worst.”⁹⁵

92. *Karl Lagerfeld on Pippa Middleton: ‘I Don’t Like Her Face’*, THE SUN (Jul. 31, 2012), <http://www.thesun.co.uk/sol/homepage/showbiz/4464647/Karl-Lagerfeld-on-Pippa-Middleton-I-dont-like-her-face.html>.

93. Angela Buttolph, *Lagerfeld Exclusive: ‘I’d Love to Do Kate Middleton’s Makeup...But Carole is Sexier!’*, GRAZIA DAILY (Sep. 18, 2012), <http://www.graziadaily.co.uk/fashion/archive/2012/09/18/mystery-solved—why-karl-lagerfeld-wears-fingerless-gloves.htm> (If this offended Kate Middleton, then she would constitute an eighth person).

94. Adam Taylor, *Here’s What Karl Lagerfeld Thinks of Francois Hollande*, BUSINESS INSIDER (Oct. 19, 2012, 11:41 AM), <http://www.businessinsider.com/karl-lagerfeld-insults-francois-hollande-2012-10>.

95. See, e.g., *Karl Lagerfeld on Adele, the Greek Crisis, and M.I.A.’s Middle Finger*, *supra* note 87; Amina Akhtar, *Karl Lagerfeld Does Not Like Big Girls. Are You Surprised?*, NEW YORK MAGAZINE (Oct. 12, 2009, 10:00 AM), http://nymag.com/thecut/2009/10/karl_lagerfeld.html; Bibby Sowray, *Today In History—March 19*, VOGUE UK (Mar. 19, 2010),

i. Lagerfeld on Russian Men

Notably, Russian citizens, who have been subjected to widespread poverty and violence since the commencement of written history, comprise a population that is ten times larger than the international Jewish community.⁹⁶ In the notorious interview in which he criticized Adele's weight, Lagerfeld offered Russian women his sympathies, stating, "If I was a woman in Russia I would be a lesbian, as the men are very ugly. There are a few handsome ones, like Naomi Campbell's boyfriend, but there you see the most beautiful women and the most horrible men."⁹⁷

ii. Lagerfeld on Greeks and Italians

In the same *Metro World News* article, Lagerfeld insulted two other countries. Lending his perspective on the Greek economic crisis, Lagerfeld opined that "Greece needs to work on a cleaner image. It's a big problem, as [Greeks] have this reputation of being so corrupt. You can't be sure the money will go where it's supposed to go. They need to build trust, and that takes time too. Nobody wants Greece to disappear, but they have really disgusting habits—Italy as well."⁹⁸

iii. Lagerfeld on the Bourgeois

The middle class is another large group of people that Lagerfeld

<http://www.vogue.co.uk/news/history/2010/03/karl-lagerfeld-believed-short-men-wanted-to-kill-him>.

96. *E.g., How Many Jews are There Worldwide?* THE YESHIVA WORLD NEWS (Sept. 9, 2012), <http://www.theyeshiva.com/article.php?p=139575> (there are approximately 13.75 million Jewish people worldwide); Mark Adomanis, *Russia's Population Decline in Regional Perspective*, FORBES (Jan. 5, 2013, 12:21 PM), <http://www.forbes.com/sites/markadomanis/2013/01/05/russias-population-decline-in-regional-perspective/> (the Russian population consists of over 140 million people).

97. *Karl Lagerfeld on Adele, the Greek Crisis, and M.I.A.'s Middle Finger*, *supra* note 87.

98. *Id.*

famously dislikes. Expressing his distaste for the non-rich, Lagerfeld states, “If you throw money out of the window, throw it with joy. Don’t say: ‘One shouldn’t do that’—that is bourgeois.”⁹⁹ Likewise, Lagerfeld opposes gay marriage because he perceives marriage as an institution created for the middle class. Lagerfeld expounds, “Yes, I’m against it for a very simple reason: In the 60s they all said we had the right to the difference. And now, suddenly, they want a bourgeois life.”¹⁰⁰

iv. Lagerfeld on “Curvy” Women

Lagerfeld has not limited his women-with-curves repartee to Adele. Responding to public outcry that models are unhealthily thin, Lagerfeld advised the public to focus on the problem of overweight girls instead: “There are less than 1% of anorexic girls, but there are over—in France, I don’t know about England—over 30% of girls who are big, big, overweight.”¹⁰¹ Lagerfeld believes the fashion industry is pressured to hire curvier models because of “fat mothers with their bags of chips [who are] sitting in front of the television and saying that thin models are ugly.”¹⁰² Lagerfeld insists that “no one wants to see curvy women.”¹⁰³

v. Lagerfeld on Short Men

According to Lagerfeld, men who are short in stature are the vilest type of people. In March 2003, *Vogue UK* interviewed Lagerfeld, who is quoted as saying, “Life is not a beauty contest, some [ugly people] are great. What I hate is nasty, ugly people . . .

99. Hind, *supra* note 83.

100. LaBruce, *supra* note 64.

101. Rebecca Adams, *Karl Lagerfeld: Models Are Not That Skinny*, THE HUFFINGTON POST (Oct. 14, 2012, 11:26 AM), http://www.huffingtonpost.com/2012/10/14/karl-lagerfeld-skinny-models-interview-quotes-weight_n_1964978.html.

102. Akhtar, *supra* note 95.

103. *Id.*

the worst is ugly, short men. Women can be short, but for men it is impossible . . . they are mean and they want to kill you.”¹⁰⁴

c. Litigation Against Lagerfeld

Although it is unclear whether private compensation has been provided to individuals offended by Lagerfeld’s speech, there are no suits against Lagerfeld on public record. This fact is surprising due to the verdict against Galliano on account of France’s restrictive hate speech laws, which protect any party from being defamed or insulted on account of ethnicity, nationality, race, religion, sex, sexual orientation, or being disabled; under this protective standard, any one of Lagerfeld’s statements is potentially slanderous.¹⁰⁵ Perhaps the Galliano suit is an exception, distinguished by and confined to the unique circumstances of the case. Or, perhaps these different litigious outcomes indicate the existence of other material factors, which warrant proper consideration in order to understand how similar conduct could produce opposite results.

III. ROUND TWO: THE HOUSE

As a general matter, determining whether the benefits of retaining a designer outweigh the potential costs is a continual process for the fashion house. While the link of causation between a designer’s publically-condemned conduct and the negative effect such behavior has on the fashion house is often long, the associated costs may be so substantial that the house feels justified in making an unwarranted decision to fire the designer for fear of further detrimental impact. This process involves balancing the potential costs of a designer’s misbehavior, such as significant negative publicity; the boycott of products and the corresponding decrease in profits; public protests against the fashion house; reputational backlash and opinion polls. By evaluating the case

104. Sowray, *Today In History—March 19*, *supra* note 95.

105. Esther Janssen, *Limits to Expression of Religion in France*, 5 J. EUROPEAN STUDIES 22, 45 (2009), http://www.ivir.nl/publications/janssen/Limits_to_expression_on_religion_in_France.pdf.

studies (discussed in Part I.B, *supra* at 10) in this context, one can resolve the apparent inconsistency of the employment-outcomes of John Galliano and Karl Lagerfeld, two designers who have repeatedly made offensive public comments.

To understand the respective employment decisions of Dior and Chanel with regard to their designer-employees, several factors unique to the fashion industry must be considered, including: (1) the institutional arrangement of the fashion house; (2) the evolution of the objectives of the fashion house; and, (3) the nature of the relationship between the fashion house and the designer.

A. Institutional Arrangement

The relationship between the designer and the fashion house can be analyzed under basic principles of agency theory.¹⁰⁶ In an agency context, the designer is a self-interested agent, whose actions will, to some extent, conflict with the objectives of the principal, or fashion house. This conflict arises because the agent-designer will be motivated to diversify his or her human capital by becoming independently successful; conversely, the principal-house has a great interest in fostering the designer's dependency and seeks to acquire house-specific human capital.¹⁰⁷ To minimize the costs associated with self-serving actions, a principal must monitor the agent to ensure that his or her conduct is aligned with corporate objectives. Informational costs that often arise in an agency relationship are exacerbated in the fashion industry because designers often shirk any creative constraints.¹⁰⁸ Designers, as artists, need flexibility to choose individual hours of employment and workplace location, both in terms of the source

106. See Utset, *supra* note 9, at 55.

107. E-mail from Manuel A. Utset, Charles W. Ehrhardt Professor, The Florida State University College of Law, to author (Mar. 3, 2013, 20:36 EST) (on file with author).

108. See *LVMH Code: Code of Conduct*, LVMH, 4, <http://www.lvmh.com/uploads/assets/Le-groupe/Documents/CodeofConductDEF.pdf> (last accessed Apr. 14, 2013) (the first of five "fundamental values," LVMH stresses the importance of "Innovation and creativity: because our future success will come from the renewal of our product offering while respecting the roots of our Houses").

from which they draw inspiration and the place at which they actually create designs. However, agency theory states that “as monitoring costs—that is, informational costs—increase, an agent will be less constrained, allowing her greater freedom to take actions detrimental to the principal.”¹⁰⁹

Because a fashion house will always incur this informational asymmetry, the principal will respond to this inherent issue at the time of contracting by either hiring an established designer or multiple unknown designers.¹¹⁰ The rationale is that a well-known designer, who has already experienced success independent from the fashion house, has less incentive to act in a self-serving manner, at least in the context of developing notoriety. In other words, an established designer may have a greater incentive to invest in house-specific capital, whereas an unknown designer may not.¹¹¹ Similarly, by hiring several up-and-coming designers, the house receives several benefits in the form of: (a) a competitive environment, which will hopefully increase the quality of the designs, but will—at a minimum—result in the creation of— b) a variety of potential products; and, (c) an internal monitoring mechanism, as the inexperienced designers will be incentivized to hold one another accountable for the success of the collection.

1. Publicly Traded Conglomerates

Large luxury conglomerates like LVMH, which owns sixty brands across five industries, compete with various small companies, whose portfolios typically include only one brand.¹¹² Due to its expansive size, LVMH can take more human capital risks than a fashion house with only one label. On the other hand, LVMH is accountable to the holders of its 508,205,072 shares, each of which is worth €139.50.¹¹³ Because the Board relies on the

109. Utset, *supra* note 9, at 55.

110. See E-mail from Utset (Mar. 3, 2013), *supra* note 107.

111. See *id.*

112. *LVMH Group*, LVMH, <http://www.lvmh.com/the-group/lvmh-group> (last visited Apr. 14, 2013).

113. *LVMH: Translation of the French Interim Financial Report*, LVMH (Jun. 20, 2013), http://www.lvmh.com/uploads/assets/Com-fi/Documents/en/Reports/Rapport_financier_semestriel_2013_VA.pdf.

voting power of the owners, the Directors must, if only facially, address the concerns of shareholders and resolve these issues with corresponding actions. If the shareholders believe a designer is a personnel concern, the Board is obligated to take some measure to correct this employee issue.

2. *Closely Held Houses*

A closely held fashion house may perceive itself, as Chanel does, as a “family business.”¹¹⁴ In a family owned enterprise, the employer often develops personal relationships with employees, which tends to result in the retention of an employee where, under similar circumstances, a publicly traded corporation would not hesitate to terminate employment. Additionally, privately owned fashion houses do not have to answer to the complaints of outside shareholders. In this sense, a closely held label like Chanel has more leeway to handle the inappropriate behavior of a designer like Karl Lagerfeld than a large, publicly-traded conglomerate like LVMH has to handle a designer like John Galliano.

B. *Evolution of Objectives*

Due to the expanding global market and its correspondingly high profits potential, the resilient nature of style—an inherently fluid concept—has been fully stretched by momentary trends and fancies. Style can no longer be limited to an artistic, creative vision; in 2013, style must also be defined as a marketing tool, which is to be used in accordance with the evolving strategic needs of a fashion house. Likewise, in the modern market of fashion, marketing is a crucial and necessary skill in the context of designer-specific human capital: “Today the designer has to be first of all a marketing man and always careful to check the sales

Documents/en/Snapshot_shareholders_2012.pdf (“The LVMH share price on the grant date of the January 2013 plan amounted to 139.50 euros”).

114. Thomas, *supra* note 67 (Explaining why Chanel would not license its name to non-luxury goods like “bedsheets and aerosols,” Alain Wertheimer stated, “You can make money that way, but that’s not the way to run a family business.”).

figures to work out what to do and not do, ready to change, churn out, tackle and attack the market daily. Creative enough to get by, but good at seizing on the trends and ideas of fast fashion.”¹¹⁵

1. Christian Dior

In the 1990s, the business strategy of Christian Dior was to revitalize the fashion house and save Dior from insolvency. The first component of revitalization was to hire a creative director who was capable of producing “creative fireworks and mass-media attractions” to captivate consumers.¹¹⁶ John Galliano, whose facial hair alone has incited controversy, was an obvious choice.¹¹⁷ The best asset of Galliano’s-specific human capital is his ability to transform clothes into actual artistic masterpieces; it follows that when Dior’s existence was threatened, Galliano’s-specific capital was extraordinarily valuable.

While Galliano’s creative whimsy was accessed to begin remaking the brand, Dior President and CEO Sidney Toledano was likewise busy implementing a policy to increase LVMH control of the Dior brand on a global scale.¹¹⁸ Due to a successful combination of factors—brand and franchise control; a revitalized, coveted label; an expanding international market—the strategic needs of the House of Dior once again began to change. By the mid-2000s, the label’s goals became more aligned with LVMH’s overall objective: increasing annual profits. The fashion conglomerate’s “focus is on those markets that have enabled sales

115. Palombo, *supra* note 43.

116. Palombo, *supra* note 43.

117. Charlotte Cowles, *Galliano’s Outfit Accused of ‘Mocking’ Jews*, N.Y. MAGAZINE (Feb. 13, 2013, 10:25 AM), <http://nymag.com/thecut/2013/02/gallianos-outfit-accused-of-mocking-jews.html>.

118. See *Christian Dior S.A. History*, *supra* note 38 (“Toledano continued trimming away at the company’s list of licensees, taking control of the ready-to-wear clothing and accessories bearing the Christian Dior brand name. Dior also adopted a policy of taking control of the Dior franchise- and licensed retail network, buying up 13 stores from Japan’s Kanebo in 1997, and acquiring its Spanish distributor in 1998, among others. The company began opening new stores, boosting its chain of retail boutiques to 130 by 2002.”).

to soar even in times of crisis, such as Asia, India, or China . . . The goal is no longer to create dreams . . . the real challenge will be to . . . create simple products that will satisfy the aesthetic needs of a huge population ready to consume madly and indiscriminately.”¹¹⁹

To address the changing objectives of Dior, LVMH pressured Galliano to reduce his creative flair and increase his output of fast fashion by seizing on current trends. Galliano’s specific capital, which was defined by the need to create art rather than profits, started to become a hindrance rather than an asset: “Galliano’s stylistic vision, his method and the approach to fashion that has always characterized it came into collision with the new strategic needs of the LVMH group . . . [Galliano] has long refused to follow certain dictates every season.”¹²⁰ Simply put, Galliano could not put on his “marketing man” hat because his closet of designer-specific human capital never included such a hat. Regardless of whether his marketing inabilities are due to opposition or apathy, this shortcoming was especially damaging on account of whom Dior was targeting—the rapidly expanding, but recently established, Asian market. Members of the Asian market did not know the outcast Dior of the 1990s, who relied on infamous bad boy John Galliano to create the label’s popular image. Further, consumers have no desire to know *that* Dior, nor are they interested in hearing Galliano reminisce: “Those shoppers aren’t tied to Galliano; they don’t remember 1997 . . . [Galliano] has served his purpose and in fact may have already run his course . . . now the big brand drives sale, not the creative talent attached.”¹²¹

2. Chanel

In contrast to the corporate conglomerate, Chanel, a closely held “family business,” allegedly is not pressured by growth figures. Rather, Chanel’s business strategy, according to CEO and majority-stockholder Alain Wertheimer, is to design and

119. Palombo, *supra* note 43.

120. *Id.*

121. Troeh, *supra* note 44.

manufacture high-quality products: “We don’t think about return. We are not buying to sell. We’re buying to make it better.”¹²² As opposed to well-known executives like Toledano of Dior and Arnault of LVMH, “which have high-profile chief executives and principal shareholders who must regularly engage with the investment community, explain their business strategies, appear at industry conferences and attend fashion shows, not to mention publicly report their performance figures,” Chanel is a notoriously intimate and close-lipped business.¹²³ The Wertheimer family rarely attends public events and conducts business affairs in a much more secretive manner than a conglomerate. Chanel CEO, Bruno Pavlovsky, notes that the label balances its rich history with contemporary, modern trends, because the business model is about creativity. And the beginning of creativity is the codes of the brand. These codes are now quite iconic because eight times a year — for two haute couture and six ready-to-wear collections — we ask Mr[.] Lagerfeld and his studio to come up with new interpretations. These incredible creative people, collection after collection, start the story again...Today, Chanel is perhaps one of the most successful business models based on creativity. We let these creative people go to the next step in designing the collection. And, on the other hand, we maximise the impact of the collection at every point of sale.¹²⁴

Although Chanel may be more focused on creativity than profits, Pavlovsky’s statement is under-inclusive because it fails to highlight that Karl Lagerfeld is more than a designer, he is, firstly, a businessman. The most valuable part of Lagerfeld’s-specific human capital is his resilience, and the experience accompanying his numerous successful brand reinventions. Lagerfeld’s creativity molds to fit the visual brand of each of the labels for which he designs. In the 1960s, Chloe, a house now known for minimalistic

122. Thomas, *supra* note 67.

123. Imran Amed, *CEO Talk: Bruno Pavlovsky, President of Fashion, Chanel*, THE BUSINESS OF FASHION (Oct. 22, 2012), <http://www.businessoffashion.com/2012/10/ceo-talk-bruno-pavlovsky-president-of-fashion-chanel.html>.

124. *Id.*

designs, had become unpopular among consumers.¹²⁵ Lagerfeld was hired to excite the public, and successfully captivated consumers with designs like “a Schiaparelli-esque meta confection—a dress with a dress on a hanger embroidered onto it.”¹²⁶ Lagerfeld developed Chloe-specific capital in the form of whimsy and humor to suit the house’s needs at that moment in time. In the 1970s, Fendi wanted to increase its base of luxury buyers. Lagerfeld was hired to make Fendi an elite label, and he accomplished this objective by designing a collection of furs and the famous Fendi baguette handbag. To solidify the label’s status as a prestigious maker of fine goods, Lagerfeld developed Fendi-specific capital in order to create the house’s “signature style.”

Lagerfeld’s ability to cater directly to the specific needs of different brands demonstrates that he has both “marketing man” and “designer” hats in his closet of designer-specific human capital. Because of his ability to meet the evolving objectives of various houses, Lagerfeld has been the Creative Director at both Chanel and Fendi since the date of his initial employment at each label, respectively. This chameleon-like ability reflects Lagerfeld’s belief that the attribute of “beauty” is constantly in flux: “Beauty is also submitted to the taste of time, so a beautiful woman from the Belle Epoch is not exactly the perfect beauty of today, so beauty is something that changes with time.”¹²⁷ Further, Lagerfeld’s specific capital, particularly his business skills and resilience, have made him desirable to countless corporations that are not in the high-fashion industry. Companies like Macy’s and H&M, as well as helicopter manufacturer AugustaWestland, have utilized Lagerfeld’s specific capital in countless collaborations and partnerships.¹²⁸ Unlike Galliano, who has developed a reputation

125. See Maureen Orth, *Kaiser Karl: Behind the Mask*, VANITY FAIR (Feb. 1992), [available at](http://www.vanityfair.com/magazine/archive/1992/02/lagerfeld199202) <http://www.vanityfair.com/magazine/archive/1992/02/lagerfeld199202>.

126. Leah Chernikoff, *60-Year Chloe Retrospective Reveals the Label’s Quirkier Side*, FASHIONISTA (Sep. 30, 2012, 8:26 AM), <http://fashionista.com/2012/09/60-year-chloe-retrospective-reveals-the-labels-quirkier-side/>.

127. Howard, *supra* note 61.

128. See, e.g., Dishman, *supra* note 66; *AgustaWestland and Karl Lagerfeld to Collaborate*, *supra* note 65.

of snobbery, Lagerfeld (regardless of comments indicating otherwise) will not turn down an opportunity to make a profit.¹²⁹

C. Nature of the Relationship

Perhaps the key factor to understanding the seemingly inconsistent employment outcomes of John Galliano and Karl Lagerfeld is the degree of cooperation between the designer and his respective house. If the house has reduced access to designer-specific human capital, then that capital will be less valuable than comparable capital to which the house has complete access.

1. Bernard Arnault, Sidney Toledano, and John Galliano

As the characteristics of the target market changed, so did the qualities that Dior expected its human capital to possess. Bernard Arnault, LVMH CEO and President, and Sidney Toledano, Dior CEO and President, urged John Galliano to create simple products to satisfy the growing Asian market. Rather than put a Dior twist on current trends, which would increase his LVMH-specific capital, Galliano resisted the advances of Arnault and Toledano and refused to follow seasonal dictates. Galliano's lack of compliance effectively reduced the house's access to his human capital and correspondingly decreased the designer's value. Galliano's failure to cooperate with the strategic needs of the conglomerate strained the employment relationship.

Bernard Arnault's son, Antoine, who is the current CEO of LVMH-owned boot maker Berluti, has stressed the importance of communication and the value of a mutually cooperative employment relationship: "Designers are not artists. They may have the talent of one, but if they want to work in that way they should paint or sculpt. Here they're working in business and they need a brief . . . my father just couldn't talk to John Galliano at all [anymore], it was impossible—he wouldn't listen to anything. At that point, it crashes."¹³⁰

129. See Lagerfeld on Bourgeois, *infra* Part I.B.2(b)(3) at 25.

130. Bibby Sowray, *Antoine Arnault: 'My Father Just Couldn't Talk to John Galliano at All,'* THE TELEGRAPH (Oct. 29, 2012),

2. *The Wertheimer Family and Karl Lagerfeld*

While Chanel's business objectives have continuously consisted of creating a quality product, the company still depends on creative and innovative human capital to survive. The designer must produce fresh looks that are modern and aligned with seasonal dictates, yet still evoke the classic Chanel vibe. The reason Lagerfeld has been able to meet the house's needs for over thirty years is because of his relationship with the Wertheimer family, who view the production of collections as a partnership between Chanel and Lagerfeld that is based on mutual respect and open communication. Lagerfeld, describing the nature of the employment relationship, states, "There's one divine person in the whole business, and that's Alain Wertheimer. If it weren't for him, it would never work. He and I made a pact, like between the Devil and Faust, and he is 100 percent behind me. So I can do what I like, when I think I should do it -- even if the political or commercial idea is the opposite of what I should" be doing.¹³¹ Cooperation and teamwork are the central components of the employment relationship between Lagerfeld and the Wertheimer family; because of this amicability, Chanel is able to fully access Lagerfeld's-specific capital, which correspondingly is viewed by the house as irreplaceable.

3. *Resolution of Different Employment Outcomes*

The theory of the value of designer-specific human capital, when analyzed under the case studies, allows the inconsistency of opposite employment outcomes to be resolved. Based on the factors outlined, *supra*, the argument can be made that although the decisions—to terminate one employee and retain the other, when both are guilty of similar repeated offenses—may appear facially inconsistent, the employment outcomes were in fact consistent when examined in the context of the respective designer-specific human capital. The tension between the opposite

<http://fashion.telegraph.co.uk/news-features/TMG9640973/Antoine-Arnault-my-father-just-couldnt-talk-to-John-Galliano-at-all.html>.

131. Thomas, *supra* note 67.

outcomes can be resolved by one primary fact—at the date of his release from Dior, the conglomerate and house no longer viewed John Galliano’s specific capital as valuable.

Based on a long history of quarrels with Arnault and Toledano, who were frustrated by their inability to control the designer’s output, the value of Galliano’s specific capital was greatly reduced. Arnault and Toledano began to wonder whether Dior could access another designer’s capital at a lower price and in a more extensive manner. Galliano became exponentially less valuable in light of his insubordination, the growing Asian market, and his tendency to create workplace hostility; Arnault began to view Galliano’s specific capital as the equivalent of general, transferable human capital. As time lapsed, and Galliano continually failed to comply with company needs, the value-perception went beyond the notion of mere replace-ability to the effect that Arnault actually desired such replacement to occur.¹³²

Thus, the lack of value attributed to the designer-specific human capital is, perhaps, the *actual* reason Galliano was fired, instead of merely an underlying factor that, when aggregated with his inappropriate behavior, was the “last straw.” Based on this reasoning, Galliano’s anti-Semitic remarks, while certainly distasteful and potentially damaging to LVMH and Dior, were not dispositive of his termination. Instead, Galliano’s offensive comments were in fact a guise that Arnault and Toledano used to justify firing an employee who had long-since become more of a liability than an asset. When contrasted with the absolute value attached to Lagerfeld’s specific capital, it becomes likely, if not obvious, that the same comments, if said by Karl Lagerfeld, would not have resulted in the termination of Lagerfeld’s employment. This hypothetically different outcome would be based on the *specific subject*, rather than the particular conduct, being condemned. Such distinction would necessarily be attributed to the value of the designer-specific human capital to the fashion house at bar. In other words, if Galliano’s specific human capital had been of extreme value to LVMH and Dior at the time his

132. See Alice Fisher, *Antoine Arnault: Prince of Luxury*, THE GUARDIAN (Oct. 27, 2012), <http://www.guardian.co.uk/theobserver/2012/oct/28/antoine-arnault-lvmh-berluti-fashion?newsfeed=true>.

offensive remarks were made, then the employment outcome would likely have been different.

IV. KNOCK OUT: THE HIGH-POWERED EMPLOYMENT AGREEMENT

In order to retain control over the human capital, or designer, a high-powered Executive Agreement is critical to achieve the objectives of the fashion house. Dependent on circumstances, the house may deem it necessary to insert clauses in the contract that are designed to protect corporate assets or to prevent the designer from working for a specific competitor. John Galliano, who is currently suing Christian Dior for unfair dismissal, may be able to recover millions based on a breach of contract theory of liability due to ambiguous provisions within his employment agreements.¹³³ Provided that the theory of the value of the designer-specific human capital, as argued *supra*, is accurate, then a designer with irreplaceable capital would effectively be shielded from any risk of termination because the costs incurred by designer-induced liabilities would always be outweighed by the value of the designer-specific human capital. Therefore, Karl Lagerfeld, as he is seemingly enabled, could make a limitless number of offensive statements without the potential consequence of being fired. Absent contractual limitations providing otherwise, Lagerfeld holds the maximum amount of bargaining power available to a designer. To provide insulation, the house must use employment agreements that are structured to constrain the designer from deploying his capital against the house's interests.

A. Contractual Risks

Filing suit against Christian Dior and subsidiary label, John Galliano S.A., in the French Labor Relations Court, John Galliano claimed that his dismissal from the creative director roles at both

133. Gallagher, *supra* note 56 (Galliano seeks \$8.11 million plus an undisclosed amount in damages, arguing that he was an employee of LVMH and not merely a subcontractor of Christian Dior).

houses was “without real and serious cause.”¹³⁴ Dior argued that Galliano was an independent contractor, rather than an employee of LVMH, and cited numerous contracts between Galliano and the brands, as well as multiple contracts between the houses and Galliano’s consulting agency, Cheyenne Freedom, as evidence of this independent contractor relationship.¹³⁵ The Court, however, held that Galliano was in fact an LVMH employee and, thus, rejected Dior’s independent contractor argument.¹³⁶ In a hearing on 24 October 2013, the Paris Court of Appeals announced that

it would rule... on a technical issue that will determine which court, the Industrial Relations Court Parise or a French commercial court, will hear the merits of the case. Dior...argues that the Industrial Relations Court Paris is not competent to examine wrongful termination lawsuits, because the designer was not an employee but a freelance contributor. Galliano...counters that it is inaccurate to portray Galliano as a mere subcontractor, since he was tied to Christian Dior Couture and John Galliano (the latter of which he owns 91%) by exclusivity clauses. The court’s decision on this issue will be revealed on November 28th.¹³⁷

The outcome of Galliano’s suit will establish legal fashion precedent because it is based on the employment agreement, rather than intellectual property rights. Intellectual property is the only

134. Alexandria Sage, *Designer Galliano Suing Former Employer Dior in French Court*, REUTERS (Feb. 6, 2013, 6:31 AM), <http://www.reuters.com/article/2013/02/06/us-fashion-dior-galliano-idUSBRE9150FF20130206>.

135. See Claire Murphy, *John Galliano’s Suit: A Sobering Reminder of the Risks of Eponymous Fashion Labels*, FORDHAM UNIV. SCHOOL OF LAW (Mar. 26, 2013), <http://iplj.net/blog/archives/5889>.

136. See Murphy, *supra* note 135.

137. See Julie Zerbo, *Galliano vs. Dior is Slowly Moving Forward*, THE FASHION LAW, available at <http://www.thefashionlaw.com/?p=16796> (last visited Nov. 4, 2013).

area of fashion law in which substantial research has been conducted. This IP analysis was triggered, in part, because of lawsuits such as those of Sigrid Olsen, who sold her fashion house to Liz Claiborne in 1991, and Kari Sigerson and Miranda Morrison, who lost their label, Sigerson Morrison, to financial backer Marc Fisher of Nine West in 2006.¹³⁸ However, Galliano's suit is notably distinguishable from such suits due to the employment cause of action. The French Court of Appeals will likely review the *Olsen* and *Sigerson-Morrison* cases to aid its assessment of whether Galliano may design future collections under his name or may, alternatively, hold that such use rights were permanently assigned to Dior.¹³⁹ LVMH and Dior could have avoided liability by explicitly stating in the employment agreement that Galliano, a subcontractor, could be fired without cause; or, alternatively, by defining that any breach of company policy (i.e., the zero-tolerance policy for discriminatory remarks) constituted "cause" sufficient for termination.

B. Bargaining Power

While the Wertheimer family and Karl Lagerfeld are both repeat players in contractual transactions, the employment relationship between the two is an exception to the general theory of bargaining

138. See Murphy, *supra* note 135 (explaining that Galliano's case reminds the public of infamous IP lawsuits like those of "Kari Sigerson and Miranda Morrison, who lost their shoe empire, Sigerson Morrison, when Nine West's Marc Fisher invested in their company as a financial backer. Fired from their own label in 2011, the two women no longer have the right to put their own names on their shoes—they signed that away to Mr. Fisher in 2006. A similar fate befell clothing designer Sigrid Olsen after she sold her label to Liz Claiborne in 1999. Olsen continued to serve as creative director of her eponymous line until she was let go from that position when Liz Claiborne shuttered the brand in January of 2008. The retail conglomerate retained the trademark and a noncompetition agreement, meaning Olsen could not design clothes until 2010 and could never again design under her own name, barring a change in the trademark agreement.").

139. *Id.* (stressing that "Galliano's suit against Christian Dior is a reminder that fashion is a business as much as it is an art, and even the industry's biggest (and most highly-paid) designers aren't immune from the dangers associated with signing away trademark rights to their names.").

power. Since Chanel's initial investment in Lagerfeld, the opportunity has existed for the designer to threaten to quit ex post, absent renegotiation of salary and contract provisions.¹⁴⁰ This flexibility is attributed to the fact that Lagerfeld possesses a substantial amount of bargaining power. When a designer has more bargaining power than the house, the designer has leverage to demand a higher salary, increased control over marketing and advertisements, and power to freely alter designs, among other provisions. This leverage is due to the prior success of the designer and the implicit threat that if the requests are not granted, then the designer will take his or her human capital to another fashion house.

An anomaly in the fashion industry, Karl Lagerfeld "runs his own brand on top of working as artistic director for LVMH's Fendi and for privately owned Chanel."¹⁴¹ Lagerfeld has been described as more of a "hired gun" than top designer, and describes himself as a "commercial designer."¹⁴² Perhaps the reason Lagerfeld has been able to design for so many other labels—especially with respect to Fendi, one of Chanel's primary competitors—is because of his specific employer. The Wertheimers have never sought to limit the creative abilities or collaborations of Lagerfeld. According to Lagerfeld, the relationship has been successful because the employer has never interfered: "Mr. Wertheimer said, 'You can do whatever you

140. See Raghuram G. Rajan & Luigi Zingales, *Power in a Theory of the Firm*, 113 Q. J. ECON. 387, 432 (1998) (the author is analogizing the employment relationship between the designer and the fashion house to the bargaining power in a theory of the firm that often appears in a venture capital context between the entrepreneur and financial investor).

141. Wendlandt, *Interview: Lagerfeld Says Ghesquiere with Arnault "Not Bad Idea,"* CHICAGO TRIBUNE (Nov. 8, 2012), http://articles.chicagotribune.com/2012-11-08/news/sns-rt-chanel-lagerfeld-interview-pixl3e8m877a-2012-11-08_1_chanel-bad-idea-carine-roitfeld.

142. Marc Karimzadeh, *WWD CEO Summit: Karl Lagerfeld*, WOMEN'S WEAR DAILY (Jan. 9, 2013), <http://www.wwd.com/fashion-news/designer-luxury/wwd-ceo-summit-karl-lagerfeld-6579844?full=true> (Lagerfeld explains that "Some people say I am a hired gun, and I am very flattered to be one I am a commercial designer. As Carrie Donovan used to say, 'Fashion is what people wear,' and I don't think that's changed.").

want,' and I did, and apparently it worked . . . we don't do meetings, we don't talk about marketing. Maybe they have marketing people but I never saw them. I have never gone to a meeting in 31 years."¹⁴³

If the Wertheimer family had attempted to condition Lagerfeld's employment based on his conduct, then Lagerfeld would have had an incentive to avoid making offensive comments; likewise, if the Wertheimers had required Lagerfeld to sign a covenant not to compete, then Chanel could have potentially increased its own growth figures (though to the detriment of Lagerfeld's creative legacy and the bottom lines of outside competitors with whom the designer has successfully collaborated). Such clauses could have been included in Lagerfeld's initial employment agreement with Chanel. Likewise, the detrimental effects of a designer acquiring excessive bargaining power can be minimized through mechanisms like golden handcuffs or other incentives that are designed to motivate the designer to exert the right amount of effort and simultaneously achieve the additional objective of dissuading opportunistic behavior.

C. Restrictive Covenants

A clause not to compete limits the ability of the designer to opportunistically use the bargaining power gained on account of his or her human capital. Because the value of the house's investment depends, in large part, on the designer remaining in the venture, the designer has some ability to act in a self-serving manner. Of course, the house will anticipate the designer's inclination to behave self-interestedly and will require certain assurances to ensure that such threats are not made. Yet, because the house cannot force the designer to perform against his or her will, other controlling mechanisms are necessary to preclude premature designer exit.

Whether a strict covenant not to compete should be included in the employment agreement will be based on the specific objectives of the individual employer. To determine the desirability of a non-compete clause, several factors will be analyzed, including

143. *Id.*

whether the house is publicly traded or closely held and whether the designer has gained bargaining power due to experience and prior success. Privately owned companies may be more likely to restrict a designer's collaborative control because a private label may view exclusive access to the designer as the top priority, whereas a publicly traded company has less incentive to restrict a designer's outside collaborations because conglomerates have access to many designers. Conversely, a top designer may have more bargaining power to demand the right to design for outside labels. In November 2011, shoe empire Jimmy Choo, a privately owned company, bought out co-founder Tamara Mellon and required her to sign a non-compete agreement that extended through February 2013 and barred Mellon from designing during the duration of the covenant.¹⁴⁴ In contrast, publicly traded conglomerates usually do not require designers to sign non-compete agreements.¹⁴⁵ Upon his release from Dior, John Galliano collaborated with Oscar de la Renta on the designer's Fall 2013 Collection.¹⁴⁶

V. CONCLUSION: GO THE DISTANCE

In this article, three principal questions regarding the relationship between the fashion house and top designer are addressed through an analysis of two case studies on John Galliano and Karl Lagerfeld, respectively: (1) How is the employment relationship between the fashion house and the designer affected by the three distinct types of human capital (general, designer-specific, and house-specific)? (2) What components are relevant to the fashion house's cost-benefit analysis of employee retention? (3) How can the fashion house insulate itself from potential social

144. See Bee-Shyuan Chang, *Tamara Mellon's Next Step*, N.Y. TIMES (Oct. 26, 2012), http://www.nytimes.com/2012/10/28/fashion/tamara-mellons-next-step.html?pagewanted=1&_r=1&ref=style.

145. See *Amended and Restated Employment Agreement*, *supra* note 26.

146. *Oscar de la Renta Fall 2013 Collection Hits the Runway with Some of John Galliano's Flair at NYFW*, HUFFINGTON POST (Feb. 14, 2013, 5:03 PM), http://www.huffingtonpost.com/2013/02/14/oscar-renta-galliano-collection_n_2689025.html.

and legal costs that it may incur due to the employment of the designer?

When examining the employment relationship from the point of view of both designers and fashion houses, it is evident that both parties are subjected to risks. However, the article focused on the costs the fashion house may suffer due to problems associated with human capital and hold-up bargaining power. As argued in this article, fashion houses, regardless of whether publicly traded or closely held, must “go the distance.” The houses must begin incorporating carefully tailored employment agreements into the contracts of designers. Such strategic business planning will prevent the designer from acquiring too much future bargaining power and likewise limit future liability for breach of contract. If the house fails to increase the use of employment agreements *ex ante*, it will certainly fail to protect its reputation and assets from disgruntled former designer-employees.