

Designer's Indictment Shows Fashion Co. Compliance Risks

By **Danielle Garno, Wifredo Ferrer and Isaac Fuhrman** (August 24, 2022)

Luxury accessories designer Nancy Gonzalez, best known for her colorful, exotic skin handbags, was arrested on July 8 in Colombia in a coordinated effort between Colombian authorities and the U.S. Fish and Wildlife Service.

She is currently facing extradition to the U.S. for conspiracy and smuggling certain exotic skins in violation of U.S. trade regulations.

The indictment was filed in the U.S. District Court for the Southern District of Florida against Gonzalez and her company, Gzuniga Ltd., along with two other defendants.

While this is an unusual set of circumstances, particularly in the fashion industry, it is a reminder for designers, distributors, resellers and retailers that compliance with federal and state laws must be paramount when conducting business.

The indictment alleges that between 2016 and 2019, Gonzalez and her co-defendants smuggled protected caiman and python skins into the U.S. without the very costly permits and documentation required under the Endangered Species Act,[1] which implements the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

According to the indictment, the defendants paid a network of people to fly from Colombia to the U.S. and carry the exotic handbags in their luggage. If stopped by customs officials, the couriers were told to say that the bags were gifts for relatives.

Over a three-year period, the authorities allege that close to 300 exotic skin handbags were smuggled into the U.S. pursuant to this scheme.

If convicted, the designer faces up to 25 years in prison, and her company faces a maximum fine of \$1 million.

States Rules Around Trade and Commerce of Endangered Species

In addition to the federal regulations, 46 states have enacted their own laws protecting various wildlife. Not surprisingly, these laws can vary from state to state.

For example, New York and California have laws that mimic the federal guidelines under the ESA, while Florida has rules that protect only species and wildlife naturally occurring in Florida.[2]

As such, the list of endangered species may differ dramatically between states as they may contain state-specific protected species.



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Additionally, as of January, California banned the importation of dead bodies or body parts of a list of species facing extinction or of special concern.[3] These include iguana, skink, caiman and hippopotamus. A violation of the statute can result in a fine of up to \$5,000 and up to six months in jail. However, this statute is currently being challenged in court.[4]

As federal and state regulations pertaining to the importation and trade of exotic animals continue to evolve, companies that sell such goods, including second-hand luxury retailers, must pay close attention to any changes to the regulations and the impact, if any, to their trade.

Moreover, under federal law, different species have varied levels of protection, depending on their population. This means that the import and export requirements can vary depending on the species.

It is imperative for retailers who are sourcing or selling exotics to understand the specific regulatory requirements that apply to the particular species that is being imported or exported.

Other Legal and Regulatory Requirements in the Fashion Industry

The action against Gonzalez is a reminder for entities operating within the U.S. market — including designers, suppliers, resellers and retailers — of their potential liability for violations of criminal statutes as well as federal and state laws and regulations.

In December 2021, President Joe Biden signed the Uyghur Forced Labor Prevention Act into law, which prohibits the importation of any goods produced or manufactured in the Xinjiang Uyghur Autonomous Region of China, or XUAR, by the U.S. Customs and Border Protection.[5]

CBP also enforces the country of origin marking regulations for importers, which requires each article entering the U.S. to be marked with the country of origin.

Similarly, fashion designers, resellers and retailers are also required to comply with Federal Trade Commission regulations on advertisement disclosures — including misstatements of "Made in USA" and green marketing claims — and with U.S. Consumer Product Safety Commission regulations on safety requirements for children's products and standards for flammability on clothing.[6]

As compliance requirements continue to evolve in complexity, companies must consistently evaluate and assess compliance risks, as well as review and specifically tailor their compliance policies and procedures to address those risks.

For example, companies that import apparel, cotton products and textiles should undertake heightened due diligence into their supply chains to ensure that no goods or raw materials come from the XUAR.

Several key components of an effective compliance program that fashion brands and retailers should have in place include: (1) a code of conduct; (2) communication and training of employees and agents on compliance across the supply chain, monitoring compliance, and internal and external auditing; (3) reporting mechanisms and (4) record-keeping.

An effective compliance program not only protects the company from breaking the law, it

also allows the company to maintain its reputation and goodwill among its customers, suppliers, employees and the communities where it operates.

The indictment of Nancy Gonzalez should serve as a wake-up call for fashion businesses, particularly those that source goods and materials internationally, that compliance with U.S. state and federal laws is paramount, or they risk a visit from the real fashion police.

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[1] 16 §§ 1531 et seq.

[2] See generally 6 NYCRR Part 182; CA Fish & G D. 3, Ch. 1.5; Fla. Stat. § 379.2291 - 2311.

[3] Cal. Penal Code § 653o (2020).

[4] See *Los Altos Boots v. Bonta*, 562 F.Supp.3d 1036 (E.D. Cal. 2021).

[5] Uyghur Forced Labor Prevention Act, U.S. Custom and Border Protection; Implementation of the Uyghur Forced Labor Prevention Act, U.S. Department of State (June 21, 2022).

[6] See Made in USA Labeling Rule, 16 C.F.R. § 323; Guides for the Use of Environmental Marketing Claims, 16 C.F.R. §§ 260.1-260.17; 16 C.F.R. § 1120.3(b); The Flammable Fabrics Act, 15 U.S.C. § 1191.