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Discounted designer labels here to stay  
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By Norman Y. Lono for USA TODAY

Emily Barnett, left, from Westwood, N.J., and friend Trish Hill from Leesburg, Va., shop at Syms in Paramus, N.J.

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By Norman Y. Lono for USA TODAY

Trish Hill follows Emily Barnett after their shopping spree at Syms. The retailer's CEO Marcy Syms says fashion has become too competitive for manufacturers to ignore cheaper retail options.

By Jayne O'Donnell and Christine Dugas, USA TODAY  
 There's Prada at T.J. Maxx, Lilly Pulitzer at Syms and a department full of Diesel, Lucky and other designer jeans at Loehmann's — high-end labels crowding the racks of off-price retailers.

Is the world of discounted high-end apparel now in peril? The Supreme Court ruled last week that apparel and other manufacturers could set a minimum retail price at which their goods can be sold. The ruling might lead more clothing and accessory manufacturers to crack down on discounting.

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But this much seems clear: The overall impact on off-price retailers is likely to be slight, for reasons that have little to do with the Supreme Court. Changes sweeping through the retail industry have been opening new paths for designer clothes to reach consumers at off-price stores. And not much seems likely to slow that trend.

"Off-price retailers are going to survive," says antitrust lawyer Steve Feirman, who represents some apparel makers. "They are a thriving industry, and many manufacturers have an interest in supporting that industry."

Who sells what to whom in the off-price world is already a murky business. Off-price stores are often a last resort for manufacturers, which often don't sell directly to them, so can't dictate prices.

Off-price retailers receive brand-name merchandise from a variety of sources. Retailers may sell them what isn't cleared out in clearance sales. Sometimes, designers, licensed manufacturers or their middlemen unload canceled orders or other excess inventory.

Many of the priciest designer brands aren't happy, of course, that their merchandise is winding up on off-price racks. But whether they'll resort to suing, having been emboldened by the court ruling, is a big question.

The court did give designers and others who dislike discounting, "the tools to prevent it," says Feirman, a partner at Nixon Peabody.

"Many prestigious brands will use this decision to require retailers to sell at a specified price," Feirman says.

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Some of Feirman's clients that are retail franchisers will want to set minimum prices, he says, to prevent franchisees from competing with each other. But off-price retailers won't likely be subject to no-discounting policies. The manufacturers have little control of what prices the off-price stores charge.

Designer clothing and accessories are "definitely where you're going to see the biggest impact ... especially in high-end accessories, because those manufacturers try to maintain more of a standard on their pricing," says Catherine Fox-Simpson, a partner at consulting firm BDO Seidman. "But I don't think it's going to be an end to, or completely change, the marketplace."

Unlike off-price retailers, department stores and smaller retailers are often bound by contracts with manufacturers that say what the stores can and can't do with unsold merchandise.

And many designers have deals with the manufacturers that license their names, stipulating that no more than 10% of production can be sold off-price, says Robert D'Loren, CEO of NexCen Brands([NEXC](#)), which owns the Bill Blass label.

D'Loren doubts that the ruling will have far-reaching consequences. Few designers, he notes, can afford to alienate retailers by reducing or eliminating discounts. Besides, he says, they won't want to take back the merchandise that customers don't want to buy at the minimum price.

When they buy designer clothing, off-price retailers often must agree not to advertise the brands they're offering. D'Loren says he can't imagine that any manufacturers would also insist on minimum prices, because if they're selling to an off-price retailer, "It's the lowest point of distribution."

"It would take a major fundamental change in the way things are done," D'Loren says.

### **Upset customers**

Anything that upset the availability of designer apparel at off-price stores could alienate a devoted retail population.

"Department stores now are like McDonald's — whether you're in Wichita or New York, it's the same stuff," says off-price shopper Jill Tracey of Atlanta.

"When I have time on Saturdays, there's nothing I like more than hitting all the T.J. Maxxes in a 20-mile radius. I *always* find different things at each store."

Tracey says it would "sooo take the fun out of the hunt" if the court ruling put a damper on deals. She understands that some luxury brands might be "upset at how common bargain prices make their products, but in the big picture, you'd think they'd see it's better to buy a real Prada at T.J. Maxx than a fake one in Chinatown."

Off-price retailing — both in stores and online at sites such as Bluefly([BFLY](#)) — is hotter than ever, and it's only the very priciest labels that won't play ball with them anymore.

"From time to time, we dispose of extremely modest ... quantities of discontinued product through the off-price retail channel, which has no impact on the brand," says Andrea Shaw Resnick, a spokeswoman for Coach([COH](#)), the maker of high-end leather accessories.

Marcy Syms, CEO of Syms([SYM](#)) and daughter of founder Sy Syms, says fashion has become too competitive for manufacturers to ignore retail channels. "I think it's more daunting than ever to be a designer," Syms says, "and I think that's a lot of what you're seeing."

Even the brands that do complain can't seem to keep their stuff out of off-price stores, despite their best efforts to uphold an exclusive image.

### **Trying to keep tabs**

"We do not sell merchandise to stores such as those," Tomaso Galli, Prada's Milan-based communications director, says of off-price retailers. "Controlling distribution is very important to our brand."

NexCen Brands, which acquired the Bill Blass label in December, is now "in the process of cleaning up our distribution channel" because much of the label had been showing up in off-price outlets, D'Loren says.

"We're very concerned that none of our product turns up in discounters," he says.

Yet, despite a bit of glancing down noses, a combination of factors is creating a boon for off-pricers and problems for mid- to upper-tier brands. Department and specialty stores are moving slow-selling

merchandise off their floors faster than ever to make room for apparel they can sell at full price.

Where once there were five apparel seasons, there now might be up to 10 at some retailers. Consolidation among department stores and an emphasis on private and exclusive labels in this smaller pool have left most brands with fewer full-price racks for their designer labels.

Many apparel makers may have little choice but to deal with off-price stores and little incentive to slap now-legal minimum prices on their goods.

Nordstrom([JWN](#)), for instance, has a new computer system that alerts it, usually within the first week, if certain styles aren't selling, says Patricia Edwards, a retail analyst at Wentworth Hauser and Violich. If that's the case, the store can return the merchandise to the designer in exchange for another item that might sell better.

At that point, the designer can sell the merchandise to an off-price retailer. And because it's fairly current merchandise, it could fetch a better price than if it had sat around all season.

"It's a win-win for everybody," Edwards says.

### **A good side effect?**

Despite possible fallout from the court ruling, consumers may be the biggest winners in the battle for retail dollars, says Marshal Cohen, an apparel industry analyst with the NPD Group. Because department stores start displaying spring clothes in January, by the time the clothing hasn't sold and has moved on to off-price retailers, it's actually in season.

"They'd rather buy it now and wear it now, anyway," Cohen says. "Off-price retailing has really become something almost in favor for the consumer because the timeliness of it is better and, of course, the price is better."

At off-price retailers, changes are affecting more than just the clothing styles.

"We're reaching younger customers than we have in the past," says Fred Forcellati, vice president of advertising at Loehmann's. "I think it has a lot to do with contemporary designer goods. Designer jeans are valued even more than a Dior gown these days."

Even with designers such as Polo Ralph Lauren([RL](#)) favoring their own outlet stores and saying they don't sell to off-price stores, there's still plenty of Ralph Lauren and other merchandise on T.J. Maxx and Marshalls([TIX](#)) racks. Somehow, it manages to get there.

Prada's Galli says he suspects that smaller boutiques around the world are selling unsold Prada items to off-price retailers or third parties, which then sell to the stores. If Neiman Marcus or Saks Fifth Avenue([SKS](#)) has Prada left over at the end of a season, Galli says, the company doesn't mind if it goes to those stores' outlets, because, "Those are very serious organizations, and they know how to treat luxury brands."

But he says the "quite old and odd combination of merchandise" that winds up at off-price stores is "not the kind of visibility we like."

"We do have contracts with all of our clients and, obviously, do not allow them to sell to third parties," Galli says. "But sometimes it's not that easy to control."

Off-price stores are trying to erase their images as fashion free-for-alls. Loehmann's is now set up less like a warehouse and more like a department store, with merchandise arranged by designer, by collection, by department.

"It's become somewhat more customer-friendly, without some of the frills of a department store," Forcellati says.

### **Dumping designer duds**

Despite many designers' misgivings, T.J. Maxx's relatively new high-end department, Runway, has been a big success and is thought to have spawned even more competition for slightly dated designer fashions.

Gordon Brothers, a Boston-based company that specializes in liquidating retail inventory and helping companies manage their "brand identity," finds T.J. Maxx a "viable solution" for many brands, says co-President Stephen Miller.

"Certain product absolutely has a place in T.J. Maxx," Miller says. "You have to let people manage their inventories."

D'Loren agrees that for others, just not Bill Blass anymore, a limited amount of off-price inventory won't sink a brand. Besides, it's the only solution at a certain point.

Gordon Brothers says one tactic often used by manufacturers that would rather sell their designer duds "under the radar" is to insist that the clothing and accessories go only to off-price chains in the Midwest, such as Goody's. Galli says some other manufacturers try to quietly dispose of unsold merchandise at stores in Asia and Africa.

Kevin Kulinowski, Gordon Brothers' director of operations and senior merchant, says that if "most high-end vendors had their druthers, their merchandise wouldn't be in off-price stores or anything below a high-end department store. But reality sets in because even the best of manufacturers have their dogs."

But much of what shoppers find in off-price retail stores are hardly fashion flops. Sometimes retailers simply cancel orders or manufacturers overproduce, leaving lots of deals for bargain hunters.

"I wouldn't call it fun shopping, (but) if you love to hunt, you have fun because you find things that you're excited about," Syms says.

Being able to pay \$70 for the same style Diane von Furstenberg dresses that she's spent more than \$300 for at Saks is what keeps Karen Coney Coplin of Naples, Fla., returning to what she and her friends call the "mighty Marshalls" in her area.

"I'd say for the real steals, it's hit or miss with most of these types of stores," Coplin says. But, "If you have half an hour to kill, you'll surely find something of note."

The deals are also what would make any Supreme-Court-spawned discount-designer shortage a cause of distress for like-minded shoppers. Amy Rodgers, a devoted off-price shopper from New Berlin, Wis., notes that price — and the "I can't believe I found this dress at this price" moment — is the chief motivator for off-price shoppers.

"It is almost incomprehensible for this ruling to be enforced at stores like T.J. Maxx," says Rodgers, a business consultant who followed the court case.

*Contributing: Elaine Hughes*

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