What It Means to Be a B Corp

What the label means for apparel makers branding themselves as conscious actors – and the consuming public they are courting.

If one scrolls down the web sites of “conscious” brands like Allbirds, Eileen Fisher and Hill City, they will find an enigmatic bold-type B logo, unassuming but with subtle gravitas. It says that the company is a certified B Corporation. But what exactly does it mean? For fashion brands seeking the holy grail of sustainability branding, and the consuming public, the answer requires some unpacking.

“We were intrigued by it, because it feels like the birth of a community of like-minded businesses,” said Amy Hall, the vice president of social consciousness at Eileen Fisher, a certified B Corp for the last few years. “We felt it could be really cool to join this community and support it.”

The B Corp seal of approval comes from B Lab Co., a Pennsylvania-based nonprofit founded in 2006 by Bart Houlanan, Jay Coen Gilbert and Andrew Kassoy. Houlanan and Coen Gilbert, who came from the footwear and apparel company AND1, and Kassoy, who had worked in private equity, have advocated for a more “conscious capitalism.” To that end, B Lab bestows the label on companies it deems responsible corporate citizens that consider their impact not just on investors, but on employees, the environment and the communities in which they operate. Of the more than 2,800 B Corps in 65 countries, 131 are in the fashion and apparel industry as of June, according to B Lab. Among the anointed in the fashion world are Gap Inc. brands Athleta and Hill City, as well as familiar eco-conscious names such as Patagonia, Allbirds and Eileen Fisher.

As the clamor of sustainability reaches fever pitch in the fashion industry, it’s easy to see the appeal of a recognizable third-party certification that can cut through the noise. There are no uniform lines to define corporate responsibility as a whole, beyond existing labor, environmental and securities laws. The B Corp program provides some standards, and packages them into a potentially valuable source of credibility for companies.

But the program is no silver bullet. Warby Parker, once a vocal proponent, didn’t renew its certification last year after B Lab began requiring many B Corps to also convert to a so-called benefit corporation, a legal status for companies who want to make their professed social goals part of their official company mission.
And it’s not just about losing some adherents. B Lab’s efforts, meant to encourage transparency and accountability in corporate decision-making, lacks teeth, said critics. There is no formal government oversight of B Lab’s program, and the reporting requirements for legal benefit corporations vary depending on where they’re incorporated.

“B Lab is trying to broaden the scope of businesses beyond their shareholders’ financial interests, and that’s something to be applauded,” said Lyman Johnson, a professor at the Washington and Lee University School of Law, who specializes in business and securities law. “Setting that aside, I do believe these efforts are well-intentioned, but I think they fall short.”

B Lab has said that the B Corp program and benefit corporation laws provide a rigorous framework to assess corporate responsibility. It takes the view that there are natural growing pains for a movement that is still fairly young.

“We hope to see more compliance as benefit corps mature, and that peer and public pressure will increase, leading to greater transparency,” said Holly Ensign-Barstow, head of mission alignment at B Lab.

Apparel companies that have cultivated cause-oriented brand identities say the program helps them track their sustainability efforts and improve performance in some areas.

For Patagonia, a B Corp since 2012, B Lab’s impact assessments helped the outdoorsy brand fast-track its switch to recycled polyester, according to Vincent Stanley, Patagonia’s designated “philosopher,” who has led the brand’s sales and marketing efforts.

Polyester, a synthetic fiber made with petroleum, consumes high amounts of energy during its production, according to the environmental advocacy group Natural Resources Defense Council. Before becoming a B Corp, Patagonia was already using recycled polyester for many styles, but what the B Corp impact assessments showed was that it was still using a significant amount of virgin polyester by weight. Since then, the brand has reintroduced many of its best-selling items in recycled polyester. By fall 2019, almost 80 percent of synthetic materials used in Patagonia products will be made from recycled materials, according to the company.
San Francisco-based Allbirds said the benefit corporation charter helped it to set ambitious environmental goals for itself and to meet them. In 2019, the company will go carbon neutral by purchasing offsets, which means investing in projects that take carbon dioxide out of the atmosphere.

“We have the explicit license to make these investments in the environment that don’t make as direct financial returns to investors the way that selling shoes does,” said Hana Kajimura, who is a sustainability lead at Allbirds.

The B Corp ethos will also inform the company’s decision-making as it grows, said Kajimura. As a young start-up, the company currently relies on two finished goods factories, one in South Korea and the other in China, both of which it has worked with for the last few years and visits regularly, she said. The brand sends its members from its product, supply chain and other teams to the factories for monthly visits. But as Allbirds expands production, it will need more factories, and is now considering how to approach that growth while being socially conscious, said Kajimura.

The B Corp program goes further than the usual sustainability concerns of fashion companies. For Eileen Fisher, founded in 1984, the B Corp certification process highlighted issues including pay parity within its own workplace, Hall said. The company created a board of directors in the fall of 2017, and, in recent months, also hired its first compensation manager, said Hall.

“It was an opportunity for us to understand how well overall the company was set up, through our governance, organizational structure, employee policies, and how that would allow us to be a more socially responsible company,” Hall said of the B Corp certification process.

“It’s not just environmental and social issues, but also our employee well-being and our governance, so there’s the whole package there,” she said.

There is a difference between B Corps and benefit corporations, although many companies hold both labels. B Corps pass B Lab’s certification program, pay their annual dues, submit to B Lab’s audits, and maintain their status by renewing it every three years. Annual B Corp fees can run from $500 to $50,000 or more, depending on the size of the company’s revenues and its business. Eileen Fisher, for instance, pays B Lab $30,000 each year.
Lately, many B Corps have also jumped through an additional hoop to maintain their status — legally converting to benefit corporations in the states where they are incorporated, if their state offers the option to do so. Legal benefit corporations draft their incorporation documents to include a commitment to having some positive social impact. They don’t necessarily have to specify how, although many outline some area of focus, and the legal structure empowers shareholders to hold them accountable by potentially bringing lawsuits.

This, too, is B Lab’s doing. Over the past decade, the group has lobbied for benefit corporation legislation, which amends states’ existing corporation laws. As of this year, 35 states, as well as Washington, D.C., and Puerto Rico, have passed benefit corporation legislation. Outside of the U.S., Colombia, British Columbia in Canada, and Italy have also passed such legislation.

But this legal conversion requirement has ended the B Corp journey for some. Warby Parker, which had been a B Corp for about seven years, said it did not renew its B Corp certification in 2018 because maintaining the certification required it to legally convert from a C Corporation in Delaware, where it is incorporated, to a public benefit corporation. Delaware’s benefit corporation law became official in 2013.

Warby Parker did not comment on the decision.
But academics who study corporate responsibility point to other shortcomings. For instance, benefit corporation laws allow shareholders, but not employees or other community groups or advocates, to sue the company for non-compliance with those standards. Critics say this feature keeps power over corporate decision-making where it has traditionally been — in the hands of the company’s board and its investors.

“They’re trying to create social impact, but they’re giving the accountability mechanisms to shareholders,” said Haskell Murray, a professor at Belmont University, who has studied B Corps. “This is great that someone is trying to challenge what we call the shareholder wealth maximization norm, but we still have a long way to go before we get it right.”

Meanwhile, B Lab’s proponents have sought to highlight the realities of policing corporate conduct. The purpose of benefit corporation legislation is to encourage companies to do better without creating the specter of legal liability, said William Clark Jr., of counsel at Drinker Biddle & Reath LLP, who advised B Lab’s founders on crafting this type of legislation and helped lead its lobbying effort across the country.

“As a practical matter, there are very few businesses that would adopt the benefit corporation status if it meant that they would be subject to a whole new set of lawsuits,” he said. “It might make sense theoretically, but it would destroy the utility and usefulness of the statute.”

Legal benefit corporations generally have to issue some kind of report on their mission and progress, though the specifics of those requirements — how often and whether it should be made public — depend on the state law in question. Some states, including Minnesota and New Jersey, enforce this reporting requirement more closely. Companies can lose their benefit corporation status in those states if they don’t file annual benefit reports.

But generally, there is the question of compliance. In 2014, Murray of Belmont University studied around 100 benefit corporations from four states that require companies with web sites to post benefit reports, and found that only eight of them had done so. The issue seems to persist. In a 2017 paper, Murray looked at the 30 for-profit benefit corporations formed before May 2016 in Tennessee, whose benefit corporation law that went into effect that year requires such reports to be posted on company web sites or made available. But none of them had done so.

B Lab acknowledged those findings, but said that overseeing benefit corporations is difficult, especially for small companies.
“It’s important to note that many of the companies mentioned in the studies are small, pre-revenue start-ups that are just getting their feet under them as they build their business,” said Ensign-Barstow of B Lab. “Given that the enforcement mechanism in benefit corporations is the shareholder, if your company does not yet have any shareholders — or if you have very few or they’re disengaged — enforcement will be a challenge.”

B Lab’s own oversight of B Corps is a different matter. B Lab oversees a complaint process on its website to receive complaints about a B Corp from anyone, including a company’s employees. Though there is no formal government oversight of whether companies comply with B Corp standards, B Lab says it audits about 10 percent of its companies each year by conducting on-site inspections. And the group certainly tests candidates before letting them in.

In 2015, Eileen Fisher spent months collecting answers to an extensive questionnaire as part of its B Corp application — hundreds of questions around its governance and employment practices, and the environmental and social impact of its supply chain and operations.

The effort dredged up internal documents around everything from the company’s employee policies and organization charts, to audits of itself and its suppliers, salary information about its employees, and even e-mail chains about some of its policies and decision-making, according to Hall.

“It’s tremendous, and what happens is that there’s not one person or even one team that can answer all those questions,” she said.

But there are still questions about the B Corp barrier to entry. Even companies that use strategies to pay less in taxes or that actively oppose their employees’ efforts to unionize could still be considered for the label, albeit with closer scrutiny and more transparency requirements, according to B Lab’s website.

B Lab says its independent standards advisory council makes case-by-case determinations of eligibility in those instances, and that companies may often have to at least be transparent about such practices on their public B Corp profile, according to B Lab’s website where it addresses these and others it refers to as “controversial issues.”
“Along with the recognition that there are many diverse and reasonable perspectives as to what contributes to a shared and durable prosperity for all, B Lab and its Standards Advisory Council will make determinations regarding eligibility for B Corp Certification and, if eligible, will require companies in controversial industries, with controversial policies, or engaged in controversial practices to be transparent about their practices and how they work to manage and mitigate concerns,” B Lab said in a document explaining its approach.

But the group has expressed some reservations recently. In June, the organization updated its guidance for aspiring B Corps involved in the prison industry, including those that use prison labor, to say it was pausing for a closer look. The group said it is imposing “a certification moratorium until the conclusion of an expert stakeholder engagement process to determine whether they may be eligible for the certification and, if so, what management practices must be in place.”

It is not always clear how securing the B Corp label fits in with brands’ concerted marketing strategy. Patagonia doesn’t display the label prominently on its web site. Eileen Fisher hasn’t really conducted market research to gauge if its audience values the logo or even recognizes it, according to Hall.

In any case, marketing considerations alone cannot drive the kind of change in corporate culture that the B Corp program purports to seek, said Stacia Buechler, a partner at the law firm Taft Stettinius & Hollister LLP, who advises companies on B Corp certification and benefit corporation legislation.

“I sit them down, and really talk to them about whether they understand that they’re building this concept into the DNA of the organization, or if they just see it as a marketing tool,” said Buechler of her advice to clients. “It is a valuable marketing tool, but it’s more, it should be more.”

What is it worth then to fashion brands?

“That’s a really interesting question,” said Hall of Eileen Fisher. “To the extent that we can help grow this movement, it means that the business community is moving in the right direction — $30,000 a year, for that kind of impact, is priceless.”