

111TH CONGRESS
1ST SESSION

H. R. 2196

To amend title 17, United States Code, to extend protection to fashion design, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2009

Mr. DELAHUNT (for himself, Mr. GOODLATTE, Mr. NADLER of New York, Mr. ISSA, Ms. JACKSON-LEE of Texas, Mrs. BONO MACK, Mr. SENSENBRENNER, Ms. WASSERMAN SCHULTZ, Mr. COBLE, Mr. MAFFEI, Mr. WEINER, Mr. RANGEL, Mr. WEXLER, Ms. WATERS, Mr. COHEN, Mrs. MALONEY, Mr. GEORGE MILLER of California, and Ms. DELAURO) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to extend protection to fashion design, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Design Piracy Prohibi-
5 tion Act”.

6 **SEC. 2. AMENDMENTS TO TITLE 17, UNITED STATES CODE.**

7 (a) DESIGNS PROTECTED.—Section 1301 of title 17,
8 United States Code, is amended—

1 (1) in subsection (a), by adding at the end the
2 following:

3 “(3) FASHION DESIGN.—A fashion design is
4 subject to protection under this chapter.”; and

5 (2) in subsection (b)—

6 (A) in paragraph (2), by inserting “, or an
7 article of apparel,” after “plug or mold”; and

8 (B) by adding at the end the following:

9 “(7) A ‘fashion design’—

10 “(A) is the appearance as a whole of an
11 article of apparel, including its ornamentation;
12 and

13 “(B) includes original elements of the arti-
14 cle of apparel or the original arrangement or
15 placement of original or non-original elements
16 as incorporated in the overall appearance of the
17 article of apparel.

18 “(8) The term ‘design’ includes fashion design,
19 except to the extent expressly limited to the design
20 of a vessel.

21 “(9) The term ‘apparel’ means—

22 “(A) an article of men’s, women’s, or chil-
23 dren’s clothing, including undergarments, outer-
24 wear, gloves, footwear, and headgear;

1 “(B) handbags, purses, wallets, duffel
2 bags, suitcases, tote bags, and belts; and

3 “(C) eyeglass frames.

4 “(10) In the case of a fashion design, the term
5 ‘trend’ means a newly popular concept, idea, or prin-
6 ciple expressed in, or as part of, a wide variety of
7 designs of articles of apparel that create an imme-
8 diate amplified demand for articles of apparel em-
9 bodying that concept, idea, or principle.”.

10 (b) DESIGNS NOT SUBJECT TO PROTECTION.—Sec-
11 tion 1302(5) of title 17, United States Code, is amend-
12 ed—

13 (1) by striking “(5)” and inserting “(5)(A) in
14 the case of a design of a vessel hull,”;

15 (2) by striking the period and inserting “; or”;
16 and

17 (3) by adding at the end the following:

18 “(B) in the case of a fashion design, embodied
19 in a useful article that was made public by the de-
20 signer or owner in the United States or a foreign
21 country more than 6 months before the date of the
22 application for registration under this chapter.”.

23 (c) REVISIONS, ADAPTATIONS, AND REARRANGE-
24 MENTS.—Section 1303 of title 17, United States Code, is
25 amended by adding at the end the following: “The pres-

1 ence or absence of a particular color or colors or of a pic-
2 torial or graphic work imprinted on fabric shall not be con-
3 sidered in determining the originality of a fashion design
4 under section 1301 or 1302 or this section or the simi-
5 larity or absence of similarity of fashion designs in deter-
6 mining infringement under section 1309.”.

7 (d) TERM OF PROTECTION.—Section 1305(a) of title
8 17, United States Code, is amended to read as follows:

9 “(a) IN GENERAL.—Subject to subsection (b), the
10 protection provided under this chapter—

11 “(1) for a design of a vessel hull, shall continue
12 for a term of 10 years beginning on the date of the
13 commencement of protection under section 1304;
14 and

15 “(2) for a fashion design, shall continue for a
16 term of 3 years beginning on the date of the com-
17 mencement of protection under section 1304.”.

18 (e) INFRINGEMENT.—Section 1309 of title 17,
19 United States Code, is amended—

20 (1) in subsection (e), by striking “that a design
21 was protected” and inserting “or reasonable grounds
22 to know that protection for the design is claimed”;

23 (2) by amending subsection (e) to read as fol-
24 lows:

25 “(e) INFRINGING ARTICLE DEFINED.—

1 “(1) IN GENERAL.—As used in this section, an
2 ‘infringing article’ is any article the design of which
3 has been copied from a design protected under this
4 chapter, or from an image thereof, without the con-
5 sent of the owner of the protected design. An in-
6 fringing article is not an illustration or picture of a
7 protected design in an advertisement, book, peri-
8 odical, newspaper, photograph, broadcast, motion
9 picture, or similar medium.

10 “(2) VESSEL HULL DESIGN.—In the case of a
11 design of a vessel hull, a design shall not be deemed
12 to have been copied from a protected design if it is
13 original and not substantially similar in appearance
14 to a protected design.

15 “(3) FASHION DESIGN.—In the case of a fash-
16 ion design, a design shall not be deemed to have
17 been copied from a protected design if it is original
18 and not closely and substantially similar in overall
19 visual appearance to a protected design, if it merely
20 reflects a trend, or if it is the result of independent
21 creation. This paragraph shall not be construed to
22 permit the copying of a discrete design protected by
23 this chapter.”; and

24 (3) by adding at the end the following:

1 “(h) SECONDARY LIABILITY.—The doctrines of sec-
2 ondary infringement or secondary liability that are applied
3 in actions under chapter 5 of this title apply to the same
4 extent to actions under this chapter. Any person who is
5 liable under either such doctrine under this chapter is sub-
6 ject to all the remedies provided under this chapter, in-
7 cluding those attributable to any underlying or resulting
8 infringement.”.

9 (f) APPLICATION FOR REGISTRATION.—Section 1310
10 of title 17, United States Code, is amended—

11 (1) by amending subsection (a) to read as fol-
12 lows:

13 “(a) TIME LIMIT FOR APPLICATION FOR REGISTRA-
14 TION.—

15 “(1) VESSEL HULL DESIGN.—In the case of a
16 design of a vessel hull, protection under this chapter
17 shall be lost if application for registration of the de-
18 sign is not made within 2 years after the date on
19 which the design is first made public.

20 “(2) FASHION DESIGN.—In the case of a fash-
21 ion design, protection under this chapter shall be
22 lost if application for registration of the design is
23 not made within 6 months after the date on which
24 the design is first made public by the designer or
25 owner in the United States or a foreign country.”;

1 (2) in subsection (b), by striking “offered for
2 sale” and inserting “offered for individual or public
3 sale”; and

4 (3) in subsection (d)—

5 (A) by redesignating paragraphs (1)
6 through (6) as subparagraphs (A) through (F),
7 respectively, and moving such subparagraphs 2
8 ems to the right;

9 (B) by striking “The application for reg-
10 istration shall be made to the Administrator
11 and shall state—” and inserting the following:

12 “(1) IN GENERAL.—The application for reg-
13 istration shall be made to the Administrator and
14 shall state—”; and

15 (C) by adding at the end the following:

16 “(2) VESSEL HULL DESIGNS.—In the case of a
17 design of a vessel hull, the application for registra-
18 tion may include a description setting forth the sa-
19 lient features of the design, but the absence of such
20 a description shall not prevent registration under
21 this chapter.

22 “(3) FASHION DESIGNS.—In the case of a fash-
23 ion design, the Administrator shall require a brief
24 description of the design for purposes of matching
25 the search criteria of the searchable database estab-

1 lished under section 1333, except that such brief de-
2 scriptions shall in no way limit the protection grant-
3 ed to the design or the subject matter of the reg-
4 istration under this chapter.”.

5 (g) RECOVERY FOR INFRINGEMENT.—Section 1323
6 of title 17, United States Code, is amended by striking
7 “\$50,000 or \$1 per copy” and inserting “250,000 or \$5
8 per copy”.

9 (h) PENALTY FOR FALSE REPRESENTATION.—Sec-
10 tion 1327 of title 17, United States Code, is amended—

11 (1) by striking “\$500” and inserting “5,000”;
12 and

13 (2) by striking “\$1,000” and inserting
14 “\$10,000”.

15 (i) COMMON LAW AND OTHER RIGHTS UNAF-
16 FECTED.—Section 1330 of title 17, United States Code,
17 is amended—

18 (1) in paragraph (1), by striking “or” after the
19 semicolon;

20 (2) in paragraph (2), by striking the period and
21 inserting “; or”; and

22 (3) by adding at the end the following:

23 “(3) any rights that may exist under provisions
24 of this title other than this chapter.”.

1 (j) SEARCHABLE DATABASE FOR FASHION DE-
2 SIGN.—

3 (1) IN GENERAL.—Chapter 13 of title 17,
4 United States Code, is amended by adding at the
5 end the following:

6 **“§ 1333. Searchable database for fashion design**

7 “(a) IN GENERAL.—The Administrator shall estab-
8 lish and maintain a computerized database of fashion de-
9 signs protected under this chapter. The database—

10 “(1) shall be searchable electronically, by gen-
11 eral apparel and accessory categories;

12 “(2) shall include the information required by
13 subparagraphs (A), (B), (C), (D), and (F) of para-
14 graph (1), and paragraph (3), or section 1310(d);
15 and

16 “(3) shall be available to the public without a
17 fee or other access charge.

18 “(b) ADDITIONAL REQUIREMENTS.—The database
19 under subsection (a) shall contain a substantially complete
20 visual representation of all fashion designs that have been
21 submitted for registration under this chapter, and shall
22 include information as to the status of those designs, such
23 as whether such designs are—

24 “(1) registered under section 1313(a);

25 “(2) denied registration under section 1313 (b);

1 “(3) cancelled under section 1313(c); or

2 “(4) expired under section 1305.”.

3 (2) CONFORMING AMENDMENT.—The table of
4 sections for chapter 13 of title 17, United States
5 Code, is amended by adding at the end the fol-
6 lowing:

“1333. Searchable database for fashion design.”.

7 (3) AUTHORIZATION OF APPROPRIATIONS.—

8 There are authorized to be appropriated such sums
9 as may be necessary to carry out the amendments
10 made by this subsection.

11 **SEC. 3. EFFECTIVE DATE.**

12 This Act and the amendments made by this Act shall
13 take effect on the date of the enactment of this Act.

○