

111TH CONGRESS  
1ST SESSION

# H. R. 2196

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

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## 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

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## 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.

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