

110TH CONGRESS
1ST SESSION

S. 1957

To amend title 17, United States Code, to provide protection for fashion design.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2007

Mr. SCHUMER (for himself, Mrs. HUTCHISON, Mrs. FEINSTEIN, Mr. HATCH, Mr. WHITEHOUSE, Mr. GRAHAM, Mr. KOHL, Mrs. CLINTON, and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to provide protection for fashion design.

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. PROTECTION FOR FASHION DESIGN.**

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’ is the appearance as a
10 whole of an article of apparel, including its ornamen-
11 tation.

12 “(8) The term ‘design’ includes fashion design,
13 except to the extent expressly limited to the design
14 of a vessel.

15 “(9) The term ‘apparel’ means—

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

19 “(B) handbags, purses, and tote bags;

20 “(C) belts; and

21 “(D) eyeglass frames.”.

22 (b) DESIGNS NOT SUBJECT TO PROTECTION.—Sec-
23 tion 1302 of title 17, United States Code, is amended in
24 paragraph (5)—

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

3 (2) by striking the period and inserting “; or”;
4 and

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

6 “(B) in the case of a fashion design, embodied
7 in a useful article that was made public by the de-
8 signer or owner in the United States or a foreign
9 country more than 3 months before the date of the
10 application for registration under this chapter.”.

11 (c) TERM OF PROTECTION.—Section 1305(a) of title
12 17, United States Code, is amended to read as follows:

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

15 “(1) for a design of a vessel hull shall continue
16 for a term of 10 years beginning on the date of the
17 commencement of protection under section 1304;
18 and

19 “(2) for a fashion design shall continue for a
20 term of 3 years beginning on the date of the com-
21 mencement of protection under section 1304.”.

22 (d) INFRINGEMENT.—Section 1309 of title 17,
23 United States Code, is amended—

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

4 (2) in subsection (e)—

5 (A) in the first sentence, by inserting “or
6 from an image thereof,” after “copied from a
7 design protected under this chapter,”;

8 (B) in the third sentence, by striking “A
9 design” and inserting “In the case of a design
10 of a vessel hull, a design”; and

11 (C) by adding after the third sentence the
12 following: “In the case of a fashion design, a
13 design shall not be deemed to have been copied
14 from a protected design if it is original and not
15 closely and substantially similar in overall visual
16 appearance to a protected design.”; and

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

18 “(h) SECONDARY LIABILITY.—The doctrines of sec-
19 ondary infringement and secondary liability that are ap-
20 plied in actions under chapter 5 of this title apply to the
21 same extent to actions under this chapter. Any person who
22 is liable under either such doctrine under this chapter is
23 subject to all the remedies provided under this chapter,
24 including those attributable to any underlying or resulting
25 infringement.”.

1 (e) APPLICATION FOR REGISTRATION.—Section 1310
2 of title 17, United States Code, is amended—

3 (1) in subsection (a), by striking the first sen-
4 tence and inserting the following:

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

10 “(2) FASHION DESIGN.—In the case of a fash-
11 ion design, protection under this chapter shall be
12 lost if application for registration of the design is
13 not made within 3 months after the date on which
14 the design is first made public.”; and

15 (2) in subsection (b), by striking “for sale” and
16 inserting “for individual or public sale”.

17 (f) EXAMINATION OF APPLICATION AND ISSUE OR
18 REFUSAL OF REGISTRATION.—Section 1313(a) of title
19 17, United States Code, is amended by striking “subject
20 to protection under this chapter” and inserting “within
21 the subject matter protected under this chapter”.

22 (g) RECOVERY FOR INFRINGEMENT.—Section
23 1323(a) of title 17, United States Code, is amended by
24 striking “\$50,000 or \$1 per copy” and inserting
25 “\$250,000 or \$5 per copy”.

1 (h) OTHER RIGHTS NOT AFFECTED.—Section 1330
2 of title 17, United States Code, is amended—

3 (1) in paragraph (1), by striking “or” after the
4 semicolon;

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

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

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

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