H. R. 1

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

IN THE HOUSE OF REPRESENTATIVES

Mr. Delahunt (for himself and [see attached list of cosponsors]) introduced the following bill; which was referred to the Committee on

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Design Piracy Prohibition Act”.

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

(a) DESIGNS PROTECTED.—Section 1301 of title 17, United States Code, is amended—
(1) in subsection (a), by adding at the end the following:

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

(2) in subsection (b)—

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

(B) by adding at the end the following:

“(7) A ‘fashion design’—

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

“(B) includes original elements of the article of apparel or the original arrangement or placement of original or non-original elements as incorporated in the overall appearance of the article of apparel.

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

“(9) The term ‘apparel’ means—

“(A) an article of men’s, women’s, or children’s clothing, including undergarments, outerwear, gloves, footwear, and headgear;
“(B) handbags, purses, wallets, duffel bags, suitcases, tote bags, and belts; and
“(C) eyeglass frames.
“(10) In the case of a fashion design, the term ‘trend’ means a newly popular concept, idea, or principle expressed in, or as part of, a wide variety of designs of articles of apparel that create an immediate amplified demand for articles of apparel embodying that concept, idea, or principle.”.

(b) Designs Not Subject to Protection.—Section 1302(5) of title 17, United States Code, is amended—

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

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

and

(3) by adding at the end the following:

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

(e) Revisions, Adaptations, and Rearrangements.—Section 1303 of title 17, United States Code, is amended by adding at the end the following: “The pres-
ence or absence of a particular color or colors or of a pic-
torial or graphic work imprinted on fabric shall not be con-
sidered in determining the originality of a fashion design
under section 1301 or 1302 or this section or the simi-
larly or absence of similarity of fashion designs in deter-
mising infringement under section 1309.”

(d) TERM OF PROTECTION.—Section 1305(a) of title
17, United States Code, is amended to read as follows:
“(a) IN GENERAL.—Subject to subsection (b), the
protection provided under this chapter—

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

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

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

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

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

“(e) INFRINGING ARTICLE DEFINED.—
“(1) IN GENERAL.—As used in this section, an ‘infringing article’ is any article the design of which has been copied from a design protected under this chapter, or from an image thereof, without the consent of the owner of the protected design. An infringing article is not an illustration or picture of a protected design in an advertisement, book, periodical, newspaper, photograph, broadcast, motion picture, or similar medium.

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

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

(3) by adding at the end the following:
“(h) SECONDARY LIABILITY.—The doctrines of secondary infringement or secondary liability that are applied in actions under chapter 5 of this title apply to the same extent to actions under this chapter. Any person who is liable under either such doctrine under this chapter is subject to all the remedies provided under this chapter, including those attributable to any underlying or resulting infringement.”.

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

(1) by amending subsection (a) to read as follows:

“(a) TIME LIMIT FOR APPLICATION FOR REGISTRATION.—

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

“(2) FASHION DESIGN.—In the case of a fashion design, protection under this chapter shall be lost if application for registration of the design is not made within 6 months after the date on which the design is first made public by the designer or owner in the United States or a foreign country.”;
(2) in subsection (b), by striking “offered for sale” and inserting “offered for individual or public sale”; and

(3) in subsection (d)—

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

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

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

(C) by adding at the end the following:

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

“(3) FASHION DESIGNS.—In the case of a fash-
ion design, the Administrator shall require a brief description of the design for purposes of matching the search criteria of the searchable database estab-
lished under section 1333, except that such brief de-
scriptions shall in no way limit the protection grant-
ed to the design or the subject matter of the reg-
istration under this chapter.”.

(g) Recovery for Infringement.—Section 1323
of title 17, United States Code, is amended by striking
“$50,000 or $1 per copy” and inserting “250,000 or $5
per copy”.

(h) Penalty for False Representation.—Sec-
tion 1327 of title 17, United States Code, is amended—

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

and

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

(i) Common Law and Other Rights Unaf-
fected.—Section 1330 of title 17, United States Code,
is amended—

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

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

(3) by adding at the end the following:
“(3) any rights that may exist under provisions
of this title other than this chapter.”.
(j) SEARCHABLE DATABASE FOR FASHION DESIGN.—

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

§ 1333. Searchable database for fashion design

“(a) IN GENERAL.—The Administrator shall establish and maintain a computerized database of fashion designs protected under this chapter. The database—

“(1) shall be searchable electronically, by general apparel and accessory categories;

“(2) shall include the information required by subparagraphs (A), (B), (C), (D), and (F) of paragraph (1), and paragraph (3), or section 1310(d); and

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

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

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

“(2) denied registration under section 1313 (b);
“(3) cancelled under section 1313(c); or
“(4) expired under section 1305.”.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 13 of title 17, United States Code, is amended by adding at the end the following:

“1333. Searchable database for fashion design.”.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the amendments made by this subsection.

SEC. 3. EFFECTIVE DATE.

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