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112TH CONGRESS
1ST SESSION

H. R. 2511

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

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 2011

Mr. GOODLATTE (for himself, Mr. NADLER, Mr. SENSENBRENNER, Mrs. MALONEY, Ms. LINDA T. SÁNCHEZ of California, Mr. COBLE, Mr. SCHIFF, Ms. JACKSON LEE of Texas, Ms. WATERS, Mr. ISSA, and Mr. RANGEL) 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.

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 ''Innovative Design Protection and Piracy Prevention 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:

"(4) FASHION DESIGN.—A fashion design is subject to protection under this chapter.";

(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 that—

"(i) are the result of a designer's own creative endeavor; and

"(ii) provide a unique, distinguishable, non-trivial and non-utilitarian variation over prior designs for similar types of articles.

"(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, tote bags, and belts; and

"(C) eyeglass frames.

"(10) In the case of a fashion design, the term 'substantially identical' means an article of apparel which is so similar in appearance as to be likely to be mistaken for the protected design, and contains only those differences in construction or design which are merely trivial."; and

(3) by adding at the end the following:

"(c) RULE OF CONSTRUCTION.—In the case of a fashion design under this chapter, those differences or variations which are considered non-trivial for the purposes of establishing that a design is subject to protection under subsection (b)(7) shall be considered non-trivial for the purposes of establishing that a defendant's design is not substantially identical under subsection (b)(10) and section 1309(e).".

(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 before the date of enactment of this chapter or more than 3 years before the date upon which protection of the design is asserted under this chapter.''.

(c) REVISIONS, ADAPTATIONS, AND REARRANGEMENTS.—Section 1303 of title 17, United States Code, is amended by adding at the end the following: ''The presence or absence of a particular color or colors or of a pictorial or graphic work imprinted on fabric shall not be considered in determining the protection of a fashion design under section 1301 or 1302 or in determining 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 commencement of protection under section 1304.".

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

(1) in subsection (c)—

(A) by inserting "offer for sale, advertise," after "sell,"; and

(B) by inserting "either actual or reasonably inferred from the totality of the circumstances," after "created without knowledge";

(2) by amending subsection (e) to read as follows:

"(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 con-

sent 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 that design—

"(A) is not substantially identical in overall visual appearance to and as to the original elements of a protected design; or

"(B) is the result of independent creation."; and

(3) by adding at the end the following:

"(h) HOME SEWING EXCEPTION.—

"(1) IN GENERAL.—It is not an infringement of the exclusive rights of a design owner for a person to produce a single copy of a protected design for personal use or for the use of an immediate family

member, if that copy is not offered for sale or use in trade during the period of protection.

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to permit the publication or distribution of instructions or patterns for the copying of a protected design.".

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

(1) by striking "Protection under this chapter" and inserting "In the case of a design of a vessel hull, protection under this chapter"; and

(2) by adding "Registration shall not apply to fashion designs." after "first made public.".

(g) REMEDY FOR INFRINGEMENT.—Section 1321 of title 17, United States Code, is amended—

(1) by striking subsection (a) and inserting the following:

"(a) IN GENERAL.—

"(1) VESSEL HULL.—In the case of a vessel hull, the owner of a design is entitled, after issuance of a certificate of registration of the design under this chapter, to institute an action for any infringement of the design.

"(2) FASHION DESIGN.—In the case of a fashion design, the owner of a design is entitled to insti-

tute an action for any infringement of the design after the design is made public under the terms of section 1310(b) of this chapter.''; and

(2) by adding at the end the following:

''(e) PLEADING REQUIREMENT FOR FASHION DESIGNS.—

''(1) IN GENERAL.—In the case of a fashion design, a claimant in an action for infringement shall plead with particularity facts establishing that—

''(A) the design of the claimant is a fashion design within the meaning of section 1301(a)(7) of this title and thus entitled to protection under this chapter;

''(B) the design of the defendant infringes upon the protected design as described under section 1309(e); and

''(C) the protected design or an image thereof was available in such location or locations, in such a manner, and for such duration that it can be reasonably inferred from the totality of the surrounding facts and circumstances that the defendant saw or otherwise had knowledge of the protected design.

''(2) CONSIDERATIONS.—In considering whether a claim for infringement has been adequately

pleaded, the court shall consider the totality of the circumstances.''.

(h) PENALTY FOR FALSE REPRESENTATION.—Section 1327 of title 17, United States Code, is amended—

(1) by inserting ''or for purposes of obtaining recovery based on a claim of infringement under this chapter'' after ''registration of a design under this chapter'';

(2) by striking ''$500'' and inserting ''$5,000''; and

(3) by striking ''$1,000'' and inserting ''$10,000''.

(i) NONAPPLICABILITY OF ENFORCEMENT BY TREASURY AND POSTAL SERVICE.—Section 1328 of title 17, United States Code, is amended—

(1) in subsection (a), in the first sentence, by striking ''The Secretary'' and inserting ''In the case of designs of vessel hulls protected under this chapter, the Secretary'';

(2) in subsection (b), in the first sentence, by striking ''Articles'' and inserting ''In the case of designs of vessel hulls protected under this chapter, articles''; and

(3) by adding at the end the following:

"(c) NONAPPLICABILITY.—This section shall not apply to fashion designs protected under this chapter.".

(j) COMMON LAW AND OTHER RIGHTS UNAFFECTED.—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.".

SEC. 3. EFFECTIVE DATE.

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

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