109TH CONGRESS 2D SESSION  

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. GOODLATTE (for himself, Mr. DELAHUNT, Mr. COBLE, Mr. WEXLER, introduced the following bill; which was referred to the Committee on ______________________

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. PROTECTION FOR FASHION DESIGN.

4  (a) DESIGNS PROTECTED.—Section 1301 of title 17,

5  United States Code, is amended—

6  (1) in subsection (a), by adding at the end the

7  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 new paragraphs:

“(7) A ‘fashion design’ is the appearance as a whole of an article of apparel, including its ornamentation.

“(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, and tote bags;

“(C) belts; and

“(D) eyeglass frames.”.

(b) DESIGNS NOT SUBJECT TO PROTECTION.—Section 1302 of title 17, United States Code, is amended in paragraph (5)—

(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 de-
signer or owner in the United States or a foreign
country more than 3 months before the date of the
application for registration under this chapter."

(c) 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."

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

(1) in subsection (c), by striking "that a design
was protected" and inserting "or reasonable grounds
to know that protection for the design is claimed";
(2) in subsection (e), by inserting "or from an image thereof," after "copied from a design protected under this chapter,"; and

(3) by adding at the end the following new subsection:

"(h) SECONDARY LIABILITY.—The doctrines of secondary infringement and 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."

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

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

"(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 3 months after the date on which
the design is first made public.”; and
(2) in subsection (b), by striking “for sale” and
inserting “for individual or public sale”.
(f) EXAMINATION OF APPLICATION AND ISSUE OR
REFUSAL OF REGISTRATION.—Section 1313(a) of title
17, United States Code, is amended by striking “subject
to protection under this chapter” and inserting “within
the subject matter protected under this chapter”.
(g) RECOVERY FOR INFRINGEMENT.—Section
1323(a) 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) OTHER RIGHTS NOT AFFECTED.—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.”.