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

IN THE SENATE OF THE UNITED STATES

Mr. S. CHUMER (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

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) 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’ 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 designer 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 commencement 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)—

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

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

(C) by adding after the third sentence the following: “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.”; and

(3) by adding at the end the following:

“(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.”.
(c) Application for Registration.—Section 1310 of title 17, United States Code, is amended—

(1) in subsection (a), by striking the first sentence 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.”.