

110TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

Mr. SCHUMER (for himself, Mrs. HUTCHISON, Mr. WHITEHOUSE, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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—

9 (1) in subsection (a), by adding at the end the  
10 following:

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

3           (2) in subsection (b)—

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

6           (B) by adding at the end the following:

7           “(7) A ‘fashion design’ is the appearance as a  
8 whole of an article of apparel, including its ornamen-  
9 tation.

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

13           “(9) The term ‘apparel’ means—

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

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

18           “(C) belts; and

19           “(D) eyeglass frames.”.

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

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

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

2 and

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

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

9 (c) TERM OF PROTECTION.—Section 1305(a) of title  
10 17, United States Code, is amended to read as follows:

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

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

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

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

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

25 (2) in subsection (e)—

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

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

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

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

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

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

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

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

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

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

13          (f) EXAMINATION OF APPLICATION AND ISSUE OR  
14          REFUSAL OF REGISTRATION.—Section 1313(a) of title  
15          17, United States Code, is amended by striking “subject  
16          to protection under this chapter” and inserting “within  
17          the subject matter protected under this chapter”.

18          (g) RECOVERY FOR INFRINGEMENT.—Section  
19          1323(a) of title 17, United States Code, is amended by  
20          striking “\$50,000 or \$1 per copy” and inserting  
21          “\$250,000 or \$5 per copy”.

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

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

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- 1           (2) in paragraph (2), by striking the period and
- 2           inserting “; or”; and
- 3           (3) by adding at the end the following:
- 4           “(3) any rights that may exist under provisions
- 5           of this title other than this chapter.”.