

Dear Member of Congress

On behalf of the American Apparel & Footwear Association (AAFA), representing the manufacturers, retailers and suppliers of apparel and footwear goods, I would like to take this opportunity to provide AAFA's views on the Design Piracy Prohibition Act (HR 2033 and S 1957). While we appreciate your attention to this important issue, we strongly oppose this bill as proposed.

Unfortunately, apparel, footwear, and other fashion products are among the most counterfeited consumer goods sold throughout the world. AAFA wholeheartedly supports efforts to strengthen intellectual property protection in the United States and worldwide. Our association and members have been active on a number of initiatives to accomplish this goal.

We applaud your intentions with respect to the Design Piracy Prohibition Act as well as your overall efforts to ensure stronger enforcement and protection of U.S. intellectual property rights. However, we strongly believe the legislation – as introduced – would do much more harm than good.

We are keenly aware of concerns that exact replicas of high fashion items are often knocked off and marketed as such only days after they are unveiled in public. While this legislation is attempting to thwart that practice, it actually goes much further.

Many apparel and footwear companies and retailers, many of whom are AAFA members, have advised us that they have a number of concerns with respect to this legislation. They believe that – although well-intentioned – the legislation would create incredible ambiguity that would wreak havoc in the fashion industry. If enacted, these bills would make legitimate companies, and their legitimate designs, vulnerable to a litany of excessive litigation and bogus claims. The inherent subjectivity in both the “substantial similarity” standard for infringement and the “distinguishable variation over prior work” standard for protection would expose footwear and apparel companies, retailers, designers and ultimately the consumer to unneeded costs and uncertainty that could stifle fashion design innovation. Moreover, we believe there are practical logistical considerations that would make such a design registry difficult, if not impossible, to operate.

We have been working with the Council of Fashion Designers of America (CFDA) on approaches to address these and other significant concerns. We look forward to continuing those discussions so that we may fashion a consensus position that would benefit consumers and all industry stakeholders. In the meantime, we respectfully urge that the legislation not be considered unless it is substantially changed to ensure that critical deficiencies are removed.

As discussions on these bills continue, I would encourage you and your staff to use AAFA as a resource on these issues. We also look forward to having a proactive conversation with you to ensure that fashion design is protected and promoted in such a way to foster a culture of innovation upon which this industry depends.

Sincerely,

Kevin M. Burke
President and CEO

Cc: Stephen Kolb, CFDA