

**Statement by Kevin M. Burke, President and CEO
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Before the Subcommittee on Courts, the Internet and Intellectual Property

February 14, 2008

I would like to take this opportunity to thank Chairman Howard Berman, Ranking Member Howard Coble and the members of the subcommittee for this chance to provide comments on the issue of extending copyright protection to fashion designs. As you can imagine, the outcomes of this important discussion will have a strong and direct impact to the apparel and footwear industries, the companies that drive them and the designers whose creativity fills department and retail stores with fun, new and trendy clothing options.

As you may know, the American Apparel & Footwear Association (AAFA) is a national trade association, representing the manufacturers, retailers and suppliers of apparel and footwear goods. Our association's mission is to promote and enhance its members' competitiveness, productivity and profitability in the global market by minimizing regulatory, commercial, political and trade restraints – and this includes the protection of intellectual property.

Last year, Congressmen William Delahunt (D-MA) and Bob Goodlatte (R-VA) reintroduced legislation entitled the Design Piracy Prohibition Act, which would provide a three-year copyright on original fashion designs. Spearheaded by the Council of Fashion Designers of America (CFDA), this well-intentioned legislation sent ripples throughout our member companies. While we are strong supporters of intellectual property rights protection, and have played a lead role in seeking better enforcement of intellectual property rights worldwide, we are very strongly opposed to the Design Piracy Prohibition Act as introduced.

In October 2007, AAFA sent a letter to members of Congress, which explained our initial concerns:

“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.”

Upon Senate introduction of the legislation, Senator Orrin Hatch, the bill's lead Republican cosponsor, also highlighted problems with the current draft of the bill. He said:

“It must be recognized that this bill is not perfect and there are several legitimate concerns with the way this bill attempts to protect designs. I will be working with

my colleagues to make improvements to this bill as it goes through the Senate process. Some areas of the bill that need to be improved are: the standard for liability, the definition of designs in the public domain, and the secondary liability provisions.”

Despite AAFA’s public opposition to the bill as introduced, our association and its members believed that the issue needed further review. As a result, AAFA entered into discussions with the CFDA to see if we could find ways to improve the current draft and create a fashion design right that would offer stronger protection than what is offered under current law. Should we be able to reach a final consensus package with the CFDA, we look forward to briefing the subcommittee on the final outcome.

While it is premature to discuss the status of those discussions, it is important to stress that any outcome should contain key principles.

First, any effort to create a new design right should be done in a way that discourages frivolous or excessive litigation.

Second, any new right should ensure that only truly original designs are protected while ensuring that the many legitimate designers, who draw upon each other and trends for inspiration, are not hamstrung by costly and burdensome legal threats and requirements.

Finally, any new right should provide clear and transparent rules, including a fully searchable electronic database of registered original designs.

We would like to again express our gratitude to Chairman Berman and Ranking Member Coble for the opportunity to express AAFA’s and its members’ comments at this hearing and look forward to working with you on this issue in the coming months.