

Dear Member of Congress:

You may have recently seen a *Dear Colleague* letter from Congressmen William Delahunt, Bob Goodlatte and Jerrold Nadler asking for your support for the Design Piracy Prohibition Act, legislation that seeks to extend copyright protection to “original” fashion designs. As President and CEO of the American Apparel & Footwear Association (AAFA) – the national trade association representing many of America’s most well-known manufacturers, retailers and suppliers of apparel and footwear goods – I urge you to **oppose** this legislation.

The legislation seeks to create an expansive new form of intellectual property protection to deal with a narrow issue relating to exact copies of high fashion clothing (such as the kind worn by celebrities on red carpets.). This bill, while well-intentioned, would create enormous problems and impose additional costs for the fashion industry – at precisely the time when the industry is least able to withstand those added burdens.

While purporting to address problems with exact knock offs, the legislation gives individuals the ability to seek legal action against designs that are merely “substantially similar” to registered designs. Such a *vague and inherently subjective* standard would throw the fashion industry into chaos. Currently, fashion designers draw inspiration from a wide variety of sources, including nature, architecture, entertainment, and other designs. Fashion is constantly recycled as revolutionary designs are created and recast from older works and combined with contemporary influences. This new law would chill that process. How would somebody know if their design was the product of “legitimate” inspiration or was too “substantially similar” to a registered design? To put in another way, fashion designers, including those trying to register designs themselves, would have no way of knowing if their designs were at risk of infringing somebody else’s work.

The test before an “original” design can be registered at the Copyright Office is equally problematic. There isn’t one! So while the legislation purports to prevent the registration of articles in the public domain, there is no practical prohibition to prevent registration of designs like generic white t-shirts. In fact, such abuses have been widely reported in the foreign fashion design systems that the proponents of this legislation seek to copy.

Moreover, the sponsors claim that designers have no way to protect their products from intellectual property theft. This is not true. U.S. law arms designers with a vast array of intellectual property protection through trademarks, patents, trade dress, and copyright protection. In fact, American designers routinely take advantage of these tools protecting new fabric designs, brand names, and innovative fabrications.

The practical effect of this law would be to outlaw inspiration, which is the driver of all fashion design. It would also have a detrimental effect on consumer choice,

particularly lower income consumers, as companies try to ensure new fashion trends do not violate these new and ill-defined legal liabilities.

It is for these reasons that this legislation is **strongly opposed** by companies across the fashion supply chain. In addition to our association – whose members create and market many top designs – this legislation is opposed by many stakeholders through the industry.

Should you require additional information, please contact Kurt Courtney at 703-797-9039 or kcourtney@apparelandfootwear.org

Thank you for your attention to this matter.

Respectfully,

Kevin M. Burke
President and CEO