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Innovative Design Protection and Piracy Prevention Act (IDPPPA) and the Innovative Design Protection Act (IDPA) – What's Next for Protection of Fashion Design in the United States?

IP Buzz

The IDPPPA (H.R. 2511), a bill pending in the House of Representatives, is a proposed amendment to the Copyright Act that provides for a three-year term of protection for original elements or arrangements of fashion designs that are the result of a designer's "own creative endeavor" and that "provide a unique, distinguishable, non-trivial and non-utilitarian variation over prior designs." The IDPPPA has been lauded by numerous icons in the fashion industry, including the American Apparel and Footwear Association (AAFA) and the Council for Fashion Designers America (CFDA). However, the IDPPPA also carries significant opposition; the primary argument against the bill is that it would increase production costs in the fashion industry and, more than likely, consumers will bear this burden in the form of higher prices. The bill has been referred to the House Subcommittee on Intellectual Property, Competition and the Internet.

Recently, on September 10, 2012, a companion bill, the IDPA (S. 3523) was introduced into the Senate by Senator Charles Schumer (D-NY). The IDPA reported favorably out of the Senate Judiciary Committee on September 20 and now awaits action by the full Senate. There are some key differences between the recently introduced IDPA and the IDPPPA, namely:

- Written notice is required 21 days before an action may be commenced under the IDPA;
- Damages under the IDPA are limited to those accrued after the date on which the action for infringement is commenced; and
- The IDPA also exempts Internet service providers and Internet search tools from liability under the IDPA.

At the recent *9th Annual IQPC Brand Protection Conference* in New York (September 19-21, 2012), Venable participated in a "Fashion and IP Law" panel with Barbara Kolsun, General Counsel of Stuart Weitzman, who has been following the legislation since its early inception. It appears based on that presentation that brand owners do not hold high hopes that the bill will pass, and even if it does pass, they may feel that it would apply to a very limited subset of fashion designs. This bill is being closely followed by the industry nonetheless, and could provide a useful first step for fashion design protection in the United States. We will continue to provide updates on the legislation.