

## IP Buzz

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### Dressing for Success: Congress's Latest Fashion Bill

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On July 13, 2011, the so-called Fashion Bill was reintroduced into Congress, carrying the same name as its previous iterations, the "Innovative Design Protection and Piracy Prevention Act," H.R. 2511 ("IDPPPA"). This is Congress's most recent version of the Fashion Bill, which would amend the Copyright Act to extend special protection, but not full-fledged copyright protection, to fashion designs.

Only about ten pages long, the IDPPPA 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". To combat the potential for frivolous lawsuits, the IDPPPA requires a heightened pleading standard, namely that a plaintiff plead the facts supporting fashion design infringement with particularity.

Additionally, the IDPPPA includes three primary defenses for fashion design infringement. Under the Bill, the accused design does not infringe if it: (1) is not "substantially identical in overall visual appearance to" the original elements of a protected design; (2) results from "independent creation" by a different designer; or (3) falls under the "Home Sewing Exception," which means that it was produced as a single copy "for personal use or for the use of an immediate family member, if that copy is not offered for sale or use in trade" during the three-year period of protection.

The IDPPPA has been lauded by numerous icons in the fashion industry, particularly because under the current state of the law only limited protection is available for well-recognized designs through trade dress, design patent, or trademark law. If passed, this Act would mark the first recognized statutory protection for fashion designs in the United States. However, the IDPPPA also carries significant opposition; the primary argument against the Bill being that it would open the door for frivolous lawsuits.

On July 15, 2011, after the bill was referred to the House Committee on the Judiciary, the Subcommittee on Intellectual Property, Competition, and the Internet held a hearing concerning the IDPPPA. Rumors suggest that the IDPPPA will be a major priority in the Intellectual Property realm for the Judiciary Committee when Congress reconvenes. Venable will keep a watchful eye on the track of this potentially important legislation.