

## **FASHION DESIGNERS MAY SOON RECEIVE INCREASED COPYRIGHT PROTECTION**

Fashion houses and designers may soon be afforded new and powerful tools to protect their works, as a new bill headed to Congress seeks to increase and extend copyright protection to original fashion designs. If passed, the aptly titled Innovative Design Protection and Piracy Prevention Act (the "IDPPPA") will have a profound and immediate effect on the fashion industry, powerfully changing the way designers protect their designs, create innovative style trends and prevent against knockoffs.

Currently, American designers may only receive copyright protection for the elements of their designs that are purely decorative, aesthetic, and wholly separable from the functional and utilitarian elements present in all clothing. For example, a unique pattern of stripes and characters printed on a polo shirt may be protectable, whereas the silhouette and cut of the shirt is not. As a result, few fashion designs have received substantive copyright protection, as it is often difficult, if not impossible, to separate the creative, aesthetic elements of a design from its fundamental and utilitarian elements. In fact, it is common practice for designers to base their "original" designs on other designer's previous works and current "trends."

In response to these concerns, the IDPPPA specifically extends copyright protection to "fashion designs," presently defined as "the appearance as a whole of an article of apparel, including its ornamentation." In particular, the IDPPPA protects designs containing "unique, distinguishable, non-trivial and non-utilitarian variation[s] over prior designs," and prohibits designs that are "substantially identical" to protected works. Protectable designs may include clothing, such as shirts, pants, jackets and shoes, as well as wallets, bags, and other accessories. It is hoped that the IDPPPA will promote creativity in the fashion industry, as designers will no longer be permitted to slavishly copy the previous designs of other designers and will instead be forced to create completely original works. Those who oppose the IDPPPA fear that the potential for baseless claims and exposure to liability will stifle originality and chill creativity, as working off of existing designs is an integral aspect of the fashion industry.

Should Congress pass the IDPPPA, Courts will undoubtedly struggle to adjudicate the initial cases of infringement, as it will be challenging to apply the requisite "substantially identical" standard. Therefore, fashion houses and designers who wish to protect their original designs and prosecute infringers will need to carefully navigate this new and complex law. In addition, designers may have to change their practices to ensure compliance, and may themselves also have to defend against copyright infringement claims brought under the IDPPPA. If passed, the IDPPPA is certain to have a significant and lasting effect on the fashion industry.

Our firm has represented fashion houses and designers in the fashion industry, and has extensive experience in the areas of Fashion law and Intellectual Property law. We are closely involved in monitoring these events and will continue to provide you with pertinent updates as more information becomes available. If you have any questions about the matters covered in this Client Alert, or wish to schedule a private consultation, please call Terrence A. Oved, Esq. of Oved & Oved LLP by telephone at 212.226.2376 or contact by email at [terry@ovedlaw.com](mailto:terry@ovedlaw.com).

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