

Testimony of Fashion Designer Narciso Rodriguez

Before the

Subcommittee on Courts, the Internet and Intellectual Property
Committee on the Judiciary
U.S. House of Representatives

Hearing On

Design Law - Are Special Provisions Needed to Protect Unique Industries
February 14, 2008

Good afternoon Chairman Berman, Ranking Member Coble and other Members of the Subcommittee. I am pleased to be here today on behalf of the Council of Fashion Designers of America, of which I currently serve on board of directors. The CFDA is a not-for-profit trade association of America's fashion and accessory designers. The CFDA works to advance the status of fashion design as a branch of American art and culture and to help elevate this important American industry.

First I would like to thank Congressmen Delahunt and Goodlatte for introducing HR 2033, the Design Piracy Prohibition Act which protects for a period of three years, fashion designs that are deemed unique and original and registered with the copyright office. This is the number one legislative priority of the CFDA and our president Diane von Furstenberg and we hope it will become law very soon.

It is appropriate that this hearing falls on Valentine's Day, which marks the conclusion of fashion week in New York. Both events serve to highlight the importance of the more than \$350 billion U.S. clothing and accessory industry. More and more young Americans are going into fashion, and America now leads the world in fashion design.

Fashion designers and their stores are all over America. In addition to the jobs directly related to the manufacturing of apparel and fabric, the fashion industry creates jobs in many sectors: printing, trucking, distribution, magazine publishing, advertising, publicity, merchandising, and retail.

The more acclaimed America's fashion designs become, the more they're copied. While the U.S. Chamber of Commerce estimates the lost revenues due to counterfeiting and piracy in the fashion and apparel industry (for 2006) to be \$12 billion annually, they also indicate that they believe it may be higher due to the fact that design piracy is not outlawed.

As every counterfeit garment starts as a pirated design, we know the \$12 billion worth of counterfeit garments is \$12 billion of design piracy. Clearly that's only

garments seized, a baseline estimate; as design piracy is not illegal, there are no garments seized and therefore no counting is done. But it's a big problem and it's growing.

I am an American designer with a uniquely American story. As the only son of Cuban immigrants, I grew up in Newark, NJ. My father was a longshoreman who dreamed that I would become a doctor, lawyer or dentist. But from the time I was a teen, I dreamed of being the next Donna Karan, Calvin Klein or Ralph Lauren.

Becoming one took much more than just suddenly having a brilliant idea, sketching it and meeting success.

- It took training. Fashion design is an art that must be learned, just like painting, sculpting, or writing. It took nearly \$50,000 in loans and three years to get my degree from the Parsons School of Design in New York. My parents couldn't afford my tuition, so I took out school loans to pay the \$15,000 a year. Today Tuition is \$32,000. After graduating, fashion designers usually train as apprentices. I trained under Donna Karan at Anne Klein, as a design assistant at Calvin Klein and as the designer of the Cerruti label in Paris.
- It took hard work. After years as an apprentice and designing for someone else, I started my own company in 1998. Ever since then, I'm always traveling to collect ideas, to see new fabrics, develop unusual yarns and fabrics, and to get inspiration from architecture and different cultures and to sell my designs. A signature of my work is the texture and dimension of the fabric of the garment incorporated into the overall design; we create it much like a painter or sculptor creates.
- It took financial capital. To design and fabricate my 250 piece collection it takes six to twelve months. The fall and spring runway shows cost on average \$800,000 to stage. The fabric another \$800,000, the work room that develops the patterns and garments another \$ 1,500,000. The travel budget for design and fabric development is \$ 350,000 and marketing is another \$2,500,000 There are so many aspects of a fashion business that make it risky in the best of circumstances, and the pirates are only making it riskier.

The story I'm about to tell you is one of the reasons that I am before this subcommittee today urging that you pass a law to prohibit piracy of fashion designs. Back in 1996 one particular dress put me on the fashion map. My good friend Carolyn Bessette (whom I met while working at Calvin Klein), asked me to design her dress for her marriage to John F. Kennedy, Jr. That dress became the most copied silhouette of the past decade. The pirates sold around 7 million or 8 million copies. I sold 40.

I used a special technique to complete that look and it is part of my signature style that I had been developing since I was quite young. There was a lot of construction and special placement of seams involved even though it looks quite simple. It's a technique that fellow designers have learned from. The first group of copies the pirates released weren't sophisticated, but then, a magazine reprinted the correct sketch of the dress and far superior copies were produced. Those dresses were sold using my name, and using the Kennedy name. Some may say that I benefited from the publicity; publicity with no sales does not pay the bills.

Unfortunately, this piracy story is not unique. I have many more and so do most designers. Years ago I made a signature handbag. It was knocked off by a manufacturer, and walking down the street before I could sell it. Now that I have the financial backing to create the infrastructure that would be required to put a piece like my signature bag into production - everybody already has it. At 21st and Park in New York a guy stands on the corner and sells copies of it every day. I would love to know where that money is going and what it funds.

The same thing happened with my signature shoes – we call them the Sarah Jessica shoe because Sarah Jessica Parker wore them on Sex and the City. I was finally at a point in my career where I was able to take a signature look I had worked on for years and produce it for my client. I'd been sketching those shoes, and evolving them since I was a teen. Then the design was knocked off by a manufacturer. There is no way, under the current legal system in the U.S for designers to beat the pirates to market.

Why can't designers beat the pirates? Since there is no protection for fashion design in the U.S., companies have emerged with piracy as their business model. These companies are built for the sole purpose of copying. They have lots of money to warehouse cheap materials in every color of the rainbow. If I show a black dress in crepe with a turquoise bra in satin, then they immediately cut it in similar fabrics and put it into their stores. Pirates don't have to sell it – they just put it in their stores. It's like the guy who takes the shortcut at the race – we all start at the beginning but he cheats and is the first to walk across the finish line.

With no human or capital investments to make, when pirates copy they spend nothing; they can afford to make the copy in such quantities and low price levels that on just one of my 250 styles they could recoup what I might make on my entire collection. I can't even do a diffusion line, which is a mass market line. It is when a designer takes their own designs and produces them at higher volumes using machine sewing and less expensive fabrics. Designers Isaac Mizrahi has licensed a line at Target. So has Proenza Schouler, among others – but that only happens when retailers want the designer name as well as the design, which they can steal without paying. People have already taken my DNA

and diffused it. The pirates are the only ones who can make lower priced versions of my designs.

If the pirate enterprises were forced to hire real designers to work there would be more designers, more jobs, and it would elevate real and original design choices for all consumers. Instead, they are creating jobs in sweatshops in Asia where the copies are manufactured.

Sadly, the U.S. doesn't treat designers as well as we are treated in other developed countries with strong fashion industries, such as Europe, Japan or India - all provide 15-25 years of protection for registered fashion designs. Unlike photographers, sculptors, jewelry designers, and yes, even boat hull designers, fashion designers are not protected at all.

Please take a look at the images before you. Do these designs look any more utilitarian than a piece of beautiful jewelry or a gleaming vessel hull?

- This design is one of my own from this season's collection...
- This design was created by Rodarte, a small CA company formed by two women designers who stitch everything by hand. They are the up and comers. They are only at a point now where they can make clothes that are affordable and sellable. They are so fresh – their work will be so copied.
- This is the work of Brooklyn Designer Maria Cornejo. This is a great example of someone I have greatest respect for. She is a true original.

Fashion designers aren't working with stones or fiberglass, rather our craft is done with beautiful silks, leathers and wools and yes, even metal. Our work can be as whimsical and imaginative as any other – and copied just as fast as any that already has the protection we seek. I heard there is technology today in China that allows a dress to be made from a photo in record time. Perhaps this explains why the pirated merchandise hits the stores not weeks, but months before mine reaches my outlets.

A century ago the U.S. made a determination that clothing was functional and shouldn't be granted protection. Much has changed in the industry since then. As the slides I showed you illustrate, today, fashion design has become an art form. We don't think that Congress should protect all apparel. Some of it isn't original or unique. But when a designer creates that look that is special, so special that everybody wants to copy it, he or she should have a small window of protection – we're asking for three years – in which they can develop their idea and get it into the marketplace themselves.

To address some of the concerns we've heard raised about the bill:

- We don't want to prevent anyone from picking up a look. A designer's ability to create a trend is often his mark of success. HR 2033 wouldn't cover any design that had ever been publicly available prior to enactment. There will be a gigantic public domain of designs that we can all use for inspiration. However, I shouldn't have to experience walking down a NY street and seeing my original in the store window of a department store and a cheap imitation in the window of another, a dozen blocks down.
- Design piracy protection does not drain the market of accessibly-priced garments; it just assures that the creator of the original design which will serve as the basis for an accessibly-priced garment is the one with the opportunity to manufacture or license that line, not the pirates.
- There is no cause of action created against consumers who buy pirated designs in this bill. The only people who can be sued in a civil action are those who make, made or import, for sale or use in trade, or sell or distribute for sale or use in trade pirated designs. Even then the person must have knowledge, or reasonable grounds to know, that the design was protected and was copied.
- We have identified solutions to the problems of fraudulent registrations and frivolous lawsuits, two of the most frequent objections to the bill as introduced.
- We have clarified the scope of what is protected and developed a more narrow and clear definition of originality.

The American International Property Law Association (AIPLA) has called on Congress to address the problem of fashion piracy. In October the AIPLA Board passed a Resolution in support of the HR 2033 and S1957, the House and Senate Design Piracy Prohibition Acts with some minor changes to which we have agreed.

Manufacturers have also expressed some concerns about the bill. Apparel and accessory manufacturers told us they were concerned about the scope of the legislation and the risk of encouraging litigation and to a lesser extent, so were designers. The CFDA has had extensive discussions with the American Apparel and Footwear Association in an attempt to reach a consensus to address concerns we shared. We are hopeful that within the next month, we will be able to jointly present to you the negotiated language. We are grateful to Representatives Delahunt, Goodlatte, Coble, Weiner and Issa for your patience in allowing us to make improvements to the bill that you introduced and cosponsored. While these changes are important, the underlying structure of the bill has not changed.

Today's hearing is about overall design protection. Other industries may deserve protection, I'm only an expert on fashion. I do know that the fashion industry has been working on fashion design protection legislation for over 3 years. We have worked with others in the industry to develop unified support for a bill. We've done the hard work. We are hopeful that once we have this agreement we won't

have to wait for other sectors of business to fall behind protection. We're ready – they aren't. We would ask that the subcommittee move the Design Piracy Prohibition Act this year.