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# O.K., KNOCKOFFS, THIS IS WAR

By ERIC WILSON  
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For readers of *Marie Claire*, one of its most popular monthly features is *Splurge vs. Steal*, a column that shows an expensive runway look next to a knockoff costing a fraction of the price. But within the fashion trade the magazine column is roundly disliked, at least by designers whose work is included under the *Splurge* heading.

"I wish the magazine wouldn't encourage that kind of behavior," said Behnaz Sarafpour, after seeing an issue in which her \$1,565 silk trench coat was shown next to a similar design for \$159 from Jones New York. "I mean, thanks for the lovely picture, but no thanks."

Customers who crave inexpensive designer look-alikes at retailers like H&M and Zara or close-enoughs at Gap and Banana Republic or line-for-line copies of Oscar gowns by the label ABS may have little empathy for designers who denounce knockoffs.

Lesley Jane Seymour, the editor in chief of *Marie Claire*, which has included designer clones in *Splurge vs. Steal* by Banana Republic, Steve Madden and American Eagle Outfitters, said shoppers understand — and generally approve — how fashion offers them expensive runway originals alongside lower-price versions of the same styles.

But those inexpensive copies could be history if the Council of Fashion Designers of America has its way in a new anti-copying campaign in Washington.

Designers like Diane Von Furstenberg, Narciso Rodriguez and Zac Posen have been journeying there to lobby for copyright protections like those governing books, music and other creative arts. Mr.

Posen was in Washington on Tuesday with Steven Kolb, the executive director of the council, who said a bill could be introduced in Congress as early as today by Representative Bob Goodlatte, a Virginia Republican.



*Deb Wilcox*

Mr. Rodriguez designed the white slip wedding gown worn by Caroline Bessette Kennedy in 1996, a style that inspired innumerable brides to don copies, and Ms. Von Furstenberg's signature wrap dresses have been copied so many times that she may no longer wish to be associated with them. They are asking lawmakers to support a proposed fashion design anti-piracy act.

If passed, it could change the retail landscape in ways merchants and designers are only beginning to absorb. Major department stores with private labels, which often include close copies of designer looks, are divided on the proposed law because they also do business with the offended designers.

At the same time a prohibition on copying dresses, coats and the like would seem to open an impossibly murky debate over how to separate a duplicate garment from one simply inspired by someone else's work and part of a fashion trend.

But for the Council of Fashion Designers the issue is black and white. Rather than calling imitation the sincerest form of flattery, as they have done for decades, leading designers are acknowledging that inexpensive copies — which they label acts of piracy — have negatively affected the luxury business.

"Piracy in fashion is rampant," Mr. Rodriguez said, recalling a lunch meeting he had with senators last July, when he held up one of his \$1,500 designs next to a newspaper advertisement for a nearly identical dress at Macy's, selling for \$199.

Copyright law protects a creator of original material — like a songwriter or screenwriter — for her life plus 70 years. But clothing is not protected. In 1998 Representative Howard Coble, a Republican from North Carolina, introduced a revision to the copyright law that classified boat hulls as a design protected for 10 years. Citing the boat hull statute, fashion designers are asking for similar protection for clothing designs for three years.

Hypothetically that would mean that Allen B. Schwartz, the owner and designer of ABS, the leading brand in the \$300 million business of Oscar knockoffs, would be restricted to selling copies of the embroidered beige Elie Saab gown worn by Halle Berry in 2003, not the latest Vera Wang yellow butterfly ruffles for Michelle Williams.

"That is the most ridiculous thing," Mr. Schwartz said. "There is no such thing as an original design. All these designers are getting their inspiration from things that were done before. To me a spaghetti strap is a spaghetti strap, and a cowl neck is a cowl neck."

A violet ABS dress with swooping satin panels along the hips and bust line, selling at Bloomingdales.com for \$169.99, is a prime example of the argument by designers that there is a difference between following trends and what they call piracy. Apart from the shade of purple, it looks identical to a dress costing more than \$1,000 that Mr. Posen showed in his spring 2004 collection.

Designers say the high price of fashion is justified by the time and effort they spend researching fabrics, ideas and techniques. In their view it is unfair for people like Mr. Schwartz to profit from their work without a similar investment.

"They are stealing at the expense of creativity," said Valerie Salembier, the publisher of Harper's Bazaar, which devoted its January issue to counterfeit fashion. "It's not fair or reasonable or correct to steal that design from someone."

But Ms. Seymour of Marie Claire said there is room in stores for both originals and knockoffs. "If you go into any department store, you can take the elevator to one floor and see the designer look and then take the elevator to the next floor and see the interpreted look," she said. "It's like when you go to the Shop & Stop, you have the real Raisin Bran and then the generic raisin bran. Both have their buyers. Neither one has put the other out of business."

The National Retail Federation, the retailers' lobby, has not taken a position on the proposed legislation, said J. Craig Sherman, its vice president for government affairs. "We are staying neutral on the matter," he said. "We tend to take a position when there is a consensus in our industry on an issue. There is not a consensus on this issue."

The proposal also presents complications for designers who draw inspiration from the same sources. For instance, when "Memoirs of a Geisha" was released last year, obi belts and kimono sleeves appeared in more than one runway collection. This month Hussein Chalayan and Martin Margiela both offered fall collections that turned slipcovers and armchair upholstery into skirts and jackets. Inspiration, as designers say, is in the air.

"How do you copyright fashion design?" asked the designer Jeffrey Chow, whose \$1,000 blush satin dress was shown next to a \$245 duplicate by ABS in Marie Claire's November 2004 issue. But Mr. Chow sees only futility in trying to fight such copying. "It's not like a typeface or a song," he said. "There are no boundaries in fashion."

Stan Herman, the president of the Council of Fashion Designers, sees the matter as clear cut. "It's not as complex as everybody's making it," he said. "To take somebody's design and make a line-for-line copy, that should be stopped."

The reason clothing design is not protected under copyright or trademark law in the United States is that it is considered foremost as a utilitarian item, not an artistic expression or scientific invention. (Logos, however, and some design signatures — like the three stripes on Adidas track suits — are protected from copying under trademark statutes.)

But the designers' trade group argues that the legal principle exempting fashion from copyright protection — a 200-year-old idea that useful objects should be unregulated to encourage the growth of industry — is outdated in this era of sophisticated mass copying.

"The whole underpinning of that 200-year-old law of functionality was to promote creativity and innovation," said Alain Coblence, a lawyer hired by the Council of Fashion Designers and by fashion trade groups in Paris and Milan, which also promote the legislation. "Yet the situation is exactly the reverse because designers now must ask what is the incentive to innovate if you know your creation is going to be stolen within days and your designs are going to be used before you have a chance to use them for yourself?"

Although designers have occasionally pursued cases of design piracy in court, only the most egregious cases have been successful. In 1980 a federal appellate court held that a pair of belt buckles by the accessories designer Barry Kieselstein-Cord were not ordinary buckles but had reached the level of creative art. (A dissenting judge argued, "Innovations of form are inseparable from the more important function they serve — helping to keep the tops of trousers at waist level.")

European laws have been more favorable to designers, although with tangled results. Yves Saint Laurent sued Ralph Lauren in 1994 in a Paris court over Mr. Lauren's design of a tuxedo dress. Mr. Lauren was found guilty of copying and fined roughly \$300,000. At the same time a Saint Laurent executive was found guilty of denigrating Mr. Lauren's character and fined \$90,000.

In 2002 the European Union adopted a more uniform regulation protecting designers from member countries. Mr. Coblence said the impetus for lobbying Congress now came from meetings with French and

Italian designers who wanted similar standards applied to their work in the United States. He took the idea to the fashion design council, which readily signed on.

Copying has been embedded in American fashion since the beginning of mass production of ready-to-wear designs. From the 1930's to the 60's, buyers from American department stores would attend haute-couture shows in Paris and purchase original patterns, taking them home to be mass-produced. Regular couture clients like Babe Paley and Nan Kempner used to arrive in limousines, along with women who took the subway, at Orbach's on West 34th Street to see its twice annual "couture adaptation" shows.

But Mr. Coblence and American designers argue that the globalization of fashion needs a different perspective on copycats from their glamorized portrayal in the 1963 movie "A New Kind of Love," in which Joanne Woodward went to Paris on such a buying trip.

**Some trademark lawyers believe they have a case. "People now have more disposable income," said Deborah Wilcox, a chairwoman of the intellectual property practice of Baker Hostetler in Cleveland. "You don't need to clothe yourself just for warmth. This is one area that has stood out that has not had protection that seems close to other areas that do have protection."**

Gela Taylor, one of the designers of Juicy Couture, whose luxury sweat suits have been much knocked off, said she planned to visit Washington from Los Angeles next month to push for the bill.

"I don't think anybody's naïve about this," Ms. Taylor said. "Fashion is a strange and ephemeral thing. But this proposal is for people who are not inspired by anything but looking for an easy way to make money."

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