Knockoffs fuel the industry but rob designers. Is legislation the answer?

By Gioia Diliberto  
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"BEING COPIED is the ransom of success," Coco Chanel once said. The fashion designer laughed when people dug through the trash outside her Paris atelier looking for fabric scraps from a forthcoming collection. She smiled approvingly when she passed women on the street wearing collarless jackets inspired by her iconic tweed suit.

But she never tolerated outright theft of her designs.

In 1930, Chanel joined fellow designer Madeleine Vionnet in suing Suzanne Lanfier, a copyist who was caught with 48 Chanel and Vionnet knockoffs. A French court found Lanfier guilty in a landmark case that recognized French design originals as "real works of art . . . entitled to the same protection accorded authors and copyright holders."

Now, American fashion designers are clamoring for similar safeguards. After heavy lobbying from the Council of Fashion Designers, last month nine U.S. senators introduced a bill that would expand an existing ban on counterfeit handbags and sunglasses to include clothing knockoffs. The measure would give original designs, such as Chanel's famous suit, the same legal protection that writers have for their books.

Some intellectual property scholars think that's a terrible idea. "Growth and creativity in the fashion industry depend on copying," said Christopher Sprigman, a law professor at the University of Virginia. "It's the engine that drives the fashion cycle, and the bill would kill the engine." He convincingly argued in a Virginia Law Review article he co-wrote that the lack of copyright protection is the key to fashion's success as a $181-billion industry. He calls this "the piracy paradox."

Fashion booms precisely because customers tire quickly of their clothes and continually buy new ones. Fashion can't rely on technological improvements to make old products passe. Instead, it relies on copying, which spreads styles rapidly through all levels of society, from the haute couture client to shoppers at such low-priced retailers as H&M, Zara and Forever 21. As a result, what was trendy in April looks demode by August.

Consequently, designers are forced to continually reinvent the wrap dress (Diane von Furstenberg's looks a lot like one done by Claire McCardell in the 1950s). "I got copied all the time," said Betty Kirke, a copyist who was caught with 48 Chanel and Vionnet knockoffs. "It's the engine that drives the fashion cycle, and the bill would kill the engine." He convincingly argued in a Virginia Law Review article he co-wrote that the lack of copyright protection is the key to fashion's success as a $181-billion industry. He calls this "the piracy paradox."

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U.S. designers who want to copyright clothes should consider that France's copyright law, which covers fashion design, and its Design Act, which extends patent-like protection to fashion, have done nothing to staunch piracy. It's as big a problem as ever in France and, indeed, all over Europe.

Style theft dates back to the 18th century, when seamstresses at the Court of Versailles tried to bribe Marie Antoinette's dress maker to find out what she would wear next. Over the years, French designers tried a variety of ways to thwart illegal copying. Vionnet, for instance, put her thumbprint on her labels to brand them as originals and installed dyeing facilities to change colors at the last minute.

Throughout the first half of the 20th century, the Chambre Syndicale de la Couture Parisienne rigidly controlled access to the opening shows for French haute couture and ready-to-wear collections. The press signed agreements that they would not make unauthorized sketches and would honor photo embargoes. Violators were banned from the collections forever.

Still, style piracy thrived. In the 1920s and '30s, back-alley fashion speakeasies used stolen toile (muslin mock-ups) and sketches made by nefarious couture-house employees to supply copies to dishonest private clients, French shop owners and foreign buyers.

Interestingly, France's protective laws have spurred few lawsuits. The French "don't have an entrepreneurial class of plaintiff's lawyers like we do," Sprigman explains. But if the fashion copyright bill now before Congress becomes law, cases could clog the courts for years. And that could have a chilling effect on the whole industry.

To be sure, fashion is now considered an art in sophisticated circles, the subject of scholarly study and lavish museum exhibits. Still, it seems absurd to copyright any dress that doesn't have a novel printed on it.

Moreover, fashion copyrights would be difficult to enforce. How would courts decide if something as standard as a neckline or a hem is original? Designers continually recycle ideas and imitate one another. Sometimes they even flitch from the copyists themselves.

On a Paris street many decades ago, Chanel's press secretary saw someone selling Chanel knockoffs for 50 francs each. A crowd had gathered, and the vendor cried "Don't push. There's enough for everybody!"

According to Marcel Haedrich, who recounted the incident in his book, "Coco Chanel: Her Life, Her Secrets," the press secretary bought one of the outfits in white linen with braided trim -- a detail the original lacked -- and gave it to her boss. Chanel took one look at the raffia-like plaiting and decided to use raffia in her next collection.

Gioia Diliberto is the author of the new novel "The Collection."
### Fashion's Piracy Paradox

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