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Industry Groups Set to Vote on Piracy Bill

By Kristi Ellis

WASHINGTON — A deal is in the works between two powerful industry groups over Congressional legislation that would provide copyright protection for fashion designs for three years.

The Council of Fashion Designers of America, which has trumpeted the bill, and the American Apparel & Footwear Association, which raised concerns about the scope and risk of litigation for some of the industry's largest vendors, will each vote in the next two weeks on proposed changes to the legislation, which has been stuck in Congressional committee because of industry infighting.

The AAFA's 60-member board has until Friday to vote on the proposed changes to the bill agreed to by both associations' staffs, according to Kevin Burke, president and chief executive officer of the association, which represents most major brands and companies in the industry. Burke said he will sort through the responses and votes from his board next week when the AAFA convenes March 5 for its three-day annual meeting in Tucson, Ariz.

"If we are close, we have a deal," Burke said. "But if not, we will go back to the CFDA to discuss the [unresolved] issues."

The CFDA's 27-member board will vote on March 10 on the staff-level agreement, according to Steven Kolb, executive director of the group, which represents most of Seventh Avenue's leading designers.

Much hangs in the balance for designers, who are seeking copyright protection for their designs, as well as for many apparel vendors and brands, which are concerned such restrictions would stifle their ability to pick up on trends and lead to an escalation in expensive litigation. Finding common ground has been a struggle, but the two associations appear hopeful about approval of the compromise agreement. A third group, the California Fashion Association, which opposes the legislation, has not been involved in the negotiations.

At the center of the debate is the Design Piracy Prohibition Act, which was introduced in the House and Senate last year. As written, the bill would allow companies and designers to register their fashion designs for three years of copyright protection. Apparel, handbags, footwear, belts and eyeglass frames would be covered, but designs that are already part of the public domain would not. The measure would also establish penalties for designers or companies knocking off designs. The fine would be \$250,000, or \$5 for each copied item, whichever is greater.

The bill will still face many hurdles in Congress this year even if the associations' boards approve their staffs' proposals. Lawmakers will have to confer on the proposed changes and decide whether to incorporate any of the industry's recommendations into the legislation.

Rep. Bob Goodlatte (R., Va.) who sits on the House committee considering the legislation and cosponsored the bill, said of a committee hearing this month on the bill, "I thought that those who are concerned about fashion design piracy made their case very well."

"We are looking for a good outcome from [the industry] negotiations, which will give us some guidance as to ways we can address some of the concerns that have been raised," said Goodlatte, adding that he believes the "underlying case for doing something about fashion design piracy" is strong and that a consensus would "improve the opportunity for moving legislation forward" this year.

Although the two groups have not released the compromise agreement, they outlined several areas where they are trying to find common ground. Burke said the standard for liability and definition of original design needs to be improved and strengthened. In addition, he said the new legislation should provide "clear and transparent rules," including a "fully searchable electronic database of registered original designs."

Kolb said the CFDA wants a bill "that the entire industry is comfortable with."

"We really appreciate and have taken to heart the concerns or suggestions they had for this bill and we have really integrated into new language," he said.

From the AAFA's view, Burke said, "One thing we don't want is our clothing being designed by lawyers, but we certainly understand the concerns with copyright violations and counterfeiting. The way the bill is currently written, it was our concern that, all along, this would open a Pandora's box for every company that would have to worry that the creativity of their designers would essentially make them a party to or victim of frivolous litigation."

Kolb added: "From our side, it has been a dialogue that has created a tremendous amount of awareness about piracy that may not have existed in our industry two years ago. I think there is a lot of genuine concern from designers and others in the industry and just those voices alone are impactful."