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Sent: Friday, December 17, 2004 1:18 PM
To: FN-USTR-FR0439
Subject: FW: CFDA Submission to the Office of the U.S. Trade Representative

FR0439@ustr.eop.gov

December 17, 2004

Office of the United States Trade Representative
Attn: Mr. Mark Mowrey
Deputy Assistant United States Trade Representative for Europe and the Mediterranean
Dear Sir:

This submission is being made pursuant to Federal Register notice 04-18716, dated August 17, 2004, seeking ideas for deepening transatlantic economic ties, as updated by Federal Register notice 04-24948, dated November 9, 2004, extending the deadline for the submission of written comments to December 31, 2004.

The Council of Fashion Designers of America, Inc. ("CFDA"), 1412 Broadway, Suite 2005, New York, NY 10018, is a not-for-profit trade association currently comprised of 274 of America's foremost fashion and accessory designers. Founded in 1962, CFDA continues to advance the status of fashion design as a branch of American art and culture; to raise its artistic and professional standards; to define a code of ethical practices of mutual benefit in public and trade relations; and, to promote appreciation of the fashion arts through leadership in quality and aesthetic discernment. Americans designing in the United States or abroad, and international designers with businesses based primarily in the United States, are eligible for membership. CFDA is recognized domestically and internationally as the voice of the American fashion industry. Additional information about CFDA and its activities and members can be found at www.cfda.com.

The United States traditionally has chosen not to provide legal protection for original designs of articles of wearing apparel, except in limited ways, principally because the U.S. has viewed clothing as being primarily utilitarian and for fear of creating monopolies in the apparel market.

Europe has taken a different approach, traditionally providing strong protection to the design features of wearing apparel, principally because European authorities have viewed clothing as being primarily artistic. Not only have individual countries, particularly France and Italy, judicially protected fashion design, but approximately three years ago, the European Union adopted a detailed regulation expressly protecting designs (including wearing apparel) for a period of three years without registration and for a period of up to 25 years with registration. Council Regulation (EC) No. 6/2002 of December 12, 2001 on Community designs.

The practical effect of the inadequate U.S. protection has been that creative designers and their U.S. businesses have increasingly struggled against low-priced knock-offs, which sometimes appear in the marketplace even before the originals do. By permitting competitors to copy original clothing design created through the imagination and hard work of designers, the law rewards this unfair competition and has an adverse impact on innovation in some segments of the fashion industry, not to mention the consequent loss of U.S. jobs and reduced U.S. and local tax revenue.

Moreover, U.S. fashion design has matured to the point where U.S. original creations are increasingly being copied abroad, and we therefore have an interest in ensuring continued reciprocal protection for these original works. European designers and their trade associations are becoming increasingly dissatisfied because, even though Europe protects U.S. designs, the U.S. does not adequately protect European designs.

The United States is a party to the Berne Convention, an international copyright treaty, which requires that works such as fashion designs be protected by copyright here. Even so, U.S. protection for fashion designs remains inadequate, which not only strains our transatlantic relations, but also undermines U.S. credibility in attempting to

get other countries throughout the world to protect U.S. intellectual property.

Accordingly, by remedying this situation, there is an opportunity to further and deepen cooperation between Europe and the United States, to advance the competitiveness and innovation of U.S. designers, to combat counterfeiting more effectively, to better mesh the regulatory approaches of Europe and the United States, and to bolster the credibility of the U.S. in its worldwide trade relations.

CFDA, working with its counterparts in France and Italy, intends to propose U.S. design protection legislation that would be limited to the protection of fashion designs, would be easily obtained without registration or other formalities, and would last for a short period of time sufficient to protect the creator without unduly inhibiting fair competition. This would further the goals of the U.S. Administration, "to further transatlantic economic integration to the fullest, spur innovation and job creation, and better realize the competitive potential of our economies and enterprises."

Support, in principle, by the Office of the U.S. Trade Representative would be of assistance in furthering this initiative and would be greatly appreciated by creative designers on both sides of the Atlantic.

CFDA would be happy to discuss these issues with you further.

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