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91-32 GOLD AND SILVER ARTICLES—CONSUMER
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HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE AND FINANCE

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

FIRST SESSION

ON

H.R. 8673, H.R. 10538, and S. 1046

BILLS TO PROTECT CONSUMERS BY PROVIDING A CIVIL
REMEDY FOR MISREPRESENTATION OF THE QUALITY OF
ARTICLES COMPOSED IN WHOLE OR IN PART OF GOLD OR
SILVER, AND FOR OTHER PURPOSES

DECEMBER 15, 1969

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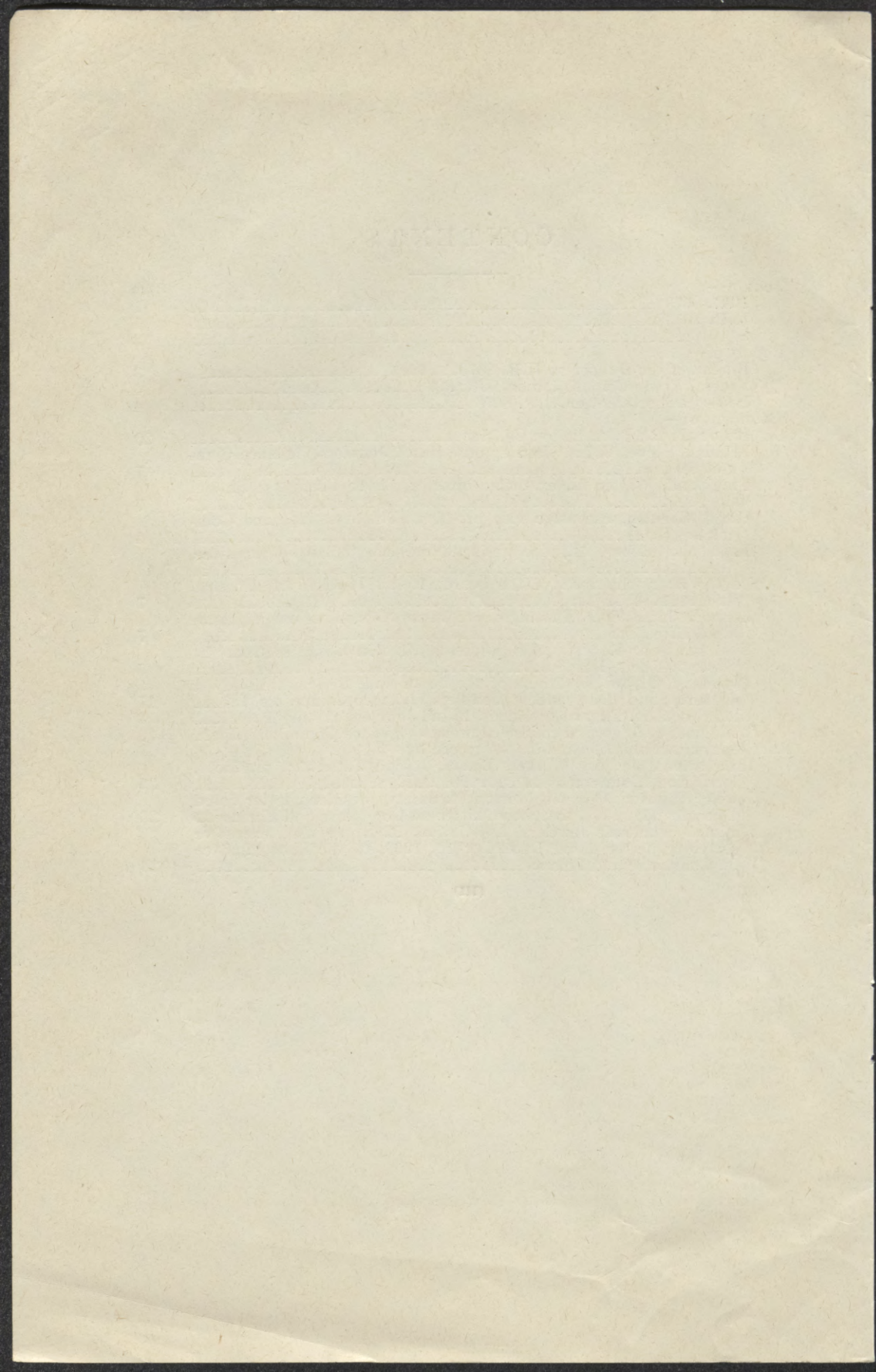
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GOLD AND SILVER ARTICLES—CONSUMER PROTECTION

MONDAY, DECEMBER 15, 1969

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE AND FINANCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John E. Moss (chairman of the subcommittee) presiding.

Mr. Moss. The subcommittee will be in order.

This morning the Subcommittee on Commerce and Finance is holding hearings on three bills which would amend the National Gold and Silver Stamping Act of 1906. One of the bills, H.R. 8673, was introduced by our colleague on the Interstate and Foreign Commerce Committee, Mr. Tiernan. The other House bill, H.R. 10538, was introduced by Mr. Brasco. The third bill, S. 1046, was passed by the Senate on May 23 of this year.

Each of the bills would provide civil remedies against persons who misrepresent the quality of gold and silver articles which they sell. These civil remedies would be in addition to the criminal remedies already provided in the act.

(The text of H.R. 8673, H.R. 10538, and S. 1046, and reports thereon follow:)

[H.R. 8673 and H.R. 10538, 91st Cong., first Sess., introduced by Mr. Tiernan on March 11, 1969, and Mr. Brasco on April 24, 1969, respectfully are identical as follows:]

A BILL To protect consumers by providing a civil remedy for misrepresentation of the quality of articles composed in whole or in part of gold or silver, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "an Act forbidding the importation, exportation, or carriage in interstate commerce of falsely stamped articles of merchandise made of gold or silver or their alloys, and for other purposes", approved June 13, 1906 (34 Stat. 260), as amended October 4, 1961 (75 Stat. 776; 15 U.S.C. 294 et seq.), is amended by—

(a) Inserting immediately after the section number "SEC. 5." the subsection designation "(a)".

(b) Adding at the end of the newly designated subsection "Sec. 5 (a)" the following new subsections:

"(b) Any competitor, customer, or competitor of a customer of any person in violation of section 1, 2, 3, or 4 of this Act, or any subsequent purchaser of an article of merchandise which has been the subject of a violation of section 1, 2, 3, or 4 of this Act, shall be entitled to injunctive relief restraining further violation of this Act and may sue therefor in any district court of the United States in the district in which the defendant resides or has an agent, without respect to the amount in controversy, and shall recover damages and the cost of suit, including a reasonable attorney's fee.

"(c) Any duly organized and existing jewelry trade association shall be entitled to injunctive relief restraining any person in violation of section 1, 2, 3, or 4 of this Act from further violation of this Act and may sue therefor as the real party in interest in any district court of the United States in the district in which the defendant resides or has an agent, without respect to the amount in controversy, and if successful shall recover the cost of suit, including a reasonable attorney's fee.

"(d) Any defendant against whom a civil action is brought under the provisions of this Act shall be entitled to recover the cost of defending the suit, including a reasonable attorney's fee, in the event such action is terminated without a finding by the court that such defendant is or has been in violation of this Act.

"(e) The district courts shall have exclusive original jurisdiction of any civil action arising under the provisions of this Act."

(c) Inserting immediately after the section number "SEC. 6." the subsection designation "(a)".

(d) Adding at the end of the newly designated subsection "SEC. 6. (a)" the following new subsections:

"(b) The term 'person' means an individual, partnership, corporation, or any other form of business enterprise, capable of being in violation of this Act.

"(c) The term 'jewelry trade association' means an organization, consisting primarily of persons actively engaged in the jewelry or a related business, the purposes and activities of which are primarily directed to the improvement of business conditions in the jewelry or related businesses."

(e) Changing paragraph (A), subsection (b), of section 4 to read as follows:

"(A) Apply or cause to be applied to that article a trademark of such person, which has been duly registered or applied for registration under the laws of the United States within thirty days after an article bearing the trademark is placed in commerce or imported into the United States, or the name of such person; and"

SEC. 2. If any provision of this Act or any amendment made thereby, or the application thereof to any person, as that term is herein defined, is held invalid, the remainder of the Act or amendment and the application of the remaining provisions of the Act or amendment to any person shall not be affected thereby.

SEC. 3. The provisions of this Act and amendments made thereby shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States.

SEC. 4. This Act shall take effect three months after enactment.

[S. 1046, 91st Cong., first sess.]

AN ACT To protect consumers by providing a civil remedy for misrepresentation of the quality of articles composed in whole or in part of gold or silver, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act forbidding the importation, exportation, or carriage in interstate commerce of falsely or spuriously stamped articles of merchandise made of gold or silver or their alloys, and for other purposes", approved June 13, 1906 (34 Stat. 260), as amended (15 U.S.C 294-300), is amended by—

(1) inserting immediately after "SEC. 5." the subsection designation "(a)":

(2) adding at the end of the newly designated subsection (a) the following new subsections:

"(b) (1) Any competitor, customer, or competitor of a customer of any person who has mismarked or caused to be mismarked any article of merchandise, or any competitor, customer, or competitor of a customer of any person who has imported or caused to be imported any mismarked article of merchandise, shall be entitled to injunctive relief restraining such person from further violation of this Act and may sue therefor in any district court of the United States in the district in which the defendant resides or has an agent, without respect to the amount in controversy, and shall recover damages and the cost of suit, including a reasonable attorney's fee.

"(2) For the purposes of this subsection, the term 'customer' refers to the first purchaser or any subsequent purchaser of an article of merchandise.

"(c) Any duly organized jewelry trade association shall be entitled to injunctive relief restraining any person who has mismarked or caused to be mismarked

any article of merchandise, or who has imported or caused to be imported any mismarked article of merchandise, from further violation of this Act and may sue therefor as the real party in interest in any district court of the United States in the district in which the defendant resides or has an agent, without respect to the amount in controversy, and if successful shall recover the cost of suit, including a reasonable attorney's fee.

"(d) Any defendant against whom a civil action is brought under the provisions of this Act shall be entitled to recover the cost of defending the suit, including a reasonable attorney's fee, in the event such action is terminated without a finding by the court that such defendant is or has been in violation of this Act. In addition, if the court determines that such action has been brought frivolously, for purposes of harassment, or in implementation of any scheme in restraint of trade, it may award punitive damages to the defendant.

"(e) The district courts shall have exclusive original jurisdiction of any civil action arising under the provisions of this Act.";

(3) inserting immediately after "SEC. 6," the subsection designation "(a)";

(4) adding at the end of the newly designated subsection (a) the following new subsections:

"(b) The term 'person', as used in this Act, means an individual, partnership, corporation, or any other form of business enterprise, capable of being in violation of this Act.

"(c) The term 'jewelry trade association', as used in this Act, means an organization, consisting primarily of persons actively engaged in the jewelry or a related business, the purposes and activities of which are primarily directed to the improvement of business conditions in the jewelry or related businesses.

"(d) The term 'mismarked' as used in this Act, means having stamped, branded, engraved, or printed upon any part of any article of merchandise, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed, any mark in violation of section 1, 2, 3, or 4 of this Act.";

(5) amending clause A of section 4(b) to read as follows:

"(A) apply or cause to be applied to that article a trademark of such person, which has been duly registered or applied for registration under the laws of the United States within thirty days after an article bearing the trademark is placed in commerce or imported into the United States, or the name of such person; and"

SEC. 2. If any provision of this Act or any amendment made thereby, or the application thereof to any person is held invalid, the remainder of the Act or amendment and the application of the remaining provisions of the Act or amendment to any person shall not be affected thereby.

SEC. 3. The provisions of this Act and amendments made thereby shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States.

SEC. 4. This Act shall take effect three months after enactment.

Passed the Senate May 23, 1969.

Attest:

FRANCIS R. VALEO, *Secretary.*

EXECUTIVE OFFICE OF THE PRESIDENT,

BUREAU OF THE BUDGET,

Washington, D.C., December 16, 1969.

HON. HARLEY O. STAGGERS,

Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on H.R. 8673, a bill "To protect consumers by providing a civil remedy for misrepresentation of the quality of articles composed in whole or in part of gold or silver, and for other purposes."

For the reasons expressed in the report to you from the Department of Justice, the Bureau of the Budget is unable to recommend the enactment of H.R. 8673.

Sincerely yours,

WILFRED H. ROMMEL,

Assistant Director for Legislative Reference.

FEDERAL TRADE COMMISSION,
Washington, D.C., December 15, 1969.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of March 17, 1969, for the Commission's views on H.R. 8673, 91st Congress, 1st Session, a bill to protect consumers by providing a civil remedy for misrepresentation of the quality of articles composed in whole or in part of gold or silver, and for other purposes.

The bill would amend the National Stamping Act (15 U.S.C. 294, *et seq.*), which prescribes the maximum allowable variations of gold or silver content permitted in the representation of the gold or silver quality of any article. It is a criminal statute enforced by the Department of Justice.

H.R. 8673 would confer upon customers and competitors a right to go into any Federal district court and bring a civil suit for recovery of damages or to secure an injunction against a violator of the Act. It would also authorize any organized and existing jewelry trade association to bring suit, as the real party in interest, to secure an injunction against a violator of the act.

The Commission does not have any special knowledge regarding the existing trade associations or the particular misrepresentations prohibited by the National Stamping Act. Accordingly, the Commission defers to the views of the Department of Justice on the necessity for this particular bill.

By direction of the Commission.

PAUL RAND DIXON,
Chairman.

Pursuant to regulations, this report was submitted to the Bureau of the Budget on June 5, 1969, and on December 15, 1969, the Bureau of the Budget advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

JOSEPH W. SHEA,
Secretary.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., December 16, 1969.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 8673, a bill "To protect consumers by providing a civil remedy for misrepresentation of the quality of articles composed in whole or in part of gold and silver, and for other purposes."

The National Stamping Act (15 U.S.C. 294-300) prohibits the importation, exportation, or participation in interstate transportation of falsely marked articles or merchandise made of silver or gold, or alloys of either. The act is in the form of a criminal statute enforceable by the Department of Justice.

H.R. 8673 would amend the Act to provide that a competitor, customer, or competitor of a customer of any person in violation of the Act, or any subsequent purchaser of an article of merchandise which has been the subject of a violation of the Act, would be entitled to injunctive relief to restrain further violation of the Act, to damages, and to the cost of suit, including a reasonable attorney's fee. Suit could be brought in any federal district court in which the defendant resides or has an agent, without regard to the amount in controversy. Any duly organized and existing jewelry trade association would be entitled to sue as the real party in interest for injunctive relief and the cost of suit (without damages) including a reasonable attorney's fee.

Concerted policing of product representation by competitors is subject to abuse. Suits by trade associations would be constrained neither by the need to show injury to business or property, as is required for individual and class-action private antitrust suits, nor by a determination by a public body that the litigation is in the public interest. Associations would have the right to determine whom to investigate and sue, when, and on what evidence. Despite judicial attempts to prevent harassment, such authority would necessarily confer some

measure of discretion on the trade association to determine which companies must bear the burden of litigation to defend their operations. This discretion could be used to discourage vigorous marketing, to penalize firms for not joining in cooperative schemes detrimental to competition and the consumer, to foster uniformity in pricing and promotion policies, to implement schemes to boycott aggressive firms or eliminate them from the industry, and in other ways to impair the freedom of companies to compete. (Cf., *Fashion Originators' Guild of America, Inc. v. FTC*, 312 U.S. 457 (1941), where trade association action to police industry practices and to prevent tortuous copying of original clothes designs was held an unfair method of competition tending to create a monopoly. Cf., also, *Eastern States Retail Lumber Dealers' Association v. United States*, 234 U.S. 600 (1914); *American Column & Lumber Co. v. United States*, 257 U.S. 377 (1921); *United States v. American Linseed Oil Co.*, 262 U.S. 371 (1922); and *Sugar Institute, Inc. v. United States*, 297 U.S. 553 (1936).

The Senate-passed version of this legislation (S. 1046) contains a provision granting courts authority to award punitive damages to a defendant in cases where the court determines that a suit was brought frivolously, to harass the defendant, or in implementation of a scheme in restraint of trade. We do not believe that such a provision constitutes an adequate safeguard against the abuse potential of trade association suits. Moreover, the introduction of such issues as harassment or a scheme in restraint of trade could materially expand the scope of the suits before the courts. The individual, typically small, defendants would be at a disadvantage in the legal contest over these issues vis-a-vis an association funded by combined competitors. Finally, enactment of such a provision would inevitably encourage additional requests by other industry groups for private authority to police trade practices. Multiplication of such private policing groups could diminish the vigor of competition in the economy.

The Department of Justice has submitted legislation which would afford another means by which the problem of falsely marked articles could be alleviated. Entitled the "Consumer Protection Act of 1969" and introduced as H.R. 14931, this bill would expand the power of the Federal Trade Commission and provide the Attorney General (and ultimately consumers themselves, after successful government suit) with the authority to prevent enumerated unlawful acts affecting consumers. Among the proscribed acts, is the "representing that goods are of a particular standard, grade, quality, style or model knowing they are not" (H.R. 14931, section 201(a)(7)). It is apparent that the type of practice sought to be eliminated by H.R. 8673 and S. 1046 could also be reached under the proposed Consumer Protection Act, without the necessity of resorting to the unprecedented granting of policing powers to trade associations.

Accordingly, although the Department of Justice fully concurs with the objectives of H.R. 8673 and S. 1046, it is unable to recommend enactment.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

Mr. Moss. It is my personal pleasure to invite as our first witness this morning my colleague on this committee, a gentleman for whom I have a very high regard, Congressman Robert Tiernan.

STATEMENT OF HON. ROBERT O. TIERNAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

Mr. TIERNAN. Thank you, Mr. Chairman, and members of the subcommittee.

I have a prepared statement which I will submit for the record, and I just want to take this opportunity to thank the chairman of the subcommittee, Mr. Moss, and the chairman of the full committee, for scheduling this hearing today because, as the members of the committee know, this is a very busy week. It is coming close to the end of the session and it did take quite a bit of consideration on your part and the Chairman's part to allow us to testify here this morning.

There are four gentlemen who are going to testify with regard to the technical aspects of the bill and the importance to the industry, and I just want to again thank you for allowing us to have this hearing.

Thank you, Mr. Chairman.

Mr. Moss. Thank you.

Without objection, the statement will be received for the record at this point.

(Mr. Tiernan's prepared statement follows:)

STATEMENT OF HON. ROBERT O. TIERNAN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF RHODE ISLAND

Mr. Chairman and members of the committee, it is a distinct privilege and honor for me to testify today on behalf of my bill H.R. 8673 which amends the National Gold and Silver Stamping Act of 1906 to provide for a civil remedy for the misrepresentation of the quality of articles composed in whole or in part of gold and silver.

I want to thank you Chairman Moss and the chairman of our full committee, Mr. Staggers, for scheduling this hearing today.

I appreciate this consideration especially in view of the heavy schedule the Interstate and Foreign Commerce Committee has been maintaining as well as the fact that we are nearing adjournment of this session of the 91st Congress.

H.R. 8673 amends the 1906 Stamping Act to allow interested parties, consumers and industry alike, to institute civil action in Federal District Court by means of injunctive relief against violators of the 1906 Act.

Under this proposed amendment, a successful plaintiff could recover for actual monetary damage suffered, as well as court costs and a reasonable attorney's fee.

The 1906 National Stamping Act was the first attempt by our government to actually regulate commerce itself. It was designed to protect the jewelry industry and the public from fraudulent misrepresentation.

When Congressman Edward Vreeland of New York first proposed his legislation in 1905, he recommended that all quality markings be accompanied by a registered trademark of the party responsible for the quality mark. Unfortunately this feature was eliminated from the original proposal. However, in 1961, fifty-years after enactment of this law, the Congress amended the act to include this provision. This represents the only change in the law since its enactment.

Regrettably the Act has never been enforced. The Justice Department has failed to act on any one complaint since Congressman Vreeland's bill became law. Obviously the Department has been forced to give enforcement of this Act with its present criminal provisions a rather low priority. This is understandable.

But it is no reason why we should allow the act to remain a dead letter. We have a responsibility to make this law enforceable and meaningful. Consumers of jewelry and silverware buy largely on faith and as a consequence must rely on the markings provided by the manufacturer. The industry has attempted to keep faith with the public by its creation in 1917 of a Jewelers Vigilance Committee. It now seeks the enactment of this bill to insure better protection against misuse of quality markings and to put a halt to fraudulent manufacturers and merchandisers.

Mr. Chairman, the cost of false markings both to the consumer and the jewelry industry has been high and damaging as well. In my view, the National Gold and Silver Stamping Act need not remain a failure. That it was a highly original and innovative piece of legislation in 1906 and that it needs new life are evident conclusions. My bill provides an effective and appropriate solution and I respectfully ask that it be given favorable consideration.

Thank you very much.

Mr. Moss. Now, we are pleased to have Mr. Robert M. Krementz, vice president, Jewelers Vigilance Committee, Inc., Newark, N.J.

STATEMENT OF ROBERT M. KREMENTZ, VICE PRESIDENT, JEWELERS VIGILANCE COMMITTEE, INC.; ACCOMPANIED BY VICTOR PAUL, CHAIRMAN OF THE BOARD, RETAIL JEWELERS OF AMERICA, INC.; WALTER L. FRANKLAND, EXECUTIVE DIRECTOR, SILVER USERS ASSOCIATION, INC.; JOEL WINDMAN, GENERAL COUNSEL, STEVEN JOHN FELLMAN, WASHINGTON COUNSEL, AND JAMES B. LENNON, WASHINGTON REPRESENTATIVE, JEWELERS VIGILANCE COMMITTEE, INC.

Mr. KREMENTZ. Mr. Chairman, my name is Robert M. Krementz.

As you have said, I am vice president of the Jewelers Vigilance Committee, and I am also vice president of Krementz & Co., a jewelry manufacturing firm in New Jersey.

The Jewelers Vigilance Committee is a trade association composed of all segments of the jewelry industry formed to promote and maintain ethical standards.

I have been selected to briefly acquaint you with proposed H.R. 8673 and leave the specific topics to be covered to Mr. Underwood, a retailer, Mr. Townsend, a supplier, and Mr. Ballou, a manufacturer. We know there is a need for H.R. 8673 and we hope we can convey this need to you today.

H.R. 8673, introduced by Congressman Robert O. Tiernan, would protect customers of articles composed of gold or silver by providing a civil remedy for misrepresentation of the quality of such articles.

The National Gold and Silver Stamping Act was passed by Congress in 1906. It provides that all goods of gold and silver upon which a quality mark, such as 14-karat gold, is affixed, be of the quality stated. If they are found to assay below quality, the act provides for criminal sanctions of a \$500 fine or 3 months in prison or both for the person found guilty of violating this act.

In 1961, Congress saw fit to further strengthen this act by providing that manufacturers who place quality marks on goods also identify themselves through a trademark. It was reasoned at that time that if persons were required to disclose who they are by placing their mark on their products then they certainly would adhere to the provisions of this Stamping Act.

With this legislation on the books, why is the jewelry industry here today to seek your aid?

The Stamping Act provides only criminal sanctions for its violation. Although there are indications that violations of this act have been constant and substantial over the years, the Department of Justice, whom Congress entrusted with its enforcement, has never instituted one case. The unscrupulous few in our industry know of this. Thus, they sell falsely-marked products with impunity. Also, they omit their trademarks in further deregation of the Stamping Act.

H.R. 8673 would alter the present situation by adding provisions for civil sanctions. Consumers who have purchased falsely-marked gold or silver, and any competitor, customer, or competitor of a customer of anyone violating the marking act, as well as jewelry trade associations would be enabled to seek civil relief.

A successful plaintiff would be able to obtain an injunction and could recover his court costs and a reasonable attorney's fee. Con-

versely, an unsuccessful plaintiff would be liable to the defendant for the defendant's costs and attorney's fee. In addition, persons and firms, other than trade associations, could recover for any actual monetary damage which they may have suffered as a result of the false marking.

There is little question that consumers need meaningful protection against mismarking of the jewelry which they buy. And honest jewelers—retailers as well as manufacturers—need protection against the unfair competition of persons who successfully deceive consumers by manufacturing and selling falsely marked and substandard jewelry items. Only through an effective enforcement scheme, however, such as that provided in this bill, can these unfair tactics be stopped.

I would like to take just a few moments at this time to introduce industry representatives who are present today who have not prepared statements, but who will be available, if necessary, to answer any specific questions.

They are: Victor Paul, chairman of the board of the Retail Jewelers of America; Joel Windman, general counsel of the Jewelers Vigilance Committee; Steven John Fellman, Washington counsel; Walter L. Frankland, executive director of the Silver Users Association; and James B. Lennon, Washington representative of the Jewelers Vigilance Committee.

In addition, I would like to submit supporting statements from Mr. Joseph Tarantola, who is president of Local No. 1 of the International Jewelry Workers Union of New York City and also a statement from Mr. Morton R. Sarett, who is president of the Jewelry Industry Council. (See pp. 25 and 26.)

Mr. Moss. Is there objection to the request?

Hearing none, the statement will be included following your oral remarks in the record.

Mr. KREMENTZ. Thank you very much, Mr. Chairman.

And Mr. Underwood will now proceed.

Mr. Moss. Thank you.

Are there any questions from members of the committee?

Mr. Keith?

Mr. KEITH. Have you been in touch with the suppliers and manufacturers of jewelry on this?

By way of background, I live close to Attleboro, and I would imagine, though I didn't hear from any people, that these supplies and manufacturers would have an interest in it.

Mr. KREMENTZ. I am sure they would, Mr. Keith, and the retail jewelers.

Mr. KEITH. I haven't heard from them either.

Mr. KREMENTZ. You have not heard from them directly?

Mr. KEITH. No.

Mr. KREMENTZ. Mr. Ballou, who will testify today, is a manufacturer from the Providence area and is in the same line of business as the Attleboro people. Mr. Townsend, who will also testify, is president of Handy and Harmon, who supply a great deal of the material that the Attleboro people use. There are many of the manufacturers in the Attleboro area who are members of the Jewelers Vigilance Committee.

Mr. KEITH. Will your testimony delineate the reasons why you emphasize primarily gold and silver?

Mr. KREMENTZ. This is an amendment to an already established act which deals only with gold and silver.

Mr. KEITH. But in your business isn't there misrepresentation or a lack of information with reference to other metals and jewels?

Mr. KREMENTZ. The only other primary metal that is used in making jewelry is platinum and that was not part of the original Stamping Act.

To amend it to include platinum would mean a change in the law itself, whereas this is merely an amendment to the already established law. The basic materials commonly used in the manufacture of jewelry are gold and silver in various degrees of fineness and, of course, there can be a gold overlay on a base metal which is perhaps what you are referring to.

Mr. KEITH. No, I was referring to platinum.

Mr. KREMENTZ. You were referring to platinum. That was not part of the original Stamping Act and this is merely an amendment to those two materials that are considered under the Stamping Act.

Mr. KEITH. We try to practice, I believe, the principle of anticipating the broad scope of the problem and making the legislation responsive to it. If you are going to make an amendment you might as well make a change. The two words are practically synonymous. To what extent is the platinum used and is it possible that it is subject to the same kind of hazard as gold and silver?

Mr. KREMENTZ. My opinion would be Mr. Keith, that platinum, being the rare metal that it is and the expensive metal that it is, would go into more expensive pieces of jewelry and because of its expense it is little used. Most of the platinum used today is used for industry and not for jewelry because of its cost. We are concerned mainly with the low and medium priced pieces of jewelry where the consumer does not have the expertise, perhaps the intelligence, of someone that is buying the more expensive piece.

We feel that they are more sophisticated and because of the volume of the thing it is not a prevalent cause for complaint.

Mr. KEITH. But somebody who is interested in platinum is just as seriously or more seriously hurt than in the case of gold and silver because of the value of the metal.

Mr. KREMENTZ. Perhaps Mr. Underwood, who is here to present a statement later, would care to comment on that. He is a retailer and perhaps is closer to the actual number of pieces or the actual experience that he might have found in handling platinum jewelry.

Would you care to comment, Mr. Underwood, if that is all right with you, Mr. Keith?

Mr. KEITH. It is all right with me, if it is all right with the chairman.

Mr. Moss. It is all right with the chairman.

Mr. Underwood?

STATEMENT OF H. F. UNDERWOOD

Mr. UNDERWOOD. I think, gentlemen, that the problem here is not one of dealing with precious metals such as platinum. Platinum is

a rare and expensive metal. We find that the conduct or misconduct of manufacturers who indulge in misrepresentation of their product is limited to smaller outfits making inexpensive jewelry. You will find in the displays that will be offered for your inspection the predominance of inexpensive things. Ninety-nine percent of them will be articles selling for less than \$20, and this is the field in which a man can make a below standard product or a grossly misrepresented product and sell hundreds of thousands of them over a period of 2 or 3 years before he is finally stopped.

Mr. Moss. Let me ask a question, and I think we might be able to bring this issue very quickly into focus to make a determination on it. Is there any person present in the room who would have the slightest objection to the addition of the words "or platinum"?

Mr. UNDERWOOD. I am sure we would have no objection whatever to it except—

Mr. Moss. It should not complicate in any manner the legislative process.

Mr. UNDERWOOD. As Mr. Krementz pointed out here, we are here not to institute a change in the law, but rather to—

Mr. Moss. Of course each amendment is a change. As Mr. Keith indicated, it is the custom when we are dealing with an organic or a basic act that if there has been some significant change in the industry since it was first enacted, we take cognizance at the time of amending to bring it up-to-date. Here by the addition of the word "platinum" we would be dealing with the three primary metals used in the manufacturing of jewelry.

Mr. UNDERWOOD. I am sure we would find no objection whatever to that.

Mr. Moss. Is that true of all the other gentlemen representing the industry?

Mr. Tiernan?

Mr. TIERNAN. I would think that that amendment would strengthen the bill and would be most acceptable to the industry. It just goes further than what the industry at this time was looking for and I think it would be very helpful.

Mr. Moss. Thank you, gentlemen.

Mr. Keith?

Mr. KEITH. Are you planning, Mr. Chairman, to consider the other consumer bills which have been filed by members of this committee and by the administration? I wondered if they were broad enough to accomplish the same objectives as this bill.

Mr. Moss. I don't think so. We are dealing here with an act passed in 1906 and we are amending that act.

Mr. KEITH. And the bills, which have been filed by Mr. Eckhardt and by the administration?

Mr. Moss. I don't think that would deal with the civil remedy which is sought in this legislation.

Mr. Eckhardt, do you want to comment?

Mr. KEITH. I asked whether or not the scope of your bill and that of the administration was broad enough to deal with the problem that is before us today.

Mr. ECKHARDT. Well, I think the bill that I have introduced on behalf of other persons would be broad enough to cover it because it pro-

vides that individuals may bring class suits with respect to matters which constitute violations of State law and I suppose that there is adequate State common law to provide for such a suit, but I don't see that this would be in any way in conflict with that bill unless there were definitely established a Federal right.

My bill creates no new Federal rights, but simply permits enforcement of State civil remedies in the Federal court without respect to the amount in controversy. It is mainly for the purpose of liberalizing the liberal rules of civil procedure with respect to class actions.

The bill that the President has recommended and has been introduced in this committee by both the chairman and me, and the ranking minority member I don't think would cover this because it provides that a certain number of consumer frauds shall be illegal but it does not give a civil remedy until the Attorney General has brought an action and has completed that action. Therefore, it would not open the gate for self-help in this case until that action was brought. It is as if this second section depended on the first section, the action of obtaining criminal liability, and then permitted you to move forward toward civil liability, so I would not think that either of the bills would wholly encompass the entire ground of this bill within the specific field which it covers.

Mr. KEITH. I thank the gentleman.

Do I understand that there has been no action on the part of the Justice Department to bring suits, and this is one of the reasons that the trade association wants this authority?

STATEMENT OF ROBERT M. KREMENTZ—Resumed

Mr. KREMENTZ. That is the fact, Mr. Keith.

Mr. KEITH. My next question is: Have you asked the Justice Department, on behalf of your membership, for some remedy under the existing statute?

Mr. KREMENTZ. I think Mr. Ballou, in his testimony, will bring that to light, one specific instance that was a glaring one.

Mr. KEITH. You are familiar with this but just want him to answer more authoritatively?

Mr. KREMENTZ. Yes, I would like that, Mr. Keith.

Mr. KEITH. I have no further questions now, Mr. Chairman.

Mr. MOSS. Mr. Blanton?

Mr. BLANTON. No questions.

Mr. MOSS. Mr. Stuckey?

Mr. STUCKEY. No questions.

Mr. MOSS. Mr. Eckhardt?

Mr. ECKHARDT. I notice that in the S. 1046 there is a difference from the provisions of H.R. 8673 in that there is an added clause with respect to an unsuccessful plaintiff suit. In both bills in such event reasonable attorney fees may be collected by the defendant but the Senate act has the additional language, "In addition, if the court determines that such action has been brought frivolously, for purposes of harassment, or implementation of any scheme in restraint of trade, it may award punitive damages to the defendant."

In view of the fact that there is, as I understand, a criminal relief as well as this extended civil relief and in view of the fact that it is a rather wide remedy to permit reasonable attorney's fees, it is somewhat unusual.

Do you not feel that the House bill goes far enough without the addition of that clause concerning punitive damages? That pretty much opens the gate, it seems to me, to rather extensive damages against one who may have merely intended to bring about fairness in the trade but might not have been quite successful in achieving that objective. I understand that it is limited to those things which are considered by the court to constitute harassment but that question is not always so sharply discernible in a case. The defendant nearly always thinks he has been harassed, and I am not sure that I would like to leave that question to either a court or a jury. I assume a jury could probably determine the fact of harassment.

What would be your preference—the Senate or the House version?

Mr. KREMENTZ. May I ask our General Counsel Joel Windman to address himself to that. It is more a legal problem, I would think.

Mr. WINDMAN. With regard to the punitive damages it was placed in the Senate version to prevent anyone from, as you stated, frivolously bringing action. Naturally no plaintiff would like that in a bill or in a law where this can occur to him for bringing an action. However, we accepted that in the Senate bill simply because they felt that this would be another reason that if an action were brought under this amendment that the person bringing the action should be fairly sure of his grounds and not bring it for the purpose of harassment and, therefore, as a deterrent to bringing an action unless there were violations as opposed to harassment.

Now, we would have no objection to excluding it. We have no objection to including it. That would be for the committee's determination.

Mr. ECKHARDT. My thought is that when you do grant the right to recover reasonable attorney's fees that is a pretty good deterrent to bring a frivolous action because attorney's fees can be very steep in a case of this nature. It would be a long drawn-out case involving more attorney's fees than damages.

Which would you prefer?

Mr. WINDMAN. Whichever would be reasonable. We have no objection to either one, whichever one, the most reasonable one.

Mr. ECKHARDT. The coin is still on the edge.

Mr. WINDMAN. We prefer the House version.

Mr. ECKHARDT. All right. Thank you.

Mr. WINDMAN. Thank you.

Mr. KEITH. Mr. Chairman?

Mr. MOSS. Mr. Keith.

Mr. KEITH. Just to get the record clear on this, I am interested in knowing whether or not the industry in the State of Massachusetts has been advised of these hearings. Does Haywood know about it?

Do they belong to your association?

Mr. KREMENTZ. They belong to the Manufacturing Jewelers and Silversmiths, and it has been widely disseminated through the trade that the Senate bill had passed and that we were expecting a hearing before the House. Through the membership of the Manufacturing Jewelers as well as in the trade press this has been quite broadly publicized.

Mr. KEITH. Were the Manufacturing Jewelers advised of these hearings today?

Mr. KREMENTZ. Oh, yes. Mr. Frankovitch, who is their executive director, unfortunately is home with the flu and could not be here, but here is the annual report of the Manufacturing Jewelers and Silversmiths and it calls attention right in the report to the fact that hearings were held in the Senate and we were successful in getting the amendment passed through the Senate.

Mr. KEITH. What percentage of the trade, so-called, belongs to that association?

Mr. KREMENTZ. There are some 700 manufacturers who are members of the Manufacturing Jewelers and Silversmiths, which is the majority of those here on the eastern seaboard. It is perhaps a good part of those on the west coast. It is a national organization that comprises—

Mr. KEITH. Would it comprise 75 percent of the total, of so-called reliable manufacturers?

Mr. KREMENTZ. I think that would be a fair assumption. As far as retailers, of which there are some 7,000 of those that are members of the Retail Jewelers of America, they have all been apprised of this, too. This is an industry-supported measure.

Mr. KEITH. Where, for the most part, were the exhibits, which you are going to show at a later hour, manufactured?

Mr. KREMENTZ. I think Mr. Sheldon Hicks can answer that, where they were manufactured, these exhibits.

Mr. HICKS. The exhibits, sir, were manufactured in all parts of the United States, predominantly, though, in the Eastern half of the United States.

Mr. KEITH. Do any of them come from Johnny's Gems?

Mr. HICKS. The name does not ring a bell, sir.

Mr. KEITH. Thank you, Mr. Chairman.

Mr. MOSS. Are there further questions?

If not, we will be pleased to hear from Mr. H. F. Underwood, Jacksonville, Fla., past president of the Retail Jewelers of America.

Mr. STUCKEY. Mr. Chairman?

Mr. MOSS. Yes?

Mr. STUCKEY. Some of us have some other committee meetings and obligations this morning I wonder would it be possible to agree on the committee if Mr. Underwood sort of summarizes his statement.

Mr. MOSS. Yes.

STATEMENTS OF H. F. UNDERWOOD, PAST PRESIDENT, RETAIL JEWELERS OF AMERICA, AND SHELDON HICKS, EXECUTIVE VICE PRESIDENT, JEWELERS VIGILANCE COMMITTEE, INC.

Mr. UNDERWOOD. My statement is relatively short.

My name is H. F. Underwood. I am a retail jeweler with five stores located in Jacksonville, Fla., and with 50 years of experience in the retail jewelry business.

I am also immediate past president of the Retail Jewelers of America, and if there ever was a time when one could speak for the 7,000 present members of that association, I think it is on the subject before us today.

The vast majority of retail jewelers as well as all other segments of our industry are honest, hard-working businessmen. Since jewelry is

sold on faith, it is the reputation of the jeweler as well as the good name of the industry he represents which play a large role in his ultimate sale of merchandise to the consumer. We come before you today imploring you to aid us in protecting our reputation against the unscrupulous few who prey upon the public cloaking themselves in the fine reputation we have built up as their shield. I appreciate your invitation and suggestion that I summarize what I am going to say, but it is pretty hard to summarize a five-minute statement and a part of this statement at this particular time involves the introduction of these examples of mismarking which we would like to place before you and for that reason I would like to introduce Mr. Sheldon Hicks, who is the executive vice president of the Jewelers Vigilance Committee, Inc., who will briefly submit a number of quality marked items, which upon testing have been found to be violative of our National Stamping Act.

Then I will proceed with the balance of my statement after this is done.

STATEMENT OF SHELDON HICKS

Mr. HICKS. Mr. Chairman, I am Sheldon Hicks, the executive vice president of the Jewelers Vigilance Committee, Inc.

At this time, I would like to submit for the record 38 exhibits which are the worst of our purchases from five cities in the Nation. I do not wish to go through each of the 38 exhibits, but I would like to show an example of gold and an example of silver and the others will be available to be looked at.

This is a silver item, has a silver chain with a pendant pearl. The item was marked sterling. On being assayed, we found that it had less than one part per thousand silver in it. In other words, there is no sterling whatsoever in that. In addition to that, the item was not trademarked.

On the gold, this is an example of a dangling earring. This earring was marked with a 14 carat gold post. That is the piece that goes through the pierced ear. It was stamped 14 carat gold and it did have a trademark on it.

In assaying it, we found that instead of 14 carat gold it had less than a half carat gold.

The other items of the exhibits I have are the same. It is the same story throughout which you can see on both gold and silver.

Mr. Underwood?

(The witness presented numerous other exhibits of a similar nature and after they were examined they were returned to the witness.)

Mr. UNDERWOOD. Thank you.

Now, gentlemen, I think it is important for us to realize at the outset that every jeweler in the United States sells articles that are made of gold and silver, and since his customers know little or nothing about identifying or valuing this merchandise the jeweler finds himself in the position of a consultant or an adviser to his customers. They come to his store to buy their engagement rings, their wedding rings, their silverware, their birthday gifts, their anniversary gifts, and they rely upon his experience, his integrity, and his judgment to provide them with gifts of precious metal that in many instances become lasting heirlooms.

Most jewelers believe—and this is an important thing, too, gentlemen—there are laws which strictly enforce proper stamping procedures on precious metals. If a wedding ring is stamped “18K,” accompanied by the trademark of a manufacturer, the jeweler feels he can safely assure his customer that the ring is indeed 18-carat solid gold. The same rule applies in his attitude toward all the other jewelry and silver he may offer for sale.

A layman might quite logically ask why the jeweler doesn't test the precious metal he buys, in order to be sure of the quality. The answer is that virtually all of the things we buy come to us completely fabricated. The only way in which the fineness of these articles may be tested is by melting the metal and making a laboratory test of its fineness.

Since the jeweler often may buy only one or two of a completed item, and since the melting and testing would leave him with a piece of molten metal worth only a fraction of the value of the original article, he obviously cannot employ this method of testing.

When a retail jeweler becomes aware that an article of jewelry has been improperly stamped, it is usually in the hands of the valued customer who accuses the jeweler of misrepresenting the article to him at the time of sale. Even if the jeweler succeeds in placating the customer by replacing the faulty merchandise, he has, through no fault of his own, lost the confidence and patronage of that customer.

It is, therefore, of the utmost importance to the retail jeweler that all fabricated jewelry of gold and silver, if stamped as to quality, be of the quality indicated, and that the law provide readily available means by which jewelers can seek and obtain redress against those few manufacturers who chisel and cheat and misrepresent the true quality of their goods.

Everyone will readily admit that to stamp an article made of 12- or 14-carat gold as 18-carat gold is unscrupulous, unethical, and probably illegal. But the process of getting anything done about it is so prolonged and so frustrating that most jewelers content themselves with ceasing to deal with the offending manufacturer and seek other sources which they hope will prove more ethical.

I would like to cite one striking example of the problems that can be caused by improper stamping by a manufacturer.

A retail jeweler in a small New Hampshire town purchased a rather large supply of attractive, low-priced earrings for pierced ears, an item that is extremely popular with teenagers today.

The earrings were represented as having 14-carat gold posts and were on cards and marked “14 kt. Gold Posts” and were so represented by him to his customers.

A teenage girl received a serious ear infection shortly after purchasing a pair of these earrings, and it was discovered that the earrings were indeed to blame. The “14 kt. Gold Posts” were not gold at all, but were, in fact, gold-plated brass.

The jeweler immediately withdrew his remaining stock, notified all purchasers to return their earrings for refund, and refused payment to the supplier.

The following problems were created for the retailer in this incident:

1. His reputation by word of mouth in the community was seriously damaged, in spite of all he could do to correct the situation, and in spite of the fact that he paid all medical expenses in the case.

2. He faced the threat of a possible lawsuit by the parents of the girl whose ears became infected.

3. He was even threatened with legal action by the supplier who refused to accept the earrings back and insisted on receiving payment for them.

This matter was only resolved by the jeweler when it was presented to the Federal Trade Commission and the supplier finally signed an "assurance of voluntary compliance."

No punishment for the guilty party. No reimbursement to the jeweler for lost time, lost money, and lost reputation. No assurance, in fact, that the same thing won't happen to him again.

I hold in my hand a yellow gold wedding ring plainly stamped "18 kt." It is actually a thin overlay of gold on a brass base. The lady who was married with this wedding ring expected to keep it all her life and pass it on to some loved one or perhaps even carry it into her grave with her.

The ring has ceased to be a prize possession, and she can never have the same sentimental attachment for any other wedding ring regardless of the price her husband may pay for it, because it is this ring she was married with, and no other ring can have the same significance.

In a situation of this kind, the full condemnation of the family falls, not on the unscrupulous manufacturer who lied and cheated, but on the jeweler who believed the quality to be represented and sold the ring to his former friend and former customer in good faith.

The knowledgeable retail jeweler with years of experience and study is well qualified to judge the style and to judge the workmanship of merchandise offered him by wholesalers and manufacturers. Since he stakes his reputation in the community on the quality marks furnished by his suppliers, he is surely entitled to protection against those who falsely mark the precious metal content of their goods.

In giving my enthusiastic endorsement to this bill, H.R. 8673, the words of the immortal bard seem particularly appropriate, when he said:

He who steals my purse steals trash; but he who filches from me my good name steals that which enriches him not but leaves me poor indeed.

Thank you, gentlemen, for this opportunity to appear before you.

Mr. Moss. Thank you, Mr. Underwood.

Mr. Keith, do you have any questions?

Mr. KEITH. I have been quite impressed with the witness, particularly as he quoted the bard, so to speak. I would point out further that it was Shakespeare also who said, "All that glitters is not gold."

Mr. UNDERWOOD. That is right.

Mr. Moss. Mr. Blanton?

Mr. BLANTON. I have no questions.

Mr. Moss. Mr. Stuckey?

Mr. STUCKEY. No questions.

Mr. Moss. Mr. Eckhardt?

Mr. ECKHARDT. No questions.

Mr. Moss. Thank you very much for your statement.

Mr. UNDERWOOD. Thank you.

Mr. MOSS. We will now hear from Mr. M. W. Townsend, chairman of the board and president, Handy & Harman, New York, N.Y.

STATEMENT OF M. W. TOWNSEND, CHAIRMAN OF THE BOARD AND PRESIDENT, HANDY & HARMAN, AND VICE PRESIDENT, JEWELERS VIGILANCE COMMITTEE, INC.

Mr. TOWNSEND. Mr. Chairman, I will comply with your wish and leave a prepared statement, copies of which are available.

Mr. MOSS. Without objection, the prepared statement will be placed in the record, and you may summarize it.

Mr. TOWNSEND. My name, as you have stated, is M. W. Townsend. I am chairman and president of Handy & Harman and also a vice president of the Jewelers Vigilance Committee. My company is a supplier of precious metals, silver and gold, to the industry, and we do not manufacture any consumer jewelry per se.

I am here in enthusiastic support of the House bill.

Thank you, sir.

(Mr. Townsend's prepared statement follows:)

STATEMENT OF M. W. TOWNSEND, CHAIRMAN OF THE BOARD AND PRESIDENT, HANDY & HARMAN, NEW YORK, N.Y., AND SECOND VICE PRESIDENT, JEWELERS VIGILANCE COMMITTEE, INC., NEW YORK, N.Y.

Mr. Chairman, my name is M. W. Townsend. I am chairman of the board and president of Handy & Harman, and I am a vice president of the Jewelers Vigilance Committee, Inc.

My company is a supplier of precious metal—that is, silver and gold—to the jewelry industry and is not a manufacturer of consumer jewelry per se.

The jewelers vigilance committee is a national trade association representing the entire industry, from metal suppliers, like my company, to the final retailers. Its activities are limited to trade regulatory matters and particularly to matters of deception and fraud in the sale of jewelry articles.

We are here to support H.R. 8673, sponsored by Congressman Tiernan. We believe this bill is vitally necessary if we are ever going to curb abuses in quality marking of gold and silver that have plagued the industry for much longer than anyone now living can possibly remember.

A civil remedy for enforcement of the National Gold and Silver Stamping Act is necessary, because criminal enforcement procedures have obviously been ineffective.

Let me cite one example of the ineffectiveness of the present criminal enforcement.

X jewelry company, with annual sales of approximately \$1 million, was falsely marking and labeling base metal as "sterling", "gold filled," and "14-carat gold," and imitation pearls as "cultured" pearls. The chronology of events was as follows:

June 1962—it was proved to the satisfaction of the jewelers vigilance committee that large quantities of falsely marked jewelry were being sold by X jewelry company all over the United States. They brought this to the attention of the U.S. Attorney and the Justice Department, hoping that, in view of the apparent willful nature of the practices and the substantial scale of operations, the U.S. attorney could act under a criminal statute (National Stamping Act 15 U.S.C. 294 et seq.) and could act more quickly than the Federal Trade Commission.

February 1963—the Federal Trade Commission began an investigation based on the complaint of the JVC, after the U.S. attorney appeared to be completely uninterested in proceeding.

January 1965—the U.S. attorney finally advised that there would be no prosecution by that office.

April 1965—the Federal Trade Commission issued its formal complaint, having previously withheld action, pending final decision by the U.S. attorney's office.

December 1965—the Federal Trade Commission's initial decision was entered, and X company was liquidated. Both in the same month.

November 1967—the Federal Trade Commission's final order to cease and desist was entered.

During this entire period of more than 3 years until just a few months before the final liquidation, it was clearly evident that X company continued to distribute the same falsely marked goods.

If the legislation that we are supporting today had been on the books at that time, the jewelers vigilance committee, or some other trade organization, could have gone to court for an injunction by at least the end of 1962, and more than 3 years of full-scale operation by—X jewelry company, during which both consumers and honest businessmen were victimized, could have been avoided.

Thus, the Stamping Act, in all of its 63 years, has apparently never been enforced. We feel that only those who have a direct interest in enforcement, such as those persons and organizations enumerated in the bill, will ever supply the time and the money and the effort that is necessary to correct the rampant false marking that now exists.

It is unfortunate, perhaps, that jewelry items must be sold on faith, but it is our responsibility to protect that faith. The industry itself is responsible. It recognized that responsibility in 1917 when the Jewelers Vigilance Committee, Inc. was incorporated, and we are here today asking to be given further opportunity to live up to that responsibility.

We are ordinarily somewhat reluctant to talk publicly about the work of the jewelers vigilance Committee for fear that publicity will undermine the very confidence in jewelry products that we wish to protect. But if a frank discussion of this problem on the record can bring about enactment of this bill whereby we may begin to cope with our problem, it will in the long run be well worth it to the industry, as well as to the consumers of our products.

Regardless of what we may say here today, most jewelers throughout the industry are honest businessmen. Most of the jewelry products are sold honestly. That every segment of the entire jewelry industry is actively supporting your bill is, in itself, I believe, an indication of this.

I would like to take just a few moments at this time to introduce industry representatives who are present today who have not prepared statements, but who will be available if necessary to answer any specific questions which may be asked with regard to their particular segment of the industry.

Mr. MOSS. Are there any questions?

Mr. Keith?

Mr. KEITH. No questions, Mr. Chairman.

Mr. MOSS. Mr. Blanton?

Mr. BLANTON. I have only one brief question.

I don't know which one of you gentlemen would give the most authoritative answer to this, but where is the largest source of supply of this fake labeled jewelry? Imported or domestic? The one that had the exhibits, were most of these within the country?

Mr. HICKS. The majority of them are domestic. Those that we purchased, I would say, in 99 percent of the cases are of domestic manufacture.

Mr. BLANTON. Produced in this country?

Mr. HICKS. Yes, sir.

Mr. BLANTON. I have no further questions.

Mr. MOSS. Mr. Stuckey?

Mr. STUCKEY. What kinds of jewelry is solid gold, just more out of curiosity than anything else. One of the statements said "18 karat solid gold."

Mr. TOWNSEND. In some respects that is a misnomer. Pure gold would be 24 karat. Eighteen karat gold has 75 percent gold in and the balance other metals and so on down. If it is 14 karat, it is 14/24, parts gold.

Mr. STUCKEY. So that is not really solid gold?

Mr. TOWNSEND. That is right.

Mr. UNDERWOOD. If I may interpolate, this business of solid gold has come before the courts and the Federal Trade Commission for clarification more than once. The distinction here is that pure gold is 24 karat, but pure gold is too soft to be fabricated into jewelry and so it is alloyed with copper or nickel or other hard metals in order to make it more usable and wearable. The Government, the law, the courts have ruled that in alloying this gold to make a solid mixture rather than an overlay of gold it is permissible to refer to anything as 22 karat solid gold, meaning that it is solid all the way through, 20 karat, 18 karat, so the term 18 karat solid gold is permissible but the 18K is a preface, you see. It is a qualifying mark. It doesn't say this is pure gold. It says it is solid gold. That is the distinction.

Mr. Moss. Mr. Eckhardt?

Mr. ECKHARDT. I notice in the Senate report the Justice Department has some doubts about letting a trade association exert pressures on individual companies to secure results which might conceivably be inconsistent with the antitrust law. It occurred to me that there is something of a limitation if I read this bill correctly with respect to a trade association's action. It seems that a trade association, if it comes in as a plaintiff in a suit, can only seek injunction and costs of suit including reasonable attorney fees, but I don't believe under this section, though I am not sure about it, the trade association could seek other damages. Is it your feeling that a trade association could not seek other damages?

Mr. WINDMAN. Yes, sir; that is correct.

Mr. ECKHARDT. In other words, the trade association would not come in, for instance, as a representative of party and say something in the nature of class action for all of those damaged, would it, under this bill?

Mr. FELLMAN. That is right, sir.

Mr. ECKHARDT. Of course if they could come in these suits could be pretty large, could involve a considerable amount of money held by the trade association which it would cover for its members, but that is not permissible under this bill, is it?

Mr. FELLMAN. That is correct.

Mr. ECKHARDT. I was just wondering, though, if it might not be better if this were made absolutely clear in that section and also in this area I would think that the provision that I criticized a minute ago about harassment and suits in restraint of trade probably should be added, but with respect solely to a trade association. Would you have any objection to that?

Mr. FELLMAN. No, sir.

Mr. WINDMAN. That is perfectly OK.

Mr. ECKHARDT. It seems to me that is where the danger may lie and there is no reason to permit this broad punitive relief with respect to individuals but with respect to the trade association it would seem to me to be a proper safeguard.

Mr. WINDMAN. That would be perfectly acceptable.

Mr. Moss. Any further questions?

If not, I want to express my appreciation to you for your testimony and we will now hear from Mr. F. R. Ballou, B. A. Ballou Co., Providence, R.I.

Mr. TOWNSEND. Thank you.

STATEMENT OF F. R. BALLOU, B. A. BALLOU CO., INC.

Mr. BALLOU. Thank you, Mr. Chairman.

I, too, would be happy if I could read just a few parts of this and submit the statement for the record.

Mr. MOSS. Without objection, the entire statement will be included in the record, and you may proceed to summarize it.

Mr. BALLOU. My name is F. R. Ballou. I am president of B. A. Ballou & Co. of East Providence, R.I. Our company manufactures finished jewelry in gold, gold filled and sterling silver. All of these products are stamped as to quality, trademarked with our company identification, and sold directly to the retail jeweler.

We also make functional jewelry findings, primarily attachment parts in both precious and base metals, which we sell to other manufacturers who trademark their own finished articles.

I also serve as chairman of the Marking and Stamping Committee of the Manufacturing Jewelers and Silversmiths of America, Inc., which began consideration of changing the National Stamping Act over 3 years ago. This committee, carefully selected to represent the major industry segments, both precious and nonprecious jewelry and silverware, determined that enforcement capability was absolutely prerequisite to improvement of any other aspects of the Stamping Act.

Consequently, representatives of our association helped the vigilance committee explore these four possibilities.

1. Somehow working with the Justice Department under the present structure. Mr. Townsend's statement which has been filed delineates a particular case that I think is the answer to the question of whether we have sought the Justice Department's enforcement in this area. This particular case was started 7 years ago and took, I believe, 5 years to complete, to an unsatisfactory conclusion, without prosecution by the Justice Department.

The second method that we explored was the utilization of the Federal Trade Commission as the primary enforcement agency for the Stamping Act, and this the FTC declined to accept responsibility for.

The third we examined was the possibility of strengthening the various State laws. In this case, lack of uniformity among them, both in rules and in strictness of enforcement, was a problem.

And the final solution, it seems to us, is the one we seek here in H.R. 8673, that of industry self-enforcement with proper safeguards and sanctions.

I might note that in this case our association is not simply reacting to the current wave of consumerism. I believe that our concern for responsible self-regulation does antedate the current Government interest in this problem inasmuch as it has been six decades since we sponsored the Stamping Act, or since members of the industry sponsored it, and it been 8 years since we also sponsored the trademarking amendment to the act.

The board of directors of the Manufacturing Jewelers & Silversmiths has unanimously approved the legislative objectives and provisions now embodied in this act and we strongly urge its passage.

May I also say on the subject of platinum and the addition that you spoke of earlier when you asked those present for an expression of their possible objection to the inclusion of this, I feel that we should point out we do not have a manufacturer present who can speak

authoritatively about platinum metals. One of the members of the marking and stamping committee is Mr. Alexander of Engelhardt Minerals Co. He testified at the Senate hearing, but was unable to come today and, therefore, I think perhaps that segment of the industry ought to be consulted. I do know that there is one basic problem and that is that there is in fact no standard of quality for platinum metal and, therefore, how you might apply it to this case without such a standard I don't know.

(Mr. Ballou's prepared statement follows:)

STATEMENT OF F. R. BALLOU, PRESIDENT, B. A. BALLOU & Co., INC.

Mr. Chairman, my name is F. R. Ballou. I am president of B. A. Ballou & Co., Inc., of East Providence, R.I.

Our company manufactures finished jewelry in gold, gold filled and sterling silver. All of these products are stamped as to quality, trademarked with our company identification, and sold direct to the retail jeweler. We also make functional jewelry findings, primarily attachment parts in both precious and base metals, which we sell to other manufacturers who trademark their own finished articles.

We are here because we have rules governing the marking of gold or silver jewelry but no way of enforcing these rules. As a result, jewelry is being made today with inaccurate and misleading quality marking. Some products, it is obvious, are deliberately made below the quality indicated, others have been found wanting because of carelessness in manufacture.

Since fine gold costs 1,000 times as much as copper, it can be lucrative to substitute just a little base metal for just a little precious metal. The article itself need not change perceptibly in appearance, weight, or functioning. But the customer who paid for the quality marked in such a case has been cheated, and the manufacturer has had an unfair advantage over his competitors whose product is properly marked.

Perhaps I might point out that the smaller the competitor, the less well-established his reputation, the more seriously he can be hurt by this type of violation.

It should be emphasized also that no violation of the act can take place until the article is stamped or labeled as to its quality. Once so marked, however, it is impossible for the average person, and indeed, difficult for an expert, without complicated metallurgical analysis, to verify actual gold or silver content of a piece of jewelry. While many other products can be entirely measured as to quality by sight, feel, or performance, our quality marks carry a special burden of reliability.

I serve as chairman of the Marking and Stamping Committee of the Manufacturing Jewelers and Silversmiths of America, Inc., which began consideration of changing the National Stamping Act over 3 years ago. This committee, carefully selected to represent the major industry segments, both precious and nonprecious jewelry and silverware, determined that enforcement capability was absolutely prerequisite to improvement of any other aspects of the Stamping Act.

Consequently, representatives of our association helped the Vigilance Committee explore these four possibilities:

1. Somehow working with the Justice Department under the present structure. The five-year-old X Company case, previously described by Mr. Townsend, as the culmination of 63 years without prosecution, virtually demolished this possibility.

2. Utilizing the Federal Trade Commission as the primary enforcement agency for the Stamping Act. Somewhat surprisingly, after many months of consideration, FTC declined to accept this responsibility.

3. Strengthening the various State laws. Here lack of uniformity, both in rules and in strictness of enforcement, was the drawback.

4. Making provisions for industry self-enforcement with proper safeguards and sanctions, and this is the approach taken by H.R. 8673.

This amendment provides for injunctive relief to any directly interested party, including the consumer, and costs and damages in the case of proven violation. It requires no elaborate new machinery or agency to accomplish, being routinely processable by the Federal district courts.

In addition, as we have discussed, it enables a trade association, acting in the interests of the industry. To be treated as a directly interested party, except for entitlement to any damages.

And I believe that this procedure will be used not only by the small manufacturer or retailer, but in most cases by the larger manufacturer, simply because of the objectivity of such a trade organization, such an impersonal third party.

And it has safeguards against harassment in providing for the reimbursement of defense costs by a plaintiff to a successful defendant.

The initiative will rest squarely in the hands of the public and the industry. In fact, the marketplace will exercise its own control.

We feel certain that the sensitivity of the marketplace will provide the best detection and, coupled with adequate trade publicity of court decisions, a powerful deterrent to mismarking.

Six decades have passed since the passage of the National Stamping Act, and eight years since the trademarking amendment thereto. In both cases the beneficiary of the legislation was the consumer, and the people sponsoring its introduction were members of the jewelry industry. We are not simply reacting to the current wave of consumerism . . . our concern for responsible self-regulation on behalf of our segment of the consuming public demonstrably ante dates the current governmental interest.

The board of directors of the Manufacturing Jewelers and Silversmiths of America, Inc., has unanimously approved the legislative objectives and provisions now embodied in H.R. 8673. As an effective solution to a critical need, we strongly urge its passage.

Thank you.

Mr. Moss. Thank you.

Mr. Keith, do you have any questions?

Mr. KEITH. What is the average price or average cost of the jewelry trinket that you find in the 10-cent stores? Twenty-five cents? A dollar?

Mr. BALLOU. There is a market in this area but I would say the bulk of the popular priced, so-called jewelry is between \$2 and \$15. That would be my guess.

Mr. KEITH. We don't want to make it more difficult for people, such as the high school girls who only have a modest income to buy cheap costume jewelry. Similarly, we don't want to put the 10-cent stores out of business. It's misrepresentation we want to get at.

Mr. UNDERWOOD. May I speak as a retailer in answer to that?

Mr. KEITH. Certainly.

Mr. UNDERWOOD. Costume jewelry that you are referring to is the 50 cents to \$1.50 or \$2 jewelry that is sold in the 10-cent stores and cheap department store counters. This is not involved at all in what we are talking about. A great deal of that is imported. It doesn't pretend to be anything but what it is, gold wash or anodized aluminum or some quite inexpensive metal, and it doesn't enter this field at all. What we are concerned about is the manufacturer who offers a piece of gold jewelry like earrings with a wire to go through the ear which would have to sell from \$5 to \$12.50.

Mr. KEITH. I understand and I am glad to have it in the record. Thank you.

Mr. Moss. Mr. Blanton?

Mr. Stuckey?

Mr. Eckhardt?

No questions apparently, gentleman, and, Mr. Ballou, I believe you are the last witness.

Mr. WINDMAN. Mr. Moss, may I take a moment to address myself to Mr. Eckhardt's question with regard to trade associations?

I have a short statement with regard to their ability to be——

Mr. MOSS. Mr. Eckhardt, would you like to have the witness answer?

Mr. ECKHARDT. Yes. I would.

Mr. MOSS. If you would take a seat there.

STATEMENT OF JOEL WINDMAN

Mr. WINDMAN. As you know, the Justice Department has informally expressed its opinion to the Senate committee that a statute which confers enforcement authority upon a trade association might be used by that association to exert pressures upon individual companies to secure results which are inconsistent with the spirit of our antitrust laws.

First of all, trade associations do not seek enforcement authority. Trade associations only seek the right to sue as any other individual litigant with regard to this bill and, as you pointed out before, they will only be entitled to injunctive relief and not damages.

The Senate committee, after considering the Justice Department's informal opinion, said they believed there were adequate safeguards in the bill, in the nature of the offense, and in the competitive situation of the jewelry industry to prevent such a result. They found, first, given the wide tolerances in the gold and silver stamping act, a reasonably careful manufacturer can be virtually certain that none of his merchandise is mismarked. Few, if any, violations should occur which do not result from a deliberate mismarking or extremely haphazard manufacturing process.

Secondly, the nature of the offense is such that it would be quickly and readily proved or disproved. The quality of a gold or silver item is susceptible to a simple and extremely accurate scientific test.

Third, the jewelry industry is composed of relatively small manufacturers and a multitude of retailers. No single corporation appears dominant enough to successfully intimidate its competitors.

Fourth, there are a large number of trade associations within the industry. Some are industrywide, while others represent particular segments of the industry, and in several segments there are competing associations. This apparent balance of strength among the associations should help to insure that no single company is likely to be coerced.

Fifth, the bill contains a definition of "jewelry trade association" which makes clear that these associations should be "primarily directed to the improvement of business conditions in the jewelry or related businesses." In other words, they should not be casually formed for brief periods of time for the purpose of filing legal actions against competitors under the Gold and Silver Stamping Act.

Sixth, the provision in the bill which enables a defendant to recover court costs and a reasonable attorney's fee if the plaintiff is unsuccessful probably is sufficient to prevent frivolous suits. A plaintiff, faced with the possibility of paying both his own attorney's fees, plus that of the opposing party, will be unlikely to file suit unless he is quite confident of success.

Seventh, the Senate committee amendment which would permit a court to award punitive damages to the defendant if the court determines that the suit was brought for the purpose of harassment or in furtherance of any scheme in restraint of trade should serve as a

further deterrent to the filing of any capricious or anticompetitive action.

Thus, it is believed that the existence of these various factors, plus the indication that the violations are apparently not of significant enough importance to secure adequate public enforcement, makes this use of trade associations as a party to sue necessary and unique.

However, the Senate emphasized that without similar overwhelming evidence, this precedent should be limited to the particular fact situation of the jewelry industry.

Mr. ECKHARDT. Mr. Chairman?

Mr. MOSS. Mr. Eckhardt.

Mr. ECKHARDT. I note that section 298 of title 15 on Commerce and Trade gives the Justice Department authority to bring criminal action, which may entail fines up to \$500 and as much as 3 months in prison to a person violating the act.

Do you know whether the Justice Department has brought any such action?

Mr. WINDMAN. The Justice Department has brought no actions within the 63-year history of the Stamping Act under that.

Mr. ECKHARDT. From 1906 to the present time it has brought no action, is that right?

Mr. WINDMAN. Not one, that is correct, sir.

Mr. ECKHARDT. I note that the President is advocating a Consumers Protection Act which would also be in the hands of the Justice Department. Do you see any difficulty in getting the Justice Department to bring actions in thousands of consumers cases if it hasn't even brought a case for all this period of time from 1906 to the present on a very limited and specific provision?

Mr. WINDMAN. Sir, I really do not know the answer to that one.

Mr. ECKHARDT. Well, isn't the real problem that the Justice Department is involved in a great number of things and we sometimes have not altogether considered what the load on the Justice Department may be and the act that you are proposing is one in which the real parties in interest who are motivated will bring action? Is that not correct?

Mr. WINDMAN. That is correct, in this particular industry.

Mr. ECKHARDT. And you feel that that theory of governmental control is an effective manner in which to bring about the remedies sought in the act here proposed?

Mr. WINDMAN. Very well stated, sir; yes, sir.

Mr. ECKHARDT. Now, if you do that, I think you do recognize that there ought to be certain safeguards to prevent these associations from possibly utilizing this in order to diminish competition or to be selective in suits that they may bring. For instance, if a trade association was composed of some who are just as big violators or perhaps bigger, they could utilize this bill selectively so as to drive persons no more guilty than some of their members out of business. At least that would be conceivable, would it not?

Mr. WINDMAN. That might be conceivable, but that is why we are proposing these safeguards in the bill, to prevent such an item.

Mr. ECKHARDT. But if they did that they would be engaged in a scheme in restraint of trade and, therefore, would fall under the punitive provisions which are provided in section (d) on page 3 of the act.

Mr. WINDMAN. That is correct, sir.

Mr. ECKHARDT. I would suggest that section (c) on page 2 of the act, S. 1046, include this provision that is contained in (d) so that (c) would read, and I have slightly changed the language, "Any duly organized jewelry trade association may seek suit for injunctive relief restraining any person who has mismarked or caused to be mismarked any article" et cetera. I have changed the language here, "shall be entitled to" to "may seek suit for" because later on it says, "as the real party in interest" and I think that would give it the same right as any other party.

Then add at the end of the sentence on page 3, "but no other damages" so that it is perfectly clear that no damages may be sought, and then after that in the same section add from line 8 through 12, "if the court determines that such action has been brought frivolously," so as to make this more sharply applicable to the trade association and also to avoid discouragement of individuals in bringing suit, because, after all, the individual jeweler who feels he is damaged may not be able to prove his suit and, therefore, might be discouraged from bringing it in the first place because of the heavy possibility of punitive damages.

Would you see any objection to that type of change?

Mr. KREMENTZ. None whatsoever. I think you have stated it excellently.

Mr. ECKHARDT. Thank you.

Mr. MOSS. Any further questions?

If not, gentlemen, the Chair thanks you on behalf of the committee and asks that we now clear the room in order that the committee may go into executive session.

Mr. WINDMAN. Thank you very much, sir.

(The statements of Joseph Tarantola and Morton R. Sarett, referred to, follow:)

STATEMENT OF JOSEPH TARANTOLA, PRESIDENT, LOCAL NO. 1, INTERNATIONAL JEWELRY WORKERS UNION

My name is Joseph Tarantola. I am President of Local No. 1, International Jewelry Workers Union, New York City and appear here as a representative of my Local and of the I.J.W.U. which has local affiliates throughout the United States and Canada, including Local No. 18, which represents workers of two of the giants in the Jewelry Industry, Gorham Silver and Coro Jewelry, both of Providence, Rhode Island.

The basic aim of our International Union is to:

1. Enhance the wages and working conditions of all jewelry workers employed in the precious metal trades so that they may enjoy a decent American standard of living.
2. To participate in joint labor management efforts for the general betterment of the industry as a whole.
3. To join with management in protecting the jewelry industry from foreign markets.
4. To assist in stabilizing the industry by advocating proper and effective standards which would eliminate unfair competition in our industry and expose fraudulent practices imposed upon the consumer.

Our members are employed in hundreds of unionized plants which produce items of high quality and great value. Their skills are acquired after many years of painstaking apprenticeships on their jobs. The consumer public is thereby guaranteed a product which gives them full dollar value in addition to intrinsic worth.

As the result of recent negotiations with employers in the gold and silver manufacturing fields in the New York, New England and West Coast areas,

agreements were reached which provided for substantial gains in wages and fringe benefits for our members in the locals concerned.

I might point out that the Contract arrived at between my Local No. 1 and the Jewelry Manufacturing Associations in New York City, included increments and general improvements such as:

1. 75c per hour general wage increase.
2. All minimum rates increased by 75c in all classifications.
3. Comprehensive Insurance Program—providing for full hospitalization and surgical benefits backed by a \$10,000 Major Medical Program.
4. Pension benefits doubled. Vesting rights provided for.
5. Additional advances were made in Holiday and Vacation Schedules.
6. A Cost of Living Clause and other gains were also included.

We recognize that the costs of these benefits impose an additional financial liability upon our employers, as do all increases in costs whether they be for material or labor. To absorb these added costs and to maintain the integrity of their products and the skills of their employees, these employers must have protection through federally approved legislation which would establish proper standards, adequate controls, and enforcement machinery to guarantee that all those operating in the jewelry industry must meet the requirements of such rules and regulations.

Under the present conditions of inadequate controls, unscrupulous individuals can operate their plants to the detriment of legitimate labor and management groups in the jewelry industry. The present lack of precious metal quality-controls has resulted in a general tearing down of the vital structure of the industry affecting prices, quality, skills and rates of pay.

We are firmly convinced that this situation requires immediate action towards the end that appropriate legislation is recommended by your committee to such effect as will eliminate the possibility of the continuation of these unwarranted and improper practices.

I therefore urge your committee to give favorable consideration to H.R. 8673, a bill which we believe will permit the industry to police itself with regard to quality marks and thus preserve the jobs and working standards which our members have obtained working on these precious metal products.

JEWELRY INDUSTRY COUNCIL,
December 11, 1969.

SUBCOMMITTEE ON COMMERCE AND FINANCE,
House Interstate and Foreign Commerce Committee,
House Office Building, Washington, D.C.

DEAR SIR: As a nationwide organization of manufacturers, wholesalers and retailers engaged in the jewelry industry, we wish to express our full endorsement of the Tiernan Bill (H.R. 8673), because this bill will protect the buying public by making the basic law regarding gold and silver products workable.

Sincerely,

MORTON R. SARETT, *President.*

(The following letter was received for the record:)

THE NATIONAL WHOLESALE JEWELERS ASSOCIATION,
Philadelphia, Pa., December 16, 1969.

SUBCOMMITTEE ON COMMERCE AND FINANCE,
House Interstate and Foreign Commerce Committee, House Office Building,
Washington, D.C.

GENTLEMEN: It is my understanding that there will soon be a hearing on the Gold and Silver Stamping Act—H.R. 8673, and I would like to acquaint you with our Association's endorsement of this proposed legislation.

The National Wholesale Jewelers Association is composed of 95 wholesalers throughout the country and 137 Associate or manufacturer Members. We would enthusiastically endorse H.R. 8673. It is indeed important to our Industry that this legislation receive the early attention of the Congress in order that stronger enforcement provisions might be included in the Federal Stamping Laws.

We urge the Sub-Committee on Commerce and Finance to report favorably to the full House Interstate and Foreign Commerce Committee at a very early

date. We would hope that the House of Representatives would give attention to this matter in the very near future.

We join the rest of the Jewelry Industry in subscribing to the provisions of this proposed bill.

Yours very truly,

R. BRUCE WALL,
Executive Secretary.

(Whereupon, at 11:15 a.m., the subcommittee adjourned.)

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