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95-125 GOLD AND SILVER LABELING AND ADVERTISING ACT

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HEARING

BEFORE THE

SUBCOMMITTEE FOR CONSUMERS

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 2782

TO PROTECT CONSUMERS FROM MISREPRESENTATIVE
ADVERTISING OF GOLD AND SILVER JEWELRY, AND FOR
OTHER PURPOSES

MAY 10, 1978

Serial No. 95-125

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GOLD AND SILVER LABELING AND ADVERTISING ACT

WEDNESDAY, MAY 10, 1978

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION,
SUBCOMMITTEE FOR CONSUMERS,
Washington, D.C.

The subcommittee met at 9:15 a.m. in room 235, Russell Senate Office Building, Hon. John A. Durkin presiding.

OPENING STATEMENT BY SENATOR DURKIN

Senator DURKIN. Today the Subcommittee for Consumers of the Senate Commerce, Science, and Transportation Committee begins a hearing on S. 2782, the Gold and Silver Labeling and Advertising Act. This legislation provides standards for when products can be termed "gold" or "silver." S. 2782 also regulates the advertising of such items. Finally, S. 2782 provides the Federal Trade Commission with increased legal powers to regulate the jewelry industry in regard to the representations of gold and silver.

The subcommittee in the course of these hearings will also examine the Federal Trade Commission's (FTC) proposed amendments to their trade practice rules in regard to the labeling of gold and silver. On June 10, 1977, the FTC proposed to amend its guidelines to allow for new standards for gold and silver content in jewelry articles marked or described as "gold" or "silver." Under the present guidelines only articles composed throughout of not less than 10 karats may be marked or described as "gold" or carry a quality mark. And only articles composed of at least 0.925 may be marked as "silver." The FTC amendments would allow, in limited circumstances, the use of the term gold and silver and related quality marks in connection with articles below these current minimum requirements. The committee is interested in the progress of this proposal and the FTC's present views in regard to this matter.

[The bill follows:]

[S. 2782, 95th Cong., 2d sess.]

A BILL To protect consumers from misrepresentative advertising of gold and silver jewelry, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Gold and Silver Labeling and Advertising Act".

ADVERTISING RESTRICTION

SEC. 2. 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; 15 U.S.C. 294) is amended—

(a) in the first section thereof by inserting immediately after "said article is encased or enclosed", the following: ", or in any advertising, irrespective of the medium thereof,"; and

(b) in section 2 thereof—

(1) by inserting "(a)" immediately before "In"; and

(2) by adding at the end of such section the following new subsection:

"(b) No representation as to gold content shall be made unless the article or part of the article represented as being made of gold is at least of 10 karat fineness."

(c) in section 3 thereof by adding immediately after "'coin silver'" the following: "'silver'".

Senator DURKIN. The subcommittee is very fortunate to have Senator Pell as our first witness. Senator Pell is extremely knowledgeable in regard to these matters and is the author of S. 2782. Senator Pell, we look forward to your statement.

I do want to commend Senator Pell for bringing this matter to our attention. I think you all know that Senator Pell has been quite concerned and asked me as a member of the Consumer Subcommittee to chair these hearings. I'm very happy to lead off with Senator Pell.

**STATEMENT OF HON. CLAIBORNE PELL, U.S. SENATOR FROM
RHODE ISLAND**

Senator PELL. I thank you very much, indeed, Mr. Chairman. I particularly thank you for your kindness and graciousness in agreeing to hold this hearing. We all know the demands that there are for hearings on the 3,000-odd bills that get introduced, and I particularly appreciate your kindness in being here and giving us the hospitality of your hearing room. Your subcommittee, the Consumer Subcommittee, has demonstrated many times over your concern and responsiveness to the problems that confront the average consumer in this age of rapidly changing technology and sophisticated advertising and marketing techniques.

And, Senator Durkin, who is presiding at this hearing, has consistently been in the forefront of those in the Senate who have fought for protection of the American consumer, very often the forgotten man in our national life.

Mr. Chairman, the legislation before the committee today is vitally important, both to purchasers of jewelry and to the jewelry industry as a whole. And because it is important to the jewelry industry, it is also vitally important to the economy of my own State of Rhode Island and to the 30,000 Rhode Islanders who work in the Jewelry industry in our State.

The purpose of this legislation is very simple: It is to assure the consumer that jewelry stamped or advertised as gold or silver will, in fact, be mostly gold or silver and will have the characteristics of those precious metals. The legislation would not change existing trade practices in the jewelry industry, but instead, merely seeks to preserve existing time proven jewelry trade practices by incorporating into law existing trade practice regulations of the FTC.

I think a bit of history is in order here to understand what is proposed in S. 2782.

The Federal Stamping Act, first enacted about 70 years ago in 1906, was one of the first and most effective truth-in-labeling acts. It banned from interstate commerce any gold or silver items, unless the item was stamped with an accurate statement of the purity of the gold or silver content of the item.

Since that time, any consumer purchasing a gold or silver item could rely on a stamped mark indicating gold or silver content, instead of depending upon the salesman's assurance that the item was "pure gold."

Initially, there were no prescribed standards for minimum content of gold or silver in order for an item to be marketed as one of those precious metals.

During the thirties, trade practice guidelines on minimum content were developed by the Commerce Department, and in 1957, 21 years ago, the FTC formally adopted trade practice regulations requiring a minimum content of 10 karat gold and 900 to 1,000 parts fine silver.

That's the situation today. Under the law, items can't be sold as gold or silver unless they're accurately stamped, and under FTC regulations, jewelry must be at least 10 karats and silver must be at least 900 fine silver.

However, 3 years ago, in the course of acting on an advisory opinion, the FTC directed its Bureau of Consumer Protection to study the issue of minimum standards for gold and silver content in jewelry.

Pursuant to that study, a staff report to the FTC suggested that the existing prohibition on jewelry of less than 10 karat gold or 900 fine silver be eliminated. Under the staff proposal, marketing of low quality alloys of gold and silver would be permitted with a requirement that such items be accompanied by printed disclosures that the item might tarnish or corrode.

Although the FTC at this time has made no final decision on that proposal, the prospect of such a change has caused widespread concern throughout the precious metals jewelry industry, and I would emphasize has brought a substantial outpouring of consumer concern as well.

I have every reason to believe on the basis of technical studies and on the merits that the FTC ultimately will decide to retain the 10 karat gold and 900 fine silver minimum content regulation.

But this minimum standard is of such basic importance to consumers and to the stability of the jewel industry that regardless of the FTC decision, these minimum standards should I believe, be a matter of law and not subject to change by administrative rulemaking.

In proposing that this matter be decided by the Congress instead of the Commission, I mean absolutely no disrespect to the FTC. The Commission was confronted with an issue concerning the minimum content regulations and proceeded to investigate it as it should under its mandate from the Congress.

But I believe strongly that the question of minimum precious metals contents should be decided by Congress and not left to the uncertainties and vagaries of future regulatory action.

I believe this for two fundamental reasons: First, the issue is a basic one for both the consumers and for the jewelry industry. It profoundly

affects the stability and marketing practices of the entire industry. In short, it has sufficient importance to receive the attention of Congress. Indeed, the effectiveness of the Federal Stamping Act would be greatly diminished if the minimum content standards were substantially altered.

Accordingly, my own view would be that Congress should make this decision. Second, the issue is not vague, technical, nor transitory. It is clearcut and involves enduring values that do not change through the years.

The issue is simply this: When a customer buys an item marked "gold" or "silver," he has a right to expect that it will have the properties of those precious metals.

Numerous technical studies have demonstrated beyond question that gold of less than 10 karat simply does not have the noble qualities the public expects of gold. Lower karat gold alloys are far more susceptible to tarnishing and corrosion.

We should not ask nor expect consumers to read the fine print on a detachable label to find out that the gold he or she is purchasing is only sort of gold, or somewhat like gold.

I would note also that the minimum 10 karat standard is one that is widely observed throughout the world. It is a simple chemical fact that low karat alloys of gold, those below 10 karat, just don't act like gold.

What would happen if the minimum contents standards were eliminated? There is an old and enduring law of economics that tells us that bad currency drives out good currency, and that is exactly what would happen in the jewelry industry and markets of the United States if minimum content standards were eliminated. Low karat alloys parading as gold in the marketplace would drive quality gold products off the streets, and the losers would be the consumers and the jewel workers and producers who would find themselves struggling to survive in a disrupted and unstable industry.

For all of those reasons, I believe the minimum standards should be a matter of law. And, Mr. Chairman, my bill proposes one additional safeguard for consumers: It would prohibit advertising a jewelry product as gold or silver in any advertising medium unless the product meets the minimum standard requirements.

In an age in which sophisticated mass advertising is such an essential part of our economy, I believe it makes sense to apply the same restriction to the advertising of a product that we apply to marking of the product itself.

And when it comes to the question of silver, the nine hundred one-thousandths parts fine silver, I must say another suggestion has come down the pike; that is, that perhaps the standards should not just be 900 fine silver, which is the present coin silver content, but it should be 925 fine silver, which is the sterling silver content.

And while my bill only provides the 900 fine silver, the coin silver minimum, I would have absolutely no objection—in fact I would support the idea of a higher number, 925 fine silver.

This, I understand, may be discussed later on, and I think that anything that can be done to keep the standards up high is to the benefit of the consumer and also to the industry as a whole.

I ask your pardon for such a long statement, but I wanted to lay out the whole history here and the whole problem. I must add that I

have discussed this problem with the FTC. They have been most cooperative and I know that they're very well aware of it as well. And I hope that you, Mr. Chairman, with your long interest and concern for the consumer, would act with sympathy on this proposal, which can help, as I say, I think the standards of our industry both in our country and in the quality of its work.

Senator DURKIN. Thank you, Senator.

I know this is a substantial industry in your State of Rhode Island. Also, it's a growing industry in the State of New Hampshire. So we share the concern you stated so well.

I gather that S. 2782 has the support of important segments of the industry.

Senator PELL. I think they'll be coming forth in a panel following me. That is my understanding, too. But we won't speak for them. They may have some suggestions for changes, and you might want to ask them this question as to whether they would prefer this 900 fine silver or 925 fine silver.

Senator DURKIN. So the bottom line here is that we're trying to bring order out of chaos, or potential chaos, whereby no one would really know what they were buying. I mean, they'd literally be buying the proverbial pig in a poke. They would not know whether there was gold or just what it was until it began to tarnish.

Senator PELL. Exactly. Also, it's really a question of keeping into effect, putting into law the present practice, so it wouldn't be subject to the vagaries of the future where another administration, another time, another agency leadership might say, well, let's make it 800 for silver. For gold, let's make it 2 karats. And I think we all know the difference in quality of gold. If anybody has ever engaged in an archeological dig, a gold object will turn up and will still be untarnished after a couple of thousand years, but if it was 2 karats, it would be pretty tarnished.

Senator DURKIN. If it still existed.

Senator PELL. If it hadn't eroded away, exactly.

Senator DURKIN. I thank you, Senator, very much. We do appreciate your concern.

Senator PELL. Thank you very much, indeed, Mr. Chairman. Again, thank you so much for holding these hearings. I'm deeply grateful, and so is the entire industry.

Senator DURKIN. Mr. Edward Steinman.

Why don't you proceed in the manner you find most comfortable?

STATEMENT OF EDWARD D. STEINMAN, ACTING ASSISTANT DIRECTOR, DIVISION OF MARKETING ABUSES, FEDERAL TRADE COMMISSION; ACCOMPANIED BY D. McCARTY THORNTON, PROGRAM ADVISER, PROGRAM FOR SUBSTANTIAL INADEQUACIES OR RISKS OF PRODUCTS OR SERVICES

Mr. STEINMAN. Thank you, Mr. Chairman.

Mr. Chairman, I'm Edward D. Steinman, acting assistant director of the Division of Marketing Abuses of the FTC's Bureau of Consumer Protection.

Accompanying me today is D. McCarty Thornton, the program adviser of the Bureau's program for substantial inadequacies or risks of products or services.

We welcome the opportunity to testify about S. 2782, a bill entitled "The Gold and Silver Labeling and Advertising Act."

Our testimony reflects the views of the Bureau of Consumer Protection, but not necessarily those of the Commission or any individual commissioner. The Commission's Bureau of Consumer Protection has had extensive experience with the issues raised by S. 2782 and we support this legislation. S. 2782 would amend the National Stamping Act, a criminal statute which relates to quality marks on precious metals.

The bill would prohibit any representation as to gold content unless the article or part of the article represented as being "gold" is at least 10 karat fineness.

Similarly, the bill would prohibit use of the word "silver" in connection with any article or part of an article represented as being silver, unless the article or part of the article is 90 percent, or .900 pure silver.

The Commission's involvement in this area began with the trade practice rules for the jewelry industry, 16 CFR part 23, adopted in 1957. The FTC practice rules which exist for many industries are not binding rules of law, but rather, are voluntary in nature. A firm is not subject to liability merely on the grounds it violated a trade practice rule.

In contrast to the modern trade regulation rules, enforcement of trade practice rules necessitates the bringing of an administrative proceeding leading to the issuance of a cease and desist order in order to prohibit the unlawful practice.

Current trade practice rules for the jewelry industry provide that only gold articles of 10 or more karats can be marked or described as gold or carry the quality mark "K."

Similarly, the rules provide the silver cannot be used unless the item is at least .925 pure silver.

In 1977, the Commission published proposed amendments to the trade practice rules which would have allowed the word "gold" to be used in connection with under 10 karat gold alloys, provided the item carried a tag which listed its metal composition and had the following warning: "Gold alloys of less than 10 karats can be expected to tarnish and/or corrode."

A similar requirement would be imposed on advertising an item of jewelry if the item is referred to as gold.

Proposed amendments would have allowed the word "silver" to be used with articles containing less than .925 silver. But the term "silver" would have to be immediately preceded by a correct designation of the silver content.

For example, 50 percent silver.

The effect of these proposed amendments would be to sanction low karat gold jewelry and low content silver jewelry. The public comment period for the proposed amendments closed on September 1977, and over 1,200 comments were received.

After reviewing these comments and conducting supplementary investigative steps, the Bureau has recently recommended to the Commission that the proposed amendments be rejected. The Bureau has also recommended that a clarifying amendment to the rules be made to make it clear that the use of the term "gold" is prohibited in any connection with sub-10 karat gold jewelry.

In sum, the Bureau supports the policy of minimum content requirements for the use of the word "gold" and "silver." We support S. 2782 because industry compliance with the National Stamping Act, a criminal statute, can be expected to be more effective than compliance with a voluntary trade practice rule.

The retention of the 10 karat gold standard is a fundamental issue for the industry. The amount of gold in an article is the principal determinant of its price. While the price of gold was fixed for many years at \$35 per ounce, in the early 1970's, the price of gold climbed spectacularly to a high of almost \$200 an ounce.

As a result of this price increase between 1973 and 1975, the Commission received several requests from industry members for a relaxation of the 10 karat rule.

In 1975, the Commission directed the Bureau of Consumer Protection to study the issue of minimum standards for gold and silver content and report on its findings. The Bureau's investigation in 1975-76 established that the principal reason for the 10 karat rule is the substantial decrease in certain metallic qualities in the lower karat gold alloys. Most significant among these qualities is the resistance of gold to tarnish and corrosion.

From the consumer standpoint, these qualities are principal reasons for the purchase of gold jewelry. Substantial scientific evidence indicates that the loss of these qualities occurs at a significantly increased rate when the gold content of alloys is reduced below the vicinity of 10 to 12 karats.

In other words, since a 6 karat item is composed of only 25 percent gold and 75 percent other metals, the article tends to assume the characteristics of those other metals in the articles, such as silver, copper, zinc, or nickel.

Although low karat gold articles may appear to be attractive in a jewelry store, they cannot be expected to resist tarnish or corrosion to an extent reasonably similar to alloys of 10 karats or more.

From this investigation, the staff recommended to the Commission that public comment be solicited on whether an affirmative disclosure system could be designed to disclose the disadvantages of low karat gold articles. It was thought that if a consumer could be made fully aware of the disadvantages of such alloys, he or she should have the opportunity to purchase items made from such alloys.

This approach would allow each consumer to make an individual economic decision, balancing decreased price against decreased quality.

There are also first amendment considerations. In the *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, the Supreme Court indicated that advertising must be afforded some measure of first amendment protection. Although the court in the *Virginia Board* and subsequent cases has clearly indicated that false, deceptive, or misleading advertising is subject to restraint, the cases indicate that extreme care must be taken before prohibiting a kind of commercial speech entirely.

Thus, the principal issue was whether an effective, understandable disclosure format could be developed to eliminate the inherent deceptiveness associated with the marketing of sub-10 karat fineness jewelry.

The proposed amendments were designed to bring two facts to the consumer's attention: First, that a low karat gold item is composed mostly of other metals; and second, that gold alloys of less than 10 karats can be expected to tarnish or corrode. The disclosure of metal contents would have been accomplished by requiring a list of the metals present in the article in the order of their percentages on a tag attached to each piece of jewelry. Use of the tag would be necessary because most jewelry is too small to allow the disclosures to be stamped on the jewelry.

The proposed amendments would have allowed the use of the word "gold" in advertising or sales representations for sub-10 Karat items if the word "gold" was preceded by the Karat number of the article, for example, 6-Karat gold.

In addition, wherever the word "gold" was used, the standard tarnish and corrosion warning was required to be given in a clear, conspicuous manner.

The Commission published the proposed amendments in the Federal Register on June 10, 1977, and asked for input from consumers and from industry on these issues. The public response was almost unanimous in its rejection of the proposed amendments. A total of 1,221 timely comments was received, of which 98.6 percent expressed total opposition. Only 4 comments were in favor and the remaining 13 expressed approval with various reservations; 99 percent of the 791 consumer comments received were opposed to the proposed amendments. The most common grounds for the opposition were: First, an objection to lowering of standards, in general, and the feeling that consumers would prefer an assurance of a minimum degree of quality in gold jewelry. Many comments also said that consumers would be confused and would not comprehend the information on the tag, even with a cooperative merchant. Then the other consumers were concerned that they would be deceived by merchants who misinterpreted the tag or removed the tag altogether.

Finally, many consumer comments observed that there is a wide variety of low cost alternatives to low grade alloy gold, and that another category of low cost jewelry is not needed; 97.9 percent of 430 comments received from the jewelry industry were opposed. Many jewelers felt that consumers would be confused by the disclosure system partly because jewelry is a relatively complicated area with many kinds of solid alloys and plated materials of various thicknesses on the market.

There was also a feeling on the part of members of the jewelry industry that consumers do not generally understand the karat rating scale. Many jewelers also felt that the sale of low-karat gold and low grade silver jewelry would negatively affect the confidence and respect of consumers toward the industry, and that some consumers would be deceived by a minority of unscrupulous merchants.

Some jewelers questioned the Commission's ability or willingness to enforce a tag disclosure system.

Finally, many jewelers cited the presence of low cost alternatives to sub-10 karat gold jewelry.

After evaluating the comments, the staff is convinced that the amendments should not be adopted for several reasons.

The principal difficulty is that it is inherently deceptive to name an article gold with very little gold in it and which no longer has the characteristics associated with gold. Since there is widespread apparent misunderstanding and interpretation of the karat rating scale, the qualifier of 6-karat in front of the word "gold" cannot be expected to remove the connotation of calling the low-karat article "gold."

Substantial scientific evidence indicates that low-karat gold alloys do not retain the characteristics of gold, such as tarnish and corrosion resistance.

The evidence remains uncontroverted, even after staff sought comments on this issue in the Federal Register notice announcing the proposed amendments to the trade practice rules for the jewelry industry.

The Commission received extensive test reports comparing 14 karat, 10 karat, 9 karat, 7 karat, and 6 karat gold jewelry. The 7 karat alloy tested was a particular alloy of gold and silver manufactured by Metals & Jewels, Inc. of Baltimore, Md., one of the original petitioners supporting abandonment of the 10-karat standards in the trade practice rules.

The evidence uniformly showed that the alloys below 10 karat tarnished and corroded at a more significant rate than the higher karat alloys. Furthermore, in the many instances, tarnished and corroded jewelry would be difficult, if not impossible to clean.

We believe that consumers expect gold articles to be durable and remain attractive for a substantial period of time. Low grade gold alloys do not do so.

The Bureau has concluded that the proposed disclosure system would not be effective in overcoming the problem of calling low grade gold "gold" for several reasons.

First, it would be difficult to enforce a requirement that such tags be used, because tags can easily be removed prior to sale. Moreover, second purchasers of jewelry would have no disclosures.

In addition, the tag disclosure would probably be ineffective in the principal market for 6-karat jewelry in the United States, the high school class ring market approximately \$150 million of rings is sold annually in this market, and the usual method of sales is to present the types of rings available to the junior class of the high school in the school auditorium. Since the student orders and pays for the ring in advance, the student would not see the tag until long after the purchasing decision.

While the proposed amendments would require the tarnish and corrosion warning to be given orally in such circumstances such a requirement would be particularly hard to enforce.

The original purpose of the proposed amendments was to save consumers money by broadening the range of economic choices available to consumers in the marketplace.

However, further study has convinced us that consumers who wish to spend a modest amount of money have a number of options already which do not have the substantial disadvantages associated with low carat, solid gold jewelry.

These alternatives include gold-plated, gold-filled, and gold-flashed jewelry, as well as jewelry made from a variety of other metals, including such metals as silver, paladium, chrome, and stainless steel.

None of these items has the significant tarnish and corrosion problems associated with low-karat gold alloys.

In the high school class ring market, perhaps the single most attractive market for low-karat solid gold jewelry, there has been substantial negative experience with such jewelry. Several manufacturers indicated that the trend in the industry is away from gold rings altogether and toward stainless steel and various combinations of silver, chrome, and nickel.

As with any product standard, the Bureau is sensitive to the possibility that standards serve to keep prices high and prevent competition. However, in this case, we are convinced that the 10-karat rule does not have such an effect. In order to assess the competitive impact of the 10-karat rule, the Commission's staff recently contacted the chief executive officer or owner of 21 manufacturers of high school rings. Again, the high school ring market was selected because the market involves large numbers of sales to persons of relatively little means, the type of consumer who might wish to buy cheaper, low karat, solid gold jewelry.

Among the 21 firms contacted by staff were the 3 largest members of the industry, as well as many small firms. The 21 firms were unanimous in that they had no interest in marketing the sub-10-karat gold alloys using the term "gold" in the future, even when asked to assume that the FTC would allow them to do so.

Each of the 21 firms was asked whether, as a general matter, they would favor or oppose a proposal to remove the 10-karat minimum in gold jewelry. Nineteen of the firms were unequivocally opposed to the proposal, while the remaining 2 took an uncommitted position.

We believe, therefore, that the 10-karat rule is not operating as a significant inhibitor of competition. The proposed amendments also called for altering the portion of the rules which pertain to the marketing of silver items of less than 0.925 pure silver. The question of maintaining this standard received comparatively little attention in the comments. However, the basic problem of nomenclature is the same, calling something silver which has little silver in it.

While it is common knowledge that silver tarnishes no matter how pure the alloy, there is a potential for confusion and deception regarding the silver content of low-grade silver alloys. Low-grade silver is known to tarnish at a faster rate than sterling silver. Further, there are many low cost options to 0.925 silver, such as silver plate.

Thus, although the case for maintaining the .925 standard for the use of the term "silver" may be less strong than for maintaining the 10-karat rule for gold, there is little reason for treating the question of silver differently.

We note that S. 2782 would adopt a 0.900 standard for "silver," while the jewelry rules have provided a 0.925 standard for the industry. The National Stamping Act already mandates a 0.925 standard for sterling silver.

Hence, to avoid unnecessary confusion, we recommend that the 0.925 standard apply when the word "silver" is used as well.

The Bureau believes that the prospects for consumer damage are great if the use of the terms "gold" and "silver" are allowed for low-grade alloys, and the benefits of such a proposal are meager.

Accordingly, the Bureau has recommended that the proposed amendments be rejected and that a clarifying amendment be added to the trade practice rules which clearly prohibits the use of the term "gold" with respect to alloys of less than 10 karats.

While the Bureau has urged the Commission to reaffirm the minimum standards for precious metal content in jewelry, we also firmly support S. 2782 to amend the National Stamping Act. We simply believe that compliance would be better with a Federal criminal statute than with a voluntary agency guideline.

Moreover, the enforcement of the criminal statute could be expected to be less costly than the Commission's enforcement of the voluntary rules.

This concludes my statement. We will be happy to answer any questions.

Senator DURKIN. Quite clearly, you support the bill with the amendment to maintain the 0.925 standard for silver.

When do you think the FTC is going to make its decision? It's been kicking around for a while, involving a lot of consternation. I'm not saying it's your fault, but just when can we expect the results to come from the Commission?

Mr. STEINMAN. Senator, in answer to your first question, the Bureau definitely does support S. 2782. We have made that recommendation to the Commission. The matter is now pending with the Commission. We would hope that in the very near future the Commission will render its decision.

Senator DURKIN. Can you give us a little sneak preview of when? Do you have any idea as to when the Commission—there must be some rumors going around as to when the Commission is going to make their decision.

Mr. STEINMAN. I have not been privy to any such rumors. I am not able to comment on when the Commission is likely to act. I am very hopeful that it will be soon.

Senator DURKIN. Could you do us a favor, then, and the next time you see the Commissioners, tell them that Congress would like them to move and resolve. You can blame it on us.

Mr. STEINMAN. Senator, I'll be more than happy to make your views known to the Commissioners when I see them.

Senator DURKIN. Let me ask you a question. Coming from New England, we're quite sensitive to imports. Is there an import problem with respect to gold and silver? Is there the potential for the market to be flooded by items manufactured around the world at much less labor cost and being billed as gold or silver, when, in fact, they are substantially less than 10-karat quality?

Mr. STEINMAN. I'm going to ask Mr. Thornton to answer your question. He is more familiar with that area than I am.

Senator DURKIN. If there is, I would like to know about it.

Mr. THORNTON. Senator, we are not aware of any particular problem in that regard. I must say that that question wasn't included in our investigation, so we just don't have any information.

Senator DURKIN. Well, we are sensitive to that in New England, inasmuch as we have the shoe industry, the textile industry, and now

some of the communications industry being ravaged, if you will, by imports. And I'm just concerned.

Mr. THORNTON. There are several other countries that have lower legal minimums than 10 karats, and, of course, there would be potential created in this country for a market for importation of that jewelry.

Whether it would be done or not, we just don't know.

Senator DURKIN. If we're going to impact on the domestic jewelry market and domestic jewelry producers, and mandate the 10-karat and the \$0.925 standard for silver, are we not going to have to make sure we don't create a loophole which will flood the market at the expense of our manufacturers and our workers, with goods produced at low-cost labor around the world. And these goods would be called gold or silver when they do not meet the standards.

Mr. STEINMAN. Senator, if I may respond to your question. If there was an importation of gold jewelry into the United States that was below the now-Bureau position of 10-K, that those importers, to the extent that they would market this jewelry in the United States, would be subject to the FTC Act. We would consider taking action to enforce the trade practice rules.

Senator DURKIN. Do you think the enforcement policies you have are adequate if the bill is passed?

Mr. STEINMAN. The bill is a criminal statute, so I assume that the Department of Justice would be enforcing the criminal aspects of it. We would be enforcing the trade practice rules. And as I indicated in my testimony, that is a voluntary guideline. In order to enforce those trade practice rules, it would necessitate our bringing about an administrative proceeding leading to a cease-and-desist order to prevent violations of the rules.

Senator DURKIN. How are you going to get a hold of some manufacturer in Taiwan if in fact the problem exists?

Mr. STEINMAN. This is how we would deal with the problem, Senator. While it might be manufactured in Taiwan, the jewelry would have to be sold for retail here in the United States. We would proceed against the retailer if it actually marketed the jewelry in the United States.

Senator DURKIN. OK, fine. Thank you very much. We appreciate your testimony this morning.

Mr. STEINMAN. Thank you, Senator.

Senator DURKIN. At this time we call the jewelry industry panel: Mr. Frankovich, Mr. Alie, Dr. Corrigan, Mr. Mulligan, and Mr. Chalson.

I want to welcome you to the committee, and we appreciate your taking the time from your busy schedules. I'm pleased to see a fellow Granite Stater. Your entire statements will be printed in the record, and we'll leave the record open for any additional comments that you might feel necessary because of the testimony here today.

Also, you can proceed in any manner which you feel most comfortable with. If you want to summarize and hit the high points, I assure you that each of your statements will be printed in its entirety in the record.

STATEMENTS OF GEORGE R. FRANKOVICH, VICE PRESIDENT AND EXECUTIVE DIRECTOR, MANUFACTURING JEWELERS & SILVERSMITHS OF AMERICA, INC.; R. NORMAND ALIE, RETAIL JEWELERS OF AMERICA, INC.; DONALD A. CORRIGAN, VICE PRESIDENT, RESEARCH AND DEVELOPMENT, HANDY & HARMAN, INC.; EDWARD W. MULLIGAN, PRESIDENT, TOWLE MANUFACTURING CO.; AND BERNARD CHALSON, PRESIDENT, JEWELERS VIGILANCE COMMITTEE, INC.

Mr. FRANKOVICH. Thank you very much, Mr. Chairman. My name is George R. Frankovich. I'm the vice president and executive director of the Manufacturing Jewelers and Silversmiths of America. My office is also in New England.

The Association is the principal representative of the American jewelry and silverware manufacturing industry. I want to add my thanks to those of Senator Pell for holding these hearings today.

Because of the thoroughness of the Senator's testimony and also the background given by the witness of the FTC, each of the panel witnesses here today has been asked to restrict his remarks to "hitting the high points," as you put it, and emphasizing a few points on which he has a particular area of expertise. So with your permission, and the understanding that the full testimony will be entered into the record, we will just discuss our high points.

S. 2782, the Gold and Silver Labeling and Advertising Act, introduced by Senator Pell, is a much-needed amendment to the industry's bible, which is basically the National Stamping Act, enacted in 1906. This act has set the guidelines for gold and silver quality representations for over 70 years. This act does not require the marking of gold or silver merchandise. It simply states that, if one is to mark or otherwise say that an article contains gold or silver, then one must modify these representations to indicate the true quality of the article.

Now, several years ago another amendment to this law permitted competitors and customers injunctive relief, as well as court costs and damages against violators. And Senator, to reply to your question of the FTC witness, this act is not only a criminal statute, but several years ago the Congress also authorized customers, buyers of jewelry, competitors, or indeed, bona fide jewelry trade associations to seek injunctive relief against violators.

So the action under the law is of a criminal nature, but also can be of a civil nature, invoked by the industry itself.

Another amendment in recent years required the identity to be stamped on the article by the person responsible for the quality of that article. And the latest amendment was enacted early in 1976, and it substantially tightened the tolerances on gold and radically decreased the leeway formerly permitted alloyers of gold. It upgraded American gold goods.

But the industry and the Congress—and this is my point—over the years have, on repeated occasions, regarded quality standards for gold and silver articles to be a matter of legislative concern. This act has resulted in helping the jeweler maintain his reputation of integrity in the community in which he does business, and therefore his success as a businessman.

Although the Stamping Act has been law for over 70 years, minimum qualities for gold and silver were never established in the act, and as of yet still do not exist. We support this act, S. 2782, to do just that, to establish these minimums through legislative means.

The rationale behind the Commission's proposal (we're delighted to hear that the Bureau is withdrawing that proposal at this time) was—and this is a quote, “as opposed to a flat ban on low-karat alloys.” The Commission's former approach, “allows the consumer to evaluate whether they wish to purchase less-expensive, lower quality items.” But in the report, the Commission recognizes that the “10-karat rule” has been observed almost unanimously in this country since the Depression. So we are asking for a maintenance of the status quo.

As indicated earlier, the Commission report is replete with statements indicating that there is little question that these low-karat alloys are substantially inferior to those now in use.

Senator DURKIN. Let me interrupt and ask you a question. We've heard discussion of 25-percent gold, the new alloys, what have you. I gather that you have no opposition to experimentation with alloys and utilization of alloys as long as they're not called gold if they're under 10 karats. Is that correct?

Mr. FRANKOVICH. That is correct, sir. We have no objection to whatever alloys come out that the American public wants to buy. We do feel that if they buy these low-karat alloys under the guise of gold or silver, when indeed they are not there is no effective means of notifying these customers of the inferiority of the product they're buying.

Senator DURKIN. I can't quite envision at the junior prom somebody giving his class ring to his date, and giving her a warning that it's only six-karat gold. I don't think it would really work.

Mr. FRANKOVICH. It would be a little embarrassing within a week when it turned green on her finger, too, if that's an indication of the lasting nature of his love.

[The statement follows:]

STATEMENT OF GEORGE R. FRANKOVICH, VICE PRESIDENT/EXECUTIVE DIRECTOR,
MANUFACTURING JEWELERS AND SILVERSMITHS OF AMERICA

Mr. Chairman: My name is George R. Frankovich. I am the vice president/executive director of the Manufacturing Jewelers and Silversmiths of America with a national membership of some 1,700 jewelry and silverware manufacturers. The association is the principal representative of the American jewelry and silverware manufacturing industry.

S. 2782, the “Gold and Silver Labeling and Advertising Act,” introduced by Senator Pell is a much needed amendment to the industry's bible, “The National Stamping Act,” first enacted by Congress in 1906. This act has set the guidelines for gold and silver quality representations for over 70 years. This act does not require the marking of gold or silver merchandise. It simply states that, if one is to mark the article or make representations on tabs or labels that accompany the article that the article contains gold or silver, then one must appropriately modify these representations to indicate the true quality of the article. It requires that these representations be accompanied by indications of the identity of the person responsible for the quality of the article. Several years ago another amendment to the law permitted competitors and customers injunctive relief as well as court costs and damages against violators. Bona fide jewelry trade associations were also authorized to bring suit. The latest amendment enacted in 1976 substantially tightened the tolerances on gold—it radically decreased the leeway formerly permitted alloyers of gold. It upgraded American gold goods. Both the industry and the Congress have, over the years, on repeated occasions regarded quality standards for gold and silver articles to be a matter

of legislative concern. This act has resulted in helping the jeweler maintain his reputation for integrity in the community in which he does business and, therefore, his success as a businessman.

S. 2782, the bill of issue today, does two things: first, it sets a legislative floor on the fineness of products that can be called "gold" or "silver." Second, the bill applies the provisions of the total act to representations that are made by advertising as well as representations that are stamped on the merchandise or that accompany the merchandise at the point of retail sale, such as tags or labels.

The fineness of gold is commonly expressed in term of karat, pure gold being 24 karat. Most golds for good technical reasons are alloyed with non-precious base metals. The common gold alloys used in this country are 10 karat which is $\frac{10}{24}$ pure, 14 karat which is $\frac{14}{24}$ pure and 18 karat which is $\frac{18}{24}$ or .75 percent pure gold. The fineness of silver in turn is expressed in parts per thousand. Sterling silver is 925 parts per thousand or 92½ percent pure silver. Coin silver, the other silver given recognition in this country, is .900 parts per thousand or 90 percent pure silver.

Fineness floors for articles purporting to contain gold or silver were codified by the Federal Trade Commission in rules for the jewelry industry promulgated in 1954 and previously by the Bureau of Standards in the commercial standards for various industry products promulgated in the 1930's. Under these standards, the word "gold" may not be used to describe an alloy of less than 10 karat fineness and the word "silver" may not be used to describe an alloy of less than .900 fine. Although the national stamping act has been law for over seventy years, minimum qualities or gold or silver were never established in the act and, therefore, are not as yet minimums established by legislation. We support S. 2782 to do just that—to establish these minimums legislatively.

The reason the industry is before you today at this hearing in such strength is that on June 6, 1977 the Federal Trade Commission published in the Federal Register a proposal for the elimination of these minimum qualities on gold and silver established in the commercial standards and later the FTC "rules." This proposal is still under study by the Federal Trade Commission. It has been the subject of extensive industry and consumer opposition. The proposal of the FTC would permit the word "gold" to be used to describe articles of less than 10 karat, and the word "silver" to be stamped onto articles of less than .900 fineness. In fact, the proposal would eliminate any quality floor for gold and silver—1 percent fineness would be permitted. The Commission proposal would require that, in cases where an article is made of a gold of less than 10 karat, two additional disclosures be made to the consumer: One, that when a low karat gold item is composed mostly of other metals, these metals be listed in descending order of presence by percent; and, second, that a disclaimer be made regarding less than 10 karat alloys, such as "gold alloys of less than 10 karat can be expected to tarnish and/or corrode." Since the Commission correctly indicated that there is seldom room for this type of disclosure on an article of jewelry itself, they proposed that tags fastened to the article be used to make these disclosures. In the case of silver, no such disclosure need be made but, where silver of less than .925 purity is used on an article, the parts per thousand of pure silver or percent of pure silver be indicated. The word, "Sterling," would still be reserved to articles of .925 quality.

The rationale behind the Commission's proposal is stated in the staff report. "As opposed to a flat ban on low karat alloys, this approach allows consumers to evaluate whether they wish to purchase less expensive, lower quality items." In its report, the Commission recognized that this proposal would be a substantial departure from the status quo. They state that . . . "The 10 karat rule has been observed on virtually a universal basis in this country since the depression."

They further state, "as in the U.S., most western European countries have jewelry minimums of between 10 and 14 karats established either by law or by trade custom . . ." The U.S. has had a 10 karat minimum over the years for good reasons:

- a. Less than 10 karat robs gold of the noble properties the public usually associates with "karat gold."
- b. Most countries have a minimum of 10 karat or more—i.e., France, 18 karat; Spain, 18 karat; Italy, 14 karat; Canada, 10 karat.

Only Britain with 9 karat, Germany with 8 karat, and Austria with 6 karat have less, and the 6 karat in Austria is seldom used.

The Commission report is replete with statements indicating that there is little question that these lower quality alloys are substantially inferior to the alloys now in use. They also continue to recognize that a permanent die stamp on the article itself should be reserved only to products of 10 karat gold or better although they would allow stamps indicating the percent of silver on articles containing any amount of silver.

Although the principal thrust of the FTC proposal seems to be to permit the buyer of jewelry products a greater freedom of choice at the lower end of the quality scale, the report also admits "a wide variety of high quality, low cost substitutes for 10 karat and 14 karat jewelry items are available, such as 14 karat gold filled or gold electroplated items." The same, of course, can be said for silver articles. Silver electroplated items are well known to the consuming public.

We take no issue with the general contention that the American consumer should have a wide freedom of choice in the purchase of gold and silver bearing articles providing that it is an informed choice. We contend, however, that he currently has, by the Commission's recognition, that wide area of choice in gold and silver plated and electroplated articles which, if they purport to contain gold or silver, are marked in terms that he generally understands. We further contend that the method of disclosure and warning proposed by the commission, that is, a tag on low karat golds, is totally inadequate in allowing the consuming public an informed choice when he selects a product of inferior alloy, in that the tag would have little chance of ever reaching the consuming public. Stamps indicating the percent or parts per thousand in low fineness silver items lend themselves to equal deception and confusion.

Because of the potentially devastating effects that this proposal would have, the jewelry and silverware industry has seldom been as united on any issue in the past as it is in opposition to this proposal. Once the consuming public experiences the poor characteristics of the inferior alloys that would be allowed by the FTC proposal, the public could quite rightfully lose all confidence in gold and silver alloys and in the noble qualities it expects of these metals. The economic impact on the retailer, the wholesaler, and the manufacturer of jewelry and silverware products would, we believe, be devastating. It is for this reason that the industry is so strongly advocating that the quality status quo of silver and gold be confirmed legislatively. It believes that this issue is too important to be left to the discretion of an administrative agency of government. The Stamping Act has long established legislation for the control of the words "gold" and "silver." The Act has been on the books for over seventy years. The important issue of minimums to gold and silver quality has belonged in this act for years. We ask its enactment now.

The second issue addressed by this amendment would apply all features of the Stamping Act to advertising of gold and silver jewelry as well as representations of quality that appear on the article or accompany the article at the point of sale. Advertising is not currently covered by the Act. The reason for the inclusion of advertising in the amendment is because of the importance advertising has been increasingly playing in the merchandising of jewelry and silverware articles as well as most other merchandise. A proliferation of catalog selling in recent years is a good example of this fact. The omission of advertising in the present Act is, we feel, a loophole that should be plugged and we support its inclusion in the present bill.

Mr. Chairman, the panel of witnesses from the industry that sits with me here will expand on certain of the points that I have made. They bring to this hearing expertise from various phases of the jewelry and silverware industry. Thank you, Mr. Chairman.

Mr. FRANKOVICH. With your permission, Senator, I'd like to ask other members of the panel now, rather than go on with this testimony, to highlight some of their particular areas of expertise.

The next member is a fellow member of the State of New Hampshire, if you will, Mr. Alie.

Mr. ALIE. Thank you, George.

Senator DURKIN. We're very happy to have you here today, Mr. Alie.

Mr. ALIE. Thank you, Senator.

My name is R. Normand Alie. I am owner and operator of A. E. Alie & Sons in Portsmouth and Dover, N.H. I have been in the jewelry business for over 32 years. I am a member of the RJA, Retail Jewelers of America, and past president of the New Hampshire Retail Jewelers Association. The Retail Jewelers of America is comprised of some 11,000 members. I hold the titles of registered jeweler and certified gemologist with the American Gem Society.

On behalf of myself and the Retail Jewelers of America, I am here today in strong support of S. 2782, particularly that part that would establish firm floors for karat gold jewelry and silver goods.

A. E. Alie & Sons sells karat gold and gold-filled jewelry. In addition, we sell sterling silverware and silver-plated ware. Our company is typical of perhaps 90 percent of the retail jewelers of this country. It is a family-owned business, largely catering to middle and low-income families. We are established jewelers in our communities. We are looked to as experts on diamonds and jewelry merchandise of all types. We in effect live by our reputation, rather than by advertising and prices.

Our continuing success in the communities in which we are located is largely dependent on our integrity and the integrity of the products which we sell. Although the public has some idea of the various qualities of gold and silver goods, in many cases the differential between qualities is somewhat obscure. They depend on us for advice and recommendations.

Our customers know in a general way that karat gold jewelry is good jewelry, that it is solid, that it has lasting value, and that it can be passed on to children and grandchildren with little deterioration in quality. It is also generally known that sterling silver connotes a high quality in flatware, hollowware, and jewelry, and it too is a life-long product. My reputation and success as a retail jeweler is strongly dependent on my customers' continued confidence in the products I sell. When I sell karat gold and sterling silver, they expect my products will be of heirloom quality.

As a buyer of jewelry merchandise, I deal in traditional and recognized alloys as they now exist. I fear that any deterioration in the alloy standards would result in a loss of confidence by our customers in American golds and silvers. It has been suggested that inferior alloys could be tagged with warnings. We have problems with the tags now that denote quality, never mind about inferior quality; and by the time it leaves the manufacturer, goes to the distributor, then goes to the jeweler, and then is handed on to the consumer, very few of the tags are still on the merchandise. I think we're all aware of that.

Senator DURKIN. Then you run into other problems. On some pillows, for example, the tags last longer than the pillows.

Mr. ALIE. Do not remove.

We ask nothing new in S. 2782. We ask that we be allowed to operate our business at the same level of quality that we have in the past.

Mr. Chairman, I am also concerned about the increasing number of jewelry sales that are made on the basis of advertising alone, particularly catalog and direct mail advertising. The customer of this

type of selling has no chance to see the marks or lack thereof on the article, nor to examine the quality representation on tags or boxes. He is dependent on the ad for this information. I have seen many of these ads, and they're deceptive. Our National Stamping Act should apply to advertising as well as representations of quality that are stamped on the merchandise or that are on tags or on other literature that accompany the merchandise at the point of retail sale.

I strongly urge this committee's support of S. 2782 and its speedy passage through the Senate.

Senator DURKIN. Thank you, Mr. Alie.

Mr. CORRIGAN. Mr. Chairman, my name is Donald A. Corrigan. I am vice president of research and development for Handy & Harman, a prominent supplier of precious metal alloys to the jewelry and silversmithing trade, as well as other industries. I received my doctorate in metallurgy from MIT.

Senator Pell has indicated that experimental studies have shown 10 karat is the minimum acceptable gold alloy for jewelry applications. The traditional standards for gold and silver alloy quality as were developed in this country over the years rest on a foundation of fundamental technical considerations. They are not the result of arbitrary industry designations.

Let me first address myself to karat gold alloys where articles made of 18, 14, and 10 karat are most commonly found in this country. As you know, 10-karat gold, the minimum acceptable under current standards, is equivalent to 41.66-percent-by-weight gold. I would like to have you consider karat gold alloy compositions from the more fundamental view of atomic percent of gold, instead of the usual weight percentage; that is, the ratio of the number of atoms of gold to the number of atoms of base metal.

Now, 18-karat alloy on a weight basis is 75 percent gold, but on an atomic basis it is 49 percent. That is, less than half of the atoms are gold in an 18-karat alloy. Similarly, 10-karat gold, which is approximately 42 percent by weight, is only 18-percent gold on an atom basis.

	Weight, gold (percent)	Atomic, gold (percent)
18 kt.....	75.00	49
14 kt.....	58.33	31
10 kt.....	41.66	18
5 kt.....	20.83	8

From this viewpoint, the minimum standard 10-karat alloy looks like a base metal with a little gold added. There is about as much gold as there is chromium in stainless steel. Lowering the standard further, by say half, to 5 karat, would reduce the atomic content still more than the percent weight reductions suggest. In the case of a 5-karat gold, which would be approximately 21-percent-by-weight gold, only 8 percent of the atoms in the alloy are gold.

Now, the corrosion resistance of karat gold alloys decreases as the atomic percentage of gold decreases. So 10-karat gold is barely at the threshold of corrosion resistance. Resistance to atmospheric tarnish and corrosion by perspiration may be lowered to a level that can become a source of complaint to the wearer. The problems of karat gold tarnish and corrosion are aggravated by warm, moist conditions, and 18-karat alloys may be required for an adequate product in tropical cli-

mates. For most environments, 10-karat gold represents the minimum acceptable quality from the technological point of view.

Rather than cite the results of numerous empirical studies for the record, I would refer the committee to standard reference texts which summarize the extent of metallurgical and chemical knowledge of karat gold alloys.

Quality standards for silver alloys have been a particular concern for my company for many years. As long ago as 1923, a major research effort was undertaken to modify the standard sterling and coin silver compositions. Originally, the motivation for this research was improvement of the tarnish resistance of these silver alloys, in effect, to produce stainless silver.

The files in my laboratory are filled with voluminous reports on all aspects of the quality problem. Much of this technical work has been recorded in two well-documented texts: "Silver in Industry," which is edited by Lawrence Addicks, and "Silver: Economics, Metallurgy, and Use," edited by Charles Coxe. The net result of these studies is simply that there is nothing as good as sterling or coin silver.

These researches have received added impetus in the last decade because of rapidly rising silver prices. Instead of stainless silver, the goal has been equal quality at reduced metal costs. Exhaustive studies have been done by firms within the industry and also by specialized metallurgical consulting and research firms. Again, the answer has been the same. Reducing the silver content of the traditional silver alloys, sterling and coin, below .900 fine substantially reduces the quality of the product.

To summarize then, the traditional quality standards of the alloys used by the jewelry and silversmithing industries are not the result of frivolous or arbitrary edict, but the logical result of constraints imposed by purely technological limitations. I feel these quality standards have met the test of time, and even the rapidly rising precious metal prices of the last decade have been unable to change the hard facts of precious metal technological fundamentals.

Thank you.

Senator DURKIN. Thank you.

I'll turn to our neighbor from Newburyport.

Mr. MULLIGAN. That's right. We're just a few miles from the New Hampshire border.

Mr. Chairman, my name is Edward W. Mulligan. I am president of the Towle Manufacturing Co., a company with a tradition dating back to 1690, and which has been making silver products in the same location in Newburyport since that time. I am also president of the Sterling Silversmiths Guild of America, an organization composed of nine manufacturers of sterling silverware products, whose purpose it is to promote the benefits and the sale of sterling silverware products.

We believe that the passage of any proposal which would permit the word "silver" to be used in an article containing less than 0.900 silver will result in grave confusion to the consumer by destroying the standards by which consumers heretofore have been able to determine the quality of a purchase. By consumers, I mean housewives, gift givers, and collectors.

Sterling silverware over the years has had a connotation which is universal. For instance, British hallmarks have acted as a safeguard to purchasers of gold and silverware articles for over six centuries in

that country. Hallmarking in England is still one of the most important forms of consumer protection, and in 1975 it was extended to include platinum. The consumer benefits in many ways. For example, it's an offense in Britain for any trader to sell or describe an article as gold or silver or platinum unless it's been hallmarked. The rules are clearly defined; there is no room for confusion.

Mr. Chairman, the FTC's former proposal would open wide the doors to confusion and deception. It would permit, for example, the term "100 silver" to be placed on a product that is only 10 percent silver. For a product to be presentable and serviceable, it should really be silverplated. To present a product that is only 10 percent silver to masquerade as 100 percent silver is not only deceptive but potentially dishonest since many people would understandably conclude that a product that was 100 percent silver, in actuality, was only 100 parts out of a possible 1000.

We're here to ask this committee's help in protecting and upholding the standards and the traditions that have long been sacred safeguards in our industry. I also find that, during these times of rampant inflation, practically every product that I buy is costing me more.

Senator DURKIN. Especially energy.

Mr. MULLIGAN. Right. I find, however, while I'm paying more, in many instances I'm getting less, and I'm getting less in quality.

Silver and gold have been the exceptions, because of the rising price of these precious metals, the product has cost more, but the items that have been made have been manufactured to standards, and there's been no dilution of quality. Under the FTC's former proposal—I mention former—I envision confusion, a lack of standards, and possible deception.

On behalf of the silverware industry and the consumers of America, I urge passage of S. 2782, which, for once and for all, will preserve not only time-honored traditions, but also strict adherence to standards as concern silver. Standards which, I might add, have served both the buying public and the industry well over many, many years.

Thank you very much.

Senator DURKIN. Thank you.

Mr. Chalson?

Mr. CHALSON. Thank you, Senator.

Mr. Chairman, my name is Bernard Chalson. I am president of Wm. Chalson & Co., Inc., a manufacturer of jewelry for 70 years and three generations, in the city of New York. I am also president of the Jewelers Vigilance Committee, a trade organization consisting of 1,688 member jewelry firms in the retail, wholesale, and manufacturing branches of the industry. Its activities are limited to trade regulatory matters and particularly the prevention of deception and fraud in the sale of jewelry articles. These activities include aiding various governmental agencies by providing technical expertise with regard to precious metals and precious stones.

I am here to urge the speedy adoption of S. 2782. The standards for marking of karat gold have protected the consumer ever since the first hallmarking rules were establishing in England in the year 1300. Then, the quality of jewelry metals and the coinage of the realm were considered synonymous.

In all the years since then, the concept of protecting the consumer by upholding standards has been maintained. The jewelry industry is

unique in that it has encouraged government to establish meaningful controls, rather than fight against them.

The latest example of this progressive thinking was the amendment to the National Stamping Act, signed into law by President Ford in 1976. This amendment took cognizance of modern manufacturing methods to "increase the protection of consumers by reducing permissible deviations in the manufacture of articles made in whole or in part of gold."

That law change was the direct result of a concerted effort by a vast majority of the entire jewelry industry.

For decades, the U.S. jewelry industry has operated with the Federal Trade Commission trade practice rules as its guide. Those rules included the protection that nothing under 10K could be called gold. We currently find that consideration is being given to dropping many of those rules.

Ample testing led to the inescapable conclusion that the ability to resist tarnish and corrosion declined in geometric proportion to the lowering of gold content.

On the basis of reason and logic, every argument in the FTC report that considered the wearing qualities of alloys under 10K concluded that the 10K rule should be retained. Also, that there currently exists an ample supply of gold plate, gold filled, good electroplate, to supply any demands of the marketplace—and that is a direct quote.

The staff then suggested, when the rule was first promulgated, gold was \$35 an ounce; therefore, we should permit the use of less gold in order to keep prices down.

I might respond that, when gold was \$35, a hot dog cost 5 cents. Is it logical to suggest that to keep the price at a nickel, we remove the meat from the hot dog?

Senator DURKIN. That depends on who you talk to. There's not a heck of a lot of meat in a hot dog now.

Mr. CHALSON. That may be. We would like to keep the gold in the jewelry. When the FTC published proposed amendments to their rules in the Federal Register and suggested that any quantity of gold would be permitted as proper disclosure is made, the public clamor was overwhelming. I'm informed that over 1,200 responses were received in the allotted time period, and 99 percent of consumers were opposed to lowering the 10-karat minimum for gold and 0.925 for silver.

A report by London's internationally respected Goldsmiths' Hall concluded that although 8- and 9-karat golds are recognized in some countries, only three, including the United Kingdom, it is suggested that ideally a minimum standard of genuine gold alloys should be 14 karat, and in the United States any move to regularize alloys below the currently accepted 10-karat standard must be a retrograde step.

The proposal to use the word "gold" below the present standard is an obvious attempt to debase the value of the word, which, itself, has meaning, because that standard has been protected for so long. Otherwise, why not simply call an article made of 96 percent brass what it basically is—brass—rather than 1 percent gold?

Jewelry exists because the instinct to beautify oneself is a basic psychological factor and concerns an essential self-image. While no one ever caught cold because of the lack of a piece of jewelry, the purchase of a piece of jewelry involves emotional aspects not attendant on the purchase of a new typewriter or washing machine.

The jeweler is the custodian of the faith placed in him by the consumers. Every trade organization in the jewelry industry unreservedly endorses this bill. This includes the Retail Jewelers of America, the Manufacturing Jewelers & Silversmiths, the Jewelers Vigilance Committee, the Sterling Silversmiths Guild, the Jewelry Casters Association, the Associate Jewelers, the Jewelry Manufacturers Association, the Gold Filled Manufacturers Associations.

All of these professional jewelers justly feel that ill-conceived and inferior merchandise will be laid at their doorstep, to the detriment of every honest product now sold. This bill will propose two major omissions, whose importance has come to be recognized in recent years as the consumer protection movement has gained momentum. They are: One, the lack of minimum-quality requirements for gold and silver; and two, the absence of any limitations on advertising requirements for these products.

This bill will give needed strength to already existing and accepted standards. It will protect the consumer and give assurance that the phrase "as good as gold" does not disappear from our vocabulary.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF BERNARD CHALSON, PRESIDENT, JEWELERS VIGILANCE COMMITTEE, INC.

Mr. Chairman, my name is Bernard Chalson. I am president of Wm. Chalson & Co., Inc.—a manufacturer of jewelry for 70 years and three generations in the city of New York. I am also president of the Jewelers Vigilance Committee—a trade organization consisting of 1,688 member jewelry firms in the retail, wholesale and manufacturing branches of the industry. Its activities are limited to trade regulatory matters and particularly to prevention of deception and fraud in the sale of jewelry articles, which includes aiding various governmental agencies by providing technical expertise with regard to precious metals and precious stones.

My purpose in coming to this hearing is to urge the speedy adoption of Senate bill No. 2782.

The standards for marking of karat gold have protected the consumer ever since the first hallmarking rules were established in England in the year 1300, when the quality of jewelry metals and the coinage of the realm were considered synonymous.

In all of the years since then the concept of protecting the consumer by upholding standards has been maintained. The jewelry industry is unique in that it has encouraged Government to establish meaningful controls rather than fight against them.

The latest example of this progressive thinking was the amendment to the National Stamping Act signed into law by President Ford in 1976. This amendment took cognizance of modern manufacturing methods to "increase the protection of consumers by reducing permissible deviations in the manufacture of articles made in whole or in part of gold."

That law change was the direct result of a concerted effort by a vast majority of the entire jewelry industry.

In making jewelry of precious metals, trade custom and usage have accepted, as a practical measure, that certain exemptions (which may be defined as those parts of jewelry that are specifically omitted from the quality requirements of the article and which would be removed prior to an overall assay) from the assay requirements are necessary. Those exemptions are spelled out in the "voluntary product standards" of the U.S. Department of Commerce National Bureau of Standards. They include certain functional or separable parts and should be incorporated by reference in this legislation as the sense of Congress to prevent placing a stranglehold on the manufacturing jewelry industry. The exact schedule of those parts are listed in product standards—

No. PS-71-76 (Marking of jewelry and novelties of silver) paragraph 3.7.

No. PS-68-76 (Marking of articles made of silver in combination with gold) paragraph 3.6.

No. PS-70-76 (Marking of articles made of karat gold) paragraph 3.6.

For decades the United States jewelry industry has operated with the Federal Trade Commission "trade practice rules" as its guide. Those rules included the protection that nothing under 10K could be called "gold." We currently find that consideration is being given to dropping many of those rules.

In discussing the advisability of lowering the currently accepted 10K standard, the staff report of the Federal Trade Commission recognized that any alloy of gold under 10K is apt to tarnish and corrode.

Ample testing led to the inescapable conclusion that the ability to resist tarnish and corrosion declined in geometric proportion to the lowering of gold content.

On a basis of reason and logic every argument in that report that considered the wearing qualities of alloys under 10 karat concluded that the rules as laid down in rule 22 of the "trade practice rules for the jewelry industry" should be retained. Also, that there currently exists an ample supply of materials (rolled gold plate, gold filed, gold electroplate) to produce lower priced articles of jewelry to supply any demands of the marketplace.

The staff then suggested that, when the rule was first promulgated, gold was \$35 per ounce; therefore, we should permit the use of less gold in order to keep prices down. I might respond that when gold was \$35—a hot dog cost 5¢. Is it logical to suggest that, to keep the price at a nickel, we remove the meat from the hot dog?

When the Federal Trade Commission published proposed amendments to their rules in the Federal Register and suggested that any quantity of gold would be permitted as long as proper disclosure was made, the public clamour was overwhelming. Over 1,100 responses were received in the allotted time period. Ninety-five percent of consumers were opposed to lowering the 10 karat minimum for gold and .925 for silver.

The public understands that pure gold (24Kt.) is too soft for wear. Various base metals are added to pure gold to give it necessary wearing qualities. The amount of alloy in the mix is expressed in terms that specify the percentage of pure gold. Thus 18Kt.=.750 or 75 percent gold, 14 Kt.=58 percent gold and 10Kt.=41 percent gold.

Ten karat has been the minimum permitted the use of the word "gold" because anything less loses the noble qualities of gold. That quality may be defined as the ability to withstand the ravages of time and wear.

A report by London's internationally respected Goldsmiths' Hall concludes that "although 8 and 9 carat golds are recognized in some countries, (only 3) including the U.K., it is suggested that ideally a minimum standard of genuine gold alloys should be 14 carat and in the U.S. any move to regularise alloys below the currently accepted 10 carat standard must be a retrograde step."

The proposal to use the word "gold" below the present standard is an obvious attempt to debase the value of the word—which itself has meaning because that standard has been protected for so long. Otherwise, why not simply call an article made of 96 percent brass—what it basically is—brass, rather than 1 karat gold?

The standing of the jeweler in the community was recognized by Earl Roberts, Assistant Attorney General of the State of New York, in an address to the Jewelers Vigilance Committee on January 14, 1977. In that address, he stated: "Gresham's law applies to competition as it does to money and the lowest ethical standards will become the basic standards if we allow it . . . jewelry exists because the instinct to beautify oneself is a basic psychological factor and concerns an essential self-image.

The purchase of jewelry thus involves emotional aspects not attendant on the purchase of a new typewriter or washing machine.

Every trade organization of the jewelry industry unreservedly endorses the proposed bill. This includes:

- The Retail Jewelers of America.
- The Manufacturing Jewelers & Silversmiths.
- The Jewelers Vigilance Committee.
- The Sterling Silversmiths Guild.
- The Jewelry Casters Association.
- The Associate Jewelers.
- The Jewelry Manufacturers Association.
- The Gold Filled Manufacturers Association.

All of these professional jewelers justly fear that ill-conceived and inferior merchandise will be laid at their doorsteps to the detriment of every honest product now sold.

The need for this legislation has been recognized since the original law was passed in 1906. Subsequent congresses have amended that law on several occasions to close loopholes as they were recognized. This bill will close 2 major omissions whose importance has come to be recognized in recent years as the consumer protection movement has gained momentum. These omissions are:

1. The lack of minimum quality requirements for gold and silver;
2. The absence of any limitations on advertising requirements for these products.

This law will give needed strength to already existent and accepted standards; it will protect the consumer and give assurance that the phrase, "as good as gold" does not disappear from our vocabulary.

Senator DURKIN. Thank you.

Mr. FRANKOVICH. Mr. Chairman, I wonder if I might have one moment to respond to a question that you had of the witness from the FTC. This industry is very much concerned with imports. Imports of fine jewelry went from about \$90 million a year to about \$300 million a year in a 2-year period.

Senator DURKIN. Where is it coming from?

Mr. FRANKOVICH. Mostly from Italy. About 50 percent of the fine gold jewelry imports come in from Italy. As you know, we have people over in Geneva today that are busy negotiating the Tokyo round of negotiations and, presumably, sometime after July, can be called upon to ratify another treaty that may reduce current tariffs to roughly 40 percent below the present level.

Senator DURKIN. I hope it doesn't take as long as the Panama Canal treaty.

Mr. FRANKOVICH. I don't mind if it took forever, sir, because we're not interested in further reduction when we have this proliferation of imports coming in, and presumably—this happened in the Kennedy round—no reciprocating benefits would accrue our industry, as happened then.

We are concerned with imports. Some of these imports are under quality. We have a great deal of difficulty policing them. Under an amendment to the law, it's necessary that any quality representation on jewelry, an amendment to the Stamping Act, also be accompanied by the name or trademark of the person responsible for the quality. Presumably, this would be that of the importer.

Our problem is, if there's no mark, how can you find out who's responsible and how can you find the violator. This is a very serious problem, and we don't have a solution to it, as yet.

[The following information was subsequently received for the record.]

MANUFACTURING JEWELERS & SILVERSMITHS OF AMERICA INC.

Providence, R.I., May 18, 1978.

HON. JOHN A. DURKIN,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR DURKIN: On May 10, the writer appeared before the Senate Subcommittee on Consumer Affairs of the Commerce, Science and Transportation in support of S. 2782—A Bill To Protect Consumers From Misrepresentation of Gold and Silver Jewelry and for Other Purposes.

You, as Chairman, inquired of a prior witness, Mr. Steinman, Federal Trade Commission, as to the impact of foreign imports of gold jewelry on the U.S. market and jobs. An answer was not forthcoming because of lack of information.

The writer, during his appearance, stated the imports of jewelry were of increasing concern to the U.S. jewelry producing segments, citing ever-increasing record volumes in recent years.

In order that you may be fully informed, the attached U.S. Department of Commerce news release dated March 27, 1978, shows in excellent detail the ex-

tent of import penetration as well as U.S. exports. TSUS 740.1020 and 740.1040 and 740.0500 are categories most affected by S. 2782.

Silver flatware and holloware appear in other statistics which are not available at this time.

Again, may I thank you for the excellent manner in which the Subcommittee public hearing was conducted.

Very sincerely,

GEORGE R. FRANKOVICH,
Vice President/Executive Director.

Enclosure.

[U.S. Department of Commerce News, March 27, 1978]

U.S. FOREIGN TRADE IN JEWELRY REACHES NEW HIGH IN 1977, BUT DEFICIT ALSO SETS RECORD

Total U.S. foreign trade in precious and costume jewelry reached a new record of \$550 million in 1977, the U.S. Department of Commerce reported today. The U.S. foreign trade deficit for jewelry also reached a new high of \$314 million during the year. These increases were 37 percent and 78 percent, respectively, over the previous peak amounts recorded in 1976.

U.S. imports of jewelry in 1977 were \$432 million while exports were \$118 million, compared with 1976 imports of \$288 million and exports of \$113 million.

Italy was the principal supplier of jewelry to the United States, accounting for 44 percent of total imports, up 116 percent from 1976. Hong Kong was the second largest source of imports with 21 percent of the total, up approximately 14 percent. Among the major suppliers, Israel showed the largest percentage gain over the previous peak year with imports increasing 123 percent.

Switzerland remained the largest market for U.S. jewelry, in spite of the fact that exports to that country were down 10 percent during the year.

The following tables show U.S. imports and exports of precious metal and costume jewelry by country and product category for 1977.

Data are compiled from the Bureau of Census Publications FT-410 (Exports) and FT-246 (Imports). Additional information may be obtained from the Industry and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377-3813.

TABLE I.—PRECIOUS AND COSTUME JEWELRY: CHANGE IN IMPORTS AND EXPORTS
(Value in thousands of dollars)

	1975 value	1976 value	1977 value	Percent change	
				1975-76	1976-77
Imports:					
Italy.....	44,419	87,140	188,441	96.0	116.2
Hong Kong.....	26,311	81,540	92,693	209.9	13.7
Japan.....	12,412	16,717	22,227	34.7	33.0
Taiwan.....	7,649	13,170	14,858	72.2	12.8
Korea.....	9,140	13,158	14,541	44.0	10.5
Israel.....	2,700	6,476	14,474	139.8	123.5
Switzerland.....	3,634	9,310	13,902	156.2	49.3
Mexico.....	6,453	8,566	10,015	32.7	16.9
West Germany.....	7,968	9,793	9,973	22.9	1.8
Others.....	56,684	42,551	50,966	-24.9	19.8
Total, imports.....	177,370	288,421	432,091	62.6	49.8
Exports:					
Switzerland.....	53,012	61,630	55,400	16.2	-10.1
Canada.....	7,297	10,358	12,716	41.9	22.8
Japan.....	6,522	8,560	7,955	31.2	-7.1
France.....	6,072	3,237	6,940	-46.7	114.4
Hong Kong.....	3,652	3,606	4,977	-1.2	38.0
United Kingdom.....	3,016	2,876	4,595	-4.6	59.8
Germany.....	1,184	2,447	3,581	106.7	46.3
Australia.....	2,078	2,789	2,951	34.2	6.2
Netherlands Antilles.....	2,399	2,988	2,570	24.5	-14.0
Others.....	11,942	14,126	16,648	18.3	17.8
Total, exports.....	97,175	112,618	118,344	15.9	5.1
Trade balance, surplus (deficit)....	(80,195)	(175,803)	(313,747)	119.2	78.5

Note: Columns may not add to total due to rounding.

Source: Bureau of the Census, Bureau of Domestic Business Development.

TABLE II.—PRECIOUS AND COSTUME JEWELRY: U.S. EXPORTS

[Value in thousands of dollars]

Schedule B No.	Article	1975 value	1976 value	1977 value	Percent change	
					1975-76	1976-77
897. 1110	Platinum and carat gold jewelry.....	30,517	55,762	76,717	82.7	37.6
897. 1120	Other precious metal jewelry.....	4,618	5,227	7,268	13.2	39.0
897. 1400	Articles with pearls or stones, n.e.c.....	38,309	22,835	2,020	-40.4	-91.2
899. 3410	Lighters, of precious metal.....	1,513	1,043	886	-31.1	-15.0
897. 2010	Men's jewelry, not rings, watch bands, base metal.....	1,996	2,744	3,386	37.5	23.4
897. 2020	Women's jewelry, not rings, watch bands, base metal.....	10,288	13,000	14,794	26.4	13.8
897. 2030	Rings, watch bands, base metal.....	7,923	9,994	10,845	26.1	8.5
897. 2040	Jewelry, except metal.....	1,207	1,309	1,520	8.4	16.1
899. 5230	Studs for fastening or decorating apparel.....	804	705	908	-12.3	28.8
Total.....		97,175	112,618	118,344	15.9	5.1

Note: Columns may not add to total due to rounding.

Source: Bureau of Census, Bureau of Domestic Business Development.

TABLE III.—PRECIOUS AND COSTUME JEWELRY: U.S. IMPORTS

[Value in thousands of dollars]

TSUS NO.	Article	1975 value	1976 value	1977 value	Percent change	
					1975-76	1976-77
740. 0500	Silver jewelry and parts, not over \$18/doz.....	3,803	4,014	5,200	5.5	29.5
740. 1020	Precious metal jewelry and parts.....	76,026	149,767	277,072	97.0	85.0
740. 1040	Jewelry of precious stones or pearls.....	10,475	13,813	14,037	31.9	1.6
740. 5500	Crucifixes and medals of precious metals.....	115	219	329	90.4	50.2
756. 0200	Lighters of gold, plat. gems.....	308	305	418	-1.0	37.0
740. 7000	Chains of precious metals.....	1,406	2,161	4,066	53.7	88.2
740. 7500	Chains of base metal, not over \$0.30/yd.....	6,275	5,468	3,387	-12.9	-38.0
740. 8000	Chains of base metal, over \$0.30/yd.....	2,010	1,896	2,932	-5.7	54.6
741. 4000	Metal rondelles for jewelry.....	102	66	39	-35.3	-40.9
740. 3000	Jewelry n.s.p.f., not over \$0.20/doz.....	4,357	4,195	3,818	-3.7	-9.0
740. 3400	Watch bracelets, over \$0.20/ to \$5/doz.....	2,365	3,696	2,929	56.3	-20.8
740. 3500	Watch bracelets, over \$5/doz.....	15,284	23,921	26,278	56.5	9.8
740. 3800	Jewelry and parts n.s.p.f. over \$0.20/doz.....	47,679	69,936	81,882	46.7	17.1
740. 5000	Rosaries and chaplets of any material.....	1,181	945	1,090	-20.0	15.3
740. 6000	Crucifixes or medals n.e.s.....	676	1,005	654	48.7	-34.9
741. 1000	Imitation pearls and pearl beads.....	515	680	942	32.0	38.5
741. 5000	Articles n.s.p.f. of beads, bugles, spangles.....	3,667	4,595	3,209	25.3	-30.2
750. 2000	Rubber or plastic hair ornaments.....	811	1,413	3,274	74.2	131.7
750. 2200	Hair ornaments n.s.p.f.....	315	325	534	3.5	63.8
Total.....		177,370	288,421	432,091	62.7	49.8

Note: Columns may not add to total due to rounding.

Source: Bureau of the Census, Bureau of Domestic Business Development.

Senator DURKIN. Do you think this bill should go further to address the problem?

Mr. FRANKOVICH. I think, at the moment the industry would be satisfied with the bill, as proposed, becoming law. We don't have any good solutions to the import problem as yet.

This would require you tripling or quadrupling the customs budget. We know that's not in the picture.

A lot of the responsibility for policing the law is in industry's hands, as I indicated earlier. It's just going to have to be up to us, I think, to come up with proper funds and a proper police force to police the law a little better than is now being done. The civil penalties provided under the law give us this opportunity.

Senator DURKIN. If they can call something gold that is less than 10 karat, and something silver that is less than 0.900 or 0.925, it would just compound your import problem.

Mr. FRANKOVICH. Yes, sir, it would.

Senator DURKIN. Geometrically compound it.

Mr. FRANKOVICH. Yes, sir, there's no question it would.

Senator DURKIN. What is your feeling with respect to the 0.925 standard, as opposed to the 0.900?

Mr. FRANKOVICH. We discussed this briefly, and I don't think the panel has any objection to that.

Would you like to address yourself to that?

Mr. MULLIGAN. I think the 0.925 is an excellent standard. The 0.900 is traditional for coin. If you put .900 on it, I think you have to put coin, and 0.925 stands for sterling. We feel that's a good standard, and it's been around a long time. We'd like to see it protected and kept the way it is.

Senator DURKIN. I gather, Mr. Alie, for those of you on the retail end, that tagging isn't going to work.

Mr. ALIE. It isn't that as much as by the time the article reaches the consumer, there's no tag on it. Half the time, by the time it reaches the retailer the tag has fallen off.

The only solution to it would be to stamp the article. Obviously, if you start putting on a warning and try to stamp a warning on an earring, it just isn't practical; it's too small a piece to stamp that way.

Mr. MULLIGAN. Senator, I might mention that in our business, which is silver—I won't speak for gold—but approximately 60 percent of our business products are sold as a gift, someone buying it for someone else. I would presume that in the jewelry business, which I know something about, it might even be higher; it might be 75 to 85 in gold jewelry, where you're buying it for someone else. I know, we buy gifts for our wives, jewelry; we don't buy them for ourselves. And men are great jewelry buyers. The majority of the time, I think, when they buy a low-quality product and it says—it doesn't have the standards and it looks like gold, those tags are removed before they're gift wrapped. And if it says Taiwan or Italy, it's usually removed, too, or if it says Japan, it's usually removed, because the connotations aren't as good as if they were made by craftsmen in this country. So, those tags are really very easily removed and, in my opinion, are removed either in the store or by the purchaser.

Senator DURKIN. As I said before, I gather there's no concern about experimentation with alloys and other substances even if they do have, in effect, essentially similar characteristics. That's not the problem. The problem is that the product should not be labeled as "gold." We complain about the erosion of standards in all walks of life. I would like to make a point, or at least an initial response. I can see, when we get to the floor, someone standing up and saying, "Well, this is just an industry trying to maintain price supports." But you are not trying to maintain price supports; you're trying to maintain quality.

Mr. CHALSON. If I may, Senator, your question about how we can recognize whether or not a piece of jewelry has been properly marked is, in part, answered by the requirement that the seller of the jewelry must trademark that merchandise so that, if it's inferior, it can be laid at his doorstep.

No one here is concerned about pricing, in any sense. We simply would like to maintain the standards. The pricing and the normal competition will take care of any of that. Our principal concern is to

see that the competition is kept honest by producing the same kind of merchandise and selling at whatever price the manufacturer is able to.

After all, we are not selling to the public gold as gold. We are selling it as a finished article of jewelry, and there are factors of labor and the quality of workmanship and so on that enter into this.

Senator DURKIN. Assuming that we maintain the 10 karat and the 0.900-0.925 standard and the alloys do come on the market, I suppose there will be some difficulty in evaluating them as to value, design and other characteristics.

Mr. FRANKOVICH. Mr. Chairman, in addition to karat gold, we have lower-priced substitutes. We have a thing called gold-filled, or gold overlay, which is about 5 percent gold, a layer of karat gold on base metal. We have electroplated goods, costume jewelry articles and, presumably, someday someone may come up with a 2 percent alloy of gold that might be marketable. It hasn't happened. We don't think it will happen in the foreseeable future. But if it does happen and that carries with it the proper terminology so that it won't be confused with karat gold and what people expect of karat gold, we, of course, would have no objection.

Senator DURKIN. There is an argument that, even with 10-karat gold, there are other metals utilized, and that the 10-karat gold standards could, therefore, be construed to be deceptive. Has that been a problem in your years of experience?

Mr. CHALSON. No, sir.

Mr. MULLIGAN. You know, Senator, you talk about tagging. I can't help but say with great pride that most of us in the industry here—especially, I might mention my own firm in Newburyport, Towle, who've been making the same product at the same location in Newburyport since 1690, we haven't been tagging it, we've been stamping it, so that a piece of silver bought in Newburyport in 1690 can be bought today, and there are some around and you pay quite a price for it, and the hallmark is on it and the word "sterling" is on it and the word ".925" is on it, and that's a hell of a tag, and it's right on the product. Nobody can take it off it; it's stamped in.

And that's just all we're trying to say, is that those standards, great traditional standards, are maintained, and we hope the committee will keep that in mind when they review this. Price has no factor in what we're talking about.

Senator DURKIN. Right. That's the point I'm trying to make. It's fairly clear that the thrust of your testimony today is that you want to maintain quality, you want to maintain standards and eliminate deception. The competition would come from quality and from the service given by the retailer.

Well, the record will remain open if you have anything additional to add. If we have any questions as we go over the hearing record, or any additional testimony, we'll forward them to you.

I do, again, appreciate, not only your time, but your testimony. As you might have gathered, I'm sort of new to this, but it is refreshing to see an industry coming in and asking that standards be maintained. All too often, we find various interest groups coming in trying to find a loophole, and I'd like to commend you for your very forthright approach and your coming in and asking, not only that there be standards, but that the standards be maintained.

Thank you very, very much.

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

Mr. MULLIGAN I might mention, Senator, you're only 20 miles from the Massachusetts border. We'd be delighted to take you through our factory sometime and show you the quality of the stamping and the things that we do. So, if you're ever in that area, please stop in.

Senator DURKIN. Thank you. I'd love to, if I ever get out of here.

Mr. Altman, as I stated before, your entire statement will be printed in the record. The record will be left open for any comments you might want to add later on.

**STATEMENT OF ARTHUR ALTMAN, THE COURT OF KING ARTHUR,
NEW YORK, N.Y.**

Mr. ALTMAN. Thank you very much.

First, I'd like to introduce myself. My name is A. Arthur Altman, and I am president of three firms that jointly use the name of the Court of King Arthur at Camelot. Each firm sells gold in a different form to a different type of distributor.

Court Casters sells manufacturers the rough castings and they in turn do the filing, polishing, and finishing. King Arthur Rings sells mountings to large wholesalers, and diamond dealers, and they have the option of either setting their own stones or sending their stones to us to set.

And Camelot Creations sells to chains of six or more stores. We are primarily in the gold business, although as much as 5 percent of what we distribute is sterling. We do not work on anything for distribution that's not a precious metal.

Senator DURKIN. Mr. Altman, I hate to interrupt, but before I forget, could you provide, if it's not proprietary data, the test results that demonstrate the tarnish qualities and so forth of, I guess you call it quarter gold?

Mr. ALTMAN. Yes, thank you, I will.

[The information follows:]

Six-karat gold, which incidentally was plum 6k, was merchandised as Quartergold, and was advertised and stamped according to the FTC as 25 percent, consisted of the following:

(a) Six parts fine gold with the normal allotment of Zinc, Cooper, and Silver (this varied with the color gold. Ex: white gold—less Copper & Zinc), that would normally be found in 9½k. (b) Replacing the other 3½ parts of gold were Boron, and a minute quantity of Colbalt.

Several samples of the same designs were made in 17½k yellow, 13½k yellow, 9½k yellow and 6k yellow. They were tested in the following manner:

(a) One of each design in each karat was left exposed to soot, water, and air. (b) Four of an identical design in 6k, as well as, four 9½k, and four 13½k, were worn by 12 different individuals in four different occupations.

The findings were the following:

(a) Where the rings were left unworn, but exposed to the elements, all of them tarnished. The rate of tarnishability depended on the fineness of the gold (ex: 17½k tarnished less than 13½k, and 13½k tarnished less than 9½k. However, interestingly, the 6k tarnished about the same as 9½k). (b) On the experiment where people wore the rings, we found that with daily wear, and where the individual regularly washed their hands (while wearing the ring), and wiped it with a buff-type towel, the tarnish remained the same.

Mr. ALTMAN. Basically, I welcome the opportunity to be here because a lot has happened since 1973, when I first introduced quarter gold. As they say, an awful lot of water has passed under the bridge.

I believe that my responsibility and obligation in the jewelry industry is to keep my ear attuned to my customer's needs. When in March of 1968 the U.S. Treasury suspended the gold sales, the jewelry industry was rocked with the first gold fluctuation in 34 years. Within 6 years the price of gold more than quadrupled.

Some established markets were suddenly in danger of becoming extinct and I kept hearing from wholesalers and manufacturers across the country: "what are we going to do about it?"

Two markets of jewelry were hardest hit by the inflationary trend. The school ring, because it's a heavy item, usually, weighing from 10 to 15 pennyweights of gold. The second was the under \$25 gift market which were mostly youth oriented.

These two items priced themselves out. Where previously school rings had sold for \$39.50, today, as the price of gold accelerated, they went into the \$75 market which was not affordable to many. Teenagers who were looking for a gold item in the under \$25 gift department just had to leave it, and go to another to find their gift.

Senator DURKIN. Let me ask you a question.

As you know, they used to make countertops and bar tops out of mahogany. Then mahogany became very, very expensive and many people switched to Formica and other substitutes, but they didn't call the Formica, mahogany.

I mean, isn't that the rub?

Mr. ALTMAN. If you notice, I call my article quarter gold, just as karat-clad and gold overlay and gold filled all use words that contain either gold or karat, because it was not our intent to say that this is a high karated gold.

To continue: out of necessity, in conjunction with Consolidated Refining, a leading supplier of karated metal to the jewelry industry, we began to experiment with a new alloy that could mix well with gold and make it tarnish less, in an effort to use gold less than 10-karat.

We explored for 6 months many combinations of alloys and then finally, after experimenting under different atmospheric conditions including water, soot, et cetera, and even had people in different occupations wear the rings. The immediate response was bad, due to excessive tarnishing.

We went back to Consolidated and said, "well, what did we do wrong here?" We decided to try cobalt as an additive and discovered that it was an effective deterrent to tarnishing.

Senator DURKIN. When you mentioned cobalt, do you run into any radiation hazard?

Mr. ALTMAN. No; the metallurgist at Consolidated assured us that the small percentage that we put in there in no way caused a hazard to health in any way, shape, or form.

Senator DURKIN. Who assured you that?

Mr. ALTMAN. The metallurgist for Consolidated worked on this with us at their plant.

Senator DURKIN. Yes; but as you know, currently, there's a new study going on concerning levels of low-level radioactivity. In fact, it grew out of the Portsmouth Naval Shipyard in my home State.

Mr. ALTMAN. The study that I'm reporting about was conducted by Consolidated in 1973. There is a possibility that something may have been discovered since then, as it does in the history of different products that we find may be injurious.

But in 1973, according to the knowledge that we had, it represented no danger to the wearer.

One of the things that we discovered, is that it is very good, in terms of tarnishability, if it is worn. Three people are, still today, wearing 6-karat rings, all from different occupational backgrounds. They include my daughter, who is a nurse, and my son, who is a jeweler. We have found that when you wear it, because you're washing your hands and you're drying it with a buff towel, which polishes it, it keeps it aglow.

One of the weaknesses of the product, is if you let it stay without doing that, it does have a tendency to tarnish. But in all manners that we explored, its character is very similar to that of 10-karat.

For instance, it casted, filed and sized like 10-karat. If you soldered it, it soldered like 10-karat, and it wore in many ways like 10-karat.

But I'd like to move on.

As I mentioned, we did not call it gold. We asked the FTC for a ruling on it and they said you can't call it gold, which I understood at that time. They gave us permission to call it 25 percent. They said, as long as you called it 25 percent, you can distribute it, so that's the way we trademarked our product.

In fact, I had a wonderful forum—at an industrywide function at the National Wholesaler Jewelers' Association Convention at Dorado Beach, Puerto Rico. At this convention, which was attended by some of the leading jewelry manufacturers and wholesalers from across the country, I had the opportunity to introduce the metal and talk about it.

Senator DURKIN. Let me ask you a question.

Titanium has tremendous qualities. We use it in jet planes, but you don't call it titanium gold. I don't argue with you. I don't think anyone does, or at least on the basis of the knowledge possessed by the committee today that your quarter gold has tremendous qualities.

But the question is, is it gold?

Mr. ALTMAN. If I'm allowed to finish, I think I'll answer that question.

Now, I want to point out something. After the presentation and after discussing openly and offering this to the industry, the use of all the knowledge that we had, paid an awful lot to develop, including the name that we had worked very hard to promote, we offered all this to the industry, and I will tell you why we did this.

I feel that mother necessity creates the inventioin. The thing that was needed now was another method that possibly could solve the sudden rise in the price of gold, without knocking certain markets completely out of our reach.

At that time, at the end of the convention, the "National Jewelers" magazine polled eight of the leading people who attended that convention. Of these manufacturers or wholesalers, there were only two that outrightly rejected the use of that metal. Six of them said "we ought to explore it" and "we ought to go ahead because we have to do something" and "let's find out more about it."

There were actually, as I see it, four alternatives open to the jewelry manufacturer. Primarily, I am a jewelry manufacturer.

One option was that we could make lighter rings, by hollowing or gutting them out, or by making them thinner, which might possibly work in certain cases but was not the solution if we wanted to main-

tain the high standards of quality that we had developed a reputation for.

The second was to substitute silver with gold electroplate. This metal exists today in the industry, but is not the product that we had previously sold, when you look for production of this type of product, you usually find that it's manufactured in Providence in large quantities, but most of the New York gold manufacturers were a little bit reluctant to do that.

The third option was to just keep adding surcharge upon surcharge as the cost of gold per ounce steadily kept going up.

In certain cases as in diamonds or gem stone jewelry, this was an excellent alternative, because the gold was a less significant part of the item's cost.

The fourth, and what I believe to be the most realistic option at that time, was to go to 25 percent.

As a result of my introducing this metal to the industry, a lot of controversy was stirred. As reported in the trade magazines, there were certain people in the industry whose opinion was that this degraded the metal. This controversy was healthy and needed, because it brought to light a lot of things that perhaps were left unsaid and should be included in any debate of this sort.

In summarizing my testimony, now in 1978, the FTC proposed that we be allowed to make this jewelry, sell it and label it based on its appropriate content.

I have, by the way, enclosed within my testimony, of which copies have been left on the table, magazine articles that bear witness to some of the material that I've presented here. I have also included a chart by Handy & Harman that traces this dramatic fluctuation of the gold price that brought about this need.

But I find that with the advent of plumb gold, it also affected the desirability of manufacturing quarter gold, as it requires double inventory, both half karat tolerances and plumb gold metal, in many colors.

This has had a severe effect on our cost of inventory. As an example, I now have to keep a running stock of 6 different karats from 9 $\frac{1}{2}$ to 18 karat in 4 different colors, totaling 24 different gold combinations.

Can a jewelry manufacturer afford another metal when we're already stocking 24 different combinations?

This reason alone has brought me to the realization that the bill, S. 2782, would protect the manufacturer, the wholesaler, and the retailer. In the course of the 5 years since I introduced 6k to the industry, the rise in consumer sales has shown that it has accepted the high price of gold and has demonstrated this graphically by contributing to some of the best years, saleswise, that the industry has ever seen.

When you compare the other inflationary price rises, gold, with its mystique, is one of the best buys ever at its higher price.

In conclusion, I believe that quarter gold is a good idea whose time has passed. Intellectually, I still endorse the assumption that any item should be allowed to be manufactured and sold, provided its quality is plainly stated.

However, after careful consideration, and for reasons stated above, and due to the factors of practicality, I can no longer endorse the use of a gold metal below 10 karat as a viable solution to the inherent problem of a fluctuating gold market.

I also strongly believe that the rules governing the stamping of gold jewelry belong in the hands of Congress and out of the arbitrary reach of any regulatory agency, whether it's FTC or any other agency.

I have witnessed several times how an employee there, can set a standard which completely disrupts an industry, whether it's the gold industry or any other.

Senator DURKIN. Totally out of the basis of law, either.

Mr. ALTMAN. Right. It could be an employee who does not quite understand the history or dimension of that particular function.

Senator DURKIN. Or ignores the clear congressional intent.

Mr. ALTMAN. Correct. I, therefore, support the bill, S. 2782, and ask that this committee approve it.

Thank you.

Senator DURKIN. Thank you.

I have just one question. We do appreciate your taking the time, and we appreciate your testimony. If you have any other further comments that you'd like to add to your testimony, the record will be maintained open, but this is for my own purposes.

There is nothing in the bill that would prohibit you from selling your quarter gold product?

Mr. ALTMAN. Correct.

Senator DURKIN. Thank you, Mr. Altman. I appreciate it very, very much.

[The statement follows:]

STATEMENT OF A. ARTHUR ALTMAN, PRESIDENT, COURT OF KING ARTHUR

In March 1968, when the United States treasury suspended gold sales, the jewelry industry was rocked with the first gold fluctuation in thirty-four years. Within six years, the price of gold has more than quadrupled the original \$35.00 fine ounce price.

Some established jewelry markets were suddenly in danger of extinction. Two of the hardest hit were the under \$25,000 gift and school ring markets. This unstable situation caused many manufacturers to investigate other alternatives.

Out of necessity, I, in conjunction with Consolidated Refining Company, a leading supplier of karated gold to the jewelry industry, began to experiment with alloys of less than 10k, in an effort to recapture these endangered markets.

More than six months were spent in trial and error experiments, to develop an alloy with acceptable characteristics, relating to atmospheric conditions, corrosion, and body wear.

As a result of these experiments, we created a metal with a new alloy combination, containing 25 percent gold, which had virtually the same characteristics as 10k gold in its ability to be casted, polished, and stand up to conditions of atmosphere.

I called this metal "Quartergold" or 6k. The name "Quartergold" was registered, but only "25 percent" was accepted by the Federal Trade Commission for purposes of stamping and advertising.

In May 1973, an industry forum, on this topic, was made available to me at the National Wholesalers & Jewelers Associations convention, at Dorado Beach, Puerto Rico. This convention was attended by many leading jewelry manufacturers and wholesalers from across the country.

At this time, I introduced 6k gold to the industry and offered to share, with other manufacturers, this revolutionary approach, as well as my registered trademark, "Quartergold".

During this convention, I suggested four options to control the cost of low to medium priced jewelry.

(1) The first was to make products thinner, lighter, etc., which I thought would, in certain areas, affect the construction and the quality of the jewelry.

(2) The second was to substitute silver for gold and apply a gold electroplate to the item. This had drawbacks because of the retailer's inability to replate rings after they were sized.

(3) The third was to just keep adding surcharges upon surcharges, as the cost of gold per ounce steadily increased. This possibility, I felt then, was only suitable for expensive diamond rings, where the gold content was a secondary factor in the ring's price.

(4) The fourth, and what I believed to be the most realistic option, at the time, was "Quartergold".

As a result of my introduction of 6k gold to the industry, several industry leaders were polled to test their reactions to "Quartergold". At that time, in June 1973, only two out of eight industry leaders of the jewelry manufacturers and wholesalers sector, definitively rejected "Quartergold". Most of the reservations, at that time, were due to the consideration of consumer acceptance.

Much water has passed under the bridge since that time. Because of the delay on the part of the F.T.C., as well as controversy within the jewelry industry, "Quartergold" lost most of its momentum and the support it already had developed.

Now, in 1978, the F.T.C. has ruled that as far as they are concerned, we can make jewelry less than 10k gold as long as it is stamped the appropriate gold content.

I have enclosed, within my testimony, several articles tracing the history of this industry controversy. They are taken from the three leading trade magazines, National Jeweler, Modern Jeweler, and Jeweler's Circular-Keystone. Also included is an up-to-date gold price chart, which is distributed by Handy and Harmen, tracing the fluctuation of the price of gold.

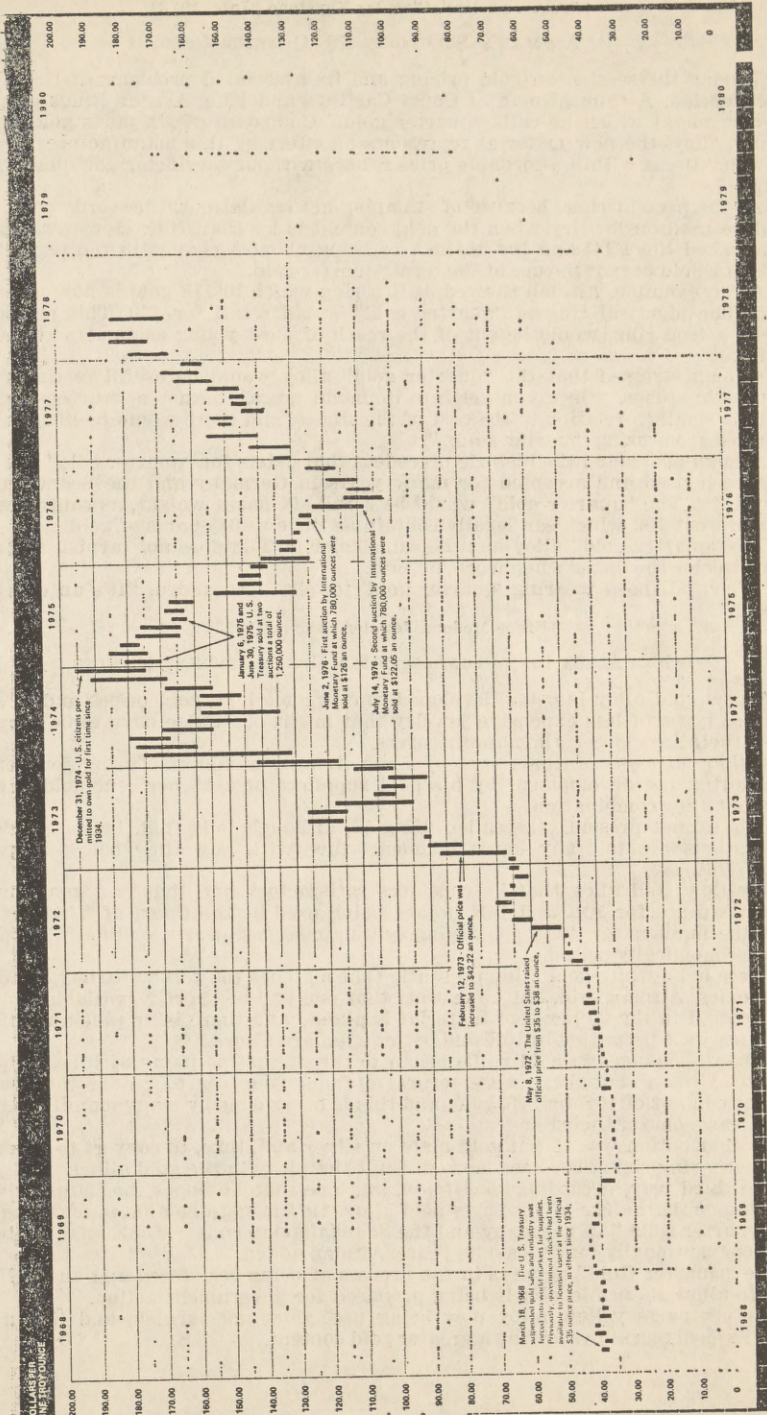
The advent of plumb gold also affected the desirability of "Quartergold". Manufacturers, now, are required to double inventory both half-karat tolerance and plumb karat metals, in many colors. This had a severe effect on our costs to inventory gold.

As an example, I now have to keep a running stock of six different karats from 9½k to 18k gold, in four colors, totaling 24 different gold combinations. Can we, the jewelry manufacturer, afford to stock more metals? This would be reason alone to support the bill S. 2782.

In the course of the five years since "Quartergold" was introduced to the industry, the consumer has shown that it has accepted the high price of gold and has demonstrated this graphically by contributing to some of the best years, saleswise, the industry has ever known. When you compare the other inflationary price rises, gold, with its mystic, is one of the best buys ever at its higher price.

In conclusion, I believe that "Quartergold" was a good idea, whose time has passed.

Intellectually, I still endorse the assumption that any item should be allowed to be manufactured and sold, providing its quality is plainly stated. However, after careful consideration and for reasons stated above, and due to factors of practicality, I can no longer endorse the use of any gold metal below 10k as a viable solution to the inherent problems of a fluctuating gold market. I also strongly believe that the rules governing the stamping of gold jewelry belongs in the hands of Congress and out of the arbitrary reach of the F.T.C. I, therefore, support the bill S. 2782, and ask that this committee approve it.



[From Jewelers' Circular-Keystone, July 1973]

ALTMAN'S SOLUTION: 6K 'QUARTER GOLD'

During the session on gold pricing and its associated problems at the NWJA Convention, Arthur Altman of Court Castings and King Arthur Rings proposed a new metal which he calls "quarter gold." Composed of six parts gold and 18 parts alloy, the new material represents an effort by this manufacturer to keep jewelry items within affordable price ranges without sacrificing the quality look of gold.

At the present time, because of stamping act regulations, the word "gold" cannot be used on jewelry when the gold content is less than 10K. However, Altman has asked the FTC and the MJ&SA to bring about a change in the regulations which would permit the use of the term "quarter gold."

As an example, Altman showed JCK a ring which in 14k gold is now priced at \$55. The identical ring in "quarter gold" would retail for \$30. This particular item, a teen ring, would be out of the reach of most young customers at the \$55 price.

Altman stressed that the "quarter gold" alloy would be useful in rings with synthetic stones. "Once you get into diamond rings," he noted, "the cost of the gold is small in relation to the cost of the stones, and there would be little benefit derived from using 'quarter gold.'"

Altman also noted the historic precedent that exists for "quarter gold": 8k gold has been used and accepted for many years in Germany and the Scandinavian countries. The "quarter gold" would be a full six karat weight, as contrasted to our present 10k which can legally contain as little as 9½ parts of gold.

The "quarter gold" alloy has the same color as 14k, does not tarnish and does not discolor the finger when worn, he said.

"We've all been wearing 'quarter gold' jewelry," he added. "It's an excellent metal."

[From Modern Jeweler, August 1973]

GOLD ALLOY BEING DEVELOPED FOR USE IN JEWELRY MAKING

A new gold alloy is being developed to overcome high gold prices and to save several types of less expensive jewelry that might otherwise have to be dropped from their lines by certain manufacturers.

Arthur Altman, of the *Court of King Arthur*, a manufacturing jeweler, is sponsoring the development by his gold suppliers of a 25 per cent gold and 75 per cent alloy combination.

This cannot presently be called 6K gold, although it is that, because federal regulations prohibit any karat nomenclature with any alloy below 10 parts gold (10K).

A yellow gold alloy that he considers satisfactory and that is a good match in appearance for 10K and 14K is now being used by the *Court of King Arthur* to make findings for items containing synthetic stones, pearls, or those that need to be economically priced.

There is no white gold alloy presently that matches the yellow variety in all its properties, Altman said, but he expects that one will be shortly available.

The gold in the 25 per cent material is plumb, and there is no plus and minus variance as is permitted in 10K and better standard alloys.

Once the changes in gold value began to threaten some items with being overpriced, Altman said there were several options. One was to reduce the penny-weight content of 10K or 14K gold, and this is being done by many manufacturers on at least some of their lines.

Another option was to put gold plate on silver and, thus, to convert to vermeil. But here, ring sizing becomes more difficult than it is in the gold alloys.

The third way, according to Altman, and one that he hopes the industry will adopt soon, is the use of six parts gold alloy. He hopes to be able to market this as "Quarter Gold." In Germany and the Scandinavian countries 8K gold has been used conventionally for at least 30 years, Altman added.

The "Quarter Gold" name is in the process of being registered and an application to allow its use legally is being prepared for government action.

The six parts yellow alloy now being used does not tarnish, and it can be sized as easily as alloys having a greater gold content.

The intent of this program is to make six-parts gold and its collateral nomenclature available to all parts of the jewelry industry.

When gold is given a base price of \$100 per fine ounce, it costs \$3.47 a penny-weight in 14K alloy form, \$2.47 at the 10K level and only \$1.62 in the six-parts alloy, *Altman* said.

[From Jewelers' Circular-Keystone, December 1973]

MORE THAN 400 AT MJ&SA BANQUET HEAR OPINIONS ON PROPOSED 6K 'GOLD'

The controversy over 6K "gold" dominated the annual meeting of the Manufacturing Jewelers and Silversmiths at the Colonial Hilton Inn, Cranston, R.I., Oct. 24.

The 400 members present watched a unique series of filmed interviews with industry notables. Most spoke of so-called "quarter-gold"—either directly or by implication.

A. Arthur Altman of the Court of King Arthur, one of the first proponents of the new alloy, argued the mystique of karat gold could withstand lowering the gold content to 6K.

More importantly, he felt it would make gift purchases of gold jewelry a reality again—especially for teenagers.

But Irving Wax of Wasko Gold Products, while not mentioning 6K *per se*, argued that high prices are good for gold. He maintained the greatest threat to the enduring mystique of karat gold would be for it to drop in quality and value.

Wax also took a maverick position on government sale of gold to industry. Although he's for it, it's only because he feels it might tend to stabilize the price, not necessarily lower it.

Senator DURKIN. Mr. Kohn and Globus.

Gentlemen, as I've said earlier, your entire statement will be included in the record. The record will remain open if there are any comments you would like to add to your testimony this morning.

If you would introduce yourselves for the record.

**STATEMENT OF EDWARD L. KOHRN AND SEYMOUR GLOBUS,
METALS AND JEWELS, BALTIMORE, MD.; ACCOMPANIED BY JOHN
J. GHINGHER III, COUNSEL**

Mr. GLOBUS. My name is Seymour Globus; my partner, Mr. Edward Kohn; our attorney, Mr. John J. Ghinger III.

Mr. Kohn and I are retail jewelers of a background of over 30 years apiece in the retail jewelry business. We are the inventors and the marketers of an alloy which is patented and which we call—which we've attempted to stamp and have marketed as 50 percent 14 karat gold and 50 percent sterling silver.

And we wish to testify against S. 2782 principally for the following reasons.

Senator DURKIN. Could you identify the gentleman with you so we get it in the record?

Mr. GHINGHER. My name is John J. Ghinger III with the firm of Weinberg & Green, attorneys in Baltimore.

Senator DURKIN. Thank you.

Mr. GLOBUS. In the first place, there really is no such thing as a 10-karat standard. A standard implies a specific formula, and the only thing that we have is by custom, a requirement of 10 parts of gold and 14 parts of any other substance, whether it be iron or any other combination of metals.

Now, while it is absolutely true that the gentleman who testified from Handy & Harmon have made nothing but high-grade metals

over the years, it is not necessarily true that everyone who would make an alloy would do so using high-grade products. It is entirely possible to alloy with extremely low-grade alloys and materials and still have 10-karat gold.

It's also possible to make a high-grade alloy of less than 10-karat gold, utilizing two of the metals that are involved in this bill.

Our alloy, in particular, was made of 14-karat plumb gold and sterling silver alloyed together; yet we are told that this is a low-grade material. We feel the components are both high-quality, noble metals and the alloy must be a high-quality material for that reason.

We do have test reports we would like to submit to you, sir. We will send them over. We would love to have you have them, because I do not believe you have that information.

Senator DURKIN. No. We'd appreciate it.

Mr. GLOBUS. Also, we'd like to discuss the fact that the prices the consumer is faced with are a very definite factor in gold jewelry, and on this market there is a proliferation of foreign gold. It's coming in as micron-washed gold cases rather than gold plated. It's coming in as 9-karat jewelry, and there's a big business in 9-karat jewelry in this country. It's coming in—in some cases it's 6-karat jewelry, and it's called antique reproduction. And these are the kinds of things—I'm sorry, I don't have national figures. I'm a small retailer. I don't have that kind of figures, but I do have that kind of jewelry offered to me for sale by wholesalers and by, I call them "peddlers" coming through weekly in my store.

So it's coming in here, and it's going to come in more and more.

I would rather see the consumer have access to a piece of jewelry so he can tell what he's getting when he buys it, so he knows what he's getting.

A very interesting thing to me was the fact that you remarked that if this young lady got a ring at the prom and she didn't know what it was and it looked like, I think you said a piece of lead or something. I'd like you to see a ring that's 4 years old. It's made of these two precious metals that we discussed just a minute ago. And this is half and half. This is one of the alloys.

Now, one of our fears is that if the 10-karat standard is adopted this way—that, by the way, has not been polished since I put it on. It is true, if you wear it every day and wash your hands, and normal wear, you'll never have to polish it. It's also true that there's a regular commercial dip available. You dip it in; it'll come out bright and shiny, just as any 14 karat ring will.

Senator DURKIN. But sir, it would help me—there's nothing in the bill that prohibits you from selling your product.

Mr. GLOBUS. But there's something that prohibits me from stamping the fact that there is contained in that ring 50 percent 14 karat gold and 50 percent sterling silver.

Senator DURKIN. But there's nothing in the bill that would prevent you from stamping your other than proprietary data on the inside of the ring. I mean, at some point, it's either gold or it isn't. I mean, isn't that the bottom line?

Mr. GLOBUS. Maybe we're talking about quality here, sir.

Senator DURKIN. I don't know. I'm asking.

Mr. GLOBUS. One of the worst analogies I can think of—and I say “worst” because it is—under this standard we’re talking about today, if we were to take 9 parts of gold and alloy that with 15 parts of platinum, we couldn’t stamp it a darn thing. All you could do is put a trademark in it, under this bill.

Senator DURKIN. Well, there’s the analogy to Formica—they’ve done pretty well under that trademark, or Masonite.

Mr. GLOBUS. Well, sir, Formica is not a precious metal. And what we’re discussing here, basically, are the precious metals. And this bill is aimed at one of the precious metals and the control of that precious metal, really. That’s really what it is. And it’s also aimed at the consumer and his ability to interpret what he’s getting for his money and what he’s buying. That’s really what it’s pointed at. And we believe that he has every right to know what he’s getting for his money. He has every right to be sure that he’s getting what he thinks he’s getting for his money.

And the way this bill is set up at this point with the 10-karat standard, which really isn’t a standard—by the way, the FTC has told us at one point that the Bureau of Standards does not have a standard for 10 karat or any other karat, nor have they been able to devise a means for devising a standard for the so-called 10-karat standard.

If we were to go by the custom that we’re talking about in this case—and believe me, I’m not against quality. I agree with everything these gentlemen have said about quality all the way down the line. Jewelry has been my business all my life. So I do agree with quality. I’m not talking against that. But I’m saying, you have to leave room for progress and for change. If you don’t, we’d all be carrying on commerce with horse-drawn carriages instead of that truck, the thing that truck symbolizes up there. That’s absolutely what we’d be doing, sir.

And in addition to that, as I understand this from our attorney, frankly, this amendment is in violation of the first amendment.

Now, I’m not an attorney. I don’t know about you. But as I understand it, it is in violation of the first amendment.

Ed, do you have anything?

Mr. KOHRN. Yes.

I’d just like to expand on a couple of things that Mr. Globus spoke about.

We’ve heard testimony here about the possibilities of deception and misrepresentation in a jewelry store where jewelry is being sold.

I can take, for instance, the ring that you just looked at, which you must admit looks like gold, and being a man that stands behind the jewelry store counter and dealing with the public, I know all of the tricks and I know all of the things that can be done. I could show this customer that particular ring. It may be marked with my name on the inside, which is legal. I can tell that customer, that consumer, “This is a gold ring.” “This has gold in it,” not legally. If this law passes, I will not even be able to tell him that it has 5-percent gold in it, 10-percent gold in it, but I can deceive him by telling him it’s a gold ring. And most consumers, whether we realize it or not, are not knowledgeable about what the term “karat gold” means—10 karat,

14, 1/20, 10-karat gold fill, gold plated. They are not familiar with those terms and they do not know what they mean and they must take the word of the person selling them the merchandise.

So I could sell them something that looks like gold and tell them anything I want to tell them.

On the subject of the particular alloy that we developed, there has been testimony from various people here today that refers to corrosion and tarnish of material of less than 10-karat fineness. I don't know where they got this material in reference to our alloy.

We had numerous scientific tests run which the FTC has on record which shows that our particular alloy is superior to or almost equal to 14-karat gold in its corrosion—in the area of corrosion. It is superior to and almost equal to 14-karat gold—superior to 10-karat gold and very close to 14-karat gold in the corrosion area.

True, in the tarnish area, which is a completely different type of test—corrosion and tarnish are not the same—in the tarnish area—

Senator DURKIN. May be I don't know the difference, but stainless steel in a lot of ways is superior to pewter, but they aren't the same. I mean, the bottom line is, it may be superior and it may be a major breakthrough; it may offer tremendous potential, not just for the jewelry industry but even, say, to the national defense effort, the space effort, but at some point it's either gold or it's not gold.

Mr. GHINGHER. I'm an attorney and not knowledgeable in the jewelry industry except by exposure to my client and to the FTC proceedings we were involved in. However, I do know that there is substantial disagreement about when something stops being gold.

For example, a number of European countries have standards that are substantially higher and lower than the 10-karat standard that seems to be prevailing in the American marketplace.

So, that whole question of when something is gold and when it's not is a difficult question to determine, and everybody has a different opinion on it, at least internationally.

What I think is at issue here is whether someone can say that an article of jewelry contains gold and truthfully state the portion of gold that's in it. Under the new legislation it's conceivable that any below-10-karat-gold alloy, whether it's 1 karat or 9 karats, can be marketed substantially on the same basis with no basis to distinguish between the two from the advertising material. So, a consumer is really at a loss to determine what's a better piece of jewelry, the 1 karat, because nobody can say how much gold is in it, or the 9. And this legislation does leave a gap below 10 karats for the consumer to decide what's a good product and what's not, simply by prohibiting the disclosure of gold content and truthful statements with respect to gold content.

Senator DURKIN. But isn't it a basic assumption—I mean, people buy gold or silver for sentimental value and goodness knows what else. They're not necessarily buying a product that is the most durable or the strongest, but they're buying gold. They feel an affection for gold. And they want gold.

Mr. GLOBUS. Senator, with all due respect, if you were to go prospecting and you were to strike a field—

Senator DURKIN. I'd leave the Senate if I did.

Mr. GLOBUS. I don't blame you. But if you were to strike a field and you found only 5-percent gold in the nuggets that you found in the

field, by golly, you'd say you struck gold. You wouldn't say you struck 5-percent gold, or you had good dirt.

Senator DURKIN. Especially if I was trying to sell it to the prospector coming behind me a week later.

Mr. GLOBUS. Right. But the point is, where is the definition of gold? I agree with you, but I don't think you can lay it down quite this way, particularly when you're talking in terms of a jewelry item, because I think there are too many variables possible in the alloy of that material.

Senator DURKIN. I understand the FTC has done some studies on your material, and we'll ask the FTC to submit that material for the record. And we would welcome your comments, either in agreement or disagreement, with the FTC data.¹

Mr. GLOBUS. We have asked to give you some reports that they have chosen—either they have forgotten or chosen to ignore, one or the other.

Senator DURKIN. That will be included in the record, as well, and the record will remain open so that it can be added.

Mr. GHINGHER. Could we make one final comment about an item that's really not been mentioned very much here, and that's the first amendment.

I believe in the FTC presentation, there is passing reference to the *Virginia Pharmacy Board* case in which once and for all the Supreme Court recognized that the first amendment does apply in the advertising and marketing context.

That case, in addition to establishing the fact that commercial speech—that is, advertising, is in fact protected—further established the principle that the consumer has first amendment rights. That is, the consumer has the right to receive the free flow of information with respect to commercial products which it buys.

This bill, by essentially stating that an advertiser cannot disclose gold content in a product if it's less than 10 karats, is doing just that, and that is, it's saying you cannot advertise or disclose or let the consumer know what is in your product.

We believe that the *Virginia Pharmacy Board* case and those which came after it have, under the first amendment, rejected the paternalistic kind of regulation of advertising that is represented by this legislation and by the former Federal Trade Commission trade practice rules.

Senator DURKIN. We'll leave the record open, and we'd like to see your brief on the first amendment problem.

Mr. GHINGHER. There is passing reference to it in our submission today. We'd be happy to elaborate on it in the future.

I would like to finalize our remarks by—under this free flow of information concept that's been introduced by the Supreme Court in interpreting the first amendment, the fact that certainly the question of quality can take both sides.

If someone who has an alloy of less than 10 karats can represent truthfully the percentage gold content, certainly those gentlemen who have appeared before you today have the resources and the product to demonstrate in the free press and in a free advertising campaign that allegedly their products are superior because of their higher gold

¹ See p. 44.

content. In other words, the free flow of information cuts both ways. Under the proposed legislation, it cuts one way.

Senator DURKIN. Right. As I said, the committee would be glad to see your brief on the first amendment problems as you feel them and then be made part of the record, and we look forward to it.¹

Mr. GHINGHER. Thank you, sir.

Senator DURKIN. Gentlemen, I'm going to have to wrap up. I have to get to the Energy Committee.

Senator DURKIN. Again, we do appreciate you taking the time—we understand your concern—to come and testify. We appreciate your statement on the first amendment problem. And we want to thank you very much.

Mr. GHINGHER. Thank you.

[The statement follows:]

STATEMENT OF EDWARD L. KOHRN AND SEYMOUR GLOBUS

Metals and Jewels is a partnership consisting of Edward L. Kohn and Seymour Globus, two Baltimore retail jewelers, and the estate of the late C. D. Kaufmann, former chairman of the Board of Kay Jewelers. It was formed to commercially develop an alloy of precious metals invented by Messrs. Kohn and Globus which showed exciting potential as a low cost, high-quality alternative to conventional 10 and 14 karat gold alloys.

This new alloy, a patented composition of one-half 14 karat gold and one-half sterling silver, was partially responsible for the current gold stamping controversy, in that its introduction to jewelry manufacture in the autumn of 1974 generated widespread reaction which culminated in the Federal Trade Commission's current proceedings to amend the provisions of its Trade Practice Rules dealing with the stamping of jewelry articles manufactured from gold and silver.

These FTC proceedings have focused upon the provisions of Section 23.22(c) (1) of the Guide for the Jewelry Industry (16 CFR § 23.22), a Trade Practice Rule of the Commission promulgated in 1957, which prohibits the marking and description as gold of an article of jewelry of less than 10 karat fineness. The provisions of Section (b) of S. 2782 are substantially identical to this old Trade Practice Rule, and represent a clear intent to institutionalize the so-called "10 karat standard" embodied in the old rule. Metals and Jewels is opposed to this backward-looking approach to consumer regulation in the jewelry industry. The length and complexity of the FTC's investigation has made it clear that a far more progressive and sophisticated treatment of the gold content issue is necessary both to aid the consumer in his evaluation of jewelry products and to provide the jewelry industry with the flexibility to react to changing economic conditions and technologies.

The so-called "10 karat standard" has been at the heart of the gold stamping controversy for some years. The forces of the jewelry industry are solidly arrayed as proponents of retaining the "10 karat standard". Opposition to the "10 karat standard" has emanated from various sources, whose positions range from a "truth in marking" concept, which would require a full disclosure of the entire metallic content of any article of jewelry, to the more conservative viewpoint of those, such as Metals and Jewels, who believe that standards of quality in gold jewelry alloys should be developed along more sophisticated qualitative lines, bearing a more direct relationship to the desired properties of fine gold jewelry.

From its experience in the complex FTC proceedings described above, and from the experience of its principals, both as retail jewelers and as inventors knowledgeable in gold alloys, Metals and Jewels offers the following comments in the hope that S. 2782 will not be enacted:

1. The so-called "10 karat standard" which is at the heart of the proposed legislation is not a standard of quality at all. It is nothing more than a requirement as to gold content, which assumes that the mere presence of a minimum quantity of gold will assure the minimum degrees of quality associated with that

¹ See p. 45.

precious metal. However, the proposed legislation does not in any way regulate or restrict the types of metals which may be alloyed with the 10 karats of gold to produce the final product. For example, a jewelry product containing 10 karats of gold but having a remaining metallic composition of brass, iron or other base metal, would comply with the proposed legislation and could be represented as gold, whereas an article made of an alloy of 9 karats of gold, with the balance of its composition consisting mostly of silver, would not be entitled to a representation as to its gold content. The latter article would be far superior in quality to the former. Clearly, no intelligent qualitative standard can be based upon the regulation of only 41 percent of an article, leaving the remaining 59 percent unrestricted.

2. There is no concrete scientific basis for the use of 10 karats as a quantitative standard. Those countries in Western Europe which have adopted standards of minimum gold content, either by law or custom, vary widely in their perception of the minimum gold content necessary to produce the desirable properties associated with gold jewelry. For example, the minimum in France is 18 karats, the minimum standard in Austria is 6 karats, and the remaining countries have standards at various points within these extremes. This great disparity in quantitative standards points quite clearly to the conclusion that minimum gold standards are the arbitrary product of trade custom and usage rather than the result of scientific investigation.

3. The adoption of a strict 10 karat minimum may result in the exclusion of a substantial portion of the American public from the opportunity to purchase "gold" jewelry. As gold prices continue to rise, as they inexorably will, requirement of minimum gold content will result in increasingly high jewelry prices beyond the reach of many Americans. Such traditional items as the gold wedding band may become too expensive for a couple of average or low income. Such couples will be obliged to settle for something which, despite a significant gold content, cannot be represented or described as containing gold.

4. Because jewelry manufacturers will be prohibited from disclosing the gold content of articles having less than 10 karats, consumers will have no basis for evaluating the quality or price of any such product. This lack of comparative data will result in widespread consumer confusion and will leave the door open to predatory sales tactics by unscrupulous purveyors of low quality products.

5. A rigid quantitative standard will severely retard the research and development efforts of jewelry manufacturers and inventors to perfect good quality, low cost alternatives to gold alloys in excess of 10 karats. The marketing through legitimate outlets of a high quality jewelry alloy containing gold is virtually impossible, as Metals and Jewels has discovered, unless an accurate representation of gold content is permitted. Without the incentive of free market access, the technological advances needed by the jewelry industry in an era of rising gold prices will simply not materialize.

6. The so-called "10 karat standard" has, in its history as a trade custom and an FTC Trade Practice Rule, served as a smokescreen under which a proliferation of gold-plated and gold-filled articles have developed without any real qualitative regulation other than by the jewelry industry itself. As a result, under current FTC Guides, the gold content of an article of jewelry can be represented and stamped on the article for such items as "1/20 10 Kt. GP" and "1/20 10 Kt. GP", representing gold-plated and gold-filled products containing an actual gold content of 1/48 by weight of total metallic composition. An average consumer can hardly be expected to intelligently evaluate such a product with no more information than that provided in the quality marks described above. In brief, the adoption of the proposed legislation would permit the jewelry industry virtually the same degree of self-regulation as that which fostered the advent of the obscure "quality marks" permitted for gold-plated and gold-filled articles.

In summary, the proposed legislation, which purports to "protect consumers from misrepresentative advertising of gold . . . jewelry," would not achieve its intended goal and would create significant and lasting problems both for the jewelry industry and for the consumer. If Congress desires to protect consumers from misrepresentation as to the quality of gold jewelry products, it should strive for the development of meaningful qualitative standards under which specific articles and alloys can be fairly and thoroughly tested, and should not fall back on the highly imperfect and virtually meaningless "10 karat standard".

However, in light of recent decisions of the Supreme Court involving statutes restricting advertising, Congress may be prevented from adopting any broad protective legislation of the type contained in S. 2782 by the freedom of speech

guarantees of the First Amendment. In the landmark case of *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Counsel, Inc.*, 425 U.S. 748 (1976), the Supreme Court struck down a Virginia statute prohibiting the advertising of prescription prices by pharmacists on the theory that such a statute violated consumers' rights under the First Amendment. In doing so, the Supreme Court resolved once and for all the question of whether "commercial speech" is protected by the First Amendment, holding that the First Amendment does in fact apply to truthful statements made in an advertising or marketing context. This holding has been reinforced by two subsequent Supreme Court decisions, *Linmark Associations, Inc. v. Township of Willingboro*, 52 L.Ed.2d 155 (1977) and *Bates v. State Bar of Arizona*, 53 L.Ed.2d 810 (1977), which declared similar advertising bans unconstitutional on First Amendment grounds.

Particularly relevant to this Committee's consideration of S. 2782 is the Supreme Court's finding, in the *Virginia* case, that consumer interests are best served not by a paternalistic approach to the regulation of advertising, which seeks to protect the consumer by withholding information, but to an approach which permits the free flow of truthful information. The Court observed that consumers will "perceive their own best interests if only they are well enough informed." Thus, implicit in the Court's holding that the Virginia statute violated the consumers' right to receive information under the First Amendment is a constitutional rejection of the paternalistic approach to the regulation of advertising and an endorsement of an opening of the channels of communication between advertisers and consumers.

Under these recent Supreme Court decisions, it seems unlikely that S. 2782 would pass the constitutional test. If enacted, the proposed legislation would clearly prevent the free flow of accurate information from advertiser to consumer as to the gold content of jewelry articles of less than 10 karat fineness. Under these decisions, the consumer is entitled to this information under the First Amendment.

For the reasons stated above, Metals and Jewels requests that the Committee report unfavorably on S. 2782.

[The following information was referred to on p. 41:]

RESPONSE TO REQUEST FOR INFORMATION

In response to the Committee's request for comment by Metals and Jewels on the findings of the Federal Trade Commission as to its alloy, one-half 14 karat gold, one-half sterling silver (the "Alloy"), Metals and Jewels offers the following observations for consideration by the Committee.

The conclusions of the Federal Trade Commission's investigation with respect to the marking of gold alloys in general and the attributes of the Alloy in particular were reported in the Bureau of Consumer Protection's *Staff Report to the Federal Trade Commission* issued in June of 1977. In the Report, the following conclusion is stated:

"In various submissions to the Commission staff, Metals and Jewels, Inc., claimed that their seven karat alloy 'exhibits all of the valuable and desirable qualities of 14-karat gold.' To evaluate this claim, staff elicited batteries of tests on a variety of gold alloys including the 7K gold alloy of Metals and Jewels, Inc. These tests reaffirmed that all low-karat alloys are significantly inferior to alloys above 10 karats in the areas of corrosion resistance and particularly tarnish resistance." (Footnote omitted.) This sweeping conclusion is not justified by a careful analysis of the "batteries of tests" referred to by the Report.

First, the January 20, 1976 report of Dr. Anton F. Mohrnheim referred to in the Report concluded that the Alloy "has relatively better corrosion resistance than '7Ky', '10Ky', and even '14Ky'." Clearly, this conclusion directly contradicts the statements made in the Bureau's report.

Second, the report commissioned by the Worshipful Company of Goldsmiths states, in its conclusions with respect to corrosion resistance:

"However, the excellent performance of the 9 carat white alloy and the ½ (14) carat yellow alloy is remarkable, particularly in view of the fact that both these alloys rank higher than the 10 carat alloys."

The Worshipful Goldsmith report goes on to observe as a general matter that: "Thus for gold alloys of a particular carat it would appear that the higher silver content, and correspondingly the lower the base metal content, the greater will its resistance be to chloride attack."

Metals and Jewels feels that this conclusion has a very real bearing upon the merits of S. 2782, which would by its terms permit alloying of 10 karats of gold entirely with base metals, thereby rendering it less corrosion resistant than other lower gold alloys with high silver content.

Finally, the Report completely ignored the findings of Dr. Robert B. Pond, Jr. that the corrosion resistance of the Alloy was equivalent to that of 10K and 14K alloys. See Dr. Pond's letter of June 18, 1975. Presumably, these conclusions were ignored because Dr. Pond's tests were commissioned by Metals and Jewels, proponents of proposed amendments to the Jewelry Guides. However, the Report gave substantial weight to corrosion tests conducted by the firm of Handy & Harmon, which was vociferously opposed to any change in the Commission's trade practice rules.

With respect to the characteristic of tarnish resistance, the Report was also quite selective with respect to the test reports it relied upon in reaching its "significantly inferior" in "all low-karat alloys." The Report made no mention of the contradictory conclusions of Doctors Coy M. Glass, Robert B. Pond, Sr. and Robert B. Pond, Jr. that the Alloy was comparable to 10K alloys in tarnish resistance. Again, the fact that these reports were commissioned by Metals and Jewels was apparently sufficient in the Bureau's eyes to justify a total disregard of their conclusions, notwithstanding the impeccable credentials of the metallurgists who prepared the reports. The Bureau chose to rely more heavily on an informal test conducted in its own offices without laboratory safeguards to prevent contamination and to insure the scientific integrity of the testing procedure.

Metals and Jewels regards as highly significant the fact that neither the staff report nor any of the tests relied on by the report made any reasonable attempt to relate the accelerated laboratory methods used in the tests to the conditions of actual consumer usage. For example, in testing for tarnish and corrosion resistance, the length of exposure to the various solutions was not correlated to any equivalent period of actual wear. Similarly, in the preparation of test solutions, particularly in the tarnishing tests, there was little attempt to accurately reproduce conditions of actual wear. Further, the experts relied on by the Commission's staff report seemed to use widely different methods and solutions in testing the various alloys. It is interesting to note in this regard that the report of the tests conducted under the auspices of the Worshipful Company of Goldsmiths is filled with qualifying language as to the reliability of the testing procedures. Obviously, there is no universally accepted procedure for testing tarnishing and corrosion resistance with any real degree of reliability. As a result, the logical connection between the test results and the absolute language of the conclusions stated in the Report appears tenuous and, in our client's opinion, without real justification.

In addition, Metals and Jewels calls the attention of the Committee to the fact that the Report did not contain any supporting information gleaned from surveys of actual consumer use. All of the alloys referred to in the Report and the attached test reports are in actual use by consumers, yet the Bureau sought no detailed information from this real life source. Notwithstanding the impressive statistics offered by the Bureau as to consumer reaction to its proposals, the simple fact remains that no one has properly canvassed consumers to determine the relative performance of the Alloy in actual consumer use.

In short, the Commission's case against the Alloy, and against other viable low gold alloys, is circumstantial at best, and does not provide a sufficient empirical basis for the sweeping provisions of S. 2782.

[The following information was referred to on p. 42:]

BRIEF ON FIRST AMENDMENT IMPLICATIONS

S. 2782 is entitled "A Bill—To protect consumers from misrepresentative advertising of gold and silver jewelry, and for other purposes", a title which clearly implies a most praiseworthy goal well within the legislative prerogative. However, the implementation of this goal, as now reflected by its subsection (b), conflicts with the First Amendment rights of advertisers to make truthful statements as to the gold content of articles of jewelry of less than 10 karat fineness and the similar rights of jewelry consumers to receive a free flow of accurate information with respect to the gold content of such articles.

The proposed legislation would make it a crime to make any representation as to gold content, whether accurate or false, unless the article or part thereof

represented as being gold is at least of 10 karat fineness. A manufacturer, distributor or retailer of jewelry articles of less than 10 karats could, thus, be subject to criminal penalties simply for making accurate disclosures with respect to the percentage of gold content of such articles or for truthfully answering questions posed by curious consumers as to such gold content.

Although the proponents of this legislation may be genuinely concerned as to the welfare of jewelry consumers and may be convinced that this legislation may be in the best interests of the consumer, the recent decisions of the Supreme Court in the area of free commercial speech foreclose the implementation of these legitimate concerns through regulation which prevents the free flow of truthful advertising and marketing information.

In the landmark case of *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S.C. 748 (1976), the Supreme Court struck down a Virginia statute prohibiting the advertising of prescription prices by pharmacists on the theory that such a statute violated consumers' rights under the First Amendment. In doing so, the Supreme Court resolved once and for all the question of whether "commercial speech" is protected by the First Amendment, holding that the First Amendment does in fact apply to truthful statements made in an advertising or marketing context. Although prior holdings had implied that commercial speech could be regulated without infringement of the First Amendment, the Court's decision in the *Virginia Pharmacy Board* case left no doubt as to the applicability of the free speech guaranty in the commercial area. This holding has been reinforced by two subsequent Supreme Court decisions, *Linmark Associations, Inc. v. Township of Willingboro*, 52 L.Ed.2d 155 (1977) and *Bates v. State Bar of Arizona*, 53 L.Ed.2d 810 (1977), which declared similar advertising bans unconstitutional on First Amendment grounds.

Particularly relevant to this Committee's consideration of S. 2782 is the Supreme Court's finding, in the *Virginia* case, that consumer interests are best served not by a paternalistic approach to the regulation of advertising, which seeks to protect the consumer by withholding information, but to an approach which permits the free flow of truthful information. The Court observed that:

"There is, of course, an alternative to this highly paternalistic approach. That alternative is to assume that this information is not in itself harmful, that people will perceive their own best interests if only they are well enough informed, and that the best means to that end is to open the channels of communication rather than to close them. If they are truly open, nothing prevents the 'professional' pharmacist from marketing his own assertedly superior product, and contrasting it with that of the low-cost, high-volume prescription drug retailer. But the choice among these alternative approaches is not ours to make or the Virginia General Assembly's. It is precisely this kind of choice, between the dangers of suppressing information, and the dangers of its misuse if it is freely available, that the First Amendment makes for us. Virginia is free to require whatever professional standards it wishes of its pharmacists; it may subsidize them or protect them from competition in other ways. Cf. *Parker v. Brown*, 317 US 341, 87 L Ed 315, 63 S Ct 307 (1943). But it may not do so by keeping the public in ignorance of the entirely lawful terms that competing pharmacists are offering. In this sense, the justifications Virginia has offered for suppressing the flow of prescription drug price information, far from persuading us that the flow is not protected by the First Amendment, have reinforced our view that it is. We so hold." 425 U.S. at 770.

This language is especially significant with respect to the ban on representations with respect to low-gold alloys which is embodied in S. 2782. Proponents of the bill contend that the consumer should be denied information as to gold content below 10 karats for their own good; the Supreme Court has made it clear that the opposite is the case—the consumer is entitled to this information under the First Amendment.

The Supreme Court was careful to point out that the First Amendment does not prevent regulation of commercial speech in the case of false or misleading advertising, and it is probable that the proponents of S. 2782 will claim that representations as to gold content below 10 karat, even if statistically accurate, are "inherently misleading" because of the alleged deterioration of recognized gold properties in low gold alloys. We believe this position to be incorrect for two reasons.

First, the "inherently misleading" argument has been asserted in prior cases and has uniformly been rejected by the courts as a justification for the suspension of First Amendment guarantees. The Supreme Court considered such an argument in *Bates v. State Bar of Arizona*, *supra*. The State Bar argued in that

case that advertising of legal services would be inherently misleading because (a) legal services are highly individualized and are difficult to evaluate by a potential consumer on the basis of advertising alone; (b) consumers cannot be sure in advance what legal services they need; and (c) advertising by attorneys fails to properly highlight the relevant factor of attorney skill. Notwithstanding the seemingly legitimate character of these arguments, the Supreme Court rejected the argument that advertising of legal services is by its nature inherently misleading. The Court recognized that the Bar retains the power to require that certain services be included in an advertised package in order to standardize the "product", but that simply because a given client may be mistaken as to the applicability of the price of his specific case does not warrant suppression of the information. An ethical lawyer, upon perceiving a misunderstanding, would inform the client accordingly. Honest sellers of jewelry would also inform a mistaken consumer of the correct interpretation of an accurate statement as to gold content of an article.

In *Bates*, the Court also pointed out that although legal advertising will not contain all the information necessary to make an intelligent choice of attorney, it is better to supply the public with truthful incomplete information than to keep them in ignorance. In the Court's words, it should not be assumed that "... the public is not sophisticated enough to understand the limitations of advertising. . . ." 53 L. Ed. 2d at 830. The Court's conclusion that it is preferable to increase the amount of information available to the consumer, rather than to decrease it, would appear to be as applicable to the gold content of a piece of jewelry as to the selection of an attorney.

In cases decided both before and after *Bates*, the lower Federal courts have repeatedly rejected the argument that due to its "inherently misleading" nature, certain information should be suppressed. In *Health Systems Agency of Northern Va. v. Va. State Board of Medicine*, 424 F. Supp. 267, 274 (E.D. Va. 1976), the court, while acknowledging the state's substantial interest in protecting the public from fraudulent and deceptive advertising by physicians, concluded that narrowly tailored statutes, rather than broad restrictions, are sufficient to attain the desired result. The contention that the potential for deception and misrepresentation inherent in the use of trade names by optometrists justified a statute barring their use was dismissed in *Rogers v. Friedman*, 438 F. Supp. 428, 431 (E.D. Tex. 1977). The total suppression of the use of trade names by optometrists was held to violate the First Amendment because it resulted in an unwarranted restriction of the free flow of commercial information. Specific regulations covering narrow areas of potential abuse would not, according to the Texas Court, be unconstitutional, but blanket prohibitions to prevent "inherently misleading" items from being disseminated would be constitutionally invalid. The Fifth Circuit in *La. Consumer's League v. La. State Board of Optometry Examiners*, 557 F. 2d 473 (5th Cir. 1977), held that absent a showing that the filling of a prescription for eyeglasses is so unique a service that fixed rates could not be meaningfully established, Louisiana statutes prohibiting the advertising of eyeglass prices encroached on the First Amendment rights of consumers. The Circuit Court cited *Bates* as rejecting all justification for a ban on advertising based on arguments that the particular information is inevitably misleading due to an inherent lack of standardization.

These cases make it clear that it is insufficient for First Amendment purposes to claim that the "inherently misleading" nature of information which is of itself truthful requires suppression of that information. All that can be done in order to prevent misunderstanding on the part of the public is to provide specific regulations which will clarify the potentially misleading facts through increasing the amount of explanatory information given consumers. The proposed legislation on gold would completely block dissemination of the gold contents of a piece of jewelry of less than 10 karat fineness. This information would be totally unavailable. The jewelry purchaser would be better able to make an intelligent choice if he were apprised of all of the facts as to the metallic content of an item, including explanatory data as to significance of the specific proportions of gold and other metallic components.

Second, as a careful review of the various test reports submitted to the Federal Trade Commission will clearly illustrate, there is no concrete scientific basis for concluding that the 10 karat level is the dividing line between "gold" and items which do not sufficiently exhibit the properties of gold. As these test reports suggest, the key gold properties of tarnish resistance and corrosion resistance are highly relative and elusive. In some cases, depending on the nature of other

metals alloyed with gold, items with less than 10 karats of gold will perform better than 10 karat alloys, particularly in the area of corrosion resistance. Thus, it is unclear whether the mere absence or presence of 10 karats of gold will by itself determine the presence or absence of these valuable properties. The uncertain scientific bases for the so-called 10 karat standard, then, boldly underscores the constitutional danger of an advertising ban based vaguely upon the "inherently misleading" character of accurate gold content disclosures below 10 karats.

In conclusion, S. 2782 is precisely the kind of blanket suppression of advertising that the Federal courts have consistently disallowed on First Amendment grounds since the landmark decision in the *Virginia Pharmacy Board* case. We respectfully urge the Committee to reject the unconstitutionally paternal approach to advertising regulation which S. 2782 represents, and thereby to stimulate a more thorough evaluation of the need for regulation of advertising abuses in the jewelry industry based upon the free flow of accurate information, rather than upon public ignorance.

[Whereupon, at 11:05 a.m., the hearing was adjourned.]

