ANTICOUNTERFEITING AND TEXTILE LABELING

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCE, TRANSPORTATION, AND TOURISM

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 5929

A BILL TO AMEND THE FEDERAL TRADE COMMISSION ACT TO MAKE THE SALE OR DISTRIBUTION IN OR AFFECTING COMMERCE OR THE PRODUCTION FOR SALE OR DISTRIBUTION IN OR AFFECTING COMMERCE OF COUNTERFEIT GOODS OR SERVICES AN UNFAIR OR DECEPTIVE ACT OR PRACTICE AND AN UNFAIR METHOD OF COMPETITION AND TO AUTHORIZE THE FEDERAL TRADE COMMISSION TO INITIATE SEIZURE ACTIONS IN SUCH CASES, AND FOR OTHER PURPOSES

H.R. 5638

A BILL TO AMEND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT AND THE WOOL PRODUCTS LABELING ACT OF 1939 TO IMPROVE THE LABELING OF TEXTILE FIBER AND WOOL PRODUCTS

JUNE 28, 1984

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ANTICOUNTERFEITING AND TEXTILE LABELING

THURSDAY, JUNE 28, 1984

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMERCE, TRANSPORTATION AND TOURISM,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m. in room 2322, Rayburn House Office Building, Hon. James J. Florio (chairman) presiding.

Mr. FLORIO. The subcommittee will come to order.

I am pleased to welcome all in attendance to what we regard as a very important hearing.

Some of the members have been delayed; but it is suggested that we go forward, and they will join us before very long.

I want to welcome everyone to this morning's hearing.

There are two very important pieces of legislation before the subcommittee, H.R. 5929 and H.R. 5638.

H.R. 5929 was introduced by myself, Mr. Dingell, and Mr. Broyhill. And title II of this bill contains provisions that come from Mr. Broyhill's earlier bill, H.R. 5638, which establishes a requirement that American-made textile and wool products be so labeled.

Title I of H.R. 5929 makes the sale or distribution, or the production for sale or distribution of counterfeit goods or services a violation of section 5 of the Federal Trade Commission Act.

The bill gives the Federal Trade Commission the same type of authority to seize counterfeit goods and services as current law gives the Food and Drug Administration to seize misbranded drugs and medical devices.

The purpose of title I is to create a process by which counterfeit goods or services may be removed from the domestic marketplace quickly and efficiently.

This bill is concerned, in that title, with curbing counterfeit activities that are going on in the marketplace. Today, counterfeiting is a fast-growing disease which robs the American worker of jobs and undermines the profitability of major American industries, and threatens the health, safety, and well-being of consumers.

This legislation is premised on the fact that this type of activity has to be stopped.

[Testimony resumes on p. 16.]

[The text of H.R. 5929 and H.R. 5638 follow:]

I

98TH CONGRESS
2D SESSION

H. R. 5929

To amend the Federal Trade Commission Act to make the sale or distribution in or affecting commerce or the production for sale or distribution in or affecting commerce of counterfeit goods or services an unfair or deceptive act or practice and an unfair method of competition and to authorize the Federal Trade Commission to initiate seizure actions in such cases, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 1984

Mr. FLORIO (for himself, Mr. DINGELL, and Mr. BROYHILL) introduced the following bill; which was referred to the Committee on Energy and Commerce

---

A BILL

To amend the Federal Trade Commission Act to make the sale or distribution in or affecting commerce or the production for sale or distribution in or affecting commerce of counterfeit goods or services an unfair or deceptive act or practice and an unfair method of competition and to authorize the Federal Trade Commission to initiate seizure actions in such cases, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AMENDMENT TO FEDERAL TRADE COMMISSION ACT

SECTION 101. Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by adding at the end the following:

"(n)(1) The sale or distribution in or affecting commerce or the production for sale or distribution in or affecting commerce of counterfeit goods or services is an unfair method of competition in or affecting commerce and an unfair or deceptive act or practice in or affecting commerce.

"(2) On or after the date the Commission issues a complaint under subsection (b) with respect to a sale, distribution, or production of counterfeit goods, the Commission may proceed against the counterfeit goods, by process of libel for the seizure and condemnation of such goods, in any district court of the United States within the jurisdiction of which such goods are found. Such proceedings shall conform as nearly as possible to proceedings in rem in admiralty.

"(3) The Commission may order counterfeit goods detained (in accordance with regulations prescribed by the Commission) for a reasonable period which may not exceed—

"(A) twenty days or, if the Commission determines that a period of detention greater than twenty days is required to institute an action under paragraph (2), thirty days, or

"(B) the date on which an action is brought under paragraph (2) respecting such goods,

whichever occurs first. A detention order under this paragraph may require the labeling or marking of goods during the period of their detention for the purpose of identifying the goods as detained. Any person who would be entitled to claim goods if they were seized under paragraph (2) may appeal to the Commission a detention of goods under this paragraph. Within five days of the date an appeal of detention is filed with the Commission, the Commission, after affording opportunity for an informal hearing, shall by order confirm the detention or revoke it.

"(4) For purposes of this section the term 'counterfeit goods or services' means goods or services—

"(A)(i) on or in connection with which a trademark which is not authentic or genuine and which is identical to or substantially indistinguishable from a genuine trademark is used or intended to be used, and

"(ii) for which the genuine trademark is registered on the principal register in the United States Patent and Trademark Office and is in use;

"(B) for which there is in effect a valid unexpired United States patent and which is manufactured by a person other than the owner of the patent or a licensee of the owner of the patent;

"(C) for which there is in effect a United States copyright and which is distributed, sold, or otherwise used without the permission of the copyright owner; or

"(D) which are designated by the Federal Trade Commission by regulation as counterfeit goods or services.

TITLE II—AMENDMENTS TO THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT AND THE WOOL PRODUCTS LABELING ACT OF 1939

SEC. 201. Subsection (b) of section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b) is amended by adding at the end thereof the following new paragraph:

"(5) If it is a textile fiber product processed or manufactured in the United States, it be so identified.".

SEC. 202. Subsection (e) of section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b) is amended to read as follows:

"(e) For purposes of this Act, in addition to the textile fiber products contained therein, a package of textile fiber products intended for sale to the ultimate consumer shall be misbranded unless such package has affixed to it a stamp, tag, label, or other means of identification bearing the information required by subsection (b), with respect to such con-

tained textile fiber products, or is transparent to the extent it allows for the clear reading of the stamp, tag, label, or other means of identification on the textile fiber product, or in the case of hosiery items, this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by subsection (b), and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each textile fiber product contained therein.".

SEC. 203. Section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b) is amended by adding at the end thereof the following new subsections:

"(i) For the purposes of this Act, a textile fiber product shall be considered to be falsely or deceptively advertised in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, unless such textile fiber product description states in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States of America, or imported, or both.

"(j) For purposes of this Act, any textile fiber product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the collar of such product if such product contains a collar, or if such product does not contain a collar in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product, or in the case of hosiery items on the outer side of such product or package.".

SEC. 204. Paragraph (2) of section 4(a) of the Wool Products Labeling Act of 1939 (15 U.S.C. 68b(1)) is amended by adding at the end thereof the following new subparagraphs:

"(5) If it is an imported wool product without the name of the country where processed or manufactured.

"(6) If it is a wool product processed or manufactured in the United States, it shall be so identified.".

SEC. 205. Section 4 of the Wool Products Labeling Act of 1939 (15 U.S.C. 68b) is amended by adding at the end thereof the following new subsections:

"(e) For the purposes of this Act, a wool product shall be considered to be falsely or deceptively advertised in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such wool product, unless such wool product description states in

a clear and conspicuous manner that such wool product is processed or manufactured in the United States of America, or imported, or both.

"(f) For purposes of this Act, any wool product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the collar of such product if such product contains a collar, or if such product does not contain a collar in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product or in the case of hosiery items, on the outer side of such product or package.".

SEC. 206. Section 5 of the Wool Products Labeling Act of 1939 (15 U.S.C. 68c) is amended—

(1) by striking out "Any person" in the first paragraph and inserting in lieu thereof "(a) Any person",

(2) by striking out "Any person" in the second paragraph and inserting in lieu thereof "(b) Any person", and

(3) by inserting after subsection (b) (as designated by this section) the following new subsection:

"(c) For the purposes of subsections (a) and (b) of this section, any package of wool products intended for sale to the ultimate consumer shall also be considered a wool product and shall have affixed to it a stamp, tag, label, or other

means of identification bearing the information required by section 4, with respect to the wool products contained therein, unless such package of wool products is transparent to the extent that it allows for the clear reading of the stamp, tag, label, or other means of identification affixed to the wool product, or in the case of hosiery items this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by subsection (4), and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each hosiery product contained therein.

SEC. 207. The amendments made by this title shall be effective ninety days after the date of enactment of this Act.

I

98TH CONGRESS
2D SESSION

H. R. 5638

To amend the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939 to improve the labeling of textile fiber and wool products.

IN THE HOUSE OF REPRESENTATIVES

MAY 10, 1984

Mr. BROYHILL (for himself, Mr. CAMPBELL, Mr. JENKINS, and Mr. DERRICK) introduced the following bill; which was referred to the Committee on Energy and Commerce

---

A BILL

To amend the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939 to improve the labeling of textile fiber and wool products.

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 "Textile Fiber and Wool Products Identification Improvement Act".

SEC. 2. Subsection (b) of section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b) is amended by adding at the end thereof the following new paragraph:

"(5) If it is a textile fiber product processed or manufactured in the United States, it be so identified.".

SEC. 3. Subsection (e) of section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b) is amended to read as follows:

"(e) For purposes of this Act, in addition to the textile fiber products contained therein, a package of textile fiber products intended for sale to the ultimate consumer shall be misbranded unless such package has affixed to it a stamp, tag, label, or other means of identification bearing the information required by subsection (b), with respect to such contained textile fiber products, or is transparent to the extent it allows for the clear reading of the stamp, tag, label, or other means of identification on the textile fiber product, or in the case of hosiery items, this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by subsection (b), and (3) the information on the stamp, tag, label, or other means of identifica-

tion affixed to such package is equally applicable with respect to each textile fiber product contained therein.".

SEC. 4. Section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b) is amended by adding at the end thereof the following new subsections:

"(i) For the purposes of this Act, a textile fiber product shall be considered to be falsely or deceptively advertised in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, unless such textile fiber product description states in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States of America, or imported, or both.

"(j) For purposes of this Act, any textile fiber product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the collar of such product if such product contains a collar, or if such product does not contain a collar in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product, or in the case of hosiery items on the outer side of such product or package.".

SEC. 5. Paragraph (2) of section 4(a) of the Wool Products Labeling Act of 1939 (15 U.S.C. 68b(1)) is amended by adding at the end thereof the following new subparagraphs:

"(5) If it is an imported wool product without the name of the country where processed or manufactured.

"(6) If it is a wool product processed or manufactured in the United States, it shall be so identified.".

SEC. 6. Section 4 of the Wool Products Labeling Act of 1939 (15 U.S.C. 68b) is amended by adding at the end thereof the following new subsections:

"(e) For the purposes of this Act, a wool product shall be considered to be falsely or deceptively advertised in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such wool product, unless such wool product description states in a clear and conspicuous manner that such wool product is processed or manufactured in the United States of America, or imported, or both.

"(f) For purposes of this Act, any wool product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the collar of such product if such product contains a collar, or if such product does not contain a collar in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product or in the case of hosiery items, on the outer side of such product or package.".

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SEC. 7. Section 5 of the Wool Products Labeling Act of 1939 (15 U.S.C. 68c) is amended—

(1) by striking out "Any person" in the first paragraph and inserting in lieu thereof "(a) Any person",

(2) by striking out "Any person" in the second paragraph and inserting in lieu thereof "(b) Any person", and

(3) by inserting after subsection (b) (as designated by this section) the following new subsection:

"(c) For the purposes of subsections (a) and (b) of this section, any package of wool products intended for sale to the ultimate consumer shall also be considered a wool product and shall have affixed to it a stamp, tag, label, or other means of identification bearing the information required by section 4, with respect to the wool products contained therein, unless such package of wool products is transparent to the extent that it allows for the clear reading of the stamp, tag, label, or other means of identification affixed to the wool product, or in the case of hosiery items this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products

contained therein, the information required by subsection (4), and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each hosiery product contained therein.

SEC. 8. The amendments made by this Act shall be effective ninety days after the date of enactment of this Act.

Mr. FLORIO. I'd like to, at this point, recognize a very distinguished ranking member of the full committee, the gentleman from North Carolina, Mr. Broyhill.

Mr. BROYHILL. Thank you, Mr. Chairman.

I want to thank you for your cooperation in scheduling this hearing today.

The problems confronting the textile and apparel industry have reached crisis proportions in my judgment.

1983, of course, was a record year. Textile and apparel imports into the United States increased 25 percent over 1982. That growth rate is continuing in this year, 1984, over the 1983 growth rate.

Studies have consistently shown that the U.S. consumers of textile and apparel products prefer American-made products.

Presently, there is no regulation or provision in the law that requires that American-made products be labeled as such. The public, therefore, has a tendency to assume that a product is domestically manufactured unless the product is labeled as coming from a foreign country. Now, this is not always the case.

The legislation that I introduced, cosponsored by a host of Members of Congress, including Ed Jenkins, the chairman of the House Textile Caucus, and others, which we are considering today would require a product be labeled as having been made in the United States if it was produced domestically. In my judgment, this would assist consumers in distinguishing American-made products from those that are made in foreign countries.

Of course, the primary purpose of this legislation is to strengthen domestic law so as to provide the consumer with as much information as possible at the time that they purchase a textile or apparel product.

I might note, Mr. Chairman, that the industry has recently launched its Crafted With Pride in the U.S.A. program, which is designed to enhance the industry's domestic competitiveness.

I feel that consumers do have a right to know what they are buying and where the product is made. The passage of this legislation would give consumers a clear choice by guaranteeing clear labeling of textile products.

The Textile Fiber Products Identification Act currently provides that all imported textile products must bear a country of origin label in a clear and conspicuous manner. But despite that mandate, many textile and apparel products are entering this country which do not comply with the current law.

Many of the labels are placed in inconspicuous places, which makes the enforcement of the existing law a major problem. This legislation strengthens the provision in current law to require that the label be attached in a more conspicuous place.

The legislation would also require that both the textile product, as well as the package in which it is contained, be labeled as to country of origin.

There have been many instances in which bulk shipments to the United States have been marked correctly, but upon entry into the country, the packages are broken up. By the time the product reaches the shelf, on the retail level, no label exists.

In instances where items are individually packaged in a transparent wrap and where they, the label can be read through such

packages, the bulk container would not have to be marked as to the country of origin.

Finally, the legislation would mandate that catalog sales descriptions and other direct mail advertisements for textile products note whether a product is produced domestically or abroad.

Although the Federal Trade Commission has issued rulings to the effect the country of origin information be contained in catalog sale offerings, it is not provided in the statute and often goes unenforced.

So, the legislation before us, Mr. Chairman, is one step that can be accomplished this year to assist a troubled industry and to increase the awareness of the American buying public.

Mr. Chairman, this bill can pass. It should pass. It is long overdue. I look forward to the opportunity to hear from the witnesses who are present today, and to working with you, in the legislative process.

Thank you.

Mr. FLORIO. Thank you very much.

Mr. Lent will be arriving later during the hearing and at this point I would like to insert his opening statement.

[The text of Mr. Lent's statement follows:]

OPENING STATEMENT OF HON. NORMAN F. LENT

I am quite pleased that the chairman has scheduled this hearing today.

The legislation which the subcommittee will be considering, H.R. 5638, the Textile Fiber and Wool Products Identification Improvement Act, is of critical importance not only to the American textile industry and the people it employs, but also to the consumer, who will be given important purchasing information as to the origin of the product they are selecting.

H.R. 5638 simply seeks to ensure that domestically made textile products are labeled and that imported products are properly and conspiciously identified as such. These are certainly modest requirements, which will produce benefits far exceeding any costs that may be imposed.

The subcommittee will also begin to examine H.R. 5929, which is designed to address the trafficking of counterfeit goods and services. This legislation would give the Federal Trade Commission authority to seize, detain and condemn such goods.

According to the U.S. Customs Service, in 1980 there were $4.5 billion worth of counterfeit goods sold at the retail level. This number has escalated to a current figure of $18-19 billion. The economic impact of counterfeiting on our domestic industries, the balance of trade, and consumers is enormous.

I look forward to exploring these concerns in depth and assessing how best to address this troubling problem.

At this point, I would like to extend a warm welcome to my colleagues, Congressmen Derrick, Jenkins, and Campbell. Gentlemen, the subcommittee appreciates your appearance here today.

Thank you, Mr. Chairman.

Mr. FLORIO. I'd like to, at this point, recognize the presence of our colleague, Mr. Jenkins, who is going to testify after the first panel, at his request.

I would, therefore, like to go to our first panel of witnesses, which is comprised of Mr. Henry Ruhl, director of manufacturing support services of the Stant division, Purolator, Inc., as well as Mr. Emilio Collado, the executive director, American Watch Association.

Gentlemen, I appreciate your participation. And I would ask that you introduce your colleagues.

As with all of our witnesses today, statements will be entered into the record in their entirety. And you may feel free to proceed as you see fit.

So, Mr. Ruhl, would you start.

STATEMENTS OF HENRY RUHL, ON BEHALF OF MOTOR AND EQUIPMENT MANUFACTURERS ASSOCIATION; AND EMILIO COLLADO, EXECUTIVE DIRECTOR, AMERICAN WATCH ASSOCIATION, ACCOMPANIED BY EUGENE LUDWIG, COUNSEL

Mr. RUHL. Thank you, Mr. Chairman.

My name is Henry Ruhl, and I am director of manufacturing support services and patents for Stant, Inc., a Purolator company. We are headquartered in Rahway, NJ.

With me today are Janis A. Parazzelli, general counsel for Stant Inc., and Paul T. Haluza, director of Government relations and public affairs for the Motor and Equipment Manufacturers Association.

I am here today representing the anticounterfeiting task force of MEMA.

Since this is our first appearance before this subcommittee, let me briefly overview our association.

For almost 80 years, the Motor and Equipment Manufacturers Association has been the representative of the U.S. motor vehicle parts manufacturing industry.

Today, the Motor and Equipment Manufacturers Association represents more than 750 American companies from the very large multinationals to small family-operated businesses.

Our members form the key foundation of this Nation's automobile and truck industry. We supply components to the motor vehicle manufacturers, as well as replacement parts and related service equipment used in the maintenance and repair of the vehicles on the world's highways today.

The counterfeiting and simulation of U.S. branded motor vehicle products represents a serious threat to motorists. MEMA has committed a substantial amount of its resources to obtaining remedial legislation to stop the growing menace to the public.

We are extremely distressed that H.R. 2447, the Trademark Counterfeiting Act of 1983, appears stalled by the Subcommittee on Crime of the House Judiciary Committee, particularly in light of the expected unanimous support for similar legislation in the Senate and, we believe, in the House.

I would also add, Mr. Chairman, the Trademark Counterfeiting Act enjoys the support of labor, consumer, and business interests. Therefore, the inaction by the House on this bill becomes even more puzzling.

Aside from the economic losses, the damage to our trademarks and to the reputation of our industry's branded products, our primary concern is the risk to public safety and the subsequent liability risks it poses to MEMA members.

Let me provide you with a few graphic examples. Probably the most visual is this counterfeit Fram oil filter that contains a used Chinese asparagus can on the inside. Use of such a shoddy product

could cost a motorist an engine at a cost of hundreds or thousands of dollars.

Another example is this package that contained a counterfeit Monroe shock absorber. It is identical to the legitimate package, even reproducing Monroe's limited warranty.

One of the most significant safety areas identified by MEMA is in the lighting area. These include not only lights, but turn signal and hazard warning flashers.

To demonstrate, we have a legitimate truck side marker light manufactured by Peterson Manufacturing Co. and a counterfeit that is identical but, in fact, does not meet FMVSS 108.

We have other products and would invite the subcommittee to examine them at the completion of our testimony.

Now, let me turn to the area that I am most familiar with and one which also poses potentially lethal risks to the public, gasoline caps.

Stant, Inc. is the largest supplier of motor vehicle closure caps; that includes not only gasoline, but oil filler and radiator caps as well. In 1975, gasoline caps, which are sold in packaging substantially similar to ours, were found to have come from Taiwan. At this point, Stant undertook to protect itself from illegal counterfeit imports by registering its trademarks and trade dress with the U.S. Customs Service. At the same time, Stant contacted the Federal Trade Commission concerning the infringments it was beginning to encounter and was told that the problem did not warrant any FTC action.

Since that time, Stant has continued to experience counterfeiting of its products. The instances of counterfeiting are too numerous to discuss with the committee in this short presentation. I shall gladly elaborate on our specific instances, if you like.

In brief, our problems have included direct infringement on our Stant, Stant S, Lev-R-Vent and S trademarks, as well as infringement of our registered trade dress, such as the distinctive red, yellow and blue and white packaging, the red and blue circles in our caps, and other trade dress.

A number of these problems have been brought to our attention by letters from consumers and concerned businessmen who found that counterfeit products did not work. We have reviewed all counterfeits, and almost all do not meet our specifications, and most fail miserably.

Our major concern with failure of these products, specifically radiator pressure caps, to meet specifications is that when the cap is removed, there is a possibility that the consumer can burn his or her hands. Failure to meet opening pressure specifications could result in radiator overheating and other problems.

We have investigated the source of all these counterfeit products, and the majority appear to have emanated from Taiwan. Many of the products are imported through companies which disappear when their counterfeit products are brought to their attention. For the most part, the infringing articles are not found to be distributed by large companies with a substantial U.S. foundation, although more recently we have experienced a few instances of such problems.

Counterfeiting of our products is a serious problem, which not only causes harm to our business and exposes consumers to potential safety problems, but is a problem that diverts our resources from other fruitful activities.

We have not had sufficient opportunity to review H.R. 5929 with regard to its specific provisions. Therefore, we cannot comment specifically on this legislation at this time.

However, we would urge the Congress to take any and all steps necessary to address this problem. I shall be glad to discuss in greater detail any of our specific situations.

I thank the committee for this opportunity to present our views this morning.

[Testimony resumes on p. 43.]

[Attachment to Mr. Ruhl's prepared statement follows:]

Notes Concerning Taiwan Infringements - June 25, 1984

(1) In December, 1975, Stant encountered a direct infringement of Stant's LEV-R-VENT cap and trademark supplied by MFP Distributors, Limited, 84-81 Keele Street, Toronto, Ontario. The source was traced to a Mr. Sonneburg of New York and further to Mr. Sol A. Schenk at Consolidated Internation, 2020 Corvair Avenue, Columbus, Ohio 43216. The infringing cap was sold in a carton which was red, blue, yellow and white very similar to the Stant carton except that the word "STANT" was removed. Mr. Schenk acknowledged that he purchased the caps from JC Industrial, Taiwan. Mr. Schenk and Mr. Sonneburg, and their company, were charged with patent and trademark infringement by Stant by a letter dated December 23, 1975, and they subsequently agreed to stop the importation of infringing items. Mr. Schenk confirmed the discontinuance of handling the type of carton and the radiator cap by letter of January 5, 1976.

(2) In January, 1976, Stant initiated its effort to register its trademarks with the Customs Department.

(3) Also in January, 1976, Stant made inquiries to the Federal Trade Commission concerning the types of infringements encountered with Consolidated International. The Federal Trade Commission expressed some concern about the public being misled by such infringers, but did not believe that the problem had sufficient public impact to warrant any FTC action.

(4) Also in January, 1976, Stant ran tests on the caps being imported from Taiwan to determine that such caps did not meet any reasonable specification.

(5) In April, 1977, Stant encountered problems with a Madison Group (Madison Auto Parts & Accessories). An effort was made to locate Madison, but Stant was unsuccessful in finding this company or its location. Madison did put out brochures and catalogs showing bogus Stant parts, apparently made in Taiwan.

(6) In May, 1977, Stant encountered infringing items from YOW SHIN TRADING COMPANY shipping products into the United States in cartons identical to the Stant cartons. The radiator caps infringed Stant's LEV-R-VENT cap patents. Careful inspection determined that the cartons from YOW SHIN were exactly the same as the cartons previously obtained from JC Industrial Corporation, another company in Taiwan, also a supplier to Consolidated International. These cartons from YOW SHIN were direct copies of Stant's cartons and actually showed the locating pin marks used by Stant's carton supplier.

(7) In May, 1977, Stant encountered such Taiwan imports in Puerto Rico. The caps in Puerto Rico infringed both Stant's patents and trademarks.

(8) In June, 1977, Stant learned about the Post Office Box 24-622 Taipei, Taiwan address of Madison Automotive Incorporated. (Stant also discovered that the Madison companies were making use of General Motors' DELCO marks on products being shipped into the United States.)

(9) In June, 1977, Stant made contact with the Taiwan Embassy and was advised that the Taiwan government's hands are tied unless Stant has patents and trademark registrations in Taiwan.

(10) In June, 1977, one of Stant's distributors actually

received a quote from Madison Automotive, Taiwan, in which the quote referred to "Stand" caps, and more particularly to "Stand Ear-Type Radiator Cap". This rather absurd substitution of "Stand" for "Stant" reflects a deliberate and malicious attempt to mislead the buying public.

(11) In July, 1977, Stant encountered bogus products from a TAFA INTERNATIONAL CORPORATION, Taipei, Taiwan, and also from a HANTON INTERNATIONAL CO., LTD. from Taipei, Taiwan.

(12) In November, 1977, Stant received a written complaint directly from a customer, Ms. Susan Laube, New Hyde Park, New York, stating that she had a defective Stant radiator pressure cap. In actuality, Ms. Laube had a cap from Taiwan which she thought was a Stant cap. Ms. Laube bought the Taiwan cap which "came in a Stant box". Ms. Laube purchased the cap from an Aide Store.

(13) In December, 1977, Stant encountered bogus Stant caps in bogus Stant cartons from a YU LEE TRADING COMPANY, LIMITED, Taipei, Taiwan.

(14) In December, 1977, it was determined that the so-called "Breeze Snap" caps of the type purchased by Ms. Laube came from Seal Enterprises, Inc., Long Island, New York.

(15) Also in December, 1977, it was determined that the cartons from YU LEE were the same cartons from other Taiwanese trading companies.

(16) In December, 1977, a private investigation firm determined that Seal Enterprises, Inc. was, in fact, registered to Ruth Fashions, Inc.

(17) In February, 1978, Stant received a shipment of caps from Seal Enterprises, Inc. that were ordered through Warehouse Service Company, Inc., in Richmond, Indiana, a Stant distributor. The caps were sent United Parcel from Long Island City, New York, invoiced to Warehouse Service Company, Inc. The invoice showed the Seal Enterprises, Long Island address.

(18) In April, 1978, an attorney for Stant met with Import Specialist Eliot Lainoff, who was in charge of Automotive Parts at Customs in New York, to discuss the ways in which Customs could help Stant identify and stop the importation of infringing radiator caps from Taiwan. Import Specialist Eliot Lainoff agreed to prepare a letter to be circulated among all Ports of the U.S. with photographs of infringing cartons.

(19) In May, 1978, other counsel from Stant met with Mr. Lainoff. Mr. Lainoff was helpful in establishing that Madison Automotive sent some of the infringing caps found in the U.S. into Puerto Rico in 1977. Stant supplied Mr. Lainoff with colored photographs of the infringing cartons and Stant cartons to show the comparison.

(20) Also in May, 1978, Stant started working with Taiwan counsel to obtain registration of Stant's trademarks in that country and to attempt to stop the infringement directly at the source.

(21) In June, 1978, another Stant warehouse distributor received another contact from Madison Automotive, Taipei, Taiwan. This contact included a PRO FORMA INVOICE referring to a "Stand T-Lever Safety Radiator Cap". The use of "Stand" followed by a "T" was carefully noted.

(22) In September, 1978, Stant learned of counterfeit Stant radiator caps being shipped into Australia from Taiwan.

(23) In January, 1979, Stant received some YT radiator caps from Taiwan, reportedly made by Taiwan Motorcycle Company in Taipei, Taiwan. Stant learned that these caps were reportedly sold in the United States by two closely related companies, one company in New York and one company in Cleveland. The New York company was Automotive Traders Incorporated and the Cleveland company was H & M Industries. The caps were distributed in blister packs and actually carried Stant part numbers on the back. Late in January, 1979, Stant learned that these YT caps with the Stant trademarks showing clearly through the blister packs were on sale at many discount places on the West Coast and particularly in the Los Angeles area. Stant learned that these caps came from a Caslo Sales Company.

(24) In June, 1979, Stant received a Frame Auto Company of Taipei, Taiwan catalog showing bogus Stant caps with Stant's red "S" trademark and with Stant's LEV-R-VENT trademark clearly visible thereon.

(25) Also in 1979, one of Stant's distributors received another catalog from Madison showing infringing caps.

(26) In March, 1979, Stant received a Daewoo Industrial Company, Inc. catalog showing infringing caps.

(27) In August, 1979, Stant encountered infringements by a Tai Lung Trading Company who had, at that time, a U.S. Divisional Manager, Mr. Roger C.L. Shum.

(28) In February, 1980, Stant received a Yuan Meng Industrial catalog showing obviously infringing caps with Stant trademarks clearly shown thereon. The catlog also showed trademarks from other U.S. companies on products being offered in the catalog which originated in Taipei, Taiwan.

(29) In March, 1980, Stant encountered a rather significant quantity of infringing gas caps being sold by Delta Marketing and Delta Refining with many outlets throughout the southern part of the United States. A charge of infringement was made and a settlement agreement was entered into. With the exception of the 1980 CEC incident and the 1975 Consolidated International incident, this was the first time Stant encountered a large company defendant with a substantial business enterprise in the United States subject to an infringement action in a Federal Court where the business enterprise could not be "folded away" to disappear.

(30) In September, 1980, Stant reached a settlement agreement with CEC Industries, Limited, an Illinois corporation, having a principal office and place of business at 2502 North Milwaukee Avenue, Chicago, Illinois 60647. CEC had imported and sold in the United States a threaded locking gas cap which infringed four Stant patents. CEC agreed to pay a small damages settlement and further agreed to stop the infringement.

(31) In November, 1980, Stant dealt with counterfeit caps having Stant's RED CIRCLE trademark shown thereon. These caps were distributed by a company ANT, New York, New York, 10022.

(32) In February or March, 1981, Stant encountered a Golden King Trade and Development Company from Taiwan selling caps at a California show, which caps had the Stant logo and the word LEV-R-VENT on the caps.

(33) In August, 1981, Stant learned that bogus caps were appearing with Stant trademarks in Pakistan.

(34) In September, 1981, Stant again encountered a company CE Auto Parts Accessories selling Breeze Pressure Caps from Taiwan.

(35) In 1983, infringing items were found distributed in the U.S. by Calpak, a substantial, Florida distributor.

STATEMENT

TO J.P. SAVARY DATE 4/25/1984

ADDRESS 608 5TH AVE, RM 802

CITY NY STATE NY ZIP 10020

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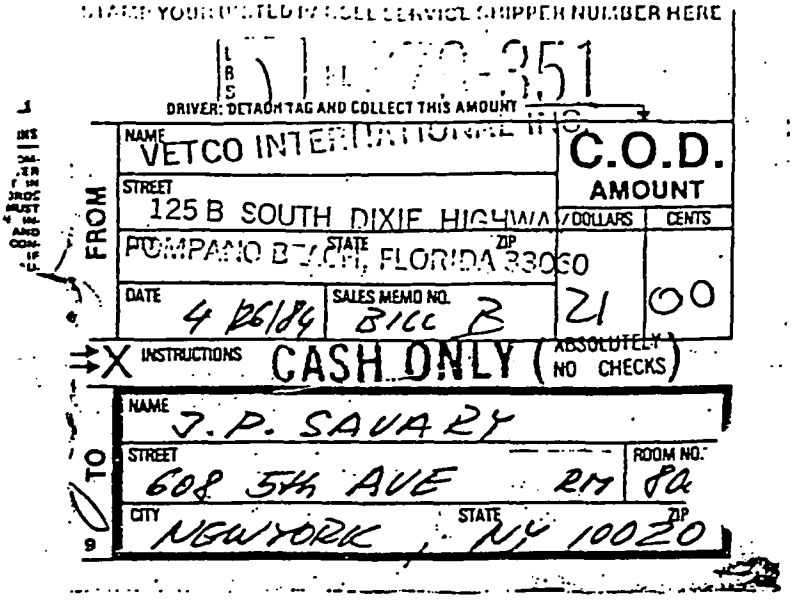
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The Downtown Newspaper

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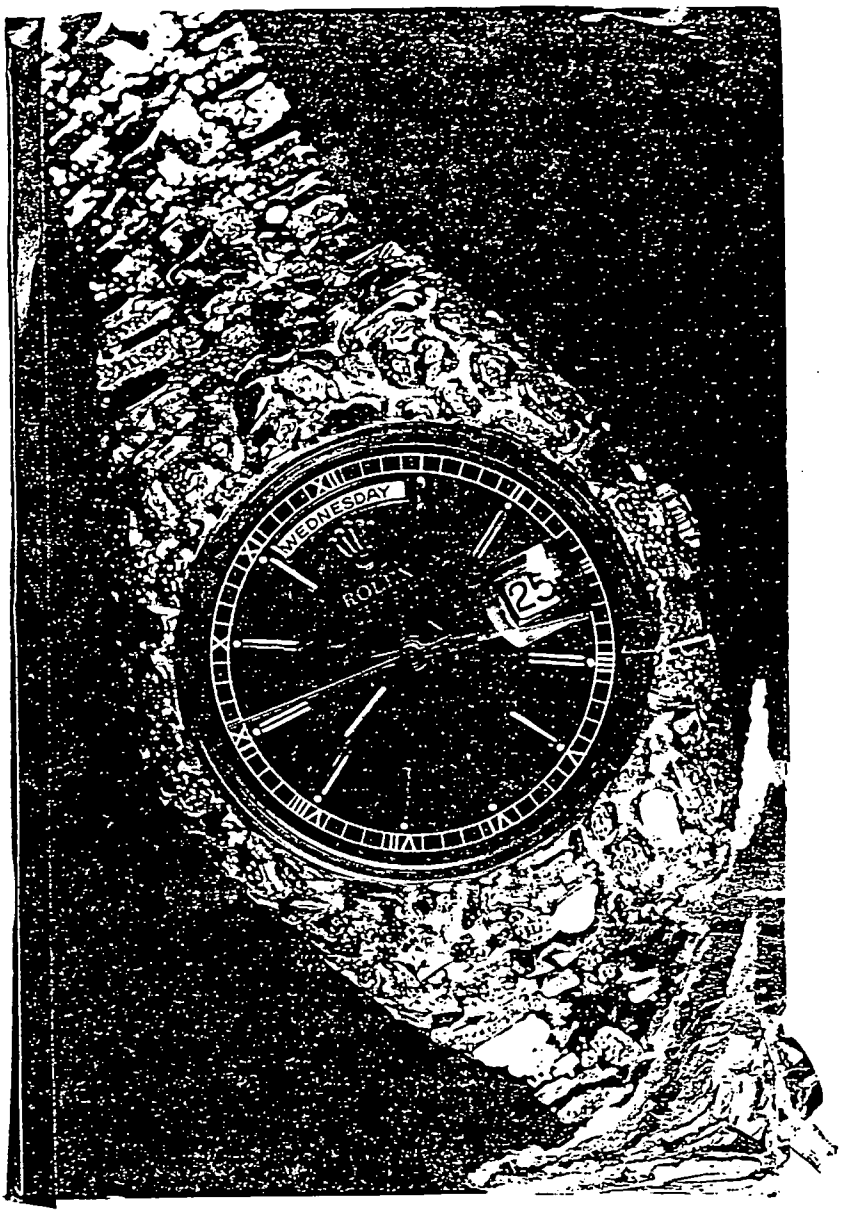


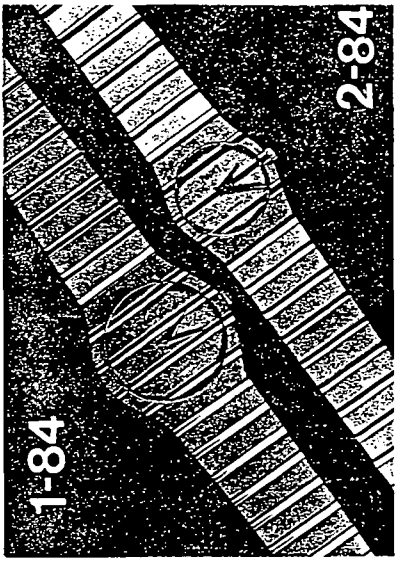


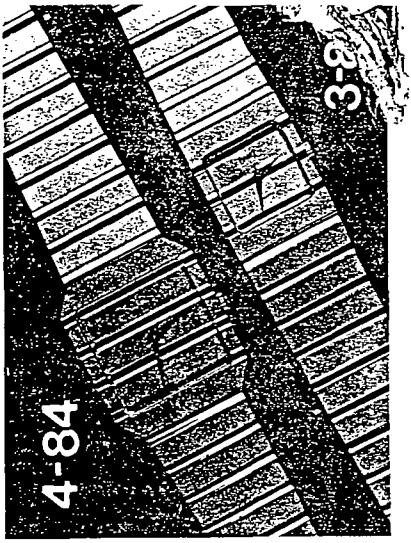
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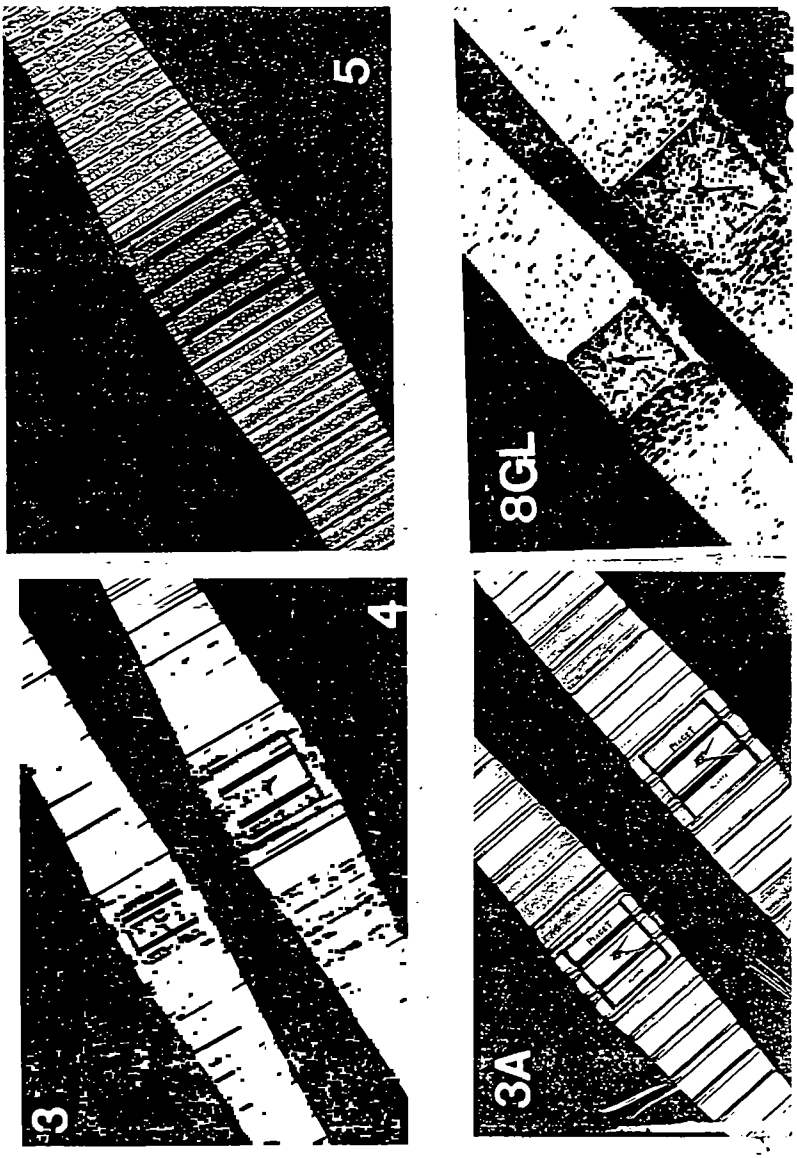
ACT COPIES OF THE MOST EXPENSIVE AND
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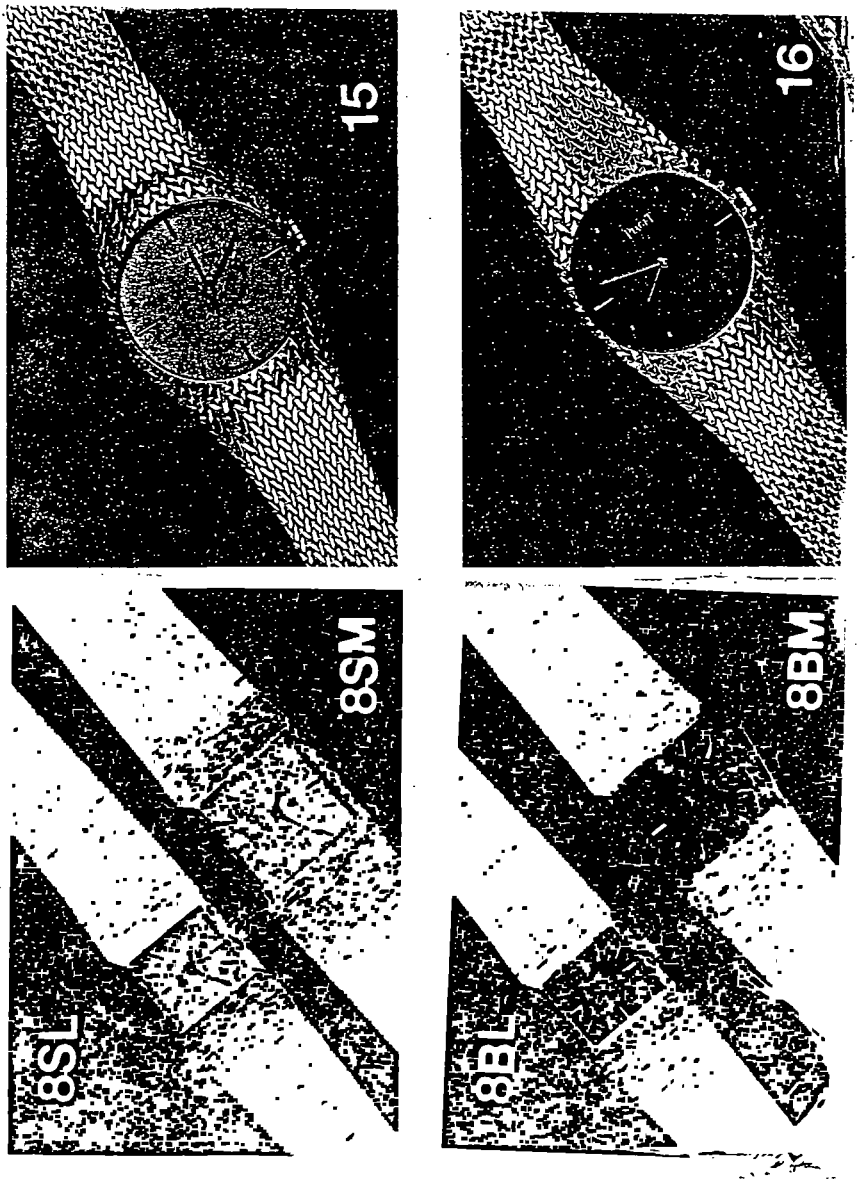
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	RIBBED FLORENTINE PIAGET	175.00
	PIAGED GOLD FACE	195.00
	PIAGET SILVER FACE	195.00
	PIAGET BROWN FACE	195.00
	PIAGET ROUND MESH	110.00
	ROLEX W/DOUBLE DIAMOND	150.00
	ROLEX W/DIAMOND FACE	150.00
	ROLEX - PRESIDENTIAL	150.00
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	ROLEX SUBMARINER	150.00
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	ROLEX ETA - AUTOMATIC	295.00
	ROLEX - NEW YORK	195.00
	ROLEX - "BARKED" NEW YORK	295.00
	ROLEX NEW YORK RUBY FACE	195.00
	ROLEX MAHOGANY FACE	150.00
	ROLEX GMT MASTER	250.00
	ROLEX - DOUBLE DIAMOND NUGGET	595.00
	ROLEX CELLINI	150.00
	PORSCHE	110.00
	PIAGET SOFT FLORENTINE	125.00
	CORUM HEAD COINS	110.00
	GOLD MESH COIN	125.00
	PATEK PHILLIPPE TANK	100.00
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	PATEK PHILLIPE - ULTRA THIN	355.00

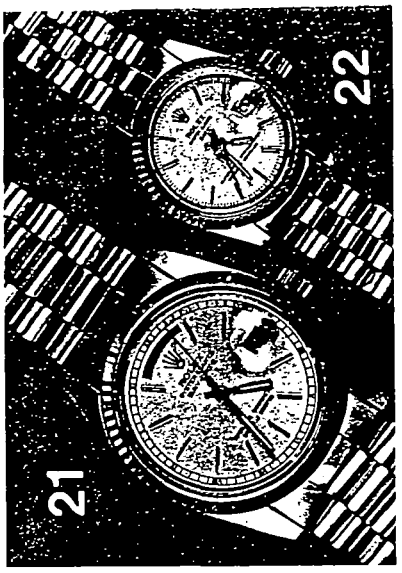

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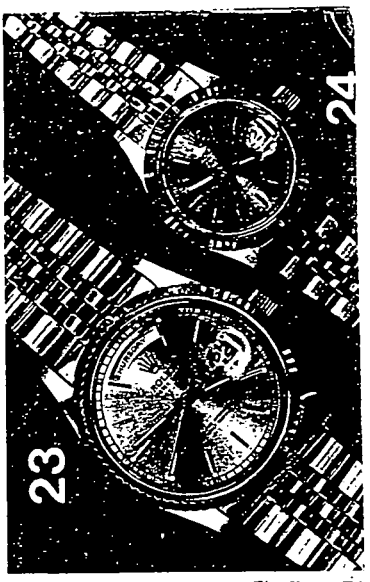

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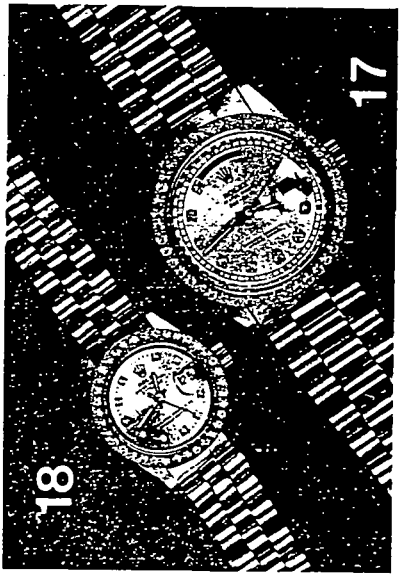

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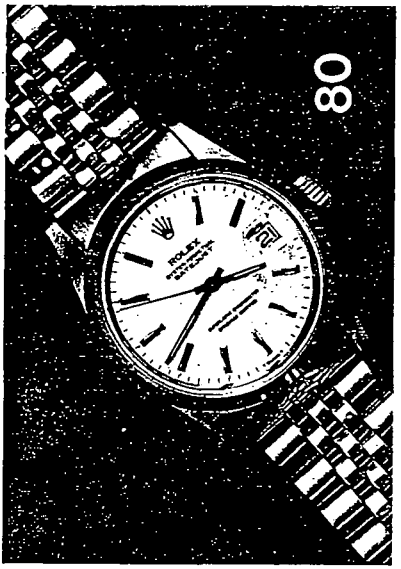

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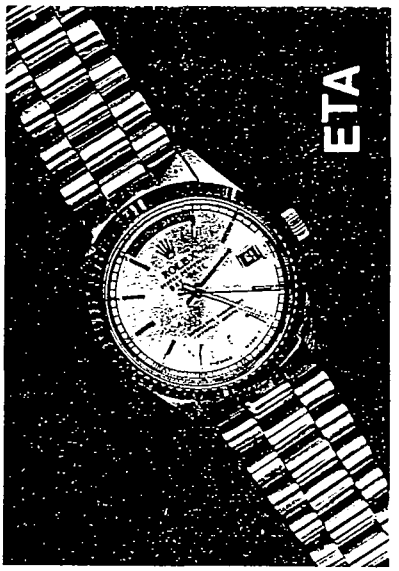

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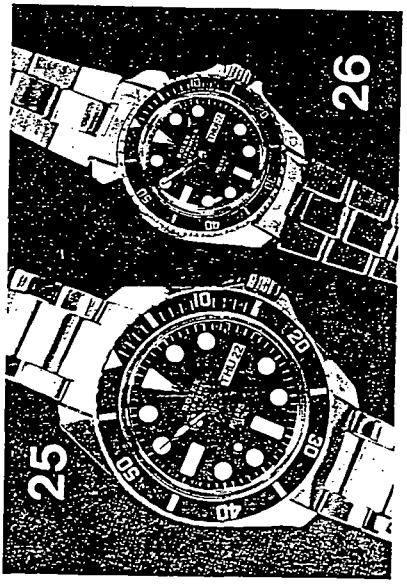

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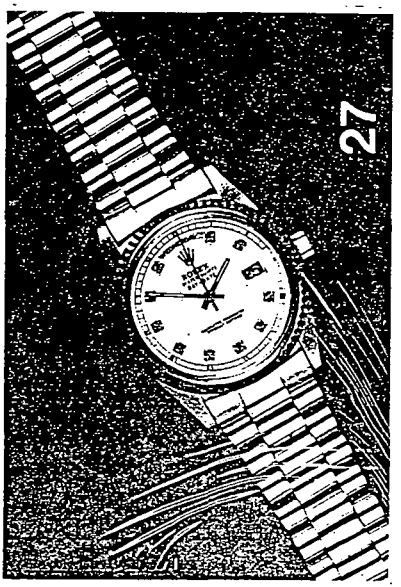

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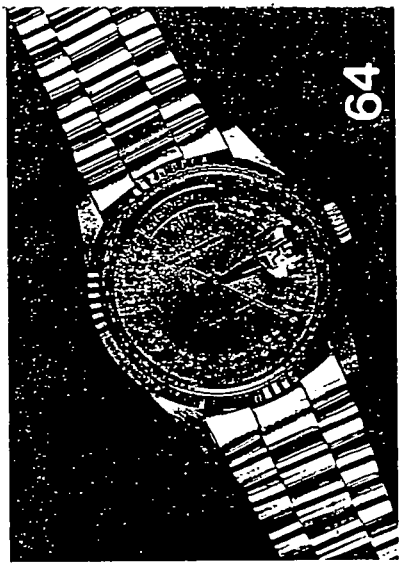

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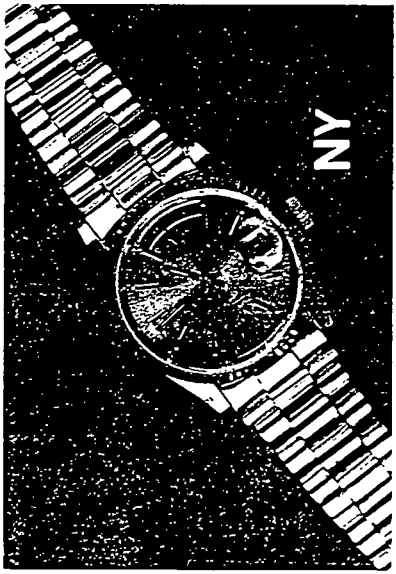

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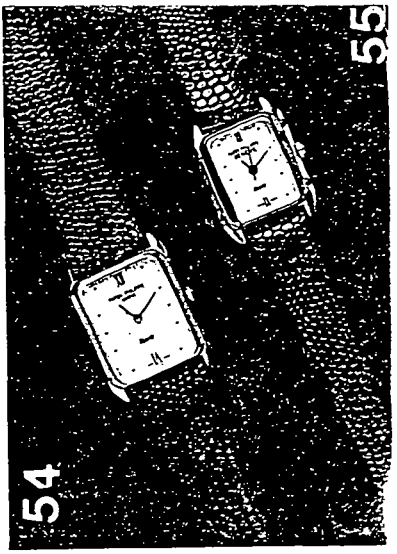

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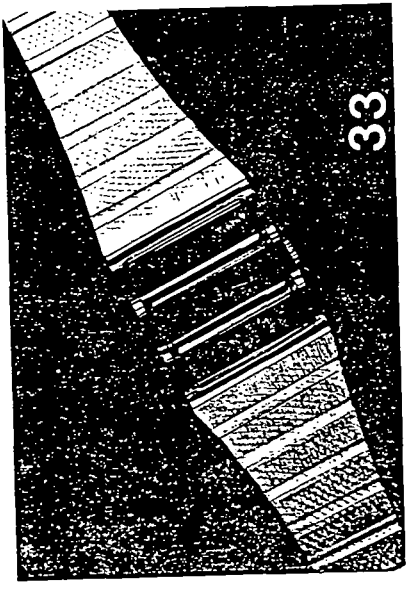

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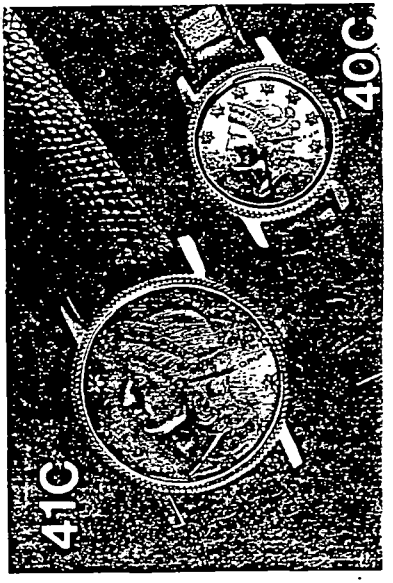


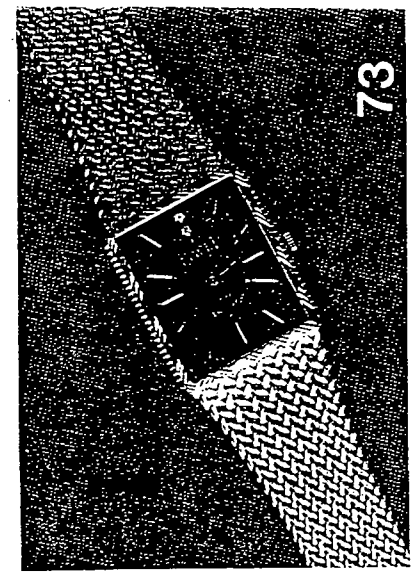
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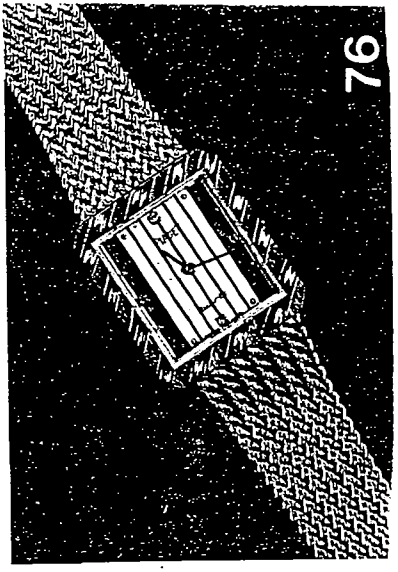

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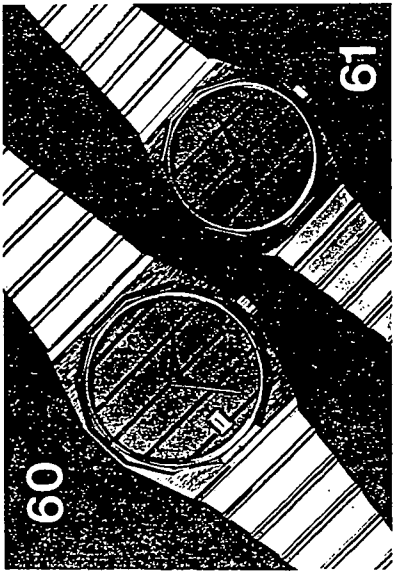

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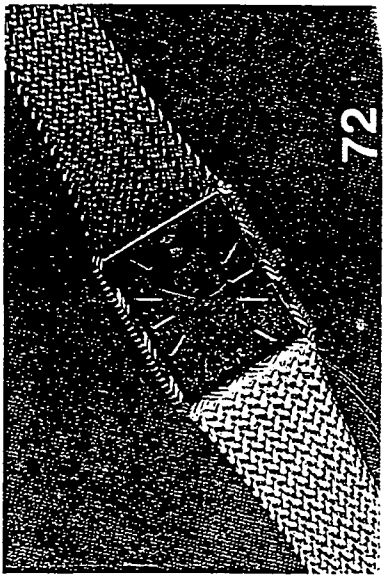

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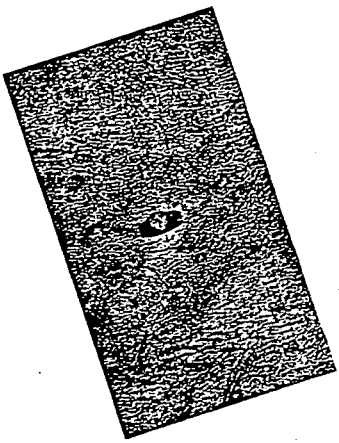

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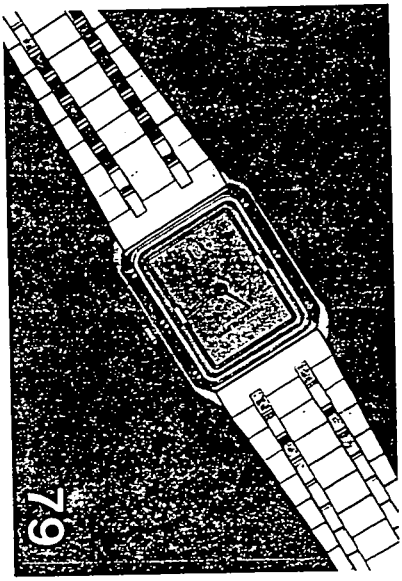

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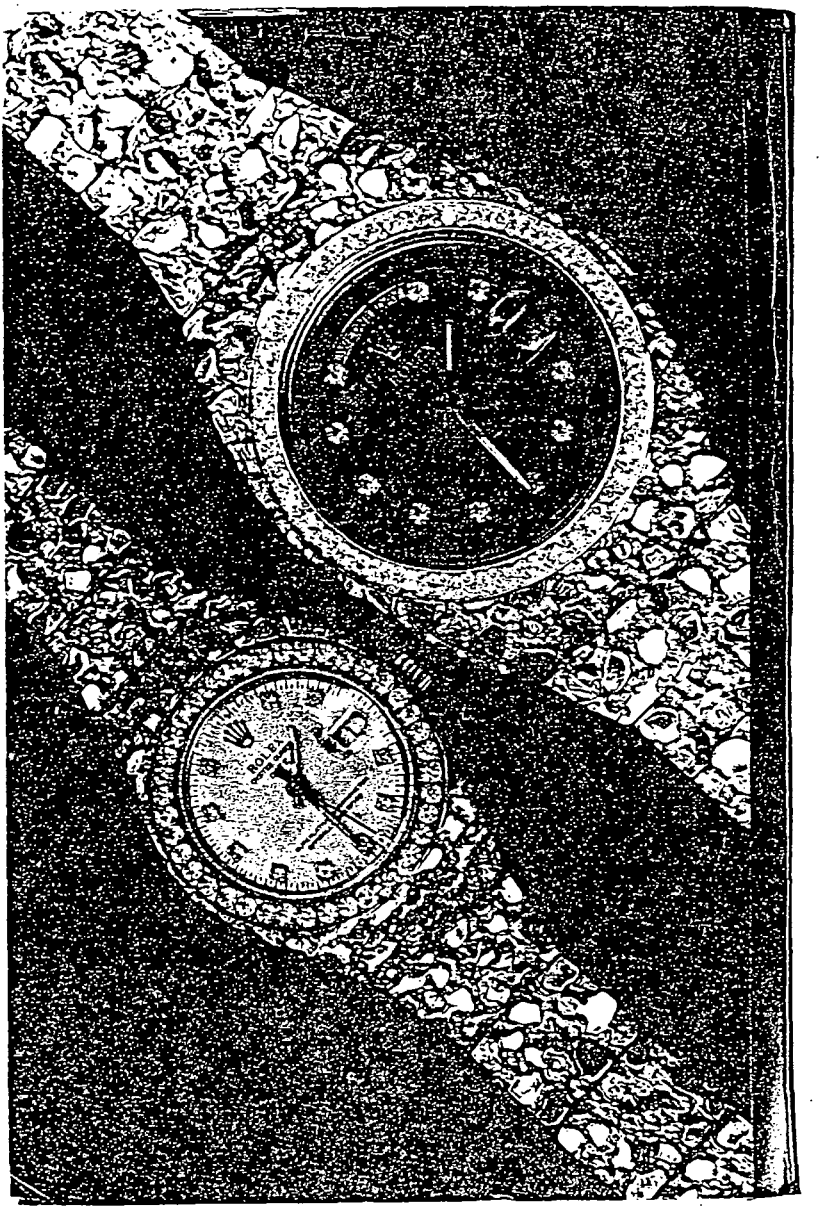

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Mr. FLORIO. Thank you very much.
Mr. Collado.

STATEMENT OF EMILO COLLADO

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

My name is Emilio Collado, and I am executive director of the American Watch Association. With me today on my left is the association's counsel, Eugene Ludwig, of Covington & Burling. We appreciate the opportunity to address the members of the subcommittee on an issue of the highest priority to our association.

The American Watch Association is a trade group that represents approximately 40 member and associate member United States companies that are engaged in the importation, manufacture or assembly of watches, watch movements, and watch parts for sale in the U.S. and world markets. Like many of the industries represented here today, the watch industry has suffered great harm as a result of the illicit activities of those who manufacture and sell counterfeit products.

Counterfeiting is not a new phenomenon in the American watch industry. In fact, the genesis of current trademark law is an act of Congress passed in 1871 to protect U.S. watch manufacturers from foreign counterfeits. Sadly, over the last century, due to the lack of effective deterrents, the counterfeiting of watch products has become a lucrative and relatively risk-free business.

Indeed, perhaps the most striking characteristic of present-day counterfeiting activity is the bold contempt of those who make and sell counterfeits. I have with me, for example, a catalog of watches, and I believe your staff has some copies of this. The catalog of watches bearing the well-known trade names of a number of watch association members, including Piaget, Rolex, Concord, and Omega, comes complete with color enlargements of the watches in question and a price list. To the nonexpert, the watches shown in this catalog appear to be genuine in every detail down to the duplication of the trademarks on their faces. Featured items include apparently solid gold and diamond studded models and even models that appear to be encased in U.S. coins.

However, this is a catalog consisting solely of counterfeits. Even the U.S. coins are almost certainly counterfeits, given the fact that a $20 gold piece would cost $750. What is most appalling, however, is that the counterfeit nature of this merchandise is trumpeted by its purveyors.

They state that these are:

> Beautiful replicas of world-famous watches, quality timepieces at affordable prices, exact copies of the most expensive and famous watches of the world for which you have to pay thousands of dollars.

Even a toll-free telephone number is provided to expedite the sale of these bogus goods. Thus, in spite of current trademark law clearly prohibiting such blatant conduct, these counterfeiters and their distributors openly promote their goods in writing.

Why? Because they view civil prosecution by trademark owners as little more than a nuisance, an insignificant cost of doing business.

The weaknesses of the present system are apparent from the onset of a lawsuit. For example, a trademark owner often is not able to obtain effective ex parte seizure orders to prevent counterfeiters and their distributors from destroying or removing to another location, evidence of significant counterfeiting activity. The almost unfettered ability of counterfeiters to rid themselves of their counterfit inventories, as soon as they are put on notice as to a possible seizure, not only severely hamstrings the trademark owner in proving its case, but also makes it virtually impossible to obtain adequate compensatory damages under current trademark law.

Thus, the ability of trademark owners to recover significant judgments against even the most notorious counterfeiters is severly limited. Moreover, court orders prohibiting the sale of counterfeit goods frequently are given no more respect by counterfeiters and their distributors than is given to the trademark in the first instance.

Our members report that following the issuance of injunctions prohibiting the sale of counterfeit products, they have still been able to purchase such counterfeits from the very defendants in question.

Not long ago, in fact, a well-known watch company obtained a permanent injunction in Florida against a major distributor of counterfeits of its products. Notwithstanding that court's order, the counterfeiter in question continued unabashedly to sell the counterfeit watches, and the trademark owner then obtained a seizure order.

When an unarmed U.S. marshal approached the defendants to seize their inventory of counterfeit watches, they refused to comply with the seizure order and assaulted the marshal in the process.

The watch company ultimately prevailed in a prosecution for criminal contempt, including the assault of the U.S. marshal. The watch company's costs amounted to tens of thousands of dollars, but the defendants ended the litigation by paying a $1,500 fine. And as I understand it, the defendants are still in business today.

Clearly, this is a sorry state of affairs, and members of the watch industry and their counterparts in the other industries throughout the United States are rendered virtually impotent against this underworld. Present laws simply do not provide the tools to curtail and to deter this illicit conduct. For this reason, Mr. Chairman, your strong and continued interest in the plight of the American trademark owners is important.

Clearly, the bill before you today is an important step in the right direction. We would welcome the involvement of the FTC in this area with its ability to detain goods, issue cease-and-desist orders, and impose substantial penalties. We therefore support your bill and hope to see it reported out of the subcommittee.

As you are aware, though, this legislation is not a panacea. It is not clear to us the extent to which the already overburdened FTC will be able to become significantly involved in this issue, especially if there is not additional appropriation of funds by Congress specifically to be used by the FTC to resolve this problem.

Frankly, we are concerned that without additional changes in the law, counterfeiters will chalk up civil suits by the FTC as just

another incremental cost of doing business. What is needed from this Congress, in addition to the creative leqislation being considered by the subcommittee, is a program to put the teeth back into the laws and to enable both the Government and private industry to root out the problem.

Specifically, American industry needs three things:

First, it needs the establishment of criminal penalties and prison terms for persons convicted of counterfeiting activities; second, increased penalties for violations of the trademark laws; and third, clear statutory authority to permit appropriate ex parte seizures of evidence related to counterfeiting activity.

We respectfully but strongly request that the members of this subcommittee consider amendmending H.R. 5929 to include provisions that accomplish these goals.

As you are aware, Congress has for some time been considering legislation with these three objectives.

Indeed, on June 11, the Senate Judiciary Committee unanimously reported out S. 875, the Trademark Counterfeiting Act. And we expect that this will soon be passed by the Senate.

Similar legislation, H.R. 2447, has been introduced by Mr. Rodino and for some time been the subject of consideration by the Crime Subcommittee of the House Judiciary Committee.

We fear though that the Crime Subcommittee will not have time to complete consideration of this important issue this year, despite the fact that counterfeiting continues to hurt our industry and many others as well.

In sum, Mr. Chairman, we need your help. And we support and appreciate your efforts to complete the task begun by your colleagues more than 100 years ago.

This concludes my remarks, Mr. Chairman. Either I or my counsel, Mr. Ludwig, will be happy to answer any questions that you and subcommittee members have.

Thank you.

[The prepared statement of Mr. Collado follows:]

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TESTIMONY OF THE AMERICAN WATCH ASSOCIATION
BEFORE THE SUBCOMMITTEE ON COMMERCE,
TRANSPORTATION AND TOURISM
OF THE COMMITTEE ON ENERGY AND COMMERCE
ON H.R. 5929,
TO AMEND THE FEDERAL TRADE COMMISSION ACT
CONCERNING COUNTERFEIT GOODS AND SERVICES

June 28, 1984

I. INTRODUCTION

My name is Emilio Collado, and I am Executive Director of the American Watch Association. With me today is the American Watch Association's counsel, Eugene Ludwig of Covington & Burling. We appreciate the opportunity to address the Members of the Subcommittee on an issue of the highest priority to our Association.

The American Watch Association is a trade association that represents approximately forty member and associate member United States companies that are engaged in the importation, manufacture or assembly of watches, watch movements and watch parts for sale in the United States and world markets. AWA members include the firms that market such well-known watch brands as: Bradley, Bulova, Casio, Citizen, Concord, Corum, Ebel, Hamilton, Helbros, Innovative Time, Longines, Lucien Piccard, Movado, Omega, Piaget, Pulsar, Rado, Rolex, Ronda, Seiko, Wittnauer and many others.

Like many of the industries represented here today, the watch industry has suffered dramatic harm as a result of the illicit activities of those who manufacture and sell counterfeit products. Counterfeiting is not a new phenomenon for the American watch industry. In fact, the genesis of current trademark law is an Act of Congress passed in 1871 to protect United States watch manufacturers from foreign counterfeits. Sadly, over the last century, due to the increasing value of the goodwill associated with well-known trade names and the lack of effective deterrents to and remedies for counterfeiting, the misappropriation of trademark rights through the counterfeiting of watch products has become a lucrative and relatively risk-free business. Indeed, perhaps the most striking characteristic of present day counterfeiting activity is the bold contempt of those who make and sell counterfeits for the legitimate rights of trademark owners and our legal processes.

II. NOTORIOUS COUNTERFEITING CONDUCT

I have with me, for example, a catalog of watches bearing the well-known trade names of a number of our members, including Piaget, Rolex, Concord and Omega. The catalog comes complete with color enlargements of the watches in question and a price list. To a non-expert the watches shown in the

catalog appear to be genuine in every detail, down to the duplication of the trademarks on their faces. Featured items include apparently 18K gold and diamond studded models and even models with what appear to be U.S. coins as decoration. However, the prices of these items begin at less than $200. As you can tell by my description, this is a catalog consisting solely of counterfeits; even the U.S. coins are almost certainly counterfeits. What is most appalling, however, is that the counterfeit nature of this merchandise is trumpeted by its purveyors. They state that these are "Beautiful Replicas of world famous watches -- Quality timepieces at affordable prices -- exact copies of the most expensive and famous watches of the world, for which you have to pay thousands of dollars." A toll free telephone number is even provided to expedite the sale of these knock-offs. Thus, in the face of current trademark law clearly prohibiting such blatantly infringing conduct, these counterfeiters and their distributors openly and notoriously promote their exploits to the public in writing. Why? Because they view identification and civil prosecution by trademark owners as little more than a nuisance, an insignificant cost of doing business.

The weaknesses of the present system are apparent from the onset of a lawsuit. For example, a trademark owner often is not able to obtain effective ex parte seizure orders

to prevent counterfeiters and their distributors from destroying or removing to another location evidence of significant counterfeiting activity. The almost unfettered ability of counterfeiters to rid themselves of their counterfeit inventories as soon as they are put on notice as to a possible seizure not only severely hamstrings the trademark owner in proving its case, but also makes it virtually impossible to obtain adequate compensatory damages under current trademark law.

Thus, the ability of trademark owners to recover significant judgments against even the most notorious counterfeiters is severely limited. Moreover, court orders prohibiting the sale of counterfeit goods frequently are given no more respect by counterfeiters and their distributors than is given to the trademark in the first instance. Our members report that following the issuance of injunctions prohibiting the sale of counterfeit products, they have still been able to purchase such counterfeits from the very defendants in question.

Not long ago, in fact, a well-known watch company obtained a permanent injunction in Florida against a major distributor of counterfeits of its products. Notwithstanding the court's order, the counterfeiter in question continued unabashedly to sell the counterfeit watches, and the trademark

owner then obtained a seizure order. When an unarmed United States Marshal approached the defendants to seize their inventory of counterfeit watches, they refused to comply with the seizure order and assaulted the Marshal in the process. The watch company ultimately prevailed in a prosecution for criminal contempt, including the assault of a United States Marshal. The watch company's costs amounted to tens of thousands of dollars, and the defendants ended the litigation by paying a $1500.00 fine. As I understand it, the defendants are still in business. This story is representative of the complete disregard for present law and trademark rights that you see exhibited in this catalog.

III. NEED FOR LEGISLATION

Clearly, this is a sorry state of affairs, and members of the watch industry, like their counterparts in the other industries represented throughout the United States, are rendered virtually impotent against this underworld, whose scorn and contempt for property rights and the law are overwhelming. Present laws simply do not provide the tools to curtail and deter effectively this illicit conduct.

For this reason, Mr. Chairman and Members of the Subcommittee, your strong and continued interest in the plight of American trademark owners is important. Clearly,

the bill before you today is a significant step in the right direction. We would welcome the involvement of the Federal Trade Commission in this area with its ability to detain goods, issue cease-and-desist orders, and impose substantial penalties. We therefore support this bill, and hope to see it reported out of the Subcommittee.

As you all are well aware, however, this legislation is not a panacea. It is not clear to us the extent to which the already overburdened FTC will be able to become significantly involved in this issue, particularly if there is no additional appropriation of funds by Congress specifically to be used by the FTC to resolve this problem.

Frankly, we are concerned that without additional changes in the law, counterfeiters will "chalk up" civil suits by the FTC as just another incremental cost of doing business. What is needed from this Congress, in addition to the creative legislation being considered by this Subcommittee, is a program to put the teeth back into the laws, and to enable both the Government and private industry to root out the problem.

Specifically, American industry needs three things: First, it needs the establishment of criminal penalties and prison terms for persons convicted of counterfeiting activities; second, it needs increased civil penalties for violations of the trademark laws involving counterfeits; and third, it needs

clear statutory authority to permit ex parte seizures, in appropriate circumstances, of evidence related to counterfeiting activity. We respectfully but strongly request that the members of this Subcommittee consider amending H.R. 5929 to include provisions that accomplish these goals.

As you are aware, the Congress has for some time been considering legislation with these three objectives. Indeed, on June 11, the Senate Judiciary Committee unanimously reported out S.875, the Trademark Counterfeiting Act, and we expect that this will soon be passed by the Senate. Similar legislation, H.R. 2447, has been introduced by Mr. Rodino and has for some time been the subject of consideration by the Crime Subcommittee of the House Judiciary Committee. However, we fear that the Crime Subcommittee will not have time to complete consideration of this important issue this year.

IV. CONCLUSION

In sum, we need your help -- and we fully support and appreciate your efforts to complete the task begun by your colleagues more than 100 years ago. We need to make it too costly to publish catalogs like these; we must stem the decay in the fabric of intellectual property rights in this country.

That concludes my prepared remarks. Either I or my counsel Mr. Ludwig would be happy to answer questions that any Members of the Subcommittee may have. Thank you.

Mr. FLORIO. Thank you very much.

Let me express my appreciation to both our witnesses.

As I think most people know, the oversight subcommittee of this full committee has gone into this matter in some depth, even beyond the scope of what has been talked about today.

I recall, as a member of the committee, the discussions concerned counterfeit jeans, designer jeans, tapes, recordings, and things of that sort. They are also areas that are of concern to individuals in this matter.

Let me ask—you both have emphasized safety, particularly our first witness—safety and shoddy goods—to what degree is the problem that has emerged in the production of goods by overseas subsidiaries that are of good quality but are out of control? Those goods get back into the market by individuals without paying the appropriate respect to trademarks and patents—that is to say, products of someone's, yours or someone else, that somehow have gotten lost and therefore get back into the market, but not through the appropriate channels. That is say they are not shoddy goods, they are of equal quality to the goods that you are producing, because in some instances they may be your goods that are being produced overseas, but somehow they have gotten siphoned off out of the mainstream and then get back into the market.

Mr. COLLADO. Well, in our industry, Mr. Chairman, that is referred to as the gray market, or parallel goods.

There may be, also, some production overruns. That does not appear to be a problem.

The gray market is very definitely a problem. We view it as a version of unfair trade practice. It's different from counterfeiting. It's just as troublesome. It is very definitely a problem. We are concerned about that as well.

Mr. FLORIO. Well, if those products were—assume that they were put back into the market in this country and they are not appropriately labeled, how is that different from counterfeiting? I'm confused about—on how you maintain that it would be a bit different.

Mr. COLLADO. Well, I was assuming that you were talking about gray market, and maybe you're really talking about overruns that are unauthorized in all respects—

Mr. FLORIO. Yes, it's the latter that I'm talking about.

Is that—is there any distinction between counterfeiting and that type of production?

Mr. COLLADO. That really, to my knowledge, is not a significant problem for our industry. So, I'm not equipped to answer it.

Mr. FLORIO. It apparently is in the jeans area and some of the clothing products area.

Let me ask a question with regard to the distinction between—well, this legislation, you know, covers not only trademarks, but patents and copyrights. And I ask for your thoughts as to the appropriateness of covering all those areas in this field.

Mr. RUHL. I think that would be very needed coverage.

We find that in addition to experiencing problems with the copying of our trademarks—also, our mechanical patents are counterfeited. For instance, Delta marketing was found to be selling counterfeit locking fuel caps that infringed four of our mechanical patents. Also, several Taiwan companies are selling counterfeit radia-

tor pressure caps in this country that infringe our Lev-R-Vent mechanical patents.

In instances of copying trademarks we have trademark coverage on the color arrangement on our cartons—in other words, we have affidavits to the effect that our customers recognize our product by the color of our carton. And the counterfeiters realize that.

And here are two boxes. This one is the counterfeit that actually says "Made in Taiwan" on it. And this is our carton.

If you were far enough away that you couldn't read the printing on the carton, you would think it was our product.

Mr. LUDWIG. Mr. Chairman, we, too, applaud the efforts of the subcommittee to deal with patents and copyrights in this bill. I think that they are linked to this problem very definitely, and our members would be possibly affected by the legislation dealing with these two areas of intellectual property law.

Mr. FLORIO. Mr. Collado, just a last question on what appears to be your enthusiam for the FTC detention authority of goods that is included in this bill. Could you elaborate on that for me?

You've indicated that one of the problems under the existing procedures, is that by the time court orders procedures were obtained, the counterfeit goods are gone.

Are you of the opinion that the FTC authority that's provided here would be something that would give some assistance?

Mr. COLLADO. I will just state that I think that is a step in the right direction. But I think we could do with and would benefit from more.

Mr. LUDWIG. Yes.

Mr. Chairman, we have both concerns about the FTC and an appreciation for the FTC's detention authority—let me take it in that reverse order.

The FTC—the threat of the Federal Government getting involved in counterfeiting is apt to be a significant deterrent to counterfeits, particularly if the FTC actually has the funds and the impetus to get involved.

Nevertheless, industry members are perfectly prepared to assist the Government in stopping counterfeiters, acting as private attorneys general if they have the tools, like ex parte seizure, to be able to fulfill that role.

So, yes, the FTC, I think, would help. I think the detention of goods is a tremendous step in the right direction. Our only concern in that regard is if the FTC would really follow through.

Mr. FLORIO. Thank you very much.

Mr. Broyhill.

Mr. BROYHILL. Mr. Ruhl, I am amazed at some of these examples that you brought in your testimony to the subcommittee.

Of course, the counterfeiting of auto parts does present a real danger to consumers. It poses a situation where you could have these products that are not made to specification incorporated into an automobile, they fail and cause accidents.

Is there any other way that the industry has found that they can deal with this problem? That is, any self-help programs such as civil suits or any other kinds of programs that would help in battling this problem?

Mr. RUHL. Yes, Mr. Broyhill, we've had numerous experiences in trying to track down these counterfeiters.

For instance, a couple of years ago, we were informed of a place in Chicago where two of our sales respresentatives went down this alley and up some stairs and into a dark room. It almost gets—of a cloak-and-dagger nature. But they simply had an ordering desk there, and our people said they were truckers and they wanted to buy some caps for their fleet of trucks.

The counterfeiters became suspicious and wouldn't sell them the caps. But in the meantime, they were able to look over the operation. The product was not on the premises. It was strictly a place where they would take orders.

Mr. BROYHILL. Well, let me get to the heart of my question.

My question is: You do have the option at this time of initiating civil suits?

Mr. RUHL. Yes.

Mr. BROYHILL. Is that kind of self-help doing any good? What is the outcome of that litigation?

Mr. RUHL. All right. We had an experience with a concern in Memphis, TN. The name of the company was Delta Marketing. This is the cap that they were marketing through supermarkets.

We found this product in a few supermarkets around central Indiana, and we contacted Delta Marketing. We informed them that they were infringing our mechanical patents and our trademarks.

Delta at first denied it. After several exchanges of correspondence through our attorneys, they did, in fact, admit the infringement.

There was a settlement made, and they signed an agreement that they would not market counterfeit products any longer.

Incidentally, Delta is a subsidiary—or part of a conglomerate—out of Dallas, TX.

A short time later—a few months later, we found the product again on the market. And right now we are in the process of working with their attorneys to get another settlement. But frankly, we have little faith in this second agreement. I think we still need to be searching the marketplace——

Mr. BROYHILL. Are you telling us, then, that civil actions are not working? Is that what you're telling us?

Mr. RUHL. I don't believe it does. And, in fact, it becomes difficult to bring civil action, because you cannot find out who they are or where they are, or you can't find out names.

We've had private detectives investigate locations where we find that product orders are being taken, orders for counterfeit product. We go to these locations. And in one instance in New York, it was the back of a dress shop, and whenever you called there, they would answer the phone with the last four numbers of the telephone number. There was nothing mentioned about the company or anything of that nature.

If they trusted you, they would take your order. But we had difficulty even buying products through them because there was a lot of mistrust of who we were.

Mr. BROYHILL. I wonder if you could comment on this line of questioning as to the relative success of using civil suits, which are available under present law.

Mr. COLLADO. It has been a continuing, expensive process for our members. Some of them bring dozens of suits each year. It costs a great deal of money for them to do it, because you have to begin with an investigator, as Mr. Ruhl suggested, and after that, you have to go through a significant effort in the courts. You usually end up either with an out of court settlement or some court-imposed settlement that is relatively minor.

The example that I gave in the testimony is typical of a great many others. Our members have experienced that counterfeiters continue to sell their wares while an investigation, or court action is underway, and afterward almost always;

They are part of shell corporations—if one person is enjoined from counterfeiting, somehow the organization crops up, somewhere else the very same people usually. It is easy enough. These products are small. They are transportable. They are all over the place. And so far, it is basically an operation in which our members spend tens of thousands of dollars to impose a thousand dollar or so fine on these people.

Counterfeiting is so profitable and so easy to do with so very little overhead that this is a really insignificant cost of doing business, and our members just ache, without the ability to have the threat of Government participation in this. The FTC's participation would be enormously helpful. Even better, in addition to that, would be criminal penalties, as the Senate appears on the brink of doing, and as the House Crime Subcommittee has been considering. The treble damages would be very helpful.

In the Lanham Act, it is permitted for the courts to impose fines up to treble damages. There is really no incentive for them to do it, and they almost never do it, so there is no deterrent value in terms of being able to impose treble damages and reclaim your costs, your attorneys' fees and your investigators' fees.

The other thing is, we are hamstrung because we don't have any means of effective ex parte seizure, again a provision in the Senate bill and one being considered by the House.

We feel all those are necessary. We continue and will continue to try to fight this problem in the courts, but so far it's been a losing battle.

Mr. BROYHILL. Mr. Chairman, I wish we had a long time to explore this particular line of questioning. I would appreciate, in the interest of moving the hearing along, since I know that we have a number of our colleagues who are scheduled to testify have other business today, if the witnesses and their counsels to present additional testimony on this question of the success of using the self-help of civil suits available under present law stop running this trafficking in illegal counterfeit goods?

Thank you, Mr. Chairman.

Mr. FLORIO. We thank the witnesses for their participation this morning.

We now are pleased to recognize and ask two of our colleagues who are here in attendance to come forward. As previously indicated, the Honorable Ed Jenkins is here, as well as, I see, Mr. Butler Derrick. I would ask both of our colleagues to come forward. Their statements will be made a part of the record, and they may feel free to proceed as they see fit.

Mr. BROYHILL. Mr. Chairman, we did have another member of this panel, Mr. Campbell.

Mr. FLORIO. Mr. Campbell is scheduled, but unfortunately has been delayed. When he comes, we will certainly be happy to hear from him.

Congressman Jenkins.

STATEMENTS OF HON. ED JENKINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA; HON. BUTLER DERRICK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA; AND HON. CARROLL A. CAMPBELL, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Mr. JENKINS. Thank you, Mr. Chairman. Let me express my appreciation to you as chairman of the subcommittee and the subcommittee itself for having these hearings today on a bill that is extremely important to the textile and apparel industries across this country.

I would like to digress for a moment from my statement, which I have asked to be included in the record, to say to the subcommittee that for many years, along with Mr. Broyhill, and Mr. Derrick, and others, we have followed the difficulties of the domestic apparel and textile industries, and we have been constantly frustrated because we cannot get measures before the House floor or the Senate floor for action, and we believe that if we are successful in getting measures on the House and Senate floors for consideration we can have our day in court and take our lumps for our victories, as is the American way. This subcommittee is the first subcommittee to give us the opportunity to have our day in court. And we are very appreciative of you, Mr. Chairman, for permitting us to testify.

I am sure that the industry and labor spokespersons will highlight the bill's technical features in their presentation, and I will not duplicate that today. I would just like to point out why I believe that passage of this bill will give the domestic industry a fair chance and not an unfair advantage in competing with foreign imports which have penetrated these shores in unprecedented volumes.

In 1983, we had an increase over 1982 of some 25 percent in imports. In 1984, the first 4 months, we have had an increase of roughly 49 percent. We simply cannot continue in this direction, and I know that is not the jurisdiction of this subcommittee to deal with quotas and imports, but this labeling bill is a relatively simple way to give the American public all the information it needs in order to discern its purchases of textile and apparel products.

Studies have concluded that American consumers do prefer to buy American-made textile products, and if given clear options, would do so without sacrificing quality. Due to labeling laws already on the books, American consumers can readily determine fabric content and care instructions pertaining to their purchases; however, the benefits of country-of-origin labeling laws on the books have not been likewise transferred to the consumer.

This bill would also provide the Government with some legal tools necessary to enforce labeling laws whenever they are contend-

ing with fraudulent practices, such as mislabeling, counterfeiting, and quota evasion through transshipments, and this is one of the real problems we have. We have some quotas in the textile/apparel field, and unlike many other industries; we have some bilateral quotas with a host of countries. Too often we simply cannot implement or enforce these bilateral agreements because of the ability to transship, to perpetrate fraud in country-of-origin labeling, and we think that this particular bill would be extremely helpful to us in that regard.

I will end by saying this, Mr. Chairman. The industry, this particular industry, is willing to spend a great deal of money in a public relations, positive program to bring to the American people the message of the domestic apparel/textile industry. It cannot do so if legislation such as this is not passed.

It does little good to try to tell the American people to buy American-made garments if a consumer is unable to detect which is and which is not a domestically made garment. H.R. 5638 is not detrimental to the consumer, and we would hope that this subcommittee would act favorably on the legislation.

Thank you very much for the opportunity to testify, Mr. Chairman.

Mr. FLORIO. If our colleagues will be willing to appreciate our predicament at this point, we are going to have to take a 3-minute recess so that we can be of some assistance to the full committee which is meeting immediately downstairs, to give them a quorum. If our colleagues will not mind, we will stand in recess for about 3 minutes.

[Brief recess.]

Mr. FLORIO. The subcommittee will now come to order. We are now pleased to hear from our colleague, Mr. Derrick.

STATEMENT OF HON. BUTLER DERRICK

Mr. DERRICK. Thank you, Mr. Chairman. I ask unanimous consent that my remarks be incorporated into the record as if read.

Mr. FLORIO. Without objection, so ordered.

Mr. DERRICK. And I will just summarize. I know you have a heavy schedule ahead of you, but first let me thank you for scheduling these hearings when you did. It is something that is very, very important to us in my part of the country.

I would suppose that about 60 percent of the people in my district are employed in textiles, and they are suffering, and they are suffering badly, and they are suffering from imports.

It used to be a rather abstract thing when we talked about imports, but I can point to you towns and mills that have closed and mills that have laid off, and it goes directly to the textile industry. I visited some textile mills just this past Monday that are just barely hanging on by threads, and it is because of imports.

You know, we have heard that it is not a Republican thing or a Democratic thing. We have heard it from all administrations, that they are going to do something about textiles, and the fact of the matter is that nothing has been done.

There has been a lot of talk, but we cannot seem to impress upon the administration and many Members of Congress the fact that

the textile industry is the largest low-entry industry in this country, and very important.

I support this bill. I am an original cosponsor and I strongly, strongly support it.

Much of the apparel that is coming into this country now, even though there are laws on the books, is not being labeled. And as Mr. Jenkins pointed out, over a third of the people who buy textile goods in surveys have shown that they are interested in where it came from.

And I think if we could pass this bill and make sure that not only imports but American goods are labeled properly, I think it would be a great help, especially if we put it in the catalogs. It would be a great help to the textile industry.

I thank you very much again for having these hearings and allowing me the opportunity to appear before you.

[The prepared statement of Mr. Derrick follows:]

STATEMENT OF HON. BUTLER DERRICK

Mr. Chairman, thank you and your colleagues on the committee for giving me this opportunity to testify before your Subcommittee today on H.R. 5929. This bill, as you well know, authorizes the Federal Trade Commission to initiate seizure actions to combat commercial counterfeiting and to improve the labeling of textile fiber and wool products.

Representatives of the textile and apparel industries will present testimony to you today. Their recommendation will clearly outline the reasons for their support of this legislation, and therefore, I will not duplicate their comments on these issues. As an original cosponsor of legislation that is now incorporated as Title II of this bill, I want to state for the record my very strong support for this Title of the bill and would like to submit my statement for the record.

Current labeling statutes provide that all articles of foreign origin imported into the United States be legibly and conspicuously marked to indicate to the ultimate purchaser in the United States the English name of the.country of origin. However, without modifications these statutes do not go far enough and cannot be implemented to fully carry out the objectives for this legislation. In addition to other shortfalls, the current statute is extemely vague, leaving considerable latitude to the Federal Trade Commission and Customs Service which issue advisory opinions falling far short of Congressional intent.

Consequently, the legislation before you today is designed to educate consumers about textile goods which are produced in the United States versus those that are imported; correct the ambiguities and strengthen the provisions of current labeling laws; require country of origin labeling information on catalog sales items; and combat counterfeit trafficking. In the absence of a Federal statute, labor and management have gone to great lengths to advise purchasers of goods that are domestically produced with their union labels and the "Crafted with Pride in U.S.A." program. I commend them for the many inroads they have made in informing the textile buying public of American made goods.

However, many foreign-made goods that are purchased by Americans enter this country in compliance with the regulations set forth by the Federal Trade Commission. By the time these products reach the consumer they are in violation of the basic objective of the Textile Fiber Products Identification Act and the Wool Products Labeling Act. Often, these goods suffer from complete omission or the absence of any conspicuous labeling of country of origin.

A study by the chairman of the Department of Textiles, College of Home Economics at the University of Missouri, Dr. Kitty Dickerson, reveals that more than one/third of all American notice labels carefully before reaching buying decisions, to determine if the good was made in the U.S.A She therefore feels it is important for them to know whether the item was produced in this country. This bill, which provides uniformity in country of origin labeling, would enhance the efforts of the Federal Trade Commission (FTC) in regulating the consipicious labeling of textile and apparel products for the ultimate purchser in this country.

Additionally, this bill proposes to grant long overdue authority to the Federal Trade Commission to crackdown on commercial counterfeiting. According to the

Customs Service Fraud Center, one of our major import problems is international counterfeiting. I find it ironic that the number one exporter of textile and apparel goods to the United States also leads all other exporters in the volume of counterfeit goods that are found in this country. I trust that the executive branch will strongly pursue diplomatic channels in negotiating some kind of agreement with out trading partners to combat these fraudulent trade practices. Unless stringent action is taken soon to discourage this activity, more and more individuals will be encouraged to engage themselves in the marketing of counterfeit products.

Mr. Chairman, the benefits to be derived from the adoption of legislation to clarify and strengthen current textile and apparel labeling laws cannot be fully achieved without a requirement that catalog sales items also bear this information. The language in this proposal does not impose any onerous requirements on domestic or foreign manufacturers. I think this is a very worthwhile piece of legislation and the benefits of adopting this legislation are so great for the workers of this Nation, for economy and for the consumer.

Mr. Chairman, as an original cosponsor of the bill that is now Title II of H.R. 5929, I would like to work closely with you, Mr. Broyhill, and other members of the committee in moving forward with this measure.

Mr. FLORIO. Thank you.

Congressman Campbell.

STATEMENT OF CARROLL A. CAMPBELL, JR.

Mr. CAMPBELL. Thank you, Mr. Chairman.

First, I want to thank you for allowing us to come forward this morning and giving us the opportunity to do so, and I ask unanimous consent that my remarks be incorporated into the record as if read.

Mr. FLORIO. So ordered.

Mr. CAMPBELL. Mr. Chairman, most of my colleagues have outlined the need for this legislation. We firmly believe that given the choice of equal products, equal quality, that the American people will buy American goods because they realize that this means American jobs, and American jobs are important to everyone.

And we think that the second reason is probably equally as important, as my colleague from South Carolina has stated.

Now, we have attempted through the years to deal with various administrations and we have gotten little bits here and little bits there. This is a step. This is not a panacea. This will help us in our enforcement of illegal goods coming into the country.

Transshipped goods are a major problem. We have countries with whom we have agreements, and those agreements are being violated in many instances by sending goods to other countries and relabeling them.

This is a problem for us. Illegal imports penetrate our marketplace, disrupt it and cost us jobs. Now, we have tighter bilaterals with some of our major trading partners now than we have had before. We have executive orders, we have enforcement orders, and we have a lot of things that have been put into place, even though the rules and regulations on the enforcement order have not yet come forward.

But all of those, without a labeling bill to give us the opportunity to track goods and to really enforce, are not worth much more than the paper they are written on. We firmly believe that this labeling bill gives us the tool—it gives our Government the tool—that is necessary to help with the enforcement and to help with some of the job disruption that we are having.

This is, as I said, one more step in the continuing battle. It is a changing battle. The battle fronts change. The trading partner today that may be disrupting our marketplace may not be the same tomorrow.

We have been through a lot of things, and this industry has not looked for and is not, in my opinion, ever looking for anything other than a fair opportunity to compete.

We have run up against subsidized goods, illegally shipped goods, transshipped goods, mislabeled goods, counterfeit goods, and it is time we did something about it and we think this is a very positive step forward.

[The prepared statement of Mr. Campbell follows:]

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STATEMENT OF THE HONORABLE CARROLL A. CAMPBELL, JR. (R-SC)
SUBCOMMITTEE ON COMMERCE, TRANSPORTATION AND TOURISM
IN SUPPORT OF H.R. 5638, TEXTILE FIBER AND WOOL IDENTIFICATION IMPROVEMENT ACT
JUNE 28, 1984

Mr. Chairman and members of the subcommittee, I am pleased to have the opportunity today to speak in strong support of H.R. 5638 which would require country-of-origin labeling, including made in U.S.A., on all textile and apparel products.

For two very important reasons, this is an idea whose time has come and this is a bill which should be moved as expeditiously as possible through the legislative process.

First, American consumers have become increasingly aware of the desirability of buying American. As the overall trade deficit skyrockets, fueled in no small part by the growing textile/apparel trade deficit, consumers cannot help but be aware of the detrimental effect the trade imbalance has on American jobs. Every night on the news, as Americans see auto workers, steel workers, textile and apparel workers who are out of jobs because of imports, they cannot help but become sensitized to their plight. Moreover, studies have shown that, given the option, consumers prefer to buy American. A 1981 poll, for instance, showed that two-thirds of the consumers interviewed said they would rather buy U.S.-made apparel than apparel made overseas, and over 70% of them thought U.S. apparel was either superior or equal to foreign-made goods. Yet, it is often difficult for them to make an informed choice.

Current law in this area is easily evaded. While there is a requirement that imported goods be marked as to country-of-origin, the fact is that these labels are often placed in inconspicuous places or are missing entirely on individual items. By requiring that the label in each item be attached to the most conspicuous

place on the inner side of the foreign made product, H.R. 5638 would insure that consumers know exactly what they are buying. By also requiring American goods to be so labeled, which is not necessarily done now, we could insure that the consumer is given a real choice. By adopting this legislation, we could join with the industry in the goal of making it as easy as possible for Americans to find U.S.-made textiles and apparel when they go shopping.

And, quite frankly, Mr. Chairman, I believe the American consumer will come through for the American worker under these circumstances.

The second reason this bill should be moved, and moved now, is that it is absolutely mandatory that we give the government every possible tool to enforce aggressively our textile and apparel trade agreements. Vice President Bush was in my congressional district over the weekend, and he stated unequivocally that the United States will not tolerate fraudulent textile and apparel imports and, in fact, the Administration has moved on several fronts to tighten enforcement. Yet as the government toughens enforcement of our textile treaties, it seems that foreign exporters become cleverer and cleverer in their attempts to circumvent restrictions. One of the major problems we are experiencing now, for example, is transshipments, whereby a Chinese sweater, for instance, may be shipped to a third country and then to the U.S. and avoid Chinese quotas.

H.R. 5638 may not solve that problem entirely, but by mandating conspicuous labeling, it can help the Customs Service keep better track. And we should not forget, Mr. Chairman, that of the approximately 300,000 shipments Customs must deal with every month,

some 200,000 of them are textiles and apparel! The agency clearly can use all the help it can get in coping with a program of this magnitude.

Mr. Chairman, I understand that there is some controversy over the provision in H.R. 5638 which requires catalog sales items to be marked U.S.-made or imported. I honestly feel that direct marketing people may be being short-sighted in this instance, for they, along with textile and apparel workers, retailers and the U.S. economy, stand to benefit as more Americans are gainfully employed and can buy their goods.

Textile and apparel imports are at a level that threatens the very existence of this basic American industry, which employs nearly two million workers, many of them women and minorities. Last year, imports were at record levels, up 25% over 1982. And they are still going up, as imports for the first four months of 1984 have risen 49% above 1983's levels. By itself, H.R. 5638 will not correct this situation nor will it solve all the problems confronting our domestic textile/apparel industry. It is, however, a positive step toward preserving one of America's most vital and strategically important industries. I thank the subcommittee for holding this hearing, and I urge you to act quickly and favorably on this legislation.

Mr. FLORIO. Let me thank our colleagues for their participation; not just their participation today. I know all three individuals and others as well have been very active in attempting to bring before the subcommittee—as well as most of the Congress—their concerns.

The only substantive point I would make is that the comments of the three individuals here today, I think highlight the importance of the approach taken in H.R. 5929, which deals not only with the problem of labeling, but also the concern of the counterfeiting. Because if the two problems are not dealt with together, it may very well be that the labeling that you are advocating, made in the U.S.A., can, in fact, be counterfeit labeling. And that would not be achieving the purpose for which this legislation was designed.

So I think it is important, and I think there is a clear consensus among our colleagues here that this is the approach we should be taking to achieve the goal that they and others in the industry——

Mr. DERRICK. Mr. Chairman, I support the entire legislation and commend you for the counterfeit provisions. And I think they are very necessary, and I hope we can get them all through.

Mr. CAMPBELL. Mr. Chairman, I, too, commend you for moving forward with the counterfeit provisions. We see this as a major problem and one that must be dealt with.

Mr. FLORIO. Thank you very much. Let me yield to the gentleman from North Carolina.

Mr. BROYHILL. I just want to thank the gentlemen for appearing here today. These gentlemen have all been leaders in this effort to try to do something about this growing problem.

We are greatly appreciative of their testimony, and the fact that they are willing to dedicate their time to try to find a solution to the concerns facing the textile industry.

Mr. FLORIO. I recognize the gentleman from New York.

Mr. LENT. Thank you, Mr. Chairman. I also want to thank our colleagues for testifying here this morning.

I wonder if I could have unanimous consent to insert my opening statement in the record.

Mr. FLORIO. Without objection, the statement will be inserted in the record as an opening statement. [See p. 17.]

Thank you very much.

We are now pleased to have a panel of witnesses, and we are very happy to have with us once again Ms. Evelyn Dubrow, vice president and legislative director, International Ladies' Garment Workers Union; Mr. Macon T. Edwards, senior vice president, National Cotton Council; James Martin, president, American Textile Manufacturers Institute; Mr. Burton B. Ruby, chairman and chief executive officer and treasurer of the American Apparel Manufacturers Association. Mr. Robert Schroeder, a member of the executive committee of Man-Made Fiber Producers Association; and Mr. Jacob Sheinkman, secretary-treasurer, Amalgamated Clothing and Textile Workers Union.

We are pleased to have this panel with us. Your prepared statements will be inserted into the record. You may feel free to proceed in a summary fashion.

Ms. Dubrow, you may go first.

Ms. DUBROW. I think I will relinquish my time to Mr. Martin, who represents the head of our AFTAC, and then comment later on.

Mr. FLORIO. Fine. Mr. Martin.

STATEMENTS OF JAMES H. MARTIN; BURTON B. RUBY; JACOB SHEINKMAN; ROBERT C. SCHROEDER; AND EVELYN DUBROW, ALL ON BEHALF OF AMERICAN FIBER/TEXTILE/APPAREL COALITION

Mr. MARTIN. Thank you, Mr. Chairman. My name is Jim Martin, I am vice chairman of Ti-Caro, Inc., and president of the American Textile Manufacturers Institute, ATMI, located here in Washington.

I want to thank you for the opportunity to present comments on H.R. 5638. I would like to thank my Congressman, Mr. Broyhill, for his eloquent statement. I certainly do not want to repeat everything that has been said here before.

I would, in the essence of time—I know you are busy, and I can testify that I am—I would like to call next on Mr. Burton B. Ruby, who is the chairman and chief executive officer of Jaymar-Ruby, Inc., and treasurer of the American Apparel Manufacturers Association.

Before I turn it over to him, we are in the frame of mind to answer any questions that the committee might have, sir. And I will turn it over to Mr. Ruby.

[The prepared statement of Mr. Martin follows:]

STATEMENT OF

JAMES H. MARTIN, JR.

ON BEHALF OF THE AMERICAN FIBER/TEXTILE/APPAREL COALITION

BEFORE THE

HOUSE ENERGY AND COMMERCE COMMITTEE

SUBCOMMITTEE ON COMMERCE, TRANSPORTATION, AND TOURISM

JUNE 28, 1984

My name is Jim Martin. I am Vice Chairman, Ti-Caro Inc., and President of the American Textile Manufacturers Institute (ATMI). I want to thank you for the opportunity to present comments on H.R. 5638. Joining me in testifying today are Ms. Evelyn Dubrow, Vice President and Legislative Director, International Ladies' Garment Workers Union; Mr. Macon T. Edwards, Senior Vice President, National Cotton Council; Mr. Daniel J. Murphy, Director Government Affairs, National Wool Growers Association; Mr. Burton B. Ruby, Chairman & Chief Executive Officer, Jaymar-Ruby Inc., and Treasurer, American Apparel Manufacturers Association; Mr. Robert C. Schroeder, President, Fibers Operations Celanese Corp., and Member of the Executive Committee, Man-Made Fiber Producers Association; and Mr. Jacob Sheinkman, Secretary-Treasurer, Amalgamated Clothing & Textile Workers' Union. We are appearing on behalf of the American Fiber/Textile/Apparel Coalition (AFTAC) which is a national coalition of the U.S. domestic fiber, textile and apparel complex including two labor unions. Members of the group are located throughout the United States and produce most of the textiles and apparel items in this country.

H.R. 5638 is very important to both the textile industry and the consumers of the United States. The objective of this bill is to provide the consumer with clear information on the origin of the textile product he is considering buying. We believe, and surveys have shown, that American consumers want to buy quality textile products made in the USA. The passage of H.R. 5638 will give them a clear choice. It will also help us with our "Crafted with Pride in USA" program which was launched here in Washington last July. This is a product labeling program, based on independent and unbiased research, which shows consumers want an opportunity to choose U.S. goods and that they are aware of the adverse impact of imports on American jobs. With your permission, I would like to file for the record a study by Dr. Kitty Dickerson, head of the clothing and textile department at the University of Missouri-Columbia which documents the consumer interest in American-made textiles and apparel.

As you know, Mr. Chairman, the textile and apparel industries of this country have seen their markets badly disrupted by imports over the last several years. Last year, a year in which our economy began to recover from a long and severe recession, imports took the lion's share of the increase in demand. Imports of textiles and textile products rose 25% from 5.9 billion square yard equivalents to 7.4 billion in 1983. The apparel sector of the U.S. industry has been devastated by the imports. The import to production ratio in apparel and apparel fabrics reached 44 percent in 1983 versus 40 percent in 1982 and only 29 percent five years earlier.

The problem is not getting any better. In fact, it is getting worse. Imports through April 1984 have set a new record. They were 49% higher than the same four months in 1983. If this import trend continues through 1984 imports will exceed 10 billion square yards. This means that in the four years of this Administration imports will have more than doubled -- from 4.9 billion square yards in 1980 to 10 billion square yards in 1984. This increase represents 500,000 U.S. jobs which could have been available to the domestic industry.

H.R. 5638, the labelling legislation before us, is not a cure for the nation's textile and apparel import problem. But it will give American consumers the opportunity to choose American-made products. It will help the American consumer to make that choice by guaranteeing clear labelling of textile products. The consumer has a right to know what he or she is buying and where the product was made.

Mr. Chairman, most people in this country want to support the American textile and apparel industry. The awareness of the import problem has grown to the point where Americans want to buy quality products made in the U.S.A. -- not imports. When the working men and women of this country buy a textile product, they have a right to know whether that product is made in the United States or is made in Hong Kong, Taiwan, Korea, Sri Lanka or any other foreign country.

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Right now, Americans are denied this right to know. The labelling laws that apply to textile products have loopholes in them that must be closed. The problems are:

- Country of origin labels on imported garments are being concealed in the garments. Current law requires that garments carry a country of origin label. Although the Federal Trade Regulations require that the label be attached in a "clear and conspicuous manner", this requirement is not in the law itself and abuses are occurring.

- There is no requirement under current law that a product be identified as made in the U.S.A. This means that when an import label is concealed in a seam of the garment, and the consumer doesn't see the label, there is no way of distinguishing the import from an American-made product. A recent survey was made by several U.S. textile companies of labels in clothing for sale at retail across the U.S. The findings showed that 55% of the articles were foreign made, and that 14% had no labels at all. In many cases where there was no country of origin label, the goods were known to be imported, and the consumer was led to believe they were made in the U.S.

- There is no requirement under current law that the country of origin be identified in mail order catalogues. Catalogue sales are growing.

Many of these sales are now made without the consumer knowing the country of origin of the product until after they buy it. The Federal Trade Commission has issued numerous advisory opinions stating that country of origin information ought to be included in all mail order promotional material, since the mail order purchasers do not have the opportunity to inspect merchandise prior to its purchase, which could have a bearing upon its selection. Some mail order sellers are complying with the FTC advice and are including country of origin information.

- Current law does not require country-of-origin labelling on individual imported goods when they are sold in bulk form. Too often, however, these products are being resold at retail counters and the consumer is unaware that they are imported.

H.R. 5638, amends the Textile Fiber Products Identification Act, the Tariff Act of 1930, and the Wool Products Labelling Act of 1939 to remedy all these problems. It does so in a direct and straightforward way. H.R. 5638, will enable the U.S. consumer to make a clear and conscious choice between a textile product made in the U.S.A. and imports. It will prevent abuse of current labelling laws. And it does not pose any burden on legitimate U.S. or foreign businesses.

There is no good reason to oppose this bill and there is a very good reason to support it. The consumers in this country have a right to know what is being sold to them.

They have a right to know where a textile product is made. The men and women in my industry believe that, when the choice is clear, there will be a preference for quality products made in the U.S.A. With this legislation, we are putting that conviction on the line. With the "Crafted with Pride" program, we are putting our money into it. We believe that clear labelling will not only help the consumer, but that a knowledgeable consumer will help our industry regain ground which has been lost to imports. This, Mr. Chairman, will help save jobs for American textile workers.

STATEMENT OF BURTON B. RUBY

Mr. RUBY. Mr. Chairman and gentlemen, I can only echo what Mr. Martin said. Most of the views which we want to put forth have already been expressed and will be part of the record that we will be submitting as part of our testimony.

And rather than, in effect, go through all this repetition, we had a little bit of a meeting while the committee recessed, and we thought that perhaps we would be a little more flexible in answering questions rather than go through all the laborious processes of reading these things.

[The prepared statement of Mr. Ruby follows:]

STATEMENT OF BURTON B. RUBY

Mr. Chairman, my name is Burton B. Ruby. I am Chairman and Chief Executive Officer of Jaymar-Ruby, Inc., a diversified manufacturer of men's apparel, headquartered in Michigan City, Indiana. I also serve as Treasurer of the American Apparel Manufacturers Association (AAMA) on whose behalf I appear today. We appreciate the opportunity to present our views on H.R. 5638 which we support.

AAMA is the central trade association for the American apparel manufacturing industry. Our membership represents some 70% of U.S. capacity for apparel manufacturing and produces all lines of apparel.

I also would like to address H.R. 5929 which contains the labeling provision of H.R. 5638 but also contains legislative language attempting to come to grips with the counterfeit problem.

H.R. 5638 would require the conspicuous placement of labels on both foreign and domestically produced goods clearly indicating the country of origin and mandate general origin information in retail sales catalog offerings. We support the country of origin labeling requirements.

The matter of labeling is currently addressed by the Tariff Act of 1930, the Textile Fiber Products Identification Act, and the Wool Products Labeling Act. However, these laws do not address the subject in its entirety, have created some confusion as to enforcement, and in fact, leave a good bit to be desired in their implementation. H.R. 5638 would make certain that Congressional intent in the matter of origin labeling of apparel products is carried out.

Today, much imported apparel arrives in the United States in bulk containers, but is sold to the ultimate consumer by the piece. Frequently, the package is labeled as to country of origin, but often the individual items are not. When the package is broken, therefore, the goods are not labeled and the consumer is left without origin information.

In the case of goods made in the United States, origin labeling is not mandated. By requiring made in America products to be so labeled, the bill would assist consumers in identifying goods made in this country.

There are apparel products normally sold in packages containing one or more items which themselves are not susceptible to individual labeling. Men, women's and children's hosiery is an example; and where this is established practice we would hope that the legislation would accommodate it.

Finally, there are instances in which origin labels are not conspicuously placed, and the consumer must virtually search the garment to find where it is produced.

For those reasons, we support the product (or packaging labeling requirements, as the case may be) of H.R. 5638.

Essentially, we believe the consumer should have all the facts at hand when buying an article of apparel, and we think country of origin is an important factor to be weighed in the buying decision. If that decision is to buy an imported garment then so be it. At least, if it is conspicuously labled as to its source, the consumer will be in no doubt.

We also would like to commend the committee for its efforts to produce legislation to remedy the serious problems we in the apparel industry face from counterfeiters. However, we believe the remedy contained in H.R. 5929 is not sufficient to meet the need. H.R. 5929 gives the Federal Trade Commission the right to intervene in counterfeiting situations and to seize goods it believes to be counterfeit. This is not a comprehensive solution and more needs to be done.

We as an organization and also as a member of the International Anticounterfeiting Coalition (IACC) are in strong support of H.R. 2447 which is pending in the House Judiciary Committee , and of S. 875 which has been favorably reported by the Senate Judiciary Committee. These bills, essentially alike in character, provide for significant criminal and civil penalties for those persons believed to be engaged in counterfeiting American products. We believe these bills offer the best possible solution available to a serious problem confronting all of us. We would hope that the FTC remedy provided in H.R. 5929 would not be seen as a sufficient substitute for the more comprehensive bill than those pending in both Houses of Congress

Thank you for the opportunity to present these views.

Mr. FLORIO. OK. Mr. Sheinkman.

STATEMENT OF JACK SHEINKMAN

Mr. SHEINKMAN. Mr. Chairman, I just want to make a short comment. The full statement, as you know, of each of us is going to be inserted in the record, and you have a copy of that.

Frankly, I am at a loss as to how anybody could really oppose this bill. It is a bill that would give opportunities for consumers to make a clear choice in the products they buy.

Certainly, with respect to the catalog business, which is a major source of retailing today and growing, most consumers have no way of knowing whether they are buying an American-made or an imported product. Even, in many cases, with respect to counterfeiting, as you so well pointed out.

In the domestic market, in regular retail operations, there is no way, in many cases, of making clear identification of an American-made product.

I have had many people come to me and say, how do I know that it is made in the United States? It doesn't indicate it is made in the United States; it may have nothing on it. And in many cases, even the labeling itself of foreign-made goods is very hard to identify.

So we cannot see, if we are going to compete fairly, where labeling would present a problem to anybody who is interested in giving consumers a fair choice to exercise their options to buy American, domestic-made products as opposed to foreign-made products.

Second, I want to indicate that this is a coalition here testifying, that does not represent employers alone; it represents employers that are both unionized and nonunionized. It represents the two major unions that are involved in the apparel and textile industry; my own union the Amalgamated Clothing and Textile Workers Union, and the International Ladies Garment Workers Union.

And as my testimony indicates, it is not that we are just asking for space and time and help—what we are undertaking ourselves together, with portions of the textile and fiber industries, is an attempt to compete even better through the T.C. Corp. that we set up with several of the employers in an effort to come up with better machinery, better techniques, better technology to help compete with foreign-made goods.

We feel that this will lessen pressure, notwithstanding the other international problems, we face with trade deficits and the like that are flooding our country with imports. Once a handle is brought to that situation, we feel that this will go a long way toward helping American consumers know what they are buying and give them the opportunity for American workers to retain their jobs and security.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Sheinkman follows:]

TESTIMONY OF

JACK SHEINKMAN, SECRETARY-TREASURER

AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION

Chairman Florio and Members of the Subcommittee:

I am Jack Sheinkman, Secretary-Treasurer of the Amalgamated Clothing and Textile Workers Union.

The great majority of the Amalgamated's members work in the apparel and textile industry and their livelihood and well-being are tied inexorably to the strength and well-being of that domestic industry in the United States.

Textiles and apparel manufacturing is the third largest industrial segment of our economy. It is the largest non-durable goods industry. It employs nearly 2,000,000 American workers who are mainly women, heavily minority, largely rural.

The fact that the top executive officers of the major industry associations and the two unions principally involved appear before you today makes evident how vital we feel this legislation to be.

We are convinced that requiring the indentification of country of origin, including the United States on a product and in advertisements for that product, will increase sales for American business and jobs for some of the 8.5 million unemployed American workers. It is strange that we require foreign origin labeling, but sort of hide the fact that an item is American made.

My colleagues today and the many others who have appeared previously have clearly set forth the import problems this industry faces and the major improvements necessary in our bilateral quota agreements. But to continually complain about imports, to constantly fight to preserve the job security of the workers in the apparel and textile industries is, in my judgment, not enough.

We must do two other things. We, labor and management, have a responsibility to our country, to employers, to employees and to our union members to help make the industry efficient and competitive. We have a responsibility to educate retailers and consumers to the ultimate consequences of their buying decisions. We must make them aware of the origin of a product's production, the effect on American jobs of their buying foreign-made goods, and encourage them to purchase from domestic manufacturers.

On the first of these items, the industry together with the unions, have more than met their responsibility. The textile industry has made the greatest improvements in productivity over the past decade of any American manufacturing industry. It was the existence of the quota program and its assurance of a secure market that provided the needed incentive for textile companies to make the enormous investments in new machinery and equipment which resulted in that great productivity improvement.

On the apparel side, the Amalgamated Clothing and Textile Workers Union took the initiative to set up and fund a joint research and development project along with several major apparel, textile and fiber companies, union and non-union, to seek an entirely new and innovative approach to apparel production. We knew that even as skilled and as productive as American labor is, our workers cannot compete with foreign workers earning as little as a tenth of our nation's legal minimum wage. The Commerce Department, recognizing this problem, is also a partner in this effort which has just produced its first and dramatic piece of

equipment. For the very first time in history, a tailored item -- a three dimensional shaped form conforming piece of clothing -- can be produced in a totally automated manner.

So far in its development, this new equipment can "tailor" the sleeve of a man's suit jacket. We know that with the proper modifications, it can also produce a major portion of the rest of the suit.

This prototype equipment, if made in quantity, can assure that the American textile and apparel industry can compete in world markets, if given a fair chance to do so. If this program can obtain sufficient resources, it, together with a restriction on burgeoning apparel imports and further consumer awareness of the importance of buying American-made products, can go a long way to overcome the great cost differentials in production overseas, versus domestically made clothing.

Part of making this program successful is increasing the awareness of the American buying public of where textiles and apparel are produced so that consumers can make an informed buying decision. Others have spoken of the "Crafted With Pride in America" campaign. It is an important part of our overall efforts to enhance domestic competitiveness. But, it, and the legislation you are considering today, must be more than just increasing retailer and consumer information and buying attention. We must at the same time ward off a totally protectionist closed-market approach which many concerned workers and employers are clamoring for today.

In fact, I cannot imagine why anyone would be opposed to this legislation. What are they trying to hide? Can anyone seriously say they want consumers less informed or that we should take no pride in proclaiming our domestic workmanship? If any extra costs are involved, they are certainly not meaningful.

The MFA, the efforts of the domestic industry to be the most efficient in the world, and the consumer education campaign all fit together in trying to stabilize the overall import situation.

The hundreds of thousands of textile and apparel workers who have lost their jobs in the past decade, many of whom were members of the Amalgamated Clothing and Textile Workers Union, do not understand why they were asked to sacrifice their jobs in an economic war with other countries. They understand, if others do not, the tragic human costs of unregulated competition.

Our industry, tempered as we are in the fires of experience, asks not a total freeze or halt to imports. Our industry wants, and I think you will agree it deserves, breathing space, time to address the import challenge before we become faced with extreme and radical demands for relief, which will require attention. I urge the Committee to understand and help in this effort. I urge the Committee to add a simple, inexpensive item for consumer awareness and education which will pay much greater returns in the overall effort to stabilize the import situation.

Mr. MARTIN. Mr. Chairman, if I may interrupt a moment and say that we have with us also on my extreme left Mr. Daniel J. Murphy, who is the director, governmental affairs, National Wool Growers Association. Also, in my possession I have a letter from the president of the National Cotton Council, Mr. John S. Barr III, in support of the bill, and would ask that that letter be included in the record.

May I now ask Mr. Robert Schroeder, who is the chairman of the Fibers Operations Celanese Corp. and a member of the executive committee of the Man-Made Fiber Producers Association, to give his comments.

STATEMENT OF ROBERT C. SCHROEDER

Mr. SCHROEDER. Mr. Chairman, I strongly believe that this legislation will clarify and improve existing law, while providing textile consumers with adequate information on which to base purchasing decisions.

So on behalf of the Man-Made Fiber Producers Association, I would urge the committee to act favorably on this very important bill.

Thank you for allowing us to appear this morning.

[The prepared statement of Mr. Schroeder follows:]

STATEMENT OF

THE MAN-MADE FIBER PRODUCERS ASSOCIATION, INC.

IN REGARD TO H.R. 5638

June 28, 1984

Mr. Chairman and members of the Committee, my name is Robert Schroeder. I am Chairman of Celanese Fibers Operations and I am here today representing the Man-Made Fiber Producers Association. I appreciate the opportunity to appear before you to discuss the merits of H.R. 5638 as well as to offer our strong support for the bill's passage.

MMFPA members produce more than 90 percent of the man-made fibers manufactured in the United States. In addition, man-made fiber accounts for approximately 75 percent of fiber consumption in U.S. mills. This production amounted to about 8 billion pounds in 1983.

Needless to say, Mr. Chairman, the health and vitality of a strong U.S. textile and apparel industry are of major importance to our industry's future.

Last year, man-made fiber imports in all forms totalled just over a billion pounds, lowering demand and market share for our industry's products. Imports have increased substantially in the first quarter of this year. A large portion of these imports were in apparel and textile product form.

This legislation is important not only to the fiber, textile, and apparel industries, but also to the U.S. consumer. The provisions of H.R. 5638 will allow the consumer to make a clear choice when purchasing textile products by having specific knowledge concerning country of origin. We believe that consumers <u>are</u> interested in knowing where products originate.

The Tariff Act of 1930 states that textile products shall be marked "to indicate to an ultimate purchaser in the United States the English name of the

country of origin of the article." In addition, the Textile Fiber Products Identification Act requires that a tag, stamp or label be attached indicating "the name of the country where (the product) was processed or manufactured." These two references indicate that Congress intended for consumers to know the origin of textile products. Unfortunately, this intention has never been fully executed due to loopholes involving the concealment of labels, lack of identification for domestically manufactured products, lack of country-of-origin labeling in mail-order catalogues, and no requirement for labeling on individual imported goods when they are sold in bulk form.

The legislation being considered today addresses these problems by amending the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939. I would like briefly to address two sections of the bill which will specifically improve the current situation. First, Section 3e of this bill requires that both the textile product and the package which contains it be labeled as to country of origin unless the label on the article is clearly visible through the package. This problem, involving lack of labels on individual items, is particularly prevalent in hosiery, where the consumer has no indication of country of origin.

Second, Section 4i of the bill requires country-of-origin information to be contained in catalogues offering textile products for sale. Catalogue sales now account for nine percent of all apparel purchased at retail. However, those who frequently purchase textile products through the mail currently have no idea where the products are manufactured. H.R. 5638 would require that the textile fiber product be described as "processed or manufactured in the U.S., or imported, or both."

Mr. Chairman, I strongly believe that this legislation will clarify and improve existing law, while providing the textile consumer with adequate information on which to base purchasing decisions. In behalf of the Man-Made Fiber Producers Association, I would urge the Committee to act favorably on this important bill.

Again, I appreciate the opportunity to appear before you, and I will try to respond to any questions you may have.

Mr. MARTIN. I think maybe Ms. Dubrow has a statement to make.

STATMENT OF EVELYN DUBROW

Ms. DUBROW. Thank you, Mr. Martin. Thank you, Mr. Chairman, for the opportunity to speak on behalf of the members of the International Ladies Garment Workers Union. I just want to make a couple of points.

First of all, I want to underscore that we are not only concerned with the trade-labeling section of this bill, but we are certainly concerned with the counterfeiting aspect of it, and we are also concerned with the Rodino bill. And hopefully, there will be a strong counterfeiting bill that comes out from both committees, because I think that they will complement each other, and that we can take on this very important job of denying fraud and counterfeiting in apparel and textile and other industries.

Let me say that most of you know that we have spent millions of dollars in my union pushing our union label campaign, and that is in connection with this trade-labeling bill. Because we have found that in pushing the union label campaign, people are also recognizing that these apparel items are made in this country.

But we find, as the other members of the panel said, that great exceptions are made in many cases because people do not know where the goods are being made. The country of origin and the labeling is not good enough; it needs to be strengthened. We find, too, that more and more people are buying goods from catalogs, and we feel that is a very important part of this trade-labeling bill, to indicate to people who buy directly from catalogs that they have a choice of buying something made in the United States of America or buying it from other countries.

So we hope that the bill, as written, both the counterfeiting end of it and the trade-labeling end of it, will come out of your subcommittee and the full committee to the House floor as expeditiously as possible.

And I want to close by complimenting you on bringing up this matter at such a timely moment, and pushing it on behalf of your subcommittee and the full committee.

[The prepared statement of Ms. Dubrow follows:]

STATEMENT

OF

EVELYN DUBROW, VICE PRESIDENT AND

LEGISLATIVE DIRECTOR

INTERNATIONAL LADIES' GARMENT WORKERS' UNION

June 28, 1984

My name is Evelyn Dubrow. I am Vice President and Legislative Director of the International Ladies' Garment Workers' Union. I appreciate this opportunity to appear on behalf of our 270,000 members employed in the women's and children's apparel industry.

Last year personal consumption expenditures on apparel in the United States totalled $104 billion. In today's marketplace, the consumer is confronted with a seemingly infinite variety of styles, colors, fabrics, marketing practices, and quality and price ranges. Many aspects of the buying decision are readily apparent and are properly the domain of individual consumer tastes. Other aspects of a garment important in shaping a buyer's decision, however, are not so immediately or easily discernible, even by the most discriminating consumer. One of these is whether or not an item was made in the U. S. A.

Information on foreign country of origin, fabric content, garment care instructions, and such characteristics as flammability must be provided through labeling. Congress and the Executive have recognized the importance of requiring such labeling information in establishing measures like the Textile

Fiber, Fur and Wool Products Labeling Acts, the Flammable Fabrics Act, and under the Federal Trade Commission Act, care labeling rules for wearing apparel. Foreign country of origin labeling is required under the Tariff Act. These are essential public policy instruments to guard against misbranding or deceptive practices and to ensure truthful and informative labeling.

Changed circumstances and accumulated experience now make it very apparent that some modification in the Textile Fiber and Wool Labeling Acts is warranted. Monumental levels of apparel and textile imports and confusing country of origin labeling practices necessitate revision along the lines of H. R. 5638 in order to provide the consumer with the basic information to which she is entitled when she makes a decision to buy or not to buy.

Use of the ILGWU union-made label has been an integral and cherished part of our union's long history. In the early years of the century when disease and exploitative conditions were rampant in tenement sweatshops, the ILGWU label assured the consumer that the garment was produced under sanitary conditions. Then and now, the union label has symbolized decent labor standards and fair wages — the best obtainable by workers anywhere. It says so by its simple statement: "Made in U.S.A." and it says so clearly and specifically. It says on its face that the apparel which bears the label is "Made in U.S.A." It is our country of origin label -- "Made in U.S.A.".

Our members' "Look for the Union Label" campaign and their song — which reminds us to "always look for the union label, it says we're able to make it in the U.S.A." — have become part of American folklore. Through television and radio commercials, newspapers, magazine, transit and billboard advertisements and promotional efforts at conventions, county fairs and community gatherings of all kinds, the label campaign has made the union's logo

and its reminder, "Made in U.S.A." instantly recognizable across the entire country.

We strive to ensure that all union-made garments carry that label. We also work with our employers to standardize the placement of the label on the garment in order to maximize visibility and aid in consumer perception.

Given the relentless waves of apparel imports reaching our shores -- imported garments claimed over 50 percent of the U.S. market for women's and children's apparel in 1983 -- we have also used our label campaign to promote the high quality of American-made apparel. As symbols of American jobs and income, the ILGWU label and that of our sister union, the Amalgamated Clothing and Textile Workers Union, have been of great service in informing American consumers who are concerned about the impact of imports that the apparel bearing these labels are made here.

Yet, our union's efforts must be complemented by improved labeling requirements for all garments, imported ones as well as those manufactured in the U.S. Recognition is growing that many American consumers prefer American-made goods and are concerned about the impact of imports on domestic jobs. An extensive survey conducted in the early 1980s by Dr. Kitty Dickerson of the University of Missouri demonstrated the board interest of American consumers in seeking out and purchasing American-made apparel. Three out of every five respondents in that survey considered it important that clothing be American-made, and 57 percent indicated that concern for domestic jobs was an influence in determining what clothing to buy.

A Newsweek poll conducted last spring by the Gallup Organization found that 75 percent of Americans believed American-made apparel was superior in quality to imported garments. That poll also indicated that if quality and price were the same, 94 percent would choose an American-made item over an

imported one. According to the Roper Organization, there is overwhelming sentiment that identification as "Made in the U.S.A." conveys high quality. These survey results document consumer interest in American-made goods. Prevailing conditions, however, inhibit consumer awareness of a product's country of origin.

In view of the high degree of apparel and textile import penetration, the proliferation of questionable labeling practices and the desire of the American consumer to buy American-made products, H. R. 5638 provides a timely remedy. At present, apparel and textile products manufactured in the U.S. are not required to be labeled as American-made. Moreover, the varied and often devious placement of country of origin labels for imported garments results in wide spread confusion. A garment with an inconspicuously placed label is often mistaken for an American-made article.

H.R. 5638 addresses these problems by requiring: (1) that products made in the U.S.A. be so identified; and, (2) that country of origin labels be placed in the most conspicuous position on the inside of a garment unless affixed to the outer side.

A sampling of a few common labeling practices demonstrates the need for this legislation. At a clothing store near our national office in New York City we found the following:

— Garments carrying brand names with "U.S.", "U.S.A.", or "California", e.g. "U.S.A. Punkwear", prominently displayed on the label turned out to be imported, with an inconspicuously placed country of origin label elsewhere on the garment.

— Similarly, many garments carried widely-known American-named brands, long associated with the U.S., but were actually imported. The consumer who has for generations been brought up to think of

certain brand names as American as apple pie assumes that the product continues to be made here when in fact it is made in foreign sweatshops.

— Frequently, country of origin labels are hard to find: some appeared in the general neck area but were much smaller in size than the brand label with the country of origin in much smaller print than wording on the brand label; sometimes the country of origin label was placed on the periphery of the neck area and not visible at a glance for garments displayed on a hanger; on a line of shirts, the country of origin was eventually located in tiny print on the reverse of the neck loop: in some cases country of origin was indicated on a detachable tag affixed to the outside of the garment.

This bill would help to overcome the confusion illustrated above by ensuring greater clarity and uniformity in country of origin labeling and by requiring the positive identification of U.S. made products.

By no stretch of the imagination can these proposals be considered to impose burdensome requirements on domestic or foreign manufacturers. As noted earlier, existing requirements stipulate that labels must provide fabric content information and care instructions, and in the case of imports, country of origin. No new label is called for: all that is required is that additional information be provided in the case of U.S.-made goods and that there be standardized and conspicious placement of labels in the case of imported goods.

The bill also amends the Textile Fiber Products Identification Act and the Wool Products Labeling Act to require that country of origin information, including that for U.S.-made goods, be included in catalogs or other advertisements relating to the sale of textile and wool products. Clearly, such a provision furthers the valuable goal of expanding consumer awareness. It should be noted that the Fur Products Labeling Act already contains an identical proviso.

Our union would of course prefer that all garments carry a "Union Made in the U.S." label. We're working on that. But in the meantime, in the interests of furthering consumer awareness, we give our support to this measure.

Mr. FLORIO. Thank you very much, to all our witnesses. Let me ask, just as we were talking something occurred to me that I think everyone here pretty much signs on to the basic premise of the bill, that there should be appropriate labeling as to the nature and origin of the product. Almost as a consumer fraud initiative, because consumers are entitled to know what country it comes from.

But in finding where the product is made, what is it that utilizes the standard? What percent? Are we talking about 100 percent made in this country?

How do we deal with the problem of assembly of the total construction of the product that might very well be assembled in Mexico? Some parts are put together in this country.

It is my recollection that there are some manufacturers or producers that truck over the border, assemble the product and then bring it back. Is that made in the United States? Do we have a domestic content question here?

What percentage of the product is required to be made in the United States so as to be effectively made in the United States? Has anyone thought about this in terms of defining what will the label be used for?

Mr. MARTIN. Indeed, that has been thought of and discussed, because under section 807 of the Tariff Act, American manufacturers are permitted to do some subassembly work in the United States with American products or with products that have been started here in this country and then sent to Mexico or another country to finish the assembly and then brought back to be completed in this country.

Mr. FLORIO. Would such a product be authorized to have the label in it as, "Made in the United States"?

Mr. MARTIN. I think the thought was—or the recommendation was that "Made in U.S.A." would apply only to garments assembled in the United States.

And I think Mr. Boswell——

Mr. RUBY. I'd like to comment. Right now, the labeling—it has to be substantially, as far as we are concerned, under the Customs regulations. To have a declaration "Made in U.S.A.," it has to be substantially performed in the United States.

As far as we're concerned, under section 807, if it is substantially performed outside the country, which is what section 807 does, you cut here, you assemble abroad, and then you finish and package here. We would oppose that being labeled "Made in U.S.A." I think that would be a kind of fraud as far as we're concerned, on the American public.

And that would have to be clearly identified as not being made in the United States because it is not being made in the United States.

Mr. FLORIO. So, there may be at some point a need to refine the refinements, the type of product that would be entitled to utilize this label.

Mr. SHEINKMAN. You know, the exact standards would have to be set by regulation, I assume.

And as far as we're concerned, on the regulations will have to be substantially performed and made in the United States to carry that label.

Mr. FLORIO. Are the regulations currently in effect——

Mr. SHEINKMAN. Let me give you some other examples.

You may have, for example, in high tech graphic equipment, some parts coming from abroad, some made here and ultimately put together. I don't think it would be labeled "Made in the U.S.A." unless a substantial portion of that were made in the United States, Mr. Chairman.

Mr. MARTIN. On the textiles side, what we are really talking about is that you take, for example, a roll of denim cloth and you cut it into parts, in the United States and ship it across the border and assemble it into jeans. It cannot be labeled "Made in U.S.A." And while there may be a difference of opinion, I think that portion of it would have to be refined; I agree to that. That is under section 807 of the tariff law.

Ms. DUBROW. That's one of the reasons we're looking for a repeal of section 807.

But I think at the moment we don't want to confuse the picture here.

I want to say that I think we ought to suggest that anything that says "Made in the U.S.A.," ought to be manufactured here, assembled here, and distributed here. It seems to me that the important thing in this bill, is that a consumer understands that when he or she is buying the product, regardless of what it is, that it is an American-made product. And I think that's the important thing.

I don't want to get into an argument on section 807, because I think we need to have this bill you have sponsored. It is very important. We would like to cooperate on that matter.

Mr. RUBY. I would like to just clear the record, because I was absolutely wrong.

What I should have said is that anything that is made under section 807 is labeled assembled in the country where it is actually assembled and we have no interest at all in trying to represent it as being manufactured in the United States if, in fact, it was assembled in another country under section 807.

I just said it wrong, and I'm sorry.

Mr. SHEINKMAN. Mr. Chairman, excuse me. As I understand it, the Customs regulations now govern the operation that could not be labeled "Made in U.S.A;" if it went abroad under an 807 operation.

And that would make it clear. And I think Mr. Ruby is correct. On the issue of section 807, as Ms. Dubrow said—this is not before us—the Customs regulations make it very clear that you cannot label those kinds of goods as "Made in U.S.A."

And I don't think it's the intent of this group now to change that in any way.

Mr. FLORIO. Let me recognize the gentleman from North Carolina.

Mr. BROYHILL. I want to try to clear this issue up, not only for the record but also for the benefit of my colleagues here.

You are absolutely correct. That is the intent. We are not trying to change anything. This can be taken care of by regulation.

The Federal Trade Commission has issued advisory opinions under which you operate today as part of present law. I have two advisory opinions before me.

One of them is the marking requirements for those apparel products that are assembled in the United States of components manufactured abroad.

In that opinion, the Commission advised that it was of the opinion that under the laws it administered, textile products produced and processed in this manner must be labeled as "Assembled and sewn in the United States of materials imported from Hong Kong."

Another advisory opinion was issued by the FTC with respect to foreign-origin disclosure, wearing apparel partly made in a foreign country. In that opinion, the Commission expressed the opinion that it would be improper to label such a product as "Made in U.S.A.," because this would constitute an affirmative misrepresentation that the product was made in its entirety in the United States.

The Commission has ruled in the past, also, that with respect to a disclosure, it will not be necessary to disclose the foreign country of origin where less than 50 percent of the value is added to the product as far as the laws of the Commission are concerned.

Of course, this bill would change that somewhat, but I think it can be taken care of by regulation.

Mr. FLORIO. The gentleman from New York.

Mr. LENT. Thank you. I wonder whether perhaps Mr. Martin, or maybe Mr. Ruby, would indicate whether the textile industry has done any estimates on the costs that might be incurred in labeling domestically made products?

Mr. MARTIN. I will let Mr. Ruby——

Mr. RUBY. At the present time, under existing law, the Labeling Act and the Care Labeling Act, that information has to be included in the garments.

It would seem to us comparatively simple to incorporate within the existing labels, which now, by law are required to be put in garments—include whatever legends or the legislation might provide.

We see little, if any, significant increase in cost of manufacturing the garments themselves through this legislation——

Mr. LENT. I would assume that whatever that cost might be, minimal or otherwise, that it would be your position and the position of all of the witnesses that the benefits would greatly overshadow any cost.

Mr. RUBY. Very much so, sir. That's why we enthusiastically support it.

Mr. LENT. An interesting comment is made in the Amalgamated Clothing and Textile Workers Union testimony, to the effect that it is somewhat strange that current law requires foreign-origin labeling, but the fact that a garment is American-made is hidden.

Given the fact that consumers seem to prefer to purchase American-made products, has this policy in the past hurt the textile industry?

Mr. SHEINKMAN. I would comment that it has hurt the textile industry for the very simple reason that the textile industry, to my knowledge, sells most, if not all, of its goods to domestic manufacturers, and domestic production is a good part of export as well. And obviously, this has an impact on the buying public, Mr. Lent.

We are concerned. There is a preference, based on polls that we've been able to take, for Americans to buy American-made goods. I think there is a consiousness. And we want to educate the public as to the opportunity to buy the product.

As my testimony and the others' testimony says, we employ a large number of women and minorities, we are the largest nondurable goods manufacturing industry in the United States.

I wish some of you gentleman might visit a textile mill or apparel plant to see how hard our people work earning the livelihood they make. They are productive, and they make a decent product.

I have traveled the world. And particularly in the industrialized nations, I see nothing that is offered to consumers other than products coming in from countries that have low wage standards, no labor unions or subsidized products that compare to American products, both in quality and style, both in men's and women's apparel.

And I think Americans should have the opportunity to really know what they are buying.

As I indicated in my earlier statement, with respect to catalogues, they have no way of knowing. In many cases, when they go into a store, they don't realize it's American-made—or that it may be foreign-made. If they know now and it is there—I'm not talking about a counterfeiting situation in an attempt to hide country of origin they should have that opportunity and let them make a reasoned decision.

We always say that the marketplace should determine where a consumer buys his or her products. And we want to compete fairly; at the same time, we want to also promote.

We are now involved in a program, Crafted in Pride in the U.S.A., and we want to promote that program. But we cannot promote that kind of program without making sure that Americans know that the products are American-made. We would be chasing ourselves around—if you go out and buy a product of X company, you know you're buying X company's product. We cannot say that.

Mr. LENT. One followup question. To what extent is the situation where products are sold that have a label that says "Made in the U.S.A." but they are not made in the America, they are made abroad a problem?

Mr. SHEINKMAN. Well, that is a problem, too. And that was brought out in earlier testimony.

It's not only limited to motorcars or watches. It is also limited to products—particularly designer jeans and the like, designer products—where people are coming from abroad.

And therefore, as Ms. Dubrow said, we support the counterfeiting part of this statute as well, very strongly. And we feel that should be enforced as a twofold approach to the problem.

If you deal with one, as the chairman indicated, you are only dealing with part of the cake. We want the whole cake dealt with.

Mr. MARTIN. It is often difficult, particularly when labels are cut out of garments. So, it's hard to really quantify what a problem that can present, Mr. Lent.

Mr. LENT. One final question regarding the counterfeiting portion of the bill.

It should be remembered and pointed out that counterfeits are not always shoddy imitations of the genuine article. It's my understanding that many of the Jordache jeans that are on the market, or are labeled as such, are counterfeit, not because they are of lesser quality but, instead, simply because the trademark owner claims that they were introduced into commerce without his authorization. What is the extent of this phenomenon?

Mr. MARTIN. Again, that is very hard to quantify, but if it's a half of 1 percent penetration into our market, then I think it is terrible. We simply do not know. And I don't know how we go about finding out the cheaters in this world. We have problems in all areas in that regard, sir.

Ms. DUBROW. Mr. Lent, I would like to say that I think that is the reason why we need to have the very strongest kind of legislation on counterfeiting. I think if the penalties are strong enough, it will discourage counterfeiting.

You are quite right. Many of the counterfeits cannot be told from the original, and that has been one of the problems. If it was shoddy, we would have a much better chance to prove the counterfeiting, particularly in apparel. So it seems to me that that is why we need to make sure that in the Judiciary Committee bill and this bill there are real penalties against it, since these people who are counterfeiting are breaking the present laws on patents and trademarks.

But they are doing more than that. They are apparently being criminal in the sense that they are fooling the public into thinking the public is getting the original product. So I would say that's why the counterfeiting part of this is so important.

Mr. SHEINKMAN. Mr. Lent, there is another form of counterfeiting, and it's not really counterfeiting in a legal sense, and that is the form of counterfeiting of misleading the public. Like you have the All American Jean. It is not even made in the United States. And therefore the labeling part of where it is made becomes very important. Or the San Francisco Jean—trying to give it an American identity. And without the public knowing that it was not made there and people looking for it carefully and being identified very clearly, at least you would know it's made in Hong Kong, but, you know, if you had "American-Made Product", it would help a great deal.

Mr. FLORIO. I recognize the gentleman from New Mexico.

Mr. RICHARDSON. Thank you very much.

I must admit, on issues like this, being from New Mexico, we don't have much textile manufacturing but I have great respect for Ms. Dubrow, who I know has worked many years on this issue.

First, I would like to be added as a cosponsor of H.R. 5929, second, I would like to know, is there anybody against this bill? It seems like such an all-American proposal.

Is there any opposition to this bill? It sounds like it is the dream package.

Mr. SHEINKMAN. Maybe after your statement, they will not have the temerity to speak up.

Mr. RUBY. Mr. Richardson, I think all of us are in favor of the principle of H.R. 5929. I think there is some concern on at least a

part of the coalition as to whether or not the bill goes far enough in intervening in counterfeiting situations and so forth.

I think while our group enthusiastically applauds the intent, it is thought that perhaps H.R. 2447 probably would be a little bit stronger. We question whether or not, in effect, H.R. 5929 goes far enough to solve this very, very gnawing problem which is giving us grave concerns.

Mr. RICHARDSON. Maybe I should ask this of the labor representatives. What is the status of the textile industry now with respect to employment? If the objective, as Ms. Dubrow said, is to increase employment in the industry and protect American workers, what is the general status of the industry now with offshore plants?

Ms. DUBROW. Well, Congressman Richardson, we have consistently said that the percentage of imports now has gone—in our industry, at any rate, the women's apparel industry—has gone up to 53 percent penetration in the last couple of years. In textile and apparel both, we have lost over 670,000 jobs in the last few number of years. As you know, it is the most labor-intensive industry in this country. It probably employs more minority groups and women, particularly, and the new groups that come in find jobs in our shops when they can't find jobs elsewhere.

I would say that imports are increasing daily, and we find every time the new statistics come out that textiles are suffering very heavily. Apparel—men and women's, children's, boy's—are suffering very heavily, and there doesn't seem to be any stop to it. There are a number of opportunities to do something about that, not just in this trade labeling bill and not just in the counterfeiting bill, but a whole look at the import situation.

But we maintain that this bill that is being considered today is one step in educating our consumer, the public, that things are made in this country, that they are made very well, that we do compete, and the only thing that these people who are buying imports are doing is, they are encouraging low wage standards in other countries. There are jobs that are being lost in this country, and it has what we call the domino effect, because in areas where garments and textiles are particularly important, it is not just our workers that are losing their jobs, but it's other people in the community.

So I'm saying, the whole situation has been exacerbated in these last number of years the Trade Labeling Bill and the Counterfeiting Bill is one way to help us educate the public to buying products that are made in this country.

Mr. MARTIN. Let me add to what Ms. Dubrow has said.

Congressman Broyhill called it a crisis in the textile/apparel complex, the American fiber/textile/apparel complex.

You know, last year, 2 million bales of foreign-grown cotton came into the United States through the apparel route. It was not raised in the United States. It was not raised in your State; it was not raised in my State. It was raised somewhere else. And that came in.

So that's the sort of crisis that we are in. It would be hard for us to exaggerate—the whole group—it would be hard to exaggerate the situation that we are facing. We are losing jobs at such a fan-

tastic rate that it just boggles our minds that no one seems to recognize it.

I hate like the dickens to be as old as I am and stagger back in here when I am about 75 and say to some other group—and I hope it is you—"We tried to tell you so." There's a good friend of mine who said he saw a gravestone in a Boston Cemetery: "I tried to tell you that I was sick." So the thing cannot be exaggerated.

Mr. RICHARDSON. I know your preoccupation is mostly with textiles, but I wondered if you could maybe from your experience talk about other industries that are adversely affected like this?

Let me give you an example. On one factfinding trip I took overseas—and the country I will not mention—I was struck with a very sophisticated, very beautiful leather good that was an imitation of an American leather good. Although I restrained from buying it it was very well made. Is there any protection, for instance, for the domestic leather industry if such a product floods the American market?

Mr. MARTIN. I would think, any label, anything that has to be labeled, would be affected by H.R. 5638. I would hope so.

And let me say one other thing, sir. I, too, have traveled quite a bit in the last few years, and there is something that is terrible to admit. I don't think there is a single product made in the United States, whether it is a pair of shoes, a cup or whatever, that cannot be made more cheaply somewhere else in the world. We just do not have any longer a monopoly on technology. And I do hope and pray that we recognize that somehow or another. But I don't believe—for one person, I just don't believe that we can live—and here I am philosophizing—I don't believe that we can live on banks, insurance companies, and other service industries. I think we have got to keep producing something in this country, and I hope you share that with me.

Mr. RICHARDSON. Mr. Chairman——

Mr. MARTIN. I would like to make one point, please, and it kind of goes to what you were mentioning before about other industries that are affected.

I represent the agriculture industry, to the extent that I represent the wool producers, many of which are from your State, and there is also a good deal of cotton in your State.

And when you are talking about clothing and garments, you might as well be talking about the people who grow it, and it's critical to the people that I represent, that this bill be enacted as well.

Mr. RICHARDSON. Mr. Chairman, with all the leverage I have as a freshman Member—which is nonexistent—I hope that we mark this bill up expeditiously and pass it. I think it's an important piece of legislation.

Mr. FLORIO. Thank you.

Mr. BROYHILL. Let me have a word or two before the panel leaves.

I would like to point out to the gentleman from New Mexico that the first title of H.R. 5929, the new bill that has been introduced by Chairman Florio, does state that the sale or distribution in or affecting commerce, and the production for sale or distribution in/or affecting commerce, of counterfeit goods or services is an unfair

method of competition. That prohibition is rather broad, and it would cover counterfeit goods or services of all kinds.

There is a definition on page 3 of the bill, which of course the gentleman, I am sure, has already reviewed. The other title of the bill does deal, of course, with the labeling of textile and apparel products.

I want to thank each one of the panel for coming here today. I have had the pleasure and opportunity of working with each one of them over the years. They are leaders in their segments of the industry. Certainly, they have educated me as to the problem.

I know your industry has its problems. Employment in this great industry has been going down rapidly in recent years. I am concerned, and I think it is high time we do something about it.

I also want to pay my very highest compliments to Mr. Martin, who is a constituent of mine. He is an outstanding businessman, and has had an outstanding business career. We are sorry to see that he is going to be retiring in a few months. But his company, Ti-Caro, is a major employer in his community, as well as in North Carolina. I know it has been a constant battle on his part as chief executive of this great business to try to keep it going, so as to provide employment for the fine people of our area.

I know it is sad to see where these imports are coming in and taking away the jobs of our people. It's just not right. I applaud him for the fact that he is willing to take up his time to stand up for this great industry and the almost 2 million people who are employed in this great industry.

Thank you very much.

Mr. FLORIO. Thank you very much, gentlemen, Ms. Dubrow, we appreciate your participation today.

Ms. DUBROW. Thank you.

Mr. MARTIN. Thank you.

Mr. RUBY. Thank you.

Mr. SCHROEDER. Thank you.

Mr. SHEINKMAN. Thank you.

[The following letter was submitted for the record:]

NATIONAL COTTON COUNCIL OF AMERICA
EXECUTIVE BUILDING / 1030 FIFTEENTH STREET, N.W / SUITE 700
WASHINGTON, D.C. 20005
TELEPHONE: (202) 833-2943

June 27, 1984

The Honorable James J. Florio
Chairman
Subcommittee on Commerce, Transportation, & Tourism
House Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The National Cotton Council is the central organization of the U.S. cotton industry, representing not only cotton producers but also ginners, seed crushers, warehousemen, merchants, cooperatives, and textile manufacturers from the Carolinas to California.

The Council supports HR 5638, the textile labeling bill, not only because it would help the domestic textile industry to compete with imports by better informing consumers, but also because it would benefit cotton growers since an increasing amount of textile imports contain only a small fraction of U.S.-grown cotton.

Ten years ago, American consumers were using 8.1 million bales of cotton in the form of textiles. Almost 90 percent of the cotton was supplied by U.S. growers. Last year, only 76 percent of the 7.7 million bales consumed was grown in the U.S. American cotton producers have lost the difference between the 90% we used to supply and the 76% we supply today. Over the decade this amounts to 1.3 million bales annually.

Textile and apparel market losses to imports are not related to the pricing of U.S. cotton or any other characteristics of our fiber, but rather to lower labor costs abroad and other factors in the manufacturing process.

One way to compete with imports is to convince consumers that they are better served by products made in the U.S. from cotton produced in the U.S. With passage of this textile labeling bill, consumers will be able to look at a product in a store and identify its country of origin.

We urge your strong support of HR 5638 and its prompt passage by your subcommittee.

Sincerely,

John S. Barr

John S. Barr, III
President

Mr. FLORIO. I think what we will do, in light of the fact that there is a vote, we will take a 10-minute recess and reconvene, and Mr. Bikoff will be our next witness.

[Brief recess.]

Mr. FLORIO. The subcommittee will reconvene.

I apologize for the schedule interruptions, but there were two votes that were just given.

Mr. Bikoff, we will be pleased to hear from you.

STATEMENT OF JAMES L. BIKOFF, PRESIDENT, INTERNATIONAL ANTICOUNTERFEITING COALITION

Mr. BIKOFF. Mr. Chairman, I thank you for presenting the opportunity to testify on the bill that is before your committee today. I am here as president of the International Anticounterfeiting Coalition, which is a worldwide organization with a membership of over 200 major corporations.

I have submitted a statement, and I will summarize it for you.

The coalition was formed in 1978 to stimulate stronger Government measures to combat counterfeiting both in the United States and abroad, and since then we have been concerned with protection of all intellectual property rights, including patents, copyrights, trademarks, and packaging.

Counterfeiting is not a new problem. It has been around for centuries. What is new is the expanded fields in which counterfeiting has moved, and some of the health and safety concerns, which I think you heard this morning from the auto industry. Today we find counterfeiting of auto parts, aircraft parts, pharmaceuticals, computers, machine tools, even common screwdrivers.

The Dayton, OH, Daily News reported on June 8 that General Electric had uncovered a major electronic parts counterfeiting operation in Los Angeles that produced lookalike components for use in commercial aircraft. These were electronic tubes that are used to control navigational systems in commercial aircraft, and the documents that were seized by the Federal marshalls revealed that the tubes were not working properly, and I quote, "in Delta Airlines equipment."

So we are seeing counterfeit goods that can affect health and even life going into commerce today in fields like commercial aircraft and autos and hospitals.

This past year has seen an enormous growth in counterfeiting, especially in industries like the auto industry, where it is running at over $3 billion a year, according to the industry association. And the textile and apparel industry, it has increased significantly, too. On almost any street corner in a major city today, you find counterfeit goods being sold by street vendors.

The ITC report, which was issued in January, revealed that U.S. business loses $6 to $8 billion a year from foreign product counterfeiting, and over 131,000 jobs are lost in the United States each year, according to the ITC. These, I think, are startling figures and evidence the inadequacies of current law to deal with the commercial counterfeiting problems.

Now our coalition believes that new and strong laws are needed to effectively deter and prosecute those who would counterfeit

American intellectual property rights. We support the anticounterfeiting provisions of H.R. 5929, as one of several needed legislative reforms in this area. We think that the expansion of the enforcement authority of the FTC to include the prevention of counterfeit goods being sold will create an economic disincentive, and we believe that that would be one of the ways in which we can help to bring counterfeiting under control.

The provisions of the bill which enable the FTC to detain and seize merchandise will also be effective. In many cases, it is one of the only deterrents that we have to avoid the counterfeiter getting rid of the goods before he is brought into the courtroom. However, we believe that this bill itself will not do the job. We believe that it is one of many building blocks that are required in a comprehensive legislative solution to the problem.

H.R. 2447 and its Senate counterpart, we believe, provides significant civil and criminal remedies against those who would counterfeit, and we think that H.R. 5929 should be viewed only as complementary to those bills, rather than as a substitute.

H.R. 2447, which was introduced by Chairman Rodino in 1983, which is currently pending before the Crime Subcommittee is a bill that would, under its criminal provisions, expose counterfeiters to up to 5 years in jail and penalties, financial penalties, of up to $250,000 for an offense.

It would also expose corporations to a $1 million fine. These are significant deterrent factors and are much needed by American industry.

On the civil side, which is just as much needed because of the lack of Federal resources in the enforcement area, the bill would provide for seizure to be granted by Federal courts, district courts, and also for the destruction of counterfeit goods once they are determined to be counterfeit. We think that these remedies are absolutely essential, and we urge support for H.R. 2447, both the criminal and civil.

We also urge support for the GSP legislation, which is currently pending in the House also, and which would condition the grant of preferential trade benefits to developing countries on their protection and enforcement of intellectual property rights.

All of these bills are needed if we are going to make a dent in the growth of this criminal activity, and I am available for any questions you might have.

[The prepared statement of Mr. Bikoff follows:]

STATEMENT OF JAMES L. BIKOFF
PRESIDENT

INTERNATIONAL ANTICOUNTERFEITING COALITION

BEFORE THE SUBCOMMITTEE ON COMMERCE,
TRANSPORTATION AND TOURISM OF THE
COMMITTEE ON ENERGY AND COMMERCE,
HOUSE OF REPRESENTATIVES

June 28, 1984

The International Anticounterfeiting Coalition ("Coalition") is a worldwide organization with a membership of over 200 major corporations of international reputation. The Coalition was formed in 1978 to stimulate stronger government measures to combat counterfeiting domestically and internationally. Since then, the interests of our group have expanded to include a concern for the enforcement and the preservation of all forms of intellectual property rights, including patents, copyrights, trademarks and trade dress.

Commercial counterfeiting and piracy are not new problems. What is new is the vastly expanded scope of the problem. From consumer and designer items such as apparel, jewelry, sporting goods, and records and tapes, counterfeiting has been extended to a wide range of industrial products, many of which are health and safety related products, such as: computers, agricultural chemicals, automotive parts, electrical componets and aircraft parts.

The past year has shown an enormous growth of counterfeiting of automotive parts and accessories -- now estimated

to be in excess of 3 billion dollars per year in the U.S. alone -- as well as credit cards of all types, where industry losses have grown from $66,000 in 1977 to nearly 50 million dollars last year. In the fashion industry, illegal profits from commercial counterfeiting have been estimated at 700 million for the year 1982.

Counterfeiting in the apparel and textile industry have also increased significantly. Bogus "Izod" and "Polo" shirts, "Calvin Klein", "Sergio Valente", "Sasson", "Gloria Vanderbilt" and "Jordache" jeans may be found in most major cities being hawked by street vendors at prices considerably lower than the authentic products.

The United States is the single most lucrative market for counterfeit goods. In its recently released Final Report on Investigation No. 332-158 under Section 332(b) of the Tariff Act of 1930 (USITC Publication 1479, January, 1984) (the "ITC Report"), the ITC concluded that counterfeit products entering the U.S. are being manufactured in some 43 countries around the world, 30 of which are in the Far East, and that more than 62% of all counterfeit product items reported to the ITC were sold in the United States. The ITC Report also estimated that approximately "$6 billion to $8 billion of total domestic and export sales were lost by U.S. industry due to foreign product counterfeiting" and similar practices in 1982. The ITC Report additionally concluded that approximately 131,000 U.S. jobs were lost in 1982 because of foreign product counterfeiting and similar unfair trade practices in just five industry sectors: wearing apparel and footwear, chemicals and related products,

automotive parts and accessories, records and tapes, and sporting goods.

These statistics are the best evidence of the inadequacies of existing U.S. law to deal with commercial counterfeiting. Commercial counterfeiting is one of the most lucrative and yet least risky forms of theft. It is one of those rare instances where, under our law, you may steal a substantial property right, get caught and suffer nothing more than a temporary delay in distribution.

New and stronger laws to effectively deter, detect, prosecute and penalize the counterfeiters are long overdue. The Coalition supports the anticounterfeiting provisions of Title I of H.R. 5929, the "Anticounterfeiting, Textile Fiber and Wool Products Identification Act", as one of several needed legislative reforms in this area. Expansion of the enforcement authority of the Federal Trade Commission ("FTC") to include prevention of sales and distribution in counterfeit goods and services will create one of the economic disincentives we believe are critical to reduce the volume of counterfeit products.

Those provisions of the bill enabling the FTC to temporarily detain counterfeit goods and to proceed against the counterfeit goods in district court are particularly effective tools in deterring counterfeit trade. Indeed, in a great many cases, the most meaningful deterrent against a commercial counterfeiter is the seizure of his counterfeit goods before he can profit by selling them to innocent consumers or, if he suspects detection, spirit them away.

H.R. 5929 and other vitally important legislation such as H.R. 2447, the Trademark Anticounterfeiting Act of 1983, are the

building blocks of a comprehensive legislative solution to the serious problem of counterfeit trade. H.R. 2447 and its Senate companion, S. 875, provide significant criminal and civil penalties against manufacturers, distributors or retailers who intentionally produce or sell counterfeit products. Thus, H.R. 5929 should be viewed as complementary to other bills rather than as a substitute for this much-needed legislation.

Still more measures are needed to stem the tide of counterfeit products entering U.S. and world markets. Many of the counterfeit goods wreaking havoc in our economy are produced in the very same developing countries that have been receiving special duty-free treatment under the present Generalized System of Preference ("GSP") program. While the Coalition does not oppose a renewal of GSP per se, we have strongly urged Congress to condition a country's eligibility to receive GSP benefits on a showing that the country provides effective protection for intellectual property rights. Because of the importance of GSP benefits, we believe that enforcement of such a requirement would provide a most effective incentive for problem countries to cooperate with the United States in eliminating intellectual property abuses.

While the increased FTC authority provided by H.R. 5929 will be a valuable tool in enforcing the rights of patent, copyright and trademark owners, it is only a partial solution to a problem that demands legislative action on several fronts.

Mr. FLORIO. Thank you very much.

Mr. Broyhill.

Mr. BROYHILL. I have information here with respect to the estimated loss of sales and employment by U.S. industry from foreign product counterfeiting and similar practices. It indicates a multibillion dollar loss and thousands of jobs lost.

Is there a domestic production and sales of counterfeit goods?

Mr. BIKOFF. Yes, there is.

Mr. BROYHILL. How big is that?

Mr. BIKOFF. We do not, unfortunately, have any estimates on the size of that business, because the International Trade Commission study focused only on foreign counterfeiting. However, in some of the major safety and health areas, such as aircraft and auto parts, most of the production is within the United States.

The General Electric article which I referred to and which I would be happy to have copies for the committee reveals a factor producing counterfeit electronic parts under the GE trademark outside of Los Angeles. This is a domestic counterfeiting problem. Similarly, aircraft bolts, which are manufactured by SPS Technologies outside of Philadelphia, have been counterfeited widely in the United States. This is also a safety problem. Textron helicopter parts for the Bell Helicopter Division have been counterfeited in the United States, and we have an increase also in the counterfeiting of products that are being brought in from foreign countries and assembled and marked in the United States, for instance, in the watch industry. In many cases, watches are being imported and their component parts without marking, and when they are entered through Customs, they go to a loft in this major city where the markings are placed on them—the name Rolex, or Cartier, or whatever it may be.

In the apparel industry, similarly, I know with the Izod Co., the shirts come in without the labels. The labels are affixed in the United States, and the alligators come in separately or are smuggled in and are affixed also in the United States.

So there is a domestic counterfeiting industry, and I think it is growing at a fast pace.

Mr. BROYHILL. Do you feel that the authority that is given the FTC to proceed against these types of goods and practices in H.R. 5929, is adequate to address the counterfeiting problem, or would you recommend that we go further?

Mr. BIKOFF. We view the bill as not being adequate, but as being an accessory bill which would be—which would give another agency authority to deal with this problem. We think it would be helpful, but we don't think it's the answer.

We think that a bill similar to H.R. 2447, which provides strict criminal and enhanced civil provisions, is really the answer, because today most of the trademark owners do not have adequate remedies under the present law, which is the Lanham Act, the Trademark Act of 1946, which only provides very limited civil remedies, injunctive relief, and discretionary treble damages which are rarely awarded by the courts.

What H.R. 2447 and its Senate counterpart would do would be to expose counterfeiters to jail sentences and significant fines on the criminal side, and on the civil side, would codify existing practice

in some courts of granting ex parte seizure orders and enhanced damages.

Mr. BROYHILL. Well, as you know, the bills are intended to complement each other. You also know the jurisdictional problems we have here. It is difficult sometimes to put them together. But I would appreciate your outlining to us for the record and for our consideration, any additional remedies that you feel would be necessary in order to address the counterfeiting of goods or services, either produced domestically or brought in from foreign manufacturers.

Mr. BIKOFF. I would be pleased to do that. [See p. 106.]

[Additional statement of Mr. Bikoff follows:]

STATEMENT OF JAMES L. BIKOFF
PRESIDENT

INTERNATIONAL ANTICOUNTERFEITING COALITION

April 12, 1984

The International Anticounterfeiting Coalition ("Coalition") is a worldwide organization with a membership of over 200 major corporations of international reputation. The Coalition was formed in 1978 to stimulate stronger government measures to combat counterfeiting domestically and internationally. Since then, the interests of our group have expanded to include a concern for the enforcement and the preservation of all forms of intellectual property rights, including patents, copyrights, trademarks and trade dress.

The United States is the single most lucrative market for counterfeit goods. In its recently released Final Report on investigation No. 332-158 under Section 332(b), of the Tariff Act of 1930 (USITC Publication 1479, January, 1984) (the "ITC Report"), the ITC concluded that counterfeit products entering the U.S. are being manufactured in some 43 countries around the world, 30 of which are in the Far East, and that more than 62% of all counterfeit product items reported to the ITC were sold in the United States. The ITC Report also estimated that approximately "$6 billion

to $8 billion of total domestic and export sales was lost by U.S. industry due to foreign product counterfeiting" and similar practices in 1982. The ITC Report additionally concluded that approximately 131,000 U.S. jobs were lost in 1982 because of foreign product counterfeiting and similar unfair trade practices in just five industry sectors: wearing apparel and footwear, chemicals and related products, automotive parts and accessories, records and tapes, and sporting goods.

These statistics are the best evidence of the inadequacies of existing U.S. law to deal with commercial counterfeiting.

New and stronger laws to effectively deter, detect, prosecute and penalize the counterfeiters are long overdue. S.875 and H.R. 2447 provide an effective, though only partial, solution by combining significant criminal penalties with the likelihood of forfeiture of goods. Anyone intentionally producing or selling counterfeit products would fall within the bill's purview.

Beyond criminal sanctions, the bill provides mandatory treble damages in civil actions by registered trademark owners. The bills also authorize federal courts to order seizure and destruction of counterfeit products -- a powerful economic disincentive for most counterfeiters.

Commercial counterfeiting and piracy are not new problems. What is new is the vastly expanded scope of the problem. From consumer and designer items such as apparel, jewelry, sporting goods, and records and tapes, counterfeiting has been extended to a wide range of industrial products, many of which are health and safety related products, such as: computers, agricultural chemicals, automotive parts, electrical components and aircraft parts.

The past year has shown an enormous growth of counterfeiting of automotive parts and accessories -- now estimated to be in excess of 3 billion dollars per year in the U.S. alone -- as well as credit cards of all types, where industry losses have grown from $66,000 in 1977 to nearly 50 million dollars last year. In the fashion industry, illegal profits from commercial counterfeiting have been estimated at ~~$550~~ 700 million for the year 1982.

Counterfeiting in the apparel and textile industry has also increased significantly. Bogus "Izod" and "Polo" shirts, "Calvin Klein", "Sergio Valente", "Sasson", "Gloria Vanderbilt" and "Jordache" jeans may be found in most major cities being hawked by street vendors at prices considerably lower than the authentic products.

Pennsylvania itself is a distribution point for a number of counterfeit products. Fake "Evan-Picone" women's garments were recently sold through a chain of retail stores in Pennsylvania. Fake "Nexxus"shampoo has been sold by a retail chain in Philadelphia. Fake "Cartier" and "Rolex" watches have been sold by street vendors and retailers in several Pennsylvania cities.

S.875 and H.R. 2447 will enable federal prosecutors to pursue commercial counterfeiters who have been reaping immense profits by deceiving, defrauding and endangering the American consumer and injuring the reputation and pocketbooks of legitimate American businesses. At the same time, these bills respond to the reality of limited government resources by providing a mechanism through which private victims of commercial counterfeiting can obtain meaningful relief.

In endorsing S.875 and H.R. 2447, the Coalition strongly believes that the bills provide a comprehensive package of interrelated civil and criminal remedies that together are likely to have a significant deterrent impact on commercial counterfeiters. The Coalition strongly urges that this highly necessary and proper legislation receive the full support of Congress.

The Coalition also supports Title III of H.R. 3398, the International Trade and Investment Act, which would require the President to catalogue and report on barriers to foreign investment, including the inadequate protection and enforcement of intellectual property rights. This bill would also authorize the President to retaliate against foreign countries that implicitly condone the manufacture and sale of counterfeit products.

Severe problems are being caused by many of the very same developing countries that have been receiving special duty-free treatment under the present Generalized System of Preference ("GSP") program. While the Coalition does not oppose a renewal of GSP per se, we strongly urge Congress to condition a country's eligibility to receive GSP benefits on a showing that the country provides effective protection for intellectual property rights. Because of the importance of GSP benefits, we believe that enforcement of such a requirement would provide a most effective incentive for problem countries to cooperate with the United States in eliminating intellectual property abuses.

Specifically, no country should be given GSP benefits if it fails to provide adequate means under its law to secure, exercise and enforce exclusive rights in intellectual property, including measures to prevent the production, sale or exportation of infringing or otherwise unauthorized goods. Where a developing country can demonstrate that it is making a good faith effort to institute such measures, but that it has not yet firmly established them, the President should be given discretion to temporarily waive this requirement. Where a waiver is granted, however, the President should be required to submit a full report to Congress on the steps being taken by that country to ensure full compliance.

The Coalition has every reason to believe that conditioning GSP eligibility on the protection of intellectual property rights would, if conscientiously enforced, prove to be a most effective weapon against the widespread abuse of such rights. Among the major beneficiaries under the GSP program are countries like Taiwan, South Korea, Hong Kong, Brazil and Mexico. These countries happen also to be the source of much of the counterfeit goods wreaking havoc in the U.S. and world markets. It is interesting to note that of $8.4 billion in GSP imports in 1982, over 45% were exported from Brazil, Korea and Taiwan, three of the countries most active in the production and distribution of counterfeits of U.S. products.

As the economies of these countries become increasingly geared to export earnings to finance their modernization efforts, anything that jeopardizes their competitive edge obtained under GSP must be taken seriously. By adding a strong intellectual property rights requirement to GSP eligibility, the United States would be making wise use of the tremendous leverage it has under this program to force these problem countries to assume the obligations of responsible trading partners.

While we appreciate the efforts the U.S. Trade Representative's Office has already made on behalf of the Coalition and other concerned groups, U.S.T.R.'s efforts to negotiate on behalf of American intellectual property owners will be substantially strengthened by the insertion of strong mandatory provisions in the GSP program.

The Coalition expresses its gratitude to Senators Danforth and Lautenberg and Congressman Downey for their willingness to support amendments to the GSP Reauthorization Bill which would link the grant of GSP benefits to a country's protection and enforcement of the intellectual property rights of U.S. citizens.

In addition to federal legislation, we most urgently need strong state laws against commercial counterfeiting which will be enforced by state prosecutors. The first state to pass such legislation was California. The California bill, A.B. 1565, passed unanimously in the California Assembly in June 1983; passed unanimously in the State Senate in August 1983; and was signed into law by the Governor of California effective January 1, 1984.

The California bill expressly authorizes the seizure of counterfeit goods, provided certain procedural safeguards are met. It also provides that a defendant found liable for the distribution of counterfeit goods will be required to pay the trademark owner up to three times the defendant's profits and up to three times the damages suffered by reason of a defendant's wrongful acts.

Similar civil statutes have been drafted for introduction in Florida, Illinois, New York, and Pennsylvania. The Florida bill was introduced in the Florida Assembly in February, 1984.

California has also introduced a criminal bill which would provide significant fines and/or imprisonment for trademark counterfeiting. A similar bill has been drafted for introduction in Florida, Illinois, New York,and Pennsylvania.

The California statute and the other bills that have recently been introduced or are in the process of being introduced are the first steps which hopefully will provide a significant state deterrent to those who view the counterfeiting of aircraft parts, auto parts, apparel and other products as a riskless way of making a "quick buck".

The goal of all of the federal and state legislation which the Coalition supports is to provide increased disincentives to the counterfeiter to engage in unlawful counterfeiting activity and increased incentives to businessmen to police their trademarks and to vigorously pursue their remedies against the counterfeiter. The legislation will also hopefully encourage federal and state prosecutors to pursue counterfeiters under strong criminal provisions and thereby protect unsuspecting consumers from economic harm, as well as safety and health risks.

In conclusion, the Coalition is extremely concerned about the safety hazards involved in the counterfeiting of products having safety or health implications, and urges the adoption and implementation of state, national and international laws and regulations which will curtail commercial counterfeiting - especially the production and distribution of bogus products endangering the health and lives of consumers around the world. Controlling the traffic in counterfeit goods will require constant vigilance and aggressive action from governmental agencies and owners of intellectual property.

Thank you for your attention. I will be happy to answer any questions that you may have at this time.

Mr. FLORIO. Let me just ask a question. Under these proposals, particularly the Judiciary Committee's proposals, all under existing law, what do you regard as the responsibility or liability that goes to retailers in marketing products that may be counterfeit, or in the instance you indicated before, an airline that is operating with parts that are counterfeit and presumably defective. What is their responsibility, particularly under the pending criminal legislation?

Mr. BIKOFF. No. Under the pending legislation, under S. 75 and the House counterpart, the violation would be trafficking in counterfeit goods or services. So that an airline receiving parts, unless it knowingly participated in some scheme, would not be liable under those provisions. Similarly, retailers who innocently purchased are not liable either.

It is the knowing or intentional conduct that we are going after. We would like to put the distributors and manufacturers who are knowingly circulating these goods into commerce out of business, because the retailers in many cases are innocent victims.

Mr. FLORIO. I can understand that there are going to be substantial questions when the innocent victim knows that the price of a good product is $10, and the seller now comes in with a great deal for $2. To what degree are we—that's the whole concept of receiving stolen goods. The person who has received the stolen goods is potentially liable, even though they maintain that they were not aware of the fact that they were stolen. I mean, there's evidence that can be offered——

Mr. BIKOFF. Well, the Senate bill has received a lot of attention from the retail community, and at this time, the final bill, which has already been voted out of the committee, contains language that the retail community is satisfied with. There have been public statements by both K Mart and the Burlington Coat Factory in New Jersey that they accept the bill as it is presently drafted. Sears Roebuck is another major retailer who is actually working for the bill.

I think that if the House version contains the same protections as the Senate version, it would be acceptable to the retail community also.

Mr. FLORIO. Mr. Lent, any questions?

Mr. LENT. Thank you, Mr. Chairman.

Mr. Bikoff, I understand that in the apparel industry, Izod has initiated a number of suits across the country and has obtained a number of seizure orders for counterfeited Izod goods. If you know, could you tell us to what extent this private litigation has been successful in curbing the counterfeit traffic of Izod goods into this country?

Mr. BIKOFF. The litigation, as far as I know—and we work closely with Izod—has been successful in helping to decrease the amount of counterfeiting of the Izod brand. However they are still having major problems, and the unfortunate part is that under the current law—and they proceed generally under the Lanham Act—they are not able to obtain the kind of meaningful relief which deters the counterfeiter from going into continuing the business.

Generally, in the civil litigation, the cases are settled with consent judgments, and if any damages are awarded, they are general-

ly negligible. So in many cases, not even recovered in fact, because the counterfeiter will go into a chapter 11 or will change the name of the business, and in many cases it is very difficult to collect.

Mr. LENT. I want to thank you also for giving me this article, from Newsday, May 14, 1984. I would ask the chairman to make it part of the record. This article describes problems faced by the Rosco Tool Co. of Smithtown and Islip, Long Island, and also Quoizel, Inc. of Hauppauge, Long Island in the counterfeiting area. In one case screwdrivers, the so-called Rosco screwdriver, is being counterfeited in Taiwan. I guess Quoizel, Inc. of Happauge has—what do they have?

Mr. BIKOFF. Ceiling fans.

Mr. LENT. Ceiling fans being counterfeited in Taiwan, is it?

Mr. BIKOFF. Yes.

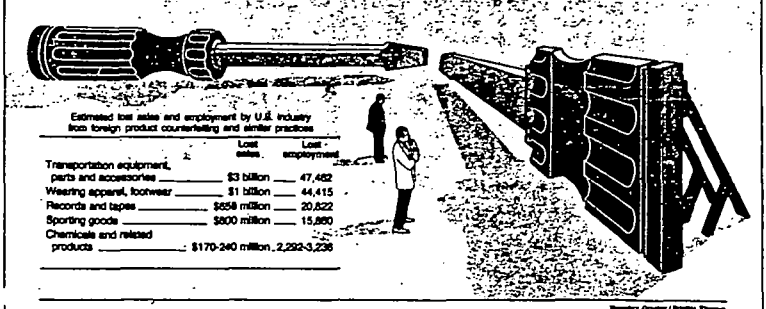
Mr. LENT. I thank the gentleman.

[The magazine article referred to follows.]

part II
business

A Weekly Survey of Business and Business People / May 14, 1984

When imitation isn't flattery



Estimated lost sales and employment by U.S. industry from foreign product counterfeiting and similar practices

	Lost sales	Lost employment
Transportation equipment, parts and accessories	$3 billion	47,462
Wearing apparel, footwear	$1 billion	44,415
Records and tapes	$658 million	20,822
Sporting goods	$800 million	15,860
Chemicals and related products	$170-240 million	2,232-3,236

By Diane Ketcham

Jon Rosenberg jokingly refers to it as a mark of distinction. "To be put in a class with Cartier, Gucci and Apple Computer," he says, "is quite something."

The distinction, however, is one that Rosenberg says he and his Rosco Tool Co. could do without. Like watches, fashions and circuitry, Rosco's screwdrivers are being counterfeited.

"To copy a screwdriver?" Rosenberg asks. "It just shows how serious this whole counterfeiting business is."

Rosenberg is a spokesman and former president of Rosco Tool Inc. of Smithtown and Islip, a division of Vermont American Corp. Rosco was once "the largest manufacturer of screwdrivers in the world," he says, but now it must contend with cheaper versions of "Rosco" screwdrivers counterfeited in Taiwan.

Rosco Tool is just one of the Long Island companies affected by international industrial counterfeiting, a growth industry whose impact is being felt throughout the country.

A recent study by the International Trade Commission estimates that in 1982, U. S. industries lost $6 to $8 billion in sales and 131,000 jobs as the result of international counterfeiting. The automotive parts and accessories industry, alone, estimates losses of $3 billion.

While domestic counterfeiting is also a problem, industry representatives say, a far greater problem is trying to stop the enormous flow of fakes from Taiwan, Korea, Hong Kong, Singapore and other Asian and South American countries.

Some counterfeit goods have made headlines in recent years:

- Ideal Toy Corp., Hollis, estimates that 6 million imitation Rubik's Cubes were manufactured and sold worldwide by nearly 100 companies.
- Nationwide sales of counterfeit or lookalike drugs reached a high of 30 million pills a week in 1981, according to manufacturing sources.
- A counterfeit fungicide, copy of a product manufactured by Chevron Research, was blamed for wiping out two-thirds of Kenya's coffee crop in 1978.
- An estimated 30,000 counterfeit Cabbage Patch dolls were imported from Taiwan.
- Some 85 million copied music tapes were made in Singapore alone by 1983. An estimated 70 million of the copies were imported into the United States.
- Izod-Lacoste estimated it lost hundreds of millions of dollars in sales when fake Izod shirts appeared on the U.S. market. The counterfeit shirts had the Izod alligator ironed rather than stitched on, and many alligators got "lost" in the wash.

Another Long Island company affected by imported copies is Quotron Inc. of Hauppauge. "It's a lot like being robbed," says Quotron president Ira Phillips.

According to Phillips, his company has lost half its ceiling-fan business, worth more than $2.5 million in sales, because a fan that he says infringes on his trademark is being made in Taiwan and Hong Kong and then sold in this country for less than half Quotron's price. His company is suing the U.S. supplier.

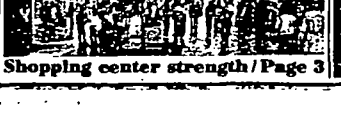
The New York metropolitan area has been hit hard by the counterfeiting for two reasons.

Because it has a major port and a large population, New York is one of the top three states in consumer distribution of counterfeit products, according to James L. Bikoff, president of the International Anticounterfeiting Coalition, representing more than 300 corporations. Only California and Florida have more.

And many of the industries hardest hit by counterfeiting — fashion, publishing, credit card manufacturers and the recording industry — have

—Continued on Page 16

Speaking the language of new power groups
Page 5



Shopping center strength / Page 3

Law for the middle class
Page 10

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When imitation isn't always flattery

—Continued From Page 1

major headquarters in the area.

With the area's varied manufacturing base, almost every field has experienced some impact. The auto parts industry is one example.

Four hundred and twenty people are employed in the Brooklyn plant of the Ideal division of Parker Hannifin Corp. Ideal makes turn signals and warning flashers for cars and trucks.

Robert R. Miller, vice president of operations for Parker Hannifin's Automotive Aftermarket Group, recently recalled his first encounter with foreign industrial counterfeiting. "A woman representing some Taiwanese manufacturers wanted to talk to me about selling flashers. She put some samples on the table, and there are our Ideal flashers and Wagner's [another manufacturer]."

Miller said she was offering to sell him exact copies of his company's merchandise at "a price below our manufacturing cost."

"There was our name on the product and the box," Miller said. "I told her she was violating every trademark, copyright and patent law. But she said that meant nothing in Taiwan."

Miller, who is also chairman of the anticounterfeiting task force of the Motor & Equipment Manufacturers Association (MEMA), said the Taiwanese flashers do not meet federal safety standards.

"Counterfeiting in automotive parts is evolving into an epidemic," says Paul Hahua, director of government relations for MEMA.

Parker Hannifin believes it was successful in stopping sales of counterfeit flashers in the United States, but it could do nothing with worldwide distribution. Miller estimates Ideal lost $500,000 in sales in the international market. And although no workers were laid off in the Brooklyn plant because of the imported ikes, Miller says, "There was a loss of potential jobs which would have resulted from normal expansion had we not lost business to counterfeiters."

Quoisel Inc. in Hauppauge, which has 200 employees and makes lamps and fans, has gone to court over the issue.

In papers filed in U.S. District Court for the Southern District of New York, Quoisel alleges that a Miami company, Moss Manufacturing Inc., was importing ceiling fans from Hong Kong and Taiwan that infringed on Quoisel's trademarks and patents.

In its suit against Moss, Quoisel also contends that Moss used a picture of Quoisel's product in advertising the imported Moss fan. The Quoisel product retails for $395, the suit says, while the Moss fan costs $159.

Quoisel's Phillips says his fan business has been cut in half since the Asian product first surfaced. He says he has reduced production from 20,000 fans to 10,000, with a loss in sales of $2.5 million.

The general manager of Moss Manufacturing, Anthony Shlopak, said he would not comment on the case while it is in court. "The only people who ever benefit from this type of litigation are the lawyers," he said.

"You develop a product," Quoisel's Phillips said, "you spend a great deal of money to get consumer interest and then some foreign country comes in with preferred status and puts American workers out of business. It's a crazy situation."

Phillips was referring to the Generalized System of Preference, a government program that gives certain countries duty-free or low-duty tariffs in order to promote their economic development. The countries benefiting most from this program are also the countries that appear to have the most counterfeiters.

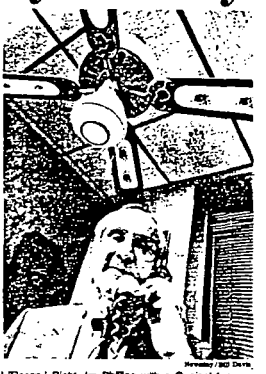
Legislation introduced in Congress by Sen. John C. Danforth (R-Mo.), chairman of the Senate trade subcommittee, and Rep. Thomas J. Downey (D-Amityville), a member of the House trade subcommittee, would make duty-free treatment of countries such as Taiwan, South Korea and Brazil conditional on their commitment to stop industrial counterfeiting.

Another bill would make it a criminal offense to knowingly traffic in counterfeit merchandise in the United States. The bill, sponsored by Sen. Charles Mathias (R-Md.) and Rep. Peter W. Rodino (D-N. J.), would provide up to a $250,000 fine and five years in jail for an individual and $1 million for a corporation.

"It's got to be stopped," declares Joe Rosenberg of Rosco Tool. The Rosco lookalike screwdrivers made in Taiwan have not come into this country as far as Rosenberg knows. But, he says, they have dried up his Philippine market, which accounts for two per cent of sales. Rosenberg says he contacted everyone he could think of to try to stop the Taiwan manufacturer. He even registered the company's name in Taiwan, but to no avail.



Newsday / Mike Rose Manfredi



Newsday / Bill Davis

Only one of the screwdrivers held by Joe Rosenberg is a real 'Rosco.' Right, Ira Phillips with a Quoizel fan.

"It's very repugnant to me," Rosenberg said. "We're recognized as manufacturing the most reputable screwdriver in the world. We enjoyed our reputation and then this happens. They're not making the same quality product, and they're stealing our Rosco dispenser."

Rosco, Ideal and Quoizel are all concerned with trademark infringements, but not all imported copies or knock-offs are counterfeit.

According to Stephen E. Feldman, a patent and trademark lawyer with offices in Huntington and New York City, "A knock-off is permissible, it's just a copy, as long as it doesn't use another company's name, or infringe in any other way upon the patent, copyright or trademark of a company. If it does infringe upon a patent, copyright or trademark, it would be considered a counterfeit."

There is general agreement that the problem of international industrial counterfeiting has grown enormously in the last five years. Stanley M. Gortikov, president of the Recording Industry Association of America, has seen an escalating trend in foreign music tape piracy since the advent of the "Walkman" type of tape player.

"The federal government is beginning to address the problem," Gortikov says. "It's just agonizingly slow, but that's the legislative process."

"People don't want to take the time to make their own product," said patent lawyer Feldman. "They can do it cheaper and quicker in the Orient." ■

Diane Ketcham is a free-lance writer

A private 'sting' goes to trial

New York (AP) — The hidden camera was rolling as Abscam undercover operative Melvin Weinberg returned to action for "Bagscam."

In a trial that begins tomorrow in U.S. District Court in Manhattan, videotapes of Weinberg are to be key pieces of evidence against six people charged with criminal contempt of court in connection with efforts to counterfeit designer handbags.

They are charged in an unusual case, which their attorneys believe involves the first privately sponsored, court-sanctioned "sting" operation.

It started after Weinberg joined a Florida private investigating firm owned in part by former FBI agent Gunnar Askeland, who was involved in the Abscam probe. They approached owners of prestige goods and offered to target an Abscam-style sting" against alleged imitators.

Louis Vuitton S.A., a leading maker of high-fashion leather goods, hired the team to investigate businessmen such as Sol Klayminc, who allegedly sold counterfeits of the famous handbags even after losing $100,000 in a suit to the company. He already had been convicted of criminal contempt of court and sentenced to probation for violating a court ban on the sales.

The company's lawyer, J. Joseph Bainton, was to supervise the operation. U.S. District Judge Morris E. Lasker permitted secret videotaping of a "sting" meeting to be held at the Plaza Hotel in Manhattan. The judge also named Bainton and an associate as special federal prosecutors.

Bainton said in court papers that Weinberg, posing as Mel West, befriended a man named Nate Helfand, who believed "West" was connected to organized crime. Helfand introduced Weinberg to Klayminc after reporting that Klayminc had a plan to manufacture imitation Vuitton handbags in Haiti, according to Bainton.

Weinberg offered to finance a counterfeit-handbag factory, Bainton said. According to Bainton, the counterfeiting operation would have produced between $31 million and $36 million a year in profit.

As many as 50 tapes — many made at the Beverly Wilshire Hotel in Los Angeles with help from the Los Angeles district attorney's office — are to be used in the trial before Judge Charles L. Brieant Jr.

Defense lawyers complained that the "prosecutors" could hardly be expected to be as objective as those paid by the Justice Department. Bainton was paid by Vuitton, they said, which would expect results from the money it spent on hotel suites, taping equipment and the "sting" team.

But the judge said appointment of private lawyers as prosecutors is necessary because copyright infringement is so vast and federal prosecutors in New York are understandably more occupied with drug traffic.

Klayminc and his son, Barry, are charged with violating a court order. Four others, including Helfand, are charged with helping them. One defendant pleaded guilty last Tuesday.

Mr. FLORIO. We thank you very much for your testimony, Mr. Bikoff.

Our next witness, Mr. Walter Killough, vice president of merchandising, Spiegel, Inc., who is representing the Direct Mail Marketing Association.

STATEMENT OF WALTER B. KILLOUGH, ON BEHALF OF DIRECT MAIL MARKETING ASSOCIATION

Mr. KILLOUGH. Good morning, ladies and gentlemen. I am Walter B. Killough, vice president of merchandising for Spiegel Catalog, Chicago.

I am here this morning to offer my objections to the proposed amendments to certain textile and wool labeling acts as outlined in H.R. 5638.

My first concern is that the amendment, if passed, would require the identification, in our catalog copy, that an item is processed or manufactured in the United States of America imported, or both.

For Spiegel, in a single major catalog effort, it would mean the identification of over 1,000 items with "Made in U.S.A.," "Imported," or both to the already necessary identification of fabric content, washability, and our own necessary caution of "State color and size" to ensure customer satisfaction.

Since the majority of the merchandise offered in our catalog is made in the United States of America, it means a constant repetition of a phrase that does little to outline the benefits of a particular item, but seeks only to establish where an item is manufactured.

The imposition on our catalog copy space of this phrase further limits our ability to promote the benefit of the item to our customer.

Our fashion merchandise copy should relate to the emotional values that prompts a woman to purchase will, instead, because of this restrictive structure, begin to look like a spare parts catalog with a sterile repetition of phrases designed to meet Federal requirements, but does little to enhance the selling of the item.

By limiting space available to sell an item or, in some cases, reducing the space available to list items, we reduce the sales potential of each page.

Spiegel, as a department store in print, seeks to establish a quality, fashionable image to the customers we serve. And the continued structuring or our copy seriously affects our ability to do so, as compared to our retail advertising.

The selective nature of this legislation as related specifically to mail order selling places an economic burden on this industry not shared by retailers and is, in my opinion, discriminatory.

Similarly, the effect of the act, in relation to labeling and packaging, places our industry at a disadvantage. Our garments are properly labeled with fabric content, washability, and country of origin, as required by current law.

To this requirement, we now add the necessity to mark the packaging with the requirements of the act, since most mail order items require packaging that is not transparent to ensure a safe delivery.

To these two requirements, we are now adding the third requirement of identification in catalog copy. Repetition of this information in catalog copy now burdens the mail order industry with a triple requirement, as contrasted to our retail competition, and creates an economic hardship for our industry.

A second point I would like to make is that the effect of the act would tend to increase the amount of purchases by Spiegel of an import item, rather than reducing our purchases.

Most import items in our catalogs are also priced and sourced by domestic manufacturers. We must have an opportunity to balance our inventories with domestic production since the lead time and transportation times on imported items often does not allow for resupply.

If, in catalog copy, we specify that the item is imported, we will then have to increase our initial purchase of the items in order to assure continuity of this imported item.

A customer ordering a cashmere sweater identified in the catalog as cashmere imported from Scotland would necessarily be supplied with a cashmere imported from Scotland. And we no longer would have the opportunity to buy domestically produced sweaters of similar quality of cashmere, since the item would not be as described in the catalog.

As retailers, we feel our obligation rests with the consumers. We seek to deliver products that satisfy their desire for fashionability and value. If they want silk, we offer silk, not silk-like polyester produced domestically, despite the fact that importation of silk garments creates additional burdens and risk upon us. Both the auto industry and electronics industry have learned that providing the quality, styling, and features demanded by consumer is the key to economic growth and not the limitation of product features to exising productive capacity. There are far more consumers than producers, and it is the consumer today who controls economic growth. We are dealing with a knowledgeable consumer that understands that Mercedes are produced in Germany, televisions in Japan, silk dresses in Hong Kong. Wine growers in California didn't capture their share of the market by having imported wine labeled "a product of France," but by offering qualities and values that rivaled the import. It will be no different in apparel. We cannot legislate taste. The consumer will dictate purchases, not the producer. So, this bill offers little to aid the industry it seeks to protect, but creates an additional burden on a still larger audience of retailers and people employed in retailing. The largest majority, the ultimate consumer of these products, have indicated that their loyalty supports quality and value regardless of country of origin.

Mr. FLORIO. I am interested in the panel that we had here, the long panel of the proponents of the bill, who almost worked from the basic premise that it was an advertising sales feature that would promote the sale of domestic goods if people knew that the goods were made in the United States, and hence they were arguing in favor of this legislation.

You appear to almost come from the opposite perspective—saying it doesn't really make too terribly much difference where the goods are made, and that if you do inform people as to where they are made, if they are made in the United States, and that's

going to be relevant—I am interested in that, because I am working from the assumption that you are working from your self-interest, which is very legitimate.

And if you said that in your catalog most of the products are made in the United States and if the premise of the previous panel was correct, you would be here supporting this legislation, because that is going to enhance the salability of those products that are made in the United States that are currently not readily identified in your catalog as made in the United States.

Do you reject the premise that the previous panel operates from?

Mr. KILLOUGH. Yes, I do.

I find no fault with the idea of crafted with pride in the United States, but it is not an advertising slogan, it's a commitment that the unions and management should be making, and that labeling it so is not going to make it so.

Mr. FLORIO. Mr. Broyhill.

Mr. BROYHILL. Mr. Chairman, at the present time, the catalog mail order industry does currently disclose country of origin in descriptive material.

I have several catalogs before me, which I will share with you and the members of the subcommittee, that not only for apparel products, but for a whole host of products, disclose the country of origin. The disclosure not only exists for the country of origin that they are imported from, but also, in many instances, they say "Made in the U.S.A."

So, it seems to me that the practice here of several people who are in this industry, the fact that they have made a conscious decision, a business decision, that they are going to disclose the country of origin refutes what you are saying. It is not costly. In fact, this practice encourages sales.

Mr. KILLOUGH. I think it is handled selectively by each individual company. It is not required at this point by law.

If you take a commonsense approach to what a woman walking into a store looks for in apparel, I would suggest that she wants to look right in the garment that she is selecting first. She wants to feel that she is receiving quality relative to price. She wants to know what the washability of that garment is, or the drycleanability of the garment, as related to what her cost factor is. And then, maybe she'd like to know that it is made in the United States, or it's made in Hong Kong, or it's made in Europe someplace.

We have considered at various times whether we should put made in another country or made in—well, not too often made in the United States, but made in other countries, where we feel it indicates a value or a plus to the sale, but have decided against it because we didn't want to be selective about what we put in the catalog.

Mr. BROYHILL. Do you have any numbers to provide to the committee to show that your concern is going to be difficult or costly to comply with? I've already indicated that this is being done now, but do you have any numbers or any way to quantify your testimony?

Mr. KILLOUGH. No; we will be supplying to the committee relative to costs. But I think the real impact is not on whether it costs us more in lost items on the page, or more type, or more ink, but

our concern is does it put us at a disadvantage relative to the retailer in competing for the sale in selling the garment? Do we lose sales? That's kind of hard to judge in a statistical manner, as to how—what disadvantage do we have compared to retail advertising with mail order, in the fact that we are burdened with this structured copy that we must use.

Mr. FLORIO. Isn't the cost of this legislation, whatever it is, in terms of your printing costs, equal across the board, in that the retailer is going to have to pay the additional cost that flows to the manufacturer and comes from making the modification in the labeling? I mean, that's being translated, too. Doesn't that sort of cancel out this cost for labeling and printing?

I mean, you're certainly not handling—I guess you are handling goods.

Mr. KILLOUGH. My point is that the real cost is not in the cost of administrating the act, but how it structures our copy and limits our ability to sell our product.

Mr. FLORIO. I'm not sure I fully understand how it does.

Mr. KILLOUGH. The items are going to have to have on a line "Made in the U.S.," or "Imported," or both. Every copy block will have to have that on it. It's not going to be an exciting addition to what we are attempting to do, in selling the emotional values of what makes a woman purchase a blouse or a dress.

And why not in retail advertising?

Mr. LENT. I can understand, if you have a page like this and after every item, and there may be 30 items, you have to add where it was made and where it was partially made and so forth, that might be a burden.

I wonder if it could be put in the back, like an index?

Mr. KILLOUGH. It could if it was—if there was an indication on every garment whether it was imported or domestic, it could.

It would certainly be less cumbersome. But my point is I don't think it's going to enhance the sale of domestic garments.

The description of "Crafted with Pride in the United States" should be a fact, not a label. And we are holding out to an industry a promise of improvement that is not going to improve it, in my opinion.

Mr. LENT. Well, the fundamental premise of the bill, as I understand it, is that consumers want to know where the goods were manufactured. You obviously disagree with that.

You're taking the position that the consumer really doesn't care unless it is Italian shoes, or a Paris frock, or a Swiss watch.

Mr. KILLOUGH. Right.

The consumer, I am sure, with a choice of equal quality, would prefer to buy United States Spiegel, as a company, given the same choice, would prefer to sell United States. Our life is only complicated by going overseas, with longer delivery time and earlier commitments, but we have to supply the consumer with what she is asking for. And if she wants silk blouses, well, I have to go to China for silk. If she wants cashmere sweaters, chances are I will be someplace in Britain or Scotland.

Plus, the difference that Spiegel basically is attempting to be a department store in print, we are attempting not to compete with Sears, Wards, and Penney's. We are attempting to compete with

Macy's and Federated in the fashions that we sell and the customers that we reach.

We are now, as a very small part of that apparel industry—less than 5 percent I would assume of the total is mail order sales—being forced to put this into our copy, whereas retailing will not have to put it into their copy.

If you wanted to get the best out of it, why not put it on television, why not request that all television—I mean, there you reach the most people. But why our small industry?

Mr. FLORIO. If the gentleman would yield, I assume the rationality is that in those other means of advertising their aim is to induce someone to go to the facility to buy the product, at which time the label will inform the individual where it was made.

Your observation is that the person makes the purchase without ever having had the opportunity to see the product and therefore make the informed judgment, if it happens to be meaningful to them, that it was made in the United States or not made in the United States.

I assume that is the rationale for specially treating your specialized merchandising mechanism.

Mr. KILLOUGH. It is true, mail order, since its inception, has a 100 percent satisfaction guarantee. If you were to receive a sweater and it had a label in it that said that the country of origin was one that you objected to, we would accept the return, no problem.

A retail ad is a solicitation to buy the garments. You must go to the store to discover that it came from this same country of origin.

So, the only thing you are differentiating is the type of purchase you are making, the advertising of both are solicitations of sales.

In our case, you get it home, you don't like it, you pick up the phone and we take it back, no cost to you. In the other, you get in your car and you drive 7 miles to the shopping center, and then you find out, when you get there, that it is made in the country that you object to and you don't make the purchase. I see very little difference.

Also, if you analyze the packaging part of the argument, the customer, if she sees it in a catalog, that it's imported, if the garment is labeled "Imported," then why do we have to put it on every package? The package arrives after we have made the sale. So there is a conflict there.

And the big thing is not that we object to garments being labeled "Made in the United States." We object to having to put it into our catalog copy. We don't object to attempting to limit the growth in imports, but our approach is the way the California wine merchants did it, not the way the auto industry failed to do it or the television industry failed to do it, by trying to be restrictive. We've got to challenge the unions and the managements to be more innovative in their garments or their fabrics that are offered to us to compete with the market, not attempt to limit the market.

Mr. BROYHILL. I might comment on the gentleman's point with respect to how the label would appear.

Of course, the problem is that many of these garments are bundled in packages and they are not opened. How do you tell what the content is or where the garment might have been made?

And then you have the other problem of where, oftentimes, the importer will discard the package and the country of origin label is not on the garment itself or on the product. We see many examples of that.

I perhaps should have brought some examples here today, but I didn't. But we have had many of them that have been presented to us in the past as we have explored this problem.

Here is one right here, just handed to me, men's work gloves that were manufactured in another country, and they had a label on a package. These came in a huge package. Then the retailer breaks open the package and puts these on the shelves. There's no label on here that indicates if they were made in a foreign country.

Mr. KILLOUGH. But isn't that failure to comply with existing law, that the garment should have a label on it?

Mr. BROYHILL. Well, one of the purposes of this bill is to plug some of those loopholes, to make sure that these laws are going to be complied with.

Mr. KILLOUGH. It was my understanding that those gloves should be labeled, if they were imported, with country of origin and should have been.

We are not opposed to the labeling of garments. We are complying with the labeling law as existing.

We do quality checks on all our merchandise before it is imported, to see that it conforms with Federal law.

My previous statement said that we are now saying the garment has to be labeled, your copy has to be labeled, and the package has to be labeled.

Now, the package is not seen by our consumer until after she receives the merchandise at home. And when she opens it, the garment is labeled with country of origin.

Mr. BROYHILL. Mr. Lent had a comment on that.

Mr. LENT. The Federal Trade Commission has testified before Congress that since mail order purchasers do not have the opportunity to inspect the merchandise prior to its purchase and thus be apprised of its country of origin, which is a material fact bearing on its selection, the disclosure of foreign origin should be made in all mail order promotional material.

Would you comment on that point of view?

Mr. KILLOUGH. It's quite true that the customer must receive the merchandise and look at the label in that to know whether it came in from a foreign country or—well, at this point, we don't even know whether it was manufactured in the United States. It does not necessarily say on there that it was manufactured in the United States.

The law says if it was manufactured outside the United States, that label must be in there.

In the mail order purchase, it is true that she has to get it home to see that. At that point, our guarantee says if you don't like the merchandise, return it. If it's a country of origin you object to, we will gladly take it back. We will take it back for any reason, not in 30 days, not in 60 or 90 days, but any time in the future. We do not limit our guarantee.

Take the example of the same item run in a retail ad and you have to go to the store. You do go to the store. You do get in your

car and drive to the store and make that purchase. True, if you look at the label in the garment, you will know, at the time of purchase——

Mr. LENT. That's right. But the difference there is the person goes to the store. The same analogy can be made with the television ad: The article may be advertised on television, but that contemplates that the person goes to the store. At that point, the person is apprised, by looking at the label, of the country of origin.

When they deal with Spiegel on the other hand, they do not make that physical inspection.

Mr. KILLOUGH. That's correct.

Mr. LENT. So, for that reason, the FTC takes the position that a catalog ought to specify the country of origin.

And this is what you object to. I certainly am sympathetic to your objection. I'm trying to figure out if there isn't some way that we could satisfy both sides here by somehow having you cover that base without cluttering up your copy with a lot of what you feel are irrelevant facts, but we feel are relevant facts.

Mr. KILLOUGH. Yes. I think it's a question of where do you put that fact. Is it one, two, three, four, five, six?

And we cannot fit everything into our copy blocks without having one picture and another page with all the copy.

Mr. BROYHILL. Mr. Chairman, I appreciate the witness coming today, and his testimony has been most helpful.

I must respectfully say that I disagree with his conclusions. I feel that we do have examples here where many people who do sell their products by catalog are putting in country of origin, and apparently they have made that business decision, that it is not burdensome and does not harm their sales.

I would like, since we do have a vote on, to ask one legal question.

I'm not a lawyer, but the Direct Marketing Association, which you represent today, sent me a letter recently which challenged H.R. 5638 on constitutional grounds. Specifically, the letter referred to a Supreme Court case which is entitled *Central Hudson Gas* v. *Public Service Commission.*

In that case, the Court held that a Commission regulation that prohibited an electric utility from advertising to promote the use of electricity, was unconstitutional.

Now, you are not a lawyer, and I am not either. But I have asked my legal counsel to comment on this and to do some research.

I would like at this time to read into the record some of the comments of my counsel in direct reply to that letter from your association.

I note that the regulation that was at issue in that case involved the prohibition of speech. Now, H.R. 5638 is talking about the compelling of or disclosure of certain information. It's not talking about prohibiting speech.

Now, it seems to me, even if the *Central Hudson* case did apply, it would appear that H.R. 5638 would meet the test that was put forward by the Court for these three reasons:

One, the United States has a substantial interest in ensuring its citizens know the origin of products they are purchasing.

Second, H.R. 5638 directly advances the Government's interest by requiring this information to be available to consumers at the point of purchase, in this case, mail order catalogues.

And three, H.R. 5638 is fashioned in the least intrusive, only practical way to indicate the product's origin.

Now, I might also add that compelled disclosures of this type have been upheld in other cases. For example, Food and Drug Administration regulations require the presence of certain basic information on labels, such as the net quantity of the contents of a product or the name and place of the business of a manufacturer. These have survived constitutional challenges.

Even in the case of the Federal Trade Commission, an order requiring the inclusion of corrective advertising statements in future advertising of the defendant was upheld as constitutional.

Would you want to comment on these observations of counsel in response to the letter that was sent to me?

Mr. KILLOUGH. Not at this time. I don't feel competent to pass on the legal issue.

Mr. BROYHILL. Thank you.

Mr. FLORIO. We thank you very much for your participation.

We have no further witnesses, so the committee stands adjourned.

[Whereupon, at 12:15 p.m., the hearing was adjourned.]

[The following statement was submitted for the record:]

STATEMENT OF THE NATIONAL RETAIL
MERCHANTS ASSOCIATION ON TITLE II OF H.R. 5929

July 12, 1984

The National Retail Merchants Association ("NRMA") is opposed to Title II of H.R. 5929, which would amend the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939 to require more extensive country of origin labeling than required under current law. NRMA requests that this statement be included in the record of this Committee's hearings on H.R. 5929.

This legislation would increase the regulatory burdens in an already extensively regulated area. In particular, if this legislation is enacted, domestically-manufactured or processed goods would have to be so identified; all required disclosures would have to be made on the outside of packages, as well as on the particular item enclosed therein unless the label on the product were visible; country of origin disclosures would have to be made in mail order advertising materials; and the label disclosing all required information would have to be placed on the collar of the product or in "the most conspicuous place" on the inside of a collarless product, unless it were on the product's exterior.

NRMA is a voluntary, non-profit trade association whose over 3,700 members operate more than 45,000 department, chain and specialty stores throughout the nation. NRMA's members have an aggregate net annual sales volume in excess of $150 billion and employ over 2.5 million workers. Approximately three-fourths of NRMA's members are small businesses, with annual sales of less than one million dollars each. Because NRMA's members sell both domestic and imported textile and wool products, the labeling and advertising of which would be affected by H.R. 5929, NRMA's members are vitally interested in this bill.

NRMA opposes this bill for several basic reasons.

As an initial matter, NRMA sincerely questions whether it is necessary or desirable to require a "made in USA" disclosure on domestic goods. Domestic producers who believe that the public would be motivated by the knowledge that an item is produced in the United States are perfectly free under existing law to add such a notation. Indeed, many do. For this reason, it is unnecessary to mandate such a disclosure.

Further, the requirement that goods "manufactured or processed" in the United States be so identified would upset well-established principles concerning country of origin disclosure developed under Section 5 of the Federal

Trade Commission Act, 15 U.S.C. §45, and Section 4 of the Textile Fiber Products Identification Act, 15 U.S.C. §706.[1] Under the FTC's rulings, the bulk of which consist of advisory opinions, a "Made in USA" disclosure represents that the entire product, including all components, has been manufactured in the United States. See, e.g., 16 CFR §15.37. If a product manufactured in the United States contains imported components, a "Made in USA" statement must be qualified by a clear and conspicuous disclosure concerning the origin of such imported components. See, e.g., 16 CFR §15.20. Further, under the FTC's rules, a "Made in USA" disclosure is inappropriate if a substantial portion of the product's components are imported, even if the product is finished or assembled in the United States. See, e.g., 16 CFR §§15.22, 15.217, 15.235.

A disclosure that a product manufactured or processed in the United States is "Made in USA" would likely be deemed deceptive unless accompanied by appropriate qualifiers for imported components. As a separate disclosure would presumably have to be made with respect to each foreign-manufactured component, a country of origin label might be leng-

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1. As currently enacted, the Wool Products Labeling Act does not specifically address country of origin disclosures. A note to 16 CFR §300.25, a regulation promulgated under that Act, nevertheless states that compliance with the FTC's country of origin disclosure standards is expected.

thy for products manufactured in the United States from components produced in other countries.[2]

NRMA also questions the wisdom of requiring country of origin disclosures in mail order catalogs and other mail order solicitations. Such a requirement would be particularly burdensome for small retailers that do not import directly and may not know that particular goods they may order from domestic manufacturers or distributors are in fact imported. Such retailers may inadvertently transgress the law if they prepare catalogs and advertisements under the assumption that goods ordered from a U.S. company are made in this country. At a minimum, if H.R. 5929 is enacted, domestic manufacturers and distributors should be obligated to inform their retail customers of the country of origin of products subject to the Wool Products Labeling Act and the Textile Fiber Products Identification Act.

Moreover, a retailer may not, as a practical matter, be able to comply with the advertising disclosure requirements. Thus, for instance, retailers often procure a given item from different suppliers, possibly located in different countries. In addition, due to the particular exigen-

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2. A single garment may be composed of many elements. For example, a woman's dress might consist of, besides the fabric, such components as a collar, buttons, cuffs, interlining, trim and thread.

cies of the marketplace, retailers may not know the exact country of origin of a particular item by the time the advertising must be placed.

H.R. 5929 would also require that the label containing all required disclosures be affixed to the collar of the product or, if it lacks a collar, in "the most conspicuous place on the inner side of [the] product," if it is not on the product's outer side. Such a requirement, besides being hopelessly vague as applied to collarless products, would be regulatory overkill. The FTC's current view -- that such disclosures should be "clear and conspicuous" so that they are accessible to consumers before purchase should suffice. See, e.g., 16 CFR §§15.216, 15.221.[3]

In addition, H.R. 5929 would require that all required information be set forth on packages, as well as on tags affixed to the products, unless the package is transparent and the label is clearly legible. Again, this measure reeks of regulatory overkill and would impose burdens far in excess of any commensurate benefit to consumers.

Further, as drafted, H.R. 5929 would become effective ninety days after its enactment. This is simply not

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3. If Congress believes that companies are ignoring the FTC's requirements, the proper action should be a call for enforcement proceedings, not legislation that would subject those who have observed the current law to stricter regulation.

sufficient lead time for the retail industry, which typically places orders and prepares catalogs and mail order advertisements far in advance of the anticipated selling season. Of necessity, a reasonable lead time is required for any changes in laws dealing with labeling and advertising. NRMA suggests that any such changes apply only to the manufacture of new goods and, in addition, not become effective for at least one year after enactment of the amendment.

Finally, H.R. 5929 would add another layer of regulation to an already heavily-regulated area. Retailers, importers and manufacturers already face a maze of disclosure requirements regarding such matters as fiber content, care instructions, fair packaging and labeling, and foreign origin. H.R. 5929 would significantly tighten the regulatory yoke and thus is inconsistent with current efforts to decrease the burdens imposed by federal regulations. In NRMA's view, no sufficient showing has been made to justify these increased regulatory requirements for labeling and advertising, which will only add to production costs and increase the prices consumers pay.

For the above reasons, NRMA has very serious reservations about the desirability of such legislation as H.R. 5929. The changes it contemplates would amount to increased federal regulation, would needlessly add to the cost of goods during a time of fiscal austerity, and would have a very negative effect on the American retail industry without, NRMA submits, benefitting consumers in a significant way.

NRMA appreciates the opportunity to submit to this Committee its views on Title II of H.R. 5929.