

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

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MEMORANDUM

May 11, 2010

To: Members of the Subcommittee on Commerce, Trade, and Consumer Protection

Fr: Subcommittee on Commerce, Trade, and Consumer Protection Staff

Re: Hearing on H.R. 4501, the “Guarantee of a Legitimate Deal Act” and H.R. 2480, the “Truth in Fur Labeling Act”

On May 13, 2010, at 1:00 p.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Commerce, Trade, and Consumer Protection will hold a hearing on H.R. 4501, the “Guarantee of a Legitimate Deal Act” and on H.R. 2480, the “Truth in Fur Labeling Act.”

I. H.R. 4501 – GUARANTEE OF A LEGITIMATE DEAL ACT

The industry for mail-in gold (and other precious metals) is a new and rapidly growing branch of the used jewelry buying industry. Mail-in gold companies offer consumers the ability to sell their jewelry by mail. Ease of transaction is the primary service provided¹ In the transaction, customers mail their jewelry to a mail-in gold company, which appraises the value of the precious metals and makes the customer an offer by sending the customer a check by mail. The customer generally has a limited number of days to reject the offer, and if the customer does not reject the request within that number of days, the company will consider the offer accepted² The company then melts down the jewelry for sale as bullion³

¹ *Gold Rush: People Rush to Sell Gold Instead of Finding It*, ABCNews.com (Mar. 20, 2009) (online at abcnews.go.com/GMA/story?id=7125707&page=1).

² Cash4Gold.com, Terms and Conditions (online at www.cash4gold.com/wp-content/themes/theme_cash4gold_black/terms-conditions.php) (accessed May 9, 2010); GoldKit.com, Terms and Conditions (www.goldkit.com/terms_and_conditions.asp) (accessed May 9, 2010).

³ *Cash4Gold’s Rush*, Florida Trend (May 1, 2009) (online at www.floridatrend.com/article.asp?page=2&aID=51067).

The rapid growth of the mail-in gold industry has been driven in large part by the increasing price of gold. In the past three years, the price of gold has nearly doubled, from just over \$600 per ounce in 2007 to approximately \$1,200 an ounce in 2010.⁴ The industry's growth has been further fed by aggressive advertising, exemplified by the purchase of 30 seconds of Super Bowl air time by mail-in gold industry giant Cash4Gold in 2009.⁵ The company reported that its website traffic increased 10-fold after its Super Bowl advertisement aired⁶

The mail-in gold industry has drawn scrutiny over its business practices after widespread complaints from consumers who claimed that they did not receive a fair payment for their jewelry. *The Consumerist* and *Consumer Reports* conducted a test comparing the offers of three mail-in gold companies for identical pieces of jewelry in 2009. The companies offered between 11 and 29 percent of the jewelry's actual value based on the price of gold.⁷ ABC's *Good Morning America* and CBS's *Inside Edition* each conducted similar tests, receiving offers under 20 percent of the actual value of the jewelry sent to mail-in gold companies⁸

In addition to low payments, delayed checks and lost packages have been the basis of numerous consumer complaints. The Better Business Bureau of Southeast Florida and the Caribbean has reported that of the 324 complaints concerning Cash4Gold over the past 36 months, a pattern of allegations is apparent: valuables shipped to Cash4Gold that the company never reported as arriving, offers that consumers said were lower than what the company's ads had led them to expect, and checks arriving by mail too late to cancel a transaction⁹ The United States Postal Service Office of Inspector General conducted an investigation of over 1,300 loss claims covering 18 months in 2008 and 2009 on mail addressed to Cash4Gold, finding no irregularities in its Postal Services' mail processing¹⁰ Because many consumers have

⁴ GoldPrice.com, Gold Price History (www.goldprice.org/gold-price-history.html) (accessed May 7, 2010).

⁵ *Beneath Cash4Gold's Shiny Veneer, a Dull Reality*, Los Angeles Times Technology Blog (Feb. 5, 2009) (online at <http://latimesblogs.latimes.com/technology/2009/02/beneath-cash4go.html>).

⁶ *Id.*

⁷ *Cashing in Gold? Here's the Catch*, Consumer Reports Magazine (Nov. 2009).

⁸ *Cash4Gold's Super Bowl Ad*, Inside Edition, (Feb 4, 2009) (online at <http://www.insideedition.com/news.aspx?storyID=2588>); *Gold Rush: People Rush to Sell Gold Instead of Finding It*, ABCNews.com (March 20, 2009) (online at abcnews.go.com/GMA/story?id=7125707&page=1).

⁹ *The Article Cash4Gold Doesn't Want You to Read*, The Consumerist (Sep. 2, 2009) (online at consumerist.com/2009/09/the-article-cash4gold-doesnt-want-you-to-read.html); Better Business Bureau, Reliability Report for Cash4Gold (online at www.seflorida.bbb.org/Business-Report/Cash-4-Gold--16000679) (accessed May 10, 2010).

¹⁰ United States Postal Service Office of Director General, Southeast Area Field Office. Case #09IMI1529IM18IM, "Cash4Gold, South Florida P&DC, Pembroke Pines, FL 33028, Mail Theft."

experienced the loss of their jewelry, the mail-in gold companies have been criticized for inadequately insuring the shipping packages provided to consumers. With respect to the delayed checks issue, consumers are advised that they have a certain number of days from issuance of the checks to reject the offer and cancel. Consumers have reported delays in receiving their checks. These delays in the delivery of checks have prevented some consumers from rejecting an offer made by a mail-in gold company before the company melted down their jewelry.

In June 2009, Florida enacted a law aimed specifically at regulating the mail-in gold industry.¹¹ Under the statute, mail-in secondhand precious metals retailers must register with the State's Department of Revenue and follow basic record-keeping procedures¹² A company may lose its registration if it is determined to have made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in making any person or sale, among other actions.¹³

On January 21, 2009, Representative Weiner introduced H.R. 4501, a bill to require certain policies from businesses that purchase precious metals from consumers and solicit such transactions through an Internet website. The bill would require online purchasers of precious metals to wait until receiving an affirmative acceptance of the amount offered before melting down a consumer's jewelry. Online purchasers of precious metals would be required to promptly return jewelry to a consumer if the consumer declines the amount offered. In addition, the bill would set a standard for the amount of insurance provided by online purchasers of precious metals on shipments of jewelry or precious metals.

II. H.R. 2480 – TRUTH IN FUR LABELING ACT

The labeling of fur products is currently regulated by the Fur Products Labeling Act of 1951, which requires that fur manufactured for use as attire have labels, which among other things, indicates the animal name and the country of origin.¹⁴ Apparel with less than \$150 worth of fur is exempted from these requirements. Under this Act, states are not preempted from passing additional or stricter regulations concerning the labeling of fur products.¹⁵

¹¹ § 538.31-538.37 Fla. Stat. (2009).

¹² § 538.32(1), § 539.32(3), Fla. Stat. (2009)

¹³ § 538.32(1), Fla. Stat., by reference to § 539.09(5), Fla. Stat.

¹⁴ 15 U.S.C. §§ 69-69j. The law also requires labeling of the manufacturer name, whether the fur is natural or dyed, and whether the fur is used or damaged.

¹⁵ *Id.* At this point five states – Delaware, Massachusetts, New Jersey, New York, and Wisconsin – have fur labeling laws that require all fur apparel to be labeled. *See* 76 Del. Laws, c. 297, § 1.; M.G.L. 94-277a; P.L.2009, c.156 (C.56:14-1 et seq.); G.B.S. § 399-aaa; Wis. Stats. s.100.35. California currently has legislation pending that would create requirements for fur labeling. California Assembly Member Ted W. Lieu, *Fur Labeling Bill Receives Bipartisan Support on Assembly Floor* (Apr. 5, 2010) (online at democrats.assembly.ca.gov/members/a53/Pressroom/Press/20100405AD53PR01.aspx).

The Federal Trade Commission enforces the Fur Products Labeling Act, and pursuant to this Act, produces the Fur Products Name Guide which defines how fur products may be listed on the label.¹⁶ This guide has been criticized as outdated and inaccurate.¹⁷

In today's manufacturing of fur apparel, roughly 14% of products trimmed with animal fur go unlabeled because they fall below the \$150 threshold set by the current federal law.¹⁸ In addition, an investigation by the Humane Society found real fur that was labeled as faux fur and other furs that were mislabeled.¹⁹

H.R. 2480, the Truth in Fur Labeling Act, introduced by Representatives Moran and Bono Mack on May 19, 2009, would amend the Fur Products Labeling Act to require all fur apparel to have labels, not just those products valued at over \$150. It would also instruct the Federal Trade Commission to update its Fur Products Name Guide. H.R. 2480 is a bipartisan bill and currently has 165 cosponsors. A companion bill, S. 1076, has been introduced in the Senate.

III. WITNESSES

Panel I:

James A. Kohm

Associate Director
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission

Charles Bell

Programs Director
Consumers Union

Cecilia L. Gardner, Esq.

President & CEO
Jewelers Vigilance Committee

An affected consumer witness may be added

¹⁶ 16 C.F.R. 301.

¹⁷ Humane Society Legislative Fund, *Fact Sheet: Support the Truth in Fur Labeling Act S.1076 / H.R. 2480*, (online at www.hslf.org/pdfs/fur-labeling-fact-sheet-tafa.pdf) (accessed May 10, 2010).

¹⁸ The Humane Society of the United States, *Congress Calls for Truth in Fur Labeling In Response to Ongoing Misrepresentation* (May 20, 2009) (online at www.hsus.org/press_and_publications/press_releases/congress_calls_for_truth_in_fur_labeling_052009.html).

¹⁹ *Id.*

Panel II:

James A. Kohm

Associate Director, Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission

Michael Markarian

Chief Operating Officer
The Humane Society of the United States

Keith Kaplan

Executive Director
Fur Information Council of America