

PREPARED STATEMENT OF  
THE FEDERAL TRADE COMMISSION

on

Legislative Hearing on H.R. 2480 and H.R. 4501

Before the

COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION  
UNITED STATES HOUSE OF REPRESENTATIVES

Washington, D.C.  
May 13, 2010

## **I. Introduction**

Chairman Rush, Ranking Member Whitfield, and Members of the Committee, I am James A. Kohm, the Associate Director of the Enforcement Division in the Bureau of Consumer Protection at the Federal Trade Commission (“FTC” or “Commission”).<sup>1</sup> I appreciate the opportunity to appear before you today. The work of the FTC is critical to protecting consumers and preserving competitive markets. As the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy, the FTC’s work touches the economic life of every American. The FTC performs its unique mission through the use of a variety of tools, including law enforcement, rulemaking, research, studies of marketplace trends and legal developments, as well as consumer and business education. The FTC is also able, from time to time, to share the information it has gained through these tools by testifying before Congress regarding proposed legislation, including the two bills the Committee is considering today: the Truth in Fur Labeling Act (H.R. 2480) and the Guarantee of a Legitimate Deal Act (H.R. 4501). The Commission supports both of these bills, and has some minor technical suggestions regarding the latter. This testimony will address these proposals, briefly describing the issue that each bill seeks to address, summarizing the legislation, and commenting on the potential benefits of each bill.

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<sup>1</sup> This written statement represents the views of the Commission. My oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

## II. The Truth in Fur Labeling Act

The FTC promulgates and enforces regulations pursuant to the Fur Products Labeling Act.<sup>2</sup> The FTC's Rules and Regulations under the Fur Products Labeling Act ("Fur Rules")<sup>3</sup> require manufacturers, importers, and sellers of fur garments to attach accurate labels to their products. These labels must disclose the animal name,<sup>4</sup> the country of origin, information about the treatment of the fur (*e.g.*, bleached or colored), a Registered Identification Number, and other information that is material to purchasing decisions.<sup>5</sup> The Fur Rules also set standards for the size and durability of the labels, the lettering to be used, and the order in which information is presented.<sup>6</sup>

When the FTC first promulgated the Fur Rules in 1952, it exercised its discretion under the Fur Products Labeling Act to exempt garments that contain a relatively small quantity or value of fur.<sup>7</sup> Specifically, the Commission exempted many garments that contained fur with a value of less than five dollars (the "*de minimis* exemption").<sup>8</sup> The Commission subsequently

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<sup>2</sup> 15 U.S.C. §§ 69 *et seq.* (1951).

<sup>3</sup> 16 C.F.R. Part 301, Rules and Regulations under the Fur Products Labeling Act.

<sup>4</sup> Some animal fur is illegal to sell because the animal is on the endangered species list. 16 U.S.C. § 1538. In addition, the Dog and Cat Protection Act of 2000 prohibits importing, exporting, selling, trading, advertising, transporting, or distributing any products made with dog or cat fur. 19 U.S.C. § 1308.

<sup>5</sup> 16 C.F.R. §§ 301.2, 301.5-6, 301.12, and 301.26.

<sup>6</sup> 16 C.F.R. §§ 301.27-30.

<sup>7</sup> 15 U.S.C. § 69(d).

<sup>8</sup> The Commission did not exempt the following garments, even if the value of the fur was less than five dollars: any garment that contained used fur; any garment that was, or purported to be, the whole skin of an animal with the head, ears, paws and tail; and any garment that had marketing or labeling that contained any false, deceptive, or misleading statements about the fur.

increased the amount of the exemption to account for inflation, most recently to \$150 in 1998.<sup>9</sup> The Commission determined this increase “would ensure that only items substantially made of fur would be subject to the Fur Rules.”<sup>10</sup> No comment opposed the exemption.

Historically, the Fur Rules served to provide valuable information to help consumers compare fur garments. The purchase of a fur garment can require a substantial investment, and the fur of some animals is more valuable than others. However, most consumers lack the expertise to independently assess the relative value of fur garments. Therefore, accurate labeling is needed to help consumers make informed purchasing decisions. To the extent that the value of fur contained in garments is relatively low, consumers do not have the same need to compare these attributes, and the Commission has chosen not to impose fur labeling requirements on such garments through its rulemaking.

In today’s market, however, the accurate labeling of fur garments may serve another important purpose. There appear to be an increasing number of consumers who, for a variety of reasons, would prefer not to purchase real fur, or who might object to certain types of fur, even in small amounts. Accurate labeling of all garments containing fur, regardless of the value of the fur component of the garment, would help these consumers distinguish between real and synthetic fur.

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16 C.F.R. § 301.39; 17 Fed. Reg. 6075 (July 8, 1952).

<sup>9</sup> During the FTC’s 1998 review of the Fur Rules, the Fur Information Council of America submitted the only comment regarding the exemption, and proposed an increase from \$20 to \$145 to account for inflation.

<sup>10</sup> 63 Fed. Reg. 7508, 7514 (Feb. 13, 1998). In 2000, the Fur Rules were further amended pursuant to the Dog and Cat Protection Act of 2000, 19 U.S.C. § 1308, to clarify that the exemption does not apply if the garment contains dog or cat fur. 65 Fed.Reg. 82269 (Dec. 28, 2000).

Given these apparent changes in the marketplace, and their impact upon consumers, the Commission plans to explore eliminating the *de minimis* exemption during its currently scheduled 2011 review of the Fur Rules. Of course, the Commission would eliminate the exemption through a rulemaking proceeding only if the record establishes that currently exempted information is material to consumers, and after weighing the benefits of extending the Fur Rules to cover currently exempted garments against any corresponding burden on industry.

The proposed Truth in Fur Labeling Act would revise the statutory definition of “fur product” in the Fur Products Labeling Act by removing the Commission’s discretion to exempt garments with a “relatively small quantity of the fur or used fur contained therein.”<sup>11</sup> As discussed above, such a provision appears to benefit those consumers who wish to avoid fur products, or certain types of fur products, but currently have no means to distinguish between low-cost fur and synthetics, or between types of fur trim. However, a new labeling requirement might also impose additional burdens on industry. If Congress decides that the benefits outweigh the costs, legislation would be the most efficient and expeditious means to eliminate the exemption. If this legislation is enacted, the Commission would move quickly to revise the Fur Rules to reflect the new law.

### **III. Guarantee of a Legitimate Deal Act**

Recently, an increasing number of fraudulent operators have sought to take advantage of the economic downturn by preying on consumers in economic distress. The Commission is meeting this challenge by spearheading multiple law enforcement sweeps against operations that

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<sup>11</sup> H.R. 2480 § 2(a) (which would amend 15 U.S.C. § 69(d)).

target financially-strapped consumers.<sup>12</sup> Most recently, the FTC announced “Operation Bottom Dollar,” a multi-agency crackdown on organizations that fleeced unemployed consumers by taking their money in exchange for jobs, or job placement opportunities, that simply did not exist.<sup>13</sup> As part of this multi-agency law enforcement sweep, the FTC filed seven cases against the owners and operators of allegedly deceptive job and money-making scams; the Department of Justice initiated 43 criminal actions; the United States Postal Inspection Service commenced one civil action; and state attorneys general offices filed 18 actions. In each of its cases, the FTC obtained court orders barring the defendants from continuing their deceptive business practices and freezing their assets while the litigation proceeds.<sup>14</sup>

Although the FTC has not yet brought any cases involving the purchase of precious metals from consumers, we have begun to see complaints by consumers who are seeking to make ends meet by selling gold jewelry, watches, and other family heirlooms containing precious metals. The use of the Internet, or other mass-marketing advertising, to induce

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<sup>12</sup> In addition to aggressive law enforcement actions, the Commission also has launched consumer educational campaigns and created new consumer educational materials to provide consumers with the resources necessary to detect and avoid financial scams and other schemes driven by the difficult economic times. *See, e.g.*, FTC Money Matters microsite, available at <http://www.ftc.gov/bcp/edu/microsites/moneymatters/>.

<sup>13</sup> FTC press release, FTC Cracks Down on Con Artists Who Target Jobless Americans (Feb. 17, 2010), available at <http://www.ftc.gov/opa/2010/02/bottomdollar.shtm>.

<sup>14</sup> Since October 2008, the Commission led four other law enforcement sweeps focused on protecting consumers affected by the economic downturn: “Operation Stolen Hope” and “Operation Loan Lies,” which targeted alleged foreclosure rescue scams; “Operation Short Change,” which targeted alleged job opportunity scams, deceptive get-rich-quick schemes, bogus government grants, and phony debt-reduction services; and “Operation Clean Sweep,” a multi-agency crackdown on alleged credit repair scams. The FTC’s press releases are available at: <http://www.ftc.gov/opa/2009/04/hud.shtm>, <http://www.ftc.gov/opa/2009/07/loanlies.shtm>, <http://www.ftc.gov/opa/2009/07/shortchange.shtm>, and <http://www.ftc.gov/opa/2008/10/opcleansweep.shtm>.

consumers to ship jewelry and other items to be melted and sold for its precious metal content is not inherently deceptive or unfair. However, it can be exploited by unscrupulous marketers. In fact, a growing number of consumers have complained about companies that offer these services. The majority of these complaints concern telephone calls to consumers who are on the National Do Not Call Registry, but the FTC also is receiving complaints about problems with shipping and about the amount of money consumers have received in exchange for their jewelry and other items. As a general matter, absent deception, the Commission does not intervene in disputes about price, but the manner in which these sales are conducted raises significant consumer protection concerns.

According to consumer complaints, some online purchasers of precious metals only provide a quote or other indication of the amount that they are willing to pay for consumers' precious metal items if specifically requested to do so by the consumer. In many instances, consumers submit their items and receive payment after the purchasing company has already melted their items into their raw form.<sup>15</sup> In such instances, where the item no longer exists, consumers who are not satisfied with the sales price paid by the online purchasers of their precious metals have limited recourse. Similarly, because it would be difficult for the Commission to determine the actual value of a submitted precious metal item after it has been melted, the Commission might have difficulty proving consumer injury in an enforcement action.

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<sup>15</sup> To the extent that online merchants do not adequately disclose this policy, or misrepresent the price that they will pay consumers, such practices are deceptive and violate Section 5(a) of FTC Act, 15 U.S.C. § 45(a).

The proposed Guarantee of a Fair Deal Act would address these concerns by affording consumers a right to consider and reject a specific monetary offer for their precious metals before the merchant melts or otherwise liquidates the submitted items. The proposed legislation would also require online purchasers to insure adequately items they ship to consumers who decline their offers.<sup>16</sup> This proposal addresses the potential abuses, consumer confusion, and possible deception discussed above without imposing price controls or other burdensome, and possibly counter-productive, regulation. In addition, the legislation would give the FTC authority to seek civil penalties, which is a powerful deterrent, and would also resolve any difficulties the FTC might have proving the amount of consumer injury.

For these reasons, the Commission supports the goals of this bill, but has two suggestions to improve the legislation. First, the bill's definition of "online purchaser of precious metals" limits the applicability of H.R. 4501 to persons who are in the business of purchasing jewelry or other precious metals directly from consumers and who maintain an Internet website to solicit such transactions. The Commission is concerned that this definition might inadvertently curtail the consumer protections the bill is designed to provide. More specifically, by not covering purchasers of jewelry or other precious metals unless they maintain an Internet presence for purposes of soliciting such goods, this exclusion could provide an incentive for some marketers to avoid the law by marketing solely through alternate means such as telemarketing, direct mail, or radio and television advertisements. The Committee can cover non-Internet purchasers of

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<sup>16</sup> Some consumers have complained that items shipped to online purchasers of precious metals have been lost in shipment, and that the insurance routinely provided for such shipments is inadequate to compensate for the loss.

precious metals by eliminating the word “online” where it currently appears in the bill, and by eliminating Section 2(b)(1)(B) from the definition of the term “purchaser of precious metals.”<sup>17</sup>

Second, the Commission recommends that the Committee modify Section 2(a)(1) to clarify that purchasers of precious metals must make a firm offer to purchase the items for a specific price. Otherwise, the Commission is concerned that an unscrupulous marketer could claim that its vague offer to pay a good price is accepted when consumers ship their items. The Committee can clarify the legislation by modifying Section 2(a)(1) to provide that it is unlawful for purchasers of precious metals to:

refine through melting or otherwise permanently destroy an item of jewelry or precious metal before the purchaser of precious metals has received an affirmative acceptance of an offer to purchase the item for a specific price from the consumer to whom such an offer was made.

#### **IV. Conclusion**

Thank you for providing the Commission an opportunity to appear before the Committee to present its views on this proposed legislation.

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<sup>17</sup> Should the Committee limit the scope of the legislation to online purchasers, the Commission recommends clarifying the definition of “online purchaser of precious metals.” Section 2(b)(1)(B) defines such a purchaser, in part, as one “who maintains an Internet website through which such person transacts such transactions.” An unscrupulous marketer may argue that it is not covered because a third party web-hosting company “maintains” the website, or because it uses affiliate marketing and does not directly maintain the websites that promote its services. The Committee can resolve this issue by changing § 2(b)(1)(B) to read: “whose services are advertised, marketed, or otherwise solicited, in whole or in part, through one or more Internet websites.”