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**Written Testimony of
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Before the

House Energy & Commerce Subcommittee on Consumer Protection and Commerce

Hearing on Buyer Beware: Fake and Unsafe Products on Online Marketplaces

Wednesday, March 4, 2020

Chairwoman Schakowsky and Members of the Subcommittee,

My name is Larry Drummond and I serve as Executive Director of the International Precious Metals Institute (IPMI) and am submitting this written testimony on behalf of our members. The IPMI represents the interests of companies that refine, recycle, manufacture, trade, and deal in precious metals including gold, silver, platinum, and palladium. It is our traders, dealers, and authorized purchasers of United States Mint coins that are particularly concerned with counterfeit bullion that is sold on e-commerce platforms and imported into the United States.

Background

According to the Organization for Economic Cooperation and Development (OECD), the trade of fake goods represents 3.3 percent of global trade, or \$509 billion every year.¹ Among the many counterfeits traded globally each year are fake U.S. Mint bullion coins – most of which are produced in China, sold through online third-party marketplaces, and imported into the United States. Additionally, estimates from the U.S. Chamber of Commerce show over 85 percent of U.S. counterfeit goods originate in China and Hong Kong.²

The U.S. began production of its own bullion coins in 1986 with the introduction of the American Eagle Gold coin. Since then, the American Eagle family has since expanded to include silver, platinum, and palladium bullion coins. These coins are not sold directly to the public. Instead, authorized purchasers that satisfy stringent financial and professional criteria buy bullion

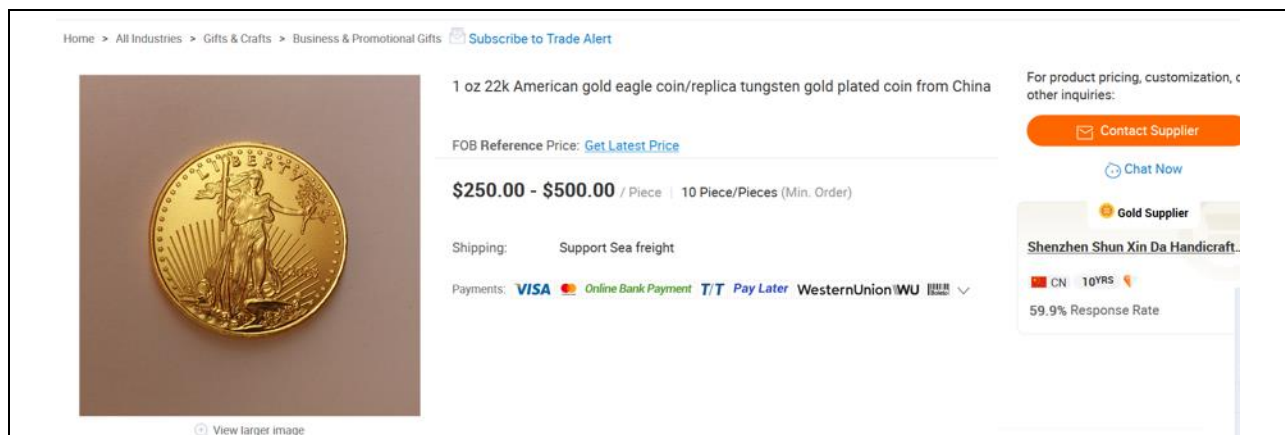
¹ "Trade in fake goods is now 3.3% of world trade and rising" <https://www.oecd.org/newsroom/trade-in-fake-goods-is-now-33-of-world-trade-and-rising.htm>

² "Measuring the Magnitude of Global Counterfeiting" <https://www.uschamber.com/sites/default/files/documents/files/measuringthemagnitudeofglobalcounterfeiting.pdf>

coins and sell them at a premium. The network of authorized purchasers, some of which are IPMI members, includes some of the most trusted names in the precious metals industry. It should also be noted that the American Eagle family of bullion coins is considered part of the public domain, and as such, is not registered with the United States Patent and Trademark Office (USPTO). Without registration with USPTO, there is very little Customs and Border Protection (CBP) officers can do to identify and intercept counterfeits at ports of entry.

The problem has grown in recent years with the explosion of online third-party marketplaces and the enhanced ability to connect consumers to the worldwide market. This situation has given Chinese manufacturers, with the backing of their government, the ability to reach a wider consumer base for selling fake coins, and further introducing them into U.S. commerce.

It is relatively easy to find fake U.S. Mint bullion coins on marketplaces, but Alibaba appears to be the preferred marketplace for vendors. Whether it is a result of loose consumer protection laws or a lack of enforcement, it is obvious that China's concept of truth in advertising only extends as far as the marketing of the product rather than the validity of the product itself. This is significantly different from U.S. law – mainly The Hobby Protection Act (15 U.S. Code § 2101) – which forbids the manufacture, importation, or sale of any imitation coin or numismatic item unless the item is permanently marked “COPY”.³ With this legal shortcoming, online third-party marketplaces are flooded with posts that advertise counterfeit coins as “replica”, “copy”, or “fake”, but the coins are not physically marked accordingly.

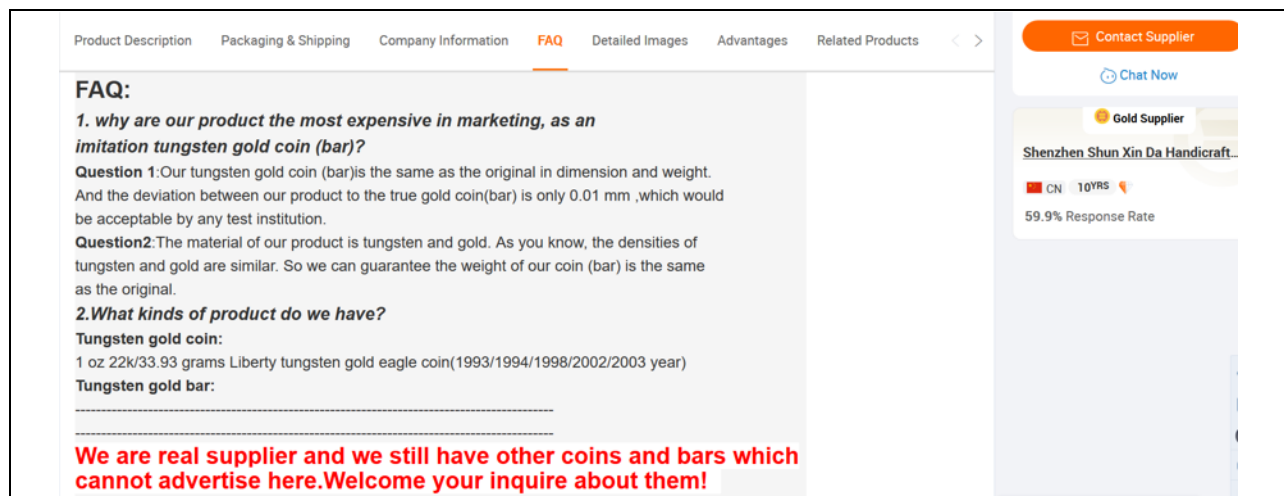


As you can see in the picture above (taken at the time this testimony was written), the supplier is advertising a fake American Eagle gold bullion coin. This particular coin is tungsten plated in a thin layer of gold. This is a popular technique because tungsten has similar characteristics as gold which makes it easy to pass off as authentic to the average consumer. This particular fake may cost upwards of \$500, but with the current price of gold at over \$1,550 per ounce, it provides a substantial return on investment for domestic criminals seeking to deceive consumers within our borders.

Additionally, many suppliers brag about the ability of their counterfeit bullion to pass as the real thing. In this example from a “frequently asked questions” section on Alibaba, potential buyers

³ 15 U.S. Code § 2101. Marking requirements

are made aware that the fake coins are nearly identical to their legitimate counterparts and can pass authentication tests. Clearly, the supplier's intent is to deceive consumers in one way or another. While the supplier may not be deceiving U.S. consumers directly, their goal is to target people who intend on passing the coins off as authentic within the U.S.



The screenshot shows a website's FAQ section for a supplier. The navigation bar includes links for Product Description, Packaging & Shipping, Company Information, FAQ (highlighted), Detailed Images, Advantages, and Related Products. On the right, there are buttons for 'Contact Supplier' and 'Chat Now', and a profile for 'Gold Supplier' from 'Shenzhen Shun Xin Da Handicraft...' with a '59.9% Response Rate'. The FAQ content includes:

FAQ:

1. why are our product the most expensive in marketing, as an imitation tungsten gold coin (bar)?

Question 1: Our tungsten gold coin (bar) is the same as the original in dimension and weight. And the deviation between our product to the true gold coin (bar) is only 0.01 mm, which would be acceptable by any test institution.

Question 2: The material of our product is tungsten and gold. As you know, the densities of tungsten and gold are similar. So we can guarantee the weight of our coin (bar) is the same as the original.

2. What kinds of product do we have?

Tungsten gold coin:
1 oz 22k/33.93 grams Liberty tungsten gold eagle coin (1993/1994/1998/2002/2003 year)

Tungsten gold bar:

We are real supplier and we still have other coins and bars which cannot advertise here. Welcome your inquire about them!

Once criminals have successfully imported fake coins, it does not take long to generate a profit. Often, they will target unsuspecting consumers, at flea markets or online, who do not have access to expensive anti-counterfeiting technology. Many victims will not realize they have been duped until years later when they try selling to an experienced coin dealer. According to a recent survey of U.S. coin dealers by the Industry Council for Tangible Assets (ICTA), attempted sales of counterfeit American Eagle silver and gold coins were reported by 43 percent and 41 percent of dealers, respectively.⁴ Furthermore, over 80 percent of dealers reported a spike of counterfeit coins and bars flooding the market within the past five years.⁵

To counter this recent influx of exceptional counterfeits, coin dealers have been forced to make substantial investments, as high as \$100,000, in anti-counterfeiting technology. As our dealers invest more in preventative technologies, their brands suffer and criminals continue to profit.

Policy Proposals

There is no one size fits all solution to this problem, but we believe that implementing three specific policies would usher in a new era for protecting consumers and businesses from counterfeit bullion coins. Therefore, the IPMI recommends the following:

1. Passage of legislation similar to H.R. 1999 “Fair Licensing Access for Governments Act of 2019” that would allow for the registration of U.S. Mint American Eagle bullion coins with USPTO. Such a law would provide an additional line of defense for preventing counterfeit bullion coins from entering our borders.

⁴ “Silver, Gold American Eagles Most Counterfeited Bullion Coins”
https://www.ictaonline.org/index.php?option=com_content&view=article&id=228:silver--gold-american-eagles-most-counterfeited-bullion-coins&catid=26:news&Itemid=128

⁵ Ibid.

2. The inclusion of language in future trade agreements, negotiated by the USTR, that holds all parties to the same marking requirements as U.S. citizens under The Hobby Protection Act (15 U.S. Code § 2101). This provision would protect consumers, our dealers' brands, and jobs along the precious metals supply chain.

3. Modernizing the Digital Millennium Copyright Act (DMCA) to hold online third-party marketplaces more accountable for the products posted and sold through their sites. Currently, Section 512 of the DMCA provides safe harbors for online marketplaces which make consumers increasingly vulnerable to harmful counterfeits. Passed in 1998, this outdated provision also places a significant burden on coin dealers to police the market – that is, if they can afford the necessary investments in anti-counterfeiting technology.

Thank you for giving the IPMI the opportunity to submit comments for the record. If you or your staff have any questions, please do not hesitate to reach out to us. We look forward to working together with you to keep both consumers and our members' businesses safe from harmful counterfeits.

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