in

MEMORANDUM TO THE FILE

th Jacqueline Hunter, Vice President of Wentworth
ng the request for advice submitted by Mary Otto in
1974. I had called the company to clarify terms used
dvice.
ormed me that a continuity book series is a set of
sent in periodic mailings to customers that are
s to subject matter.
ion posed by Wentworth Press is: Can a marketer
e., brochure) nationally concerning a continuity book
books having been published? In "dry-testing" a
eter enters into a conditional contract with the
tract to publish is conditioned upon the response to
sale s solicitation, therefore, is made before the books
ve been published or are subject to an unconditional
n.
a practice which was apparently very common in the
eries mail order business at one time, but has recently
or because of widespread confusion over its legality.
med me there are no clear rules to provide guidance to
s matter. Marketers are in need of clarification from
because of the great confusion in the industry. At the
nail order business is on the rise, which compounds
s.
of this conversation, I believe that the Commission
rmal advisory opinion to Wentworth Press in regard to
ry-testing.
second question involved "load ups" through the mail.
ation, a customer might have ordered the first volume
book series one month, the second volume the next
third volume the next month. Then the marketer
son that the remaining twelve volumes of the series are
at if the custom desires, these volumes will be sent at
ustomer billed for one volume each month. A load up.
remainder of the set which is sent to the customer at
d for per the original billing agreement.

elstein

Letter of Request

May 6, 1974

Dear Sir or Madam:

I am writing to you at the suggestion of David Paul in your New York office. We are a book packaging house and are about to embark on a continuity book series. We have conflicting sources of information about dry testing our series and would like to clarify the legality of dry testing a product through the mail. One source of information informed us that there is nothing illegal about this, however another advised us against doing so in accordance with your regulations. Mr. Paul said he knew of no such stipulation but that it should be verified with your office.

Could you also advise us on the legitimacy of "load ups" through the mail. If you have a pamphlet or brochure governing your regulations we would very much appreciate receiving one as soon as possible.

I look forward to your prompt response.

Sincerely,

/s/ Mary Otto

Marking of articles of jewelry made from alloy comprised of one-half gold of 14 karat fineness and one-half silver of at least 925/1000 fineness. (File No. 723 7007)

Opinion Letter

May 6, 1975

Dear Mr. Windman:

This is in response to your request for an advisory opinion regarding the marking of articles of jewelry made from an alloy comprised of one-half gold of 14 karat fineness and one-half silver of at least 925/1000 fineness. You question the correctness of a recent staff opinion concerning the marking of articles of jewelry made of such an alloy. We note at the outset that this staff opinion has been rescinded.

Although an advisory opinion might technically appear inappropriate pursuant to § 1.1 of the Commission's Rules of Practice, 16 C.F.R. § 1.1, the Commission has determined that a resolution of this issue by the Commission at this stage is desirable and accordingly has issued this opinion.

It is the Commission's understanding, on the basis of the representa

tions made, that the alloy as described above is a combination of silver and gold in precise proportions for which a patent is being sought. The resulting alloy may have the general appearance of gold. The question is whether it may properly be identified by a marking "1/2 14K + 1/2 Ster."

The Commission is of the opinion that such a marking would violate the Guide for the Jewelry Industry, 16 C.F.R. § 23.22(c)(1) and 23.23(b). Under section 22(c)(1), only an article of jewelry composed throughout of not less than 10 karat fineness may be described as "gold." Under section 23(b) an article may not be described as "sterling" unless it is at least 925/1000ths pure silver. The marking "1/2 14K + 1/2 Ster.," accordingly, would be in violation of both of those sections of the Guide.

The Commission is of the view, however, that a nondeceptive and commercially acceptable designation and marking of this or other alloys of precious metals might be warranted in the public interest. To that end it has directed that the Bureau of Consumer Protection promptly study this question with a view toward possible amendment of the Guide, if appropriate.

By direction of the Commission.

cc: John J. Ghingher, III, Esquire
Weinberg and Green
Nineteenth Floor
10 Light Street
Baltimore, Maryland 21202

Letter from Office of General Counsel Rescinding Informal Staff Opinion

Mar. 24, 1975

Gentlemen:

This Office has determined, after further study of this matter, to rescind the informal staff opinion rendered to you and Mr. Robert Newman of B. F. Hirsch, Inc., by letters dated Sept. 9, 1974, and Oct. 11, 1974, which approved the marking "1/2 14K + 1/2 Ster.," for articles of jewelry composed of an alloy of one-half 14 karat gold and one-half sterling silver. It is now the view of this Office that the marking in question would violate the Guide for the Jewelry Industry, 16 C.F.R. Part 23. The marking in question would permit the use of the word gold to describe a product composed throughout of an alloy of gold less than 10 karat fineness. *See* 16 C.F.R. §§23.22(b)(2), (a)(1). In addition, it would permit the use of the word sterling to describe an alloy that is not 925/1000ths pure silver. *See* 16 C.F.R. § 23.23(b).

Rescission of the subject staff opinion by this Office is inc
of any Commission action on the matter. However, in an
obtain formal resolution of the issues raised, including your pe
an amendment to the Guide for the Jewelry Industry, the m
be presented to the Commission as expeditiously as possible.
be promptly notified as to the Commission's determination.

Very truly yours,

/s/ Thomas H. Tucker
Assistant General Counsel

Third Supplemental Letter of Request

Feb. 12, 1975

Dear Mr. Tucker:

Thank you for your letter of Feb. 7, 1975, advising of the for
determination of the Commission with respect to the staff
referred to above, which have been questioned by the
Vigilance Committee, Inc. On behalf of our client, Metals an
we hereby submit to the Commission the following materia
consideration in determining whether the staff opinions in
were improper.

As a preliminary matter, we would like to address the s
contained in your letter of Feb. 7 to the effect that the us
quality mark for which FTC staff approval was reques
previously been disapproved by the Jewelers' Vigilance Co
One of the original inventors of the alloy, Seymour Globus,
principal in Metals and Jewels, did submit a sample of the allo
A. Windman, General Counsel of the Jewelers' Vigilance Comm
July 18, 1974. Mr. Windman responded, on July 25, 1974, tha
forwarded the sample for assay and that compliance with Co
Standard CS51-35 would be required if the desired mark w
employed. On Aug. 8, 1974, Mr. Windman reported to Mr. Gl
results of the assay, along with his analysis thereof, and conclu
the assay did not "definitively state that the product was no
originally made from 14K and sterling silver." Clearly, this co
does not amount to a "disapproval" by the Jewelers' V
Committee. Copies of Mr. Windman's letters of July 25 and A
are attached hereto as exhibits. No further correspondei
received by our client from Mr. Windman and our client was n
not aware of any formal action by the Committee appro
disapproving the use of the desired mark. Subsequent
Windman's correspondence as described above, he recommend

at our client seek an opinion from the Federal Trade Commission
ncerning the use of the mark and expressed his willingness to abide
whatever decision was reached by the Commission. Partly as a
sult of this recommendation, the client has instructed our firm to
bmit a request to the Commission for an advisory opinion.

As you are aware, our initial request was submitted on Aug. 30, 1974,
d in that request, a copy of which is attached as an exhibit hereto, the
ckground of the matter is set forth, along with a brief discussion of
e relevant Commission industry rules. Pursuant to our initial request,
rry R. Rubin, Esq., of the Office of General Counsel, issued an
formal staff opinion, dated Sept. 9, 1974, approving the use of the
ality mark "Alloy 1/2 14K + 1/2 Ster." in connection with the alloy.
ortly thereafter, our client granted to B. F. Hirsch, Inc. the right to
oduce the alloy for sale to jewelry manufacturers. At the request of
F. Hirsch, Inc., on Sept. 18, 1974, we asked for a second opinion from
r. Rubin approving the use of the quality mark "1/2 14K + 1/2 Ster."
ecause the quality mark originally approved by Mr. Rubin had proved
o lengthy for use by jewelry manufacturers. A copy of our second
quest is also attached as an exhibit hereto. On Oct. 11, 1974, Mr.
obin issued an opinion approving the use of this second mark. Since
he second request, the original applicant, Metals and Jewels, Inc., has
een liquidated, and its assets, including all rights to the alloy and the
ending U.S. Patent applications covering the alloy are now held
dividually by Edward Kohrn, Seymour Globus and C. D. Kaufmann,
rading as Metals and Jewels.

In reliance on the informal staff opinions, very substantial amounts
f money have been invested in testing of the alloy for production, the
anufacturing of sample jewelry lines using the alloy and the
dvertising and promotion of the sale of articles of jewelry manufac
ured from the alloy. Wholesale sales of articles made of the alloy have
xceeded $2,500,000 to date. There is every indication that the alloy will
e a tremendous success in providing a high quality, low cost substitute
or the currently employed gold alloys from 10 to 14 karats. Obviously,
his success would be a tremendous boon to the jewelry industry, which
as been seeking such a high quality, low cost alternative ever since the
rice of gold began its sharp climb. However, the value of the alloy as a
iable alternative to existing low karat gold alloys depends to a very
arge measure on the ability of jewelry manufacturers to employ a
uality mark denoting that the alloy is a combination of precious
metals. Accordingly, a decision by the Commission to withdraw the
previously issued informal staff opinions would have serious adverse
effects not only upon our client and the jewelry manufacturers and

distributors who have invested heavily in the future of the alloy, but also upon the jewelry industry as a whole.

The legal question before the Commission is substantially identical to that posed in our initial request, that is, whether the use of the quality mark "1/2 14 K - 1/2 Ster." in connection with the alloy violates Sections 23.22, 23.23 or 23.25 of the rules adopted by the Commission as industry guides for the jewelry industry. 16 CFR §§ 23.22, 23.23, 23.25. These rules were initially adopted in 1957 to insure "the elimination and prevention of unfair trade practices to the end that the industry, the trade and the public may be protected from the harmful effects of unfair methods of competition, unfair or deceptive arts or practices, and other trade abuses." 22 F.R. 4567 (June 28, 1957). These rules, with a minor amendment in 1969, 24 F.R. 9581 (Dec. 1, 1959), have endured without substantial change since that time.

The first two rules, Sections 23.22 and 23.23, entitled "Misrepresentations as to gold content" and "Misrepresentations as to silver content," respectively, deal basically with markings or labels which may deceive the public as to the true character of articles made of gold and silver. The pertinent provisions of these rules attempt to deal with deception of two basic types. The first type of deception covered by these provisions is that caused by markings which misrepresent the extent of the presence of either gold or silver in the marked article. The applicable provisions addressing this first type of deception are as follows:

1. Section 23.22(a), which states the general rule that:

(a) It is an unfair trade practice to sell or offer for sale any industry product under any trade or product name or designation or other representation having the capacity and tendency or effect of deceiving purchasers or prospective purchasers thereof as to the presence of gold or gold alloy in the product, or as to the quantity or fineness of gold alloy contained in the product, or as to the fineness, thickness, weight, ratio, or manner of application of any gold or gold alloy plating, covering, or coating on any industry product or part thereof.

2. Section 23.22(b)(2), which provides that one of the practices inhibited by the general declaration in 23.22(a) is:

(2) Use of the word "Gold," or any abbreviation thereof, as descriptive of any industry product, or part thereof, which is composed throughout of an alloy of gold, unless a correct designation of the karat fineness of the alloy immediately precedes the word "Gold," or abbreviation thereof, and such fineness designation is of at least equal conspicuousness therewith.

3. Section 23.23(a), which parallels Section 23.22(a), with respect to misrepresentations as to silver content:

(a) It is an unfair trade practice to misrepresent in any way the silver content or fineness of silver content of any industry product * * *.

Because the marking proposed with respect to our client's alloy accurately states the presence, content and fineness of both the gold

of silver contained in the alloy, there can be little argument that the provisions of Sections 23.22 and 23.23 dealing with this first type of deception have been violated. It is undeniable that the proposed quality mark is not deceptive as to the primary metallic components of the alloy because the alloy is in fact composed of equal parts by weight of 14 karat gold and sterling silver.

The second type of deception at which Sections 23.22 and 23.23 are directed is not caused by inaccuracies or misrepresentations as to the degree of the presence of gold or silver in the article, but results from the possibility that the article marked "Gold" or "Sterling" may in fact be composed of a gold or silver alloy which, because of the excessive presence of base metals, does not possess the valuable properties associated in the public eye with the precious metal known as gold or sterling silver. The pertinent provisions of Sections 23.22 and 23.23 which address this second form of deception are:

1. Section 23.22(c) which provides that certain markings of products or parts of products will meet the applicable requirements. The pertinent marking is described in subsection (1):

(1) An industry product or part thereof composed throughout of an alloy of gold *of not less than 10 karat fineness* may be marked and described as "Gold" when such word "Gold," wherever appearing, is immediately preceded by a correct designation of the karat fineness of the alloy and such karat designation is of equal conspicuousness as the word "Gold" * * *. (Emphasis added)

2. Section 23.23(b), provides a similar standard with respect to silver:

(b) It is an unfair trade practice to mark, describe or otherwise represent any industry product, or part thereof, as "silver," "solid silver," "sterling," or "Sterling Silver," unless it is at least 925/1,000ths pure silver.

These provisions reflect the judgment of the Commission and, presumably, the jewelry industry as a whole, as to the maximum proportion of base metals which can be alloyed with pure gold or pure silver without eroding the valuable properties of these precious metals. Their apparent objective is to prevent manufacturers of jewelry from marking as gold or silver an article composed of an alloy of one of those precious metals which, because of excessive dilution by base metals, does not possess the attributes publicly associated with the original precious metal.

It is significant that neither of the provisions addressing this second form of deception contemplates a situation such as the one at hand where two alloys, one clearly entitled under Section 23.22(c)(1) to the designation "Gold" and another properly the subject of the appellation "Sterling" under the standard of Section 23.23(b), are combined into a single alloy *which retains all of the valuable properties of a precious metal* and which, when properly labeled to accurately describe its

metallic content in conformity with the provisions dealing with misrepresentations of fineness, etc., can work no such deception on the public. In spite of the absence of the second form of deception in the proposed marking of our client's alloy, if the language of either Section 23.22(c)(1) or Section 23.23(b) is independently and literally applied to the alloy resulting from this combination of precious metals, it can be concluded that the alloy can be labeled neither "Gold" nor "Sterling," because the end product is not, under the literal application of Section 23.22(c)(1), "an alloy of gold of not less than 10 Karat fineness," and because the final alloy is not, under a strict application of Section 23.23(b), "at least 925/1,000ths pure silver." The ironic consequence of such an independent application of the literal terms of these sections would be that an alloying of two component metals, each independently entitled to designation as precious metals under these sections, produces a product which cannot be designated either "gold" or "silver" and, as a result, cannot be marked to disclose its true character as an alloy of these two precious metals. Indeed, the effect of such an interpretation would be to deprive the public of any accurate description of the metallic components of the product and to *conceal* the valuable properties of the alloy, a result which certainly is not consistent with the underlying intent of the applicable rules.

The third pertinent section of the rules governing the jewelry industry, Section 23.25, sets forth certain additional requirements for the use of quality marks on articles composed of a precious metal or an alloy thereof. The pertinent language of this section appears in subsection (a)(1), which declares it an unfair trade practice to sell, distribute or offer for sale any industry product bearing a quality mark which because of its location, because of its failure to identify the portion of the product to which it is applicable, or for some other reason, "has the capacity and tendency or effect of deceiving purchasers as to the metallic composition of the product or any part thereof." This language emphasizes the purpose of the rules to protect the public from the first form of deception, that is, deceptive markings which do not accurately describe the components of the articles to which they are attached. As stated earlier, because the proposed marking for our client's alloy accurately describes the component metals used in the alloying process, it can have no deceptive public effect.

In summary, the three pertinent sections disclose two independent standards of public protection. The first standard, articulated in Section 23.25 and in Sections 23.22(a), 23.22(b)(2) and 23.23(a), is aimed to protect the public from markings which misrepresent the presence of precious metals. The second standard, embodied in Sections 23.22(c)(1)

and 23.23(b) is directed to the use of a label or mark descriptive of the presence of a precious metal in articles which, because of the dilution of that precious metal by other base metals, do not possess the valuable qualities normally associated with that precious metal, regardless of whether the mark is accurate. The marking proposed by our client is not deceptive as to the metallic content of the alloy and clearly satisfies the first standard. In addition, because our client's alloy is a combination of two precious metals, it *retains the valuable properties of its component precious metals* and, therefore, does not deceive the public in the manner prohibited by the second standard. As pointed out earlier, however, the literal application of either section to the alloy could prevent the use of both "Gold" and "Sterling" as quality marks for articles composed of the alloy, since the language of those sections does not specifically consider alloys of *two* precious metals. Because the two basic standards of protection embodies in the rules are satisfied by the alloy and its proposed marking, denial of the proposed mark would not serve the underlying intent and purpose of the rules.

Accordingly, it is respectfully requested that the Commission interpret its rules in a manner consistent with their basic intent and with an awareness of the special qualities inherent in the alloy invented by our client. It is our conviction that this basic intent is satisfied by the special quality of the alloy and that the staff opinions issued to our client are consistent with such basic intent. We submit that the independent literal application of either Sections 23.22(a)(1) or 23.23(a) to a situation not contemplated by either such section will not serve the interest of the public or the jewelry industry as a whole and will have an extremely adverse effect upon our client and the other parties who have invested such significant amounts of time, effort and money in the development of the alloy. We respectfully request that the informal staff opinions issued to our clients be affirmed by the Commission.

If the Commission does not see fit to uphold the staff opinions issued to our client, we request that the Commission consider this letter as a petition for the promulgation of an amendment to the industry guide for the jewelry industry permitting the marking as a precious metal of articles manufactured from alloys, such as our client's alloy, which are made exclusively of component metals which, by themselves, would be entitled to marking as precious metals.

Sincerely yours,

s Howard B. Miller

/s/ John J. Ghingher, III

1173

Jewelers Vigilance Committee, Inc. Second Letter of Inquiry

Nov. 18, 1974

Dear Secretary Tobin:

Enclosed please find a copy of our letter to you dated Nov. 11, 1974 regarding use of the stamping "1/2 14K Plus 1/2 Sterling." Since writing to you, I have been advised that an informal staff opinion was rendered by Barry R. Rubin, attorney in the Office of the General Counsel to the effect that the stamping "1/2 14K-1/2 Ster." would be permissible in his opinion. The copy of his opinion letter is also enclosed.

On July 27, 1973, the Jewelers Vigilance Committee received an informal opinion from Attorney, Joseph P. Dufresne, also in the Office of the General Counsel, which stated, in part, that quality stamping gold of less than 10K fineness would be prohibited and

> it would be inappropriate to submit a request for an advisory opinion to the Commission as to whether the description "6K" or "6Kt" might be used.

This conclusion was reached because he referred to the *Trade Practice Rules for the Jewelry Industry* and *Commercial Standards* and stated:

> Gold articles containing gold of less than 10K fineness may not bear a quality mark.

Also, he concluded that the Commission would not sanction use of descriptions such as "1/4 Gold" or "Quarter Gold."

Finally, we are also enclosing a copy of another opinion letter from Mr. Defresne also dated July 27, 1973 to Mr. Arthur Altman on use of designations "1/4 Gold" or "Quartergold." You will note in this letter, which is not as legible as the others, he has stated:

> * * * such designations would be offensive because they easily could give the impression that the item contains more gold than it, in fact, does. Purchasers have become "educated" to the numerical karat designations. What you propose in contrast, is a significant departure from what has been in use for many years. It is very questionable whether the quality of the item would measure up to the expectations the designations would generate.

In light of the above contrary informal staff opinions, two dated July 23, 1973 and one Oct. 11, 1974, our letter of Nov. 11 requesting the Commission review the matter of stamping something "1/2 14K Plus 1/2 Sterling" becomes all the more imperative. A four-billion dollar industry has now been placed in the uncertain position reflecting upon its stability which governed it, at least since the days of the Commercial Standards in the mid 1930's.

It should further be noted contrary to Mr. Rubin's opinion permitting the stamping abbreviation of the mark "ster.," the *Commercial Standards* dealing with markings of items containing jewelry, CS 118-34 states:

> The terms "sterling" and "coin" shall not be abbreviated. * * *

Finally, unless a decision concerning this marking is reached, fractional marking of gold and silver will become commonplace and the properties and qualities one expects from noble metals will, in turn, be affected.

Once again, I will make myself available to the Commission together with any experts which may be necessary for the Commission to seek a fair and equitable decision in the matter.

Sincerely,

/s/ Joel A. Windman
General Counsel

Jewelers Vigilance Committee, Inc. First Letter of Inquiry

Nov. 11, 1974

Charles Tobin
Secretary
Federal Trade Commission
Washington, D.C. 20580

Dear Secretary Tobin:

A firm by the name of Metals and Jewels, Inc. located at 1316 13th W. Lexington St., Baltimore, Md. has a patent pending for a gold alloy comprised of 50 percent 14K gold and 50 percent sterling. They are now attempting to market this patent-pending alloy as "One-Half 14K Plus Sterling" to the trade.

They have initially asked us for our opinion whether or not a metal so composed would conform to the U. S. Department of Commerce Commercial Standard CS 51-35, "Marking Articles Made In Silver In Combination With Gold," a copy of which we enclose herein as well as with the Federal Trade Commission *Trade Practice Rules for the Jewelry Industry*, Rules 22 and 23 as well as the provisions of the *National Gold and Silver Marking Act*, 15 U.S.C., 29, *et. seq.*

We had a sample of this alloy assayed and found the gold content of the alloy to be a little over 7K and the silver to be 481.3 parts per thousand fine silver. Accordingly, we notified this firm that it was our belief that their alloy could not be stamped 14K gold and sterling in accordance with any of the aforesaid laws and/or rules.

The Commercial Standards dealing with combinations of silver and gold which they are referring to is subdivision 3(b). Please note, however, that subdivision 5(c) states:

> No quality mark indicating the presence of gold shall be applied to articles (made of sterling silver in combination with gold) composed in part of gold less than 10K fineness

Further, Rule 22c(1) states that:

> An industry product or part thereof composed throughout of an alloy of gold of not less than 10K fineness may be described as "gold" * * *

Accordingly, although the alloy may have initially been composed of 14K gold, its "composition throughout" is only one-half of the required stamping and below the 10K minimum, and, therefore, allegedly in violation of the rule. Further, according to the *National Gold and Silver Marking Act*, the stamping would allegedly be a violation since its "actual fineness" is allegedly less than the tolerances provided for 14K gold.

Further, referring to the one-half "sterling," the Commercial Standards, paragraph 5(b) states:

> No article containing metal or metals other than sterling silver and gold * * * shall have applied to it the quality marks as proscribed in paragraph three and four herein.

Since the composition indicates the silver content to be 481 parts per thousand fine silver, it would allegedly not be "sterling" which is 925. Along these lines, Rule 23 of the Federal Trade Commission Rules states:

> It is an unfair trade practice to mark, describe, or otherwise represent an industry product or part thereof * * * "sterling" unless it is at least 925/1,000 pure silver.

Further, the prohibition of the *National Gold and Silver Marking Act* would allegedly apply here as well.

The Commercial Standard, as you will note from reading them, deal with articles combined with silver and gold applied to jewelry in which the parts were made of two separate metals either entirely sterling in one part and entirely of a karat gold above 10K in the other part, or to gold which was mechanically bonded to sterling (gold filled on sterling) or where white gold, a minimum of 1/20 of the weight was bonded to sterling, and the metals could not be easily distinguished. The framers of this Commercial Standard specifically use the words "silver *in combination* with gold," the word "combination" meaning the bringing together of articles already composed of sterling and karat gold of not less than 10K. It did not mean an "alloy" of silver and gold, for as the definitions state:

> (c) "gold" means 24 karats gold or any *alloy* of the element gold of not less than 10K fineness.
>
> (e) "sterling or "sterling silver" means an *alloy* of 925/1000 parts pure silver within the tolerances permitted by the National Stamping Act.

Thus, they are talking about a combination of metals already alloyed to their legal minimum and not an alloy of sterling and gold which would be a reduction from said legal minimum.

Further, the framers of the Commercial Standards specifically provided for alloys in Commercial Standard CS 67-38, "Marking Articles Made of Karat Gold," CS 118-44, "Marking of Jewelry and Novelties of Silver," CS 47-34, "Marking of Gold Filled and Rolled Gold

Plate Articles Other Than Watchcases," and CS 66-38, "Marking of Articles Made Wholly Or In Part of Platinum." Thus, it is believed that all alloys are adequately covered, namely, those providing for the minimum silver requirements of 925 and the minimum karat requirements of 10K in conformance with the *National Gold and Silver Marking Act*.

We had notified this firm, Metals and Jewels, Inc., of our conclusion and stated, since we believe promotion of the product would allegedly mislead, they should seek an advisory opinion from the Commission, since our findings would not necessarily be conclusive.

In the interim we have found the firm is allegedly promoting its products to members of the trade and next month, in one of the trade publications, an alleged licensee will promote use of this mark. Enclosed is a photocopy of an advertisement that has appeared in the trade press, specifically the *Jewelers' Circular-Keystone* on page 105 in their November 1974 issue. To our knowledge, the product has not been sold.

Accordingly, it is imperative that the Commission review this matter to disseminate whether or not this marking would allegedly mislead the consumer who will ultimately be purchasing this product. Failure to do so at this time would lead others, for example, to allegedly manufacture alloys one-quarter silver, one-quarter 10K gold which would assay 2F and accordingly open a "Pandora's Box" to an industry which has attempted to live with Commercial Standards and within Rules and Guides promulgated by the Commission.

I will make myself available to the Commission together with any experts which may be necessary for the Commission to seek a fair and equitable decision on this matter.

Respectfully,

/s/ Joel A. Windman
General Counsel

Staff Letter of Response

...t 11, 1974

Dear Mr. Newman:

This is in response to John J. Ghingher, III, Esquire's letter of Sept. 18, 1974, requesting a further staff opinion on behalf of his client, Metals and Jewels, Inc. In my letter to him of Sept. 9, 1974, I rendered an informal staff opinion to the effect that labelling of his client's product "Alloy 1/2 14K + 1/2 Ster." would not violate any of the laws administered by the Commission.

It is my understanding that Metals and Jewels, Inc. has granted to B. F. Hirsch, Inc. the right to produce articles of jewelry composed of an alloy of one-half 14 karat gold and one-half sterling silver. B. F. Hirsch, Inc., now proposes to use the quality mark "1/2 14K 1/2 Ster." This mark would be displayed in type of sufficient size as to be legible to persons of normal vision and will be inscribed in a place likely to be observed by prospective purchasers. The word "alloy" would be dropped from the description because it would not be feasible to inscribe such a long phrase on most jewelry items.

As l ng as the above conditions are met, I do not believe that the new proposed description would violate any of the laws administered by the Commission. I do not think that the term "alloy" would add anything to the proposed disclosure. Please understand that the foregoing does not constitute an advisory opinion of the Commission. If you have any questions, please call me at (202) 963-5089.

Very truly yours,

/s/ Barry R. Rubin
Attorney

cc: John J. Ghingher, III, Esquire
Weinberg and Green
10 Light Street
Baltimore, Maryland 21202

Second Supplemental Letter of Request

S pt. 18, 1974

Dear Mr. Rubin:

Recently you were kind enough to provide us with an informal staff opinion with respect to the marking of articles of jewelry composed of an alloy of one-half 14 karat gold and one-half sterling silver. We had requested, on behalf of the above client, an opinion that the marking of

this alloy with the quality mark "Alloy 1/2 14K + 1/2 Ster." would not violate any rule or regulation of the Commission applicable to the jewelry industry. By your letter of Sept. 9, 1974, you rendered an informal staff opinion to this effect.

Since that time, our client has granted to B. F. Hirsch, Inc. the right to produce the alloy for sale to manufacturers of jewelry. Hirsch has advised us that it is highly impractical for a manufacturer of jewelry to employ such a lengthy marking. Because of the small size of articles of jewelry, the marking that we had requested would impose severe restrictions upon the design possibilities for such articles and would therefore greatly restrict the marketability of the alloy.

For the above reasons, we request that you render a second informal staff opinion that use of the quality mark "1/2 14K - 1/2 Ster." will not violate any of the laws administered by the Commission. This quality mark will be displayed in type of sufficient size as to be legible to persons of normal vision and will be inscribed in a place likely to be observed by prospective purchasers. The mark is not currently being used and the use of the quality mark is not the subject of a pending investigation or other proceeding by the Commission or any other governmental agency.

In support of my request I refer you to the "Background" and "Discussion" sections of the letter dated Aug. 30, 1974 wherein Howard B. Miller and I submitted the original request on behalf of this client. I have enclosed a copy of that letter for your convenience.

I would greatly appreciate your addressing your opinion to Mr. Robert Newman, Vice President, B. F. Hirsch, Inc., 100 Avenue of the Americas, New York, N.Y., with a copy to me. If you have any questions or if I can provide any assistance, please do not hesitate to call me at 293-1807 on the District of Columbia exchange.

Thank you once again for your very kind cooperation in this matter.

Sincerely yours,

/s/ John J. Ghingher, III

Staff Opinion Letter

...ept. 9, 1974

...entlemen:

This is in response to your letter of Aug. 30, 1974, requesting an ...dvisory opinion from the Commission regarding the proper labelling ...f jewelry composed of an alloy of gold and silver. Since you requested ...hat this matter be handled as expeditiously as possible, this letter is of

necessity only an informal staff opinion and does not constitute an advisory opinion of the Commission.

It is my understanding that your client, Metals and Jewels, Inc., will market articles of jewelry composed of an alloy of one half 14 karat gold and one half sterling silver. These articles would have the same appearance as articles manufactured entirely of 14 karat gold. Your client proposes to imprint these articles with the following description: "Alloy 1/2 14 K + 1/2 Ster." This mark will be displayed in type of sufficient size as to be legible to persons of normal vision and will be inscribed in a place likely to be observed by prospective purchasers.

As long as the above conditions are met, I do not believe this description would violate any of the laws administered by the Commission. Please understand that the foregoing does not constitute an advisory opinion of the Commission. If you have any questions, please call me at (202) 963-5089.

Very truly yours,

Barry R. Rubin
Attorney
Office of General Counsel

Letter of Request

Aug. 30, 1974.

Dear Sir:

On behalf of Metals and Jewels, Inc., a District of Columbia corporation, I hereby request an advisory opinion with respect to the following proposed course of action:

Background

Edward L. Kohrn and Seymour Globus conceived an invention consisting of an alloy of 14 karat gold and sterling silver, combined in equal parts. Messrs. Kohrn and Globus have applied for letters patent covering their invention and have assigned such application, and any letters patent which may issue thereon, to Metals and Jewels, Inc. Metals and Jewels, Inc. proposes to produce and sell quantitities of the alloy for use in the manufacture of articles of jewelry. Custom and usage in the jewelry industry is such that in order to sell quantities of the alloy to jewelry manufacturers, Metals and Jewels, Inc. must provide said manufacturers with assurances that articles of jewelry composed of the alloy may be stamped with a quality mark indicating that such article is composed throughout of an alloy of precious metals.

Proposed Course of Action

It is proposed that articles of jewelry manufactured from the alloy described above and composed throughout of the alloy be imprinted with the quality mark "Alloy 1/2 14 K + 1/2 Ster." The quality mark will be of sufficient size type as to be legible to persons of normal vision and shall be so placed as likely to be observed by purchasers or prospective purchasers. There will be no difference in the size of letters or words within the quality mark.

Discussion

The general rules applicable to the proposed course of action are set forth in Title 16 of the Code of Federal Regulations particularly in Sections 23.22, 23.23 and 23.25 thereof. Those sections deal with misrepresentations as to the gold and silver content of an article of jewelry and the use of quality marks with respect to the composition of articles composed of precious metals and alloys thereof. It is submitted that use of the proposed quality mark will not misrepresent the gold content of the article of jewelry, will not misrepresent the silver content of said article and will not deceive purchasers or prospective purchasers of the article as to the metallic composition of the article. Attached is the report of Robert B. Pond, Jr., Ph.D., analyzing an assay of the alloy. Dr. Pond concludes that the assay is consistent with the description of the alloy as being composed of equal parts of 14 karat gold and sterling silver. Based on Dr. Pond's findings, use of the quality mark described above accurately represents the gold and silver content of the alloy and will not in any way deceive a purchaser of an article composed of the alloy as to the metallic composition thereof.

Request for Advisory Opinion

Metals and Jewels, Inc. hereby requests that the Commission issue an advisory opinion that the course of action proposed, on the basis of the facts submitted, will not violate any rule or regulation of the Commission applicable to the jewelry industry. The course of action is not currently being followed by the requesting party and is not the subject of a pending investigation or other proceeding by the Commission or any other governmental agency.

If any questions arise concerning this request for an advisory opinion, please call the undersigned at 293-1807 (on the District of Columbia exchange). A conference is respectfully requested if the Commission is considering an advisory opinion that the proposed course of action may not be implemented.

Sincerely yours,

/s/ Howard B. Miller

/s/ John J. Ghingher, III

Attachment to Letter of Request

Aug. 29, 1974

Dear Sirs:

I have examined the report which you furnished of a "Birmingham" assay of a metal alloy allegedly produced by mixing 14kt gold and sterling silver in equal parts by weight.

I intend to show that the assay confirms that the alloy sample contains gold and silver in quantities consistant with a mixture of 14kt gold and sterling silver in equal parts by weight.

1. Note that the original 14kt gold must have contained not less than 14/24ths. or 585/1000 parts gold by weight.

2. The original sterling silver alloy must have contained not less than 921/1000 parts silver by weight.

The weight fractions of gold and silver in a mixture of 14kt gold and sterling silver in equal parts by weight would be one half the original fractions. Therefore the final alloy must be composed of not less than

3. 1/2x585/1000 = 292.5/1000 parts gold by weight, and

4. 1/2x925/1000 = 462.5/1000 parts silver by weight.

The assay reported:

117.2mg gold
187.93mg silver
390.5mg total

The weight fraction of gold from the assay is

5. 117.2mg gold/390.5mg total = 300.1/1000 parts gold by weight.

This is greater than the minimum gold requirement of 292.5/1000(#3).

The weight fraction of silver from the assay is

6. 187.93mg silver/390.5mg total = 481.25/1000 parts silver by weight.

This is greater than the minimum silver requirement of 462.5/1000 (#4).

By these calculations it is evident that the final alloy can be described exactly as being produced by mixing one half 14kt gold and one half stirling silver by weight.

Respectfully submitted,

/s/ Robert B. Pond, Jr., Ph.D.

Possible conflict, as to notice requirements, between State law and FTC's Trade Regulation Rule Concerning A Cooling-Off Period for Door-to-Door Sales (16 C.F.R. 429) (File No. 753 7009)

Opinion Letter

May 20, 1975

Dear Mr. Feldman:

This is in response to your request for an advisory opinion regarding conflict, as to notice requirements, between State law and the Federal Trade Commission's Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales. The question posed is: Would printing of both the notice of the buyer's right to cancel a door-to-door transaction specified in the Commission's Rule and any such notice required by State statute or municipal ordinance, identifying one as the Rule and the other as State law, violate the Rule where the statute or ordinance involved prescribes a mandatory form of notice which in some respects may be incompatible with the form of notice prescribed by the Rule?

It is the Commission's understanding, based upon the information submitted, that you have requested the opinion for your own guidance and on behalf of the Major Finance Corporation, a company engaged in purchasing commercial paper from door-to-door sellers. Pursuant to your advice, the company proposes to require door-to-door selling companies from which it purchases commercial paper to include in contracts for transactions subject to the Commission's Rule both the notice of the buyer's right to cancel required by State law or municipal ordinance and the notice specified in the Commission's Rule, identifying one as the Rule and the other as State law.

The Commission has no objection to the inclusion in such contracts of both the notice required by State law or municipal ordinance and the summary notice specified in the Commission's Rule, identifying one as the Rule and the other as State law, as long as any language in the State or municipal notice directly inconsistent with the Rule is stricken. Since the Commission's rule gives the consumer a unilateral right to cancel a transaction within three days, without penalty or fee, language in a State notice misinforming the buyer of the existence of a penalty or fee (*i.e.*, "If you cancel, the seller may keep all or part of your cash down payment") is directly inconsistent with the Rule and, if included in the sales contract or receipt, must be stricken. Moreover, since the buyer's right to cancel transactions covered by the Rule is not limited