



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Joshua S. Millard
Attorney, Division of Enforcement
Phone: (202) 326-2454
Email: jmillard@ftc.gov

August 26, 2019

Beth Deisher
Coordinator, Anti-Counterfeiting Task Force
Anti-Counterfeiting Educational Foundation, Inc.
P.O. Box 903
Sylvania, OH 43560

Re: Anti-Counterfeiting Educational Foundation, Inc. - Advisory Opinion

Dear Ms. Deisher,

This is in reply to your August 8, 2019 email to the staff of the Federal Trade Commission (“FTC”) on behalf of Anti-Counterfeiting Educational Foundation, Inc. (“ACEF”), requesting an opinion concerning the marking of the word “COPY” on imitation numismatic items pursuant to the Rules and Regulations Under the Hobby Protection Act, 16 C.F.R. part 304 (“Hobby Rules”).¹ In your email, you requested a response to the following questions:

“Does the incusing of the word ‘COPY’ have to be part of the manufacturing process or can it be applied later?”

“If it can be applied later, can any entity or individual citizen apply the word ‘COPY’ as long as it is in compliance with the requirements set forth in §304.6?”

Your email reported that members of the numismatic community have asked ACEF whether it would be legal for them to mark imitation U.S. coins identified in the marketplace with the word “copy.” Additionally, you conveyed that some persons have suggested that ACEF have punches made to the specifications set forth in 16 C.F.R. § 304.6 and offer to mark imitation numismatic items as such as a service at coin shows.

¹ As defined in the Hobby Protection Act, 15 U.S.C. §§ 2101-06 (“Hobby Act”), an imitation numismatic item is “an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item.” *Id.* § 2106(4). The Hobby Act defines original numismatic items to include coins, tokens, paper money, and commemorative medals that have been part of a coinage or issue used in exchange or used to commemorate a person or event. *See id.* § 2106(3).

Ms. Beth Deisher
Anti-Counterfeiting Educational Foundation, Inc.
August 26, 2019

In response to your questions, as discussed below, FTC staff opines that with respect to unmarked imitation numismatic items found in commerce, entities other than the manufacturer or importer may mark the word “copy” on such items after their manufacture following the marking requirements set forth in 16 C.F.R. § 304.6. However, such markings do not excuse prior violations by entities required to comply with the Hobby Act and Hobby Rules.

The Hobby Act requires manufacturers and importers of imitation numismatic items, as well as persons or entities engaged in “the sale in commerce” of such items, to mark such items “plainly and permanently” with the word “copy.” 15 U.S.C. § 2102(b).² Consistent with the Hobby Act, the Hobby Rules establish, among other things: (1) the location of markings on items; (2) the sizes and dimensions of the letters and numerals to be used; and (3) how to mark nonincusable and incusable items. 16 C.F.R. § 304.6. Incusable items are those that can be impressed with a stamp.

As to the timing of the “copy” mark, the Hobby Act and Hobby Rules establish that imitation numismatic items must be marked at least in the domestic manufacture of such items or before the importation of such items into the United States for introduction into or distribution in commerce. 15 U.S.C. §§ 2101(b), 2104; 16 C.F.R. § 304.6. Failure to comply subjects violators to liability in governmental and private actions.³ Accordingly, the marking of the word “copy” must be part of the domestic manufacturing process for imitation numismatic items and must occur prior to importation of such items made outside the United States. Persons engaged in the sale in commerce of such items must also comply. 15 U.S.C. § 2101(b); 16 C.F.R. § 304.3.

Notwithstanding the foregoing, the Hobby Act and the Hobby Rules do not prohibit entities other than manufacturers and importers from subsequently marking unmarked imitation numismatic items as copies pursuant to the marking requirements of the Hobby Rules, 16 C.F.R. § 304.6. Indeed, the Hobby Act and the Hobby Rules contemplate that persons engaged in the sale in commerce of such items will comply with the marking requirement prior to such sales, 15 U.S.C. § 2101(b), 16 C.F.R. § 304.3. However, later markings do not excuse prior violations by entities required to comply with the Hobby Act and Hobby Rules. For example, if a coin owner who obtained an unmarked imitation 1932-S Washington Quarter from an importer discovers that it is a copy and chooses to mark it as a copy for purposes of identification, that marking would not relieve the importer from liability for failing to comply with the Hobby Act and Hobby Rules.

Please note that this letter only expresses an opinion concerning laws enforceable by the Federal Trade Commission. *See* 15 U.S.C. § 2105 (provisions of Hobby Protection Act “are in

² It is also a violation of the Hobby Act for a person to provide substantial assistance, or support, to any manufacturer or importer or seller of imitation numismatic items if that person knows or should have known that the assisted or supported entity is violating the Hobby Act’s marking requirements. *Id.* § 2102(d).

³ Violations of the Hobby Act are enforceable by the Commission as violations of the Federal Trade Commission Act, 15 U.S.C. §§ 2101(b), 2103, and also provide grounds for private suits seeking injunctive relief and damages. *Id.* § 2102.

Ms. Beth Deisher
Anti-Counterfeiting Educational Foundation, Inc.
August 26, 2019

addition to, and not in substitution for or limitation of, the provisions of any other law of the United States or of the law of any State”).

In accordance with Section 1.3(c) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 1.3(c), this is a staff opinion only and has not been reviewed or approved by the Commission or by any individual Commissioner, and is given without prejudice to the right of the Commission later to rescind the advice and, where appropriate, to commence an enforcement action.

In accordance with Section 1.4 of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 1.4, this response to your request for advice will be placed on the public record.

Sincerely,

/s/

Joshua S. Millard
Attorney, Division of Enforcement