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HOUSE JUDICIARY COMMITTEE
PUBLIC HEARING on HB 523

Wednesday, September 12, 2007
Philadelphia, Pennsylvania

COMMITTEE MEMBERS PRESENT:

REPRESENTATIVE THOMAS R. CALTAGIRONE,
Chairman
REPRESENTATIVE ROSITA C. YOUNGBLOOD
REPRESENTATIVE DON WALKO
REPRESENTATIVE KATHY MANDERINO

ALSO PRESENT:

JOHN RYAN, EXECUTIVE DIRECTOR JUDICIARY

HELD AT: Philadelphia City Hall
City Council Chambers
Philadelphia, Pennsylvania

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2 TESTIFIERS:

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4 SENATOR KITCHEN

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MARY WILSON

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7 MATTHEW B. VAN HOOK

8

PETER CAPOLINO

9

10 JAMES STERNWEIS

11

NILS V. MONTAN

12

13 PATRICIA WILSON ADEN

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BRAD HUTHER

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1 THE CHAIRMAN: We're here for the
2 hearing on House Bill 523. But I would like to
3 have the members of the panel introduce themselves,
4 and then I would like to turn it over to Ms. Rosita
5 Youngblood, whose bill we're going to be holding
6 the hearing on today. If you want to start down
7 and we'll work our way down.

8 REPRESENTATIVE WALKO:
9 Representative Don Walko, Allegheny County.

10 REPRESENTATIVE YOUNGBLOOD:
11 Representative Rosita Youngblood, Philadelphia
12 County.

13 REPRESENTATIVE MANDERINO:
14 Representative Kathy Manderino, representing parts
15 of Philadelphia and Montgomery Counties.

16 THE CHAIRMAN: At this time I'd
17 like to turn the hearing over to Ms. Rosita
18 Youngblood.

19 REPRESENTATIVE YOUNGBLOOD: Good
20 morning, Chairman and members of the Committee. I
21 would like to take this time to thank you for
22 holding this public hearing for my proposed
23 legislation House Bill 523. I would also like to
24 thank Ms. Mary Wilson and the National Foundation

0004

1 of Women Legislators and President Robin Reed for
2 cohosting this hearing. I would also like to thank
3 everyone who took time out of their busy schedules
4 to speak today on the importance of this issue.

5 The bill that we are discussing
6 this morning would help stop the manufacture, sale
7 and transport of counterfeit goods here in
8 Pennsylvania. House Bill 523 will strengthen
9 existing law by increasing penalties for
10 counterfeiting consumer goods and services and
11 expanding the definition of the crime.

12 Our first testifier is my very
13 good friend from the Third Senatorial District,
14 Senator Kitchen.

15 SENATOR KITCHEN: I want to thank
16 State Representative Rosita Youngblood for hosting
17 today's discussion and for her efforts to create a
18 notable bill that combats counterfeiting. I also
19 want to thank Representative Thomas Caltagirone and
20 the National Foundation of Women Legislators for
21 holding a hearing and supporting this dialogue.
22 Thank you.

23 I am grateful to be given this
24 opportunity to testify today. My name is State

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1 Senator Shirley Kitchen and I represent the Third
2 Senatorial District, which encompasses many
3 neighborhoods in the Philadelphia area. Today, I
4 would like to address the devastating impact of
5 counterfeiting on the economy and in our
6 communities. And originally, we wanted to
7 concentrate on the impact in poor neighborhoods,
8 but information was not readily available, and
9 that's unusual because, as you know, we have an A
10 one team in the legislature.

11 Counterfeit items, whether they
12 are necessities, such as prescription drugs,
13 medical equipment or food, or whether they are
14 luxury items, like name brand clothing,
15 electronics, auto parts and beauty products do an
16 injustice to consumers. Unfortunately, consumers
17 are under the impression that these items are
18 legitimate; particularly when the products are sold
19 at a price that is comparable to the market value.
20 Although, they may not realize it, the consumers,
21 many of whom live in lower income communities, are
22 the victims of this illegal practice.

23 Counterfeit items are damaging to
24 our economy. According to the Department of

1 Commerce, the United States loses an estimated 200
2 billion dollars due to counterfeiting trademarked
3 consumer products. The Organization of Economic
4 Corporation and Development estimates that trade in
5 counterfeit goods has reached nine percent of world
6 trade.

7 Counterfeiting also impacts
8 employment. The United States Department of
9 Commerce has estimated that the auto industry could
10 employ 210,000 new workers if the losses caused by
11 counterfeit products could be eliminated. This
12 practice effects trade, domestically and
13 internationally. It is especially common in China
14 where 15 to 20 percent of all brand products are
15 illegally manufactured according to an economic
16 analysis of counterfeit goods in China. The study
17 was printed in the Journal of the Washington
18 Institute of China Studies.

19 It is important to note, however,
20 that counterfeit products are not all made in
21 China. According to the New York City comptroller,
22 42 percent of all counterfeit compact disks seized
23 in the United States are made in New York City.
24 Our advanced technology allows an average person to

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1 download the artwork of a CD printed out on a
2 quality printer, burn the music onto a disk using a
3 computer and package a nearly identical product to
4 the CDs on store shelves.

5 In New York City it is common to
6 see counterfeit items for sale like handbags,
7 perfume and watches. Many consumers who cannot
8 afford the actual designer product would argue that
9 purchasing a counterfeit version of that product is
10 harmless. They may not even realize that the
11 manufacturers supplying the counterfeit goods are
12 making a major profit on these illegally-made
13 products, which are usually made with lower grade
14 materials than their name brand counterparts.

15 Additionally, fraudulent items
16 that are fundamental to consumers, such as medicine
17 and medical equipment have a dangerous impact on
18 consumers. The World Health Organization estimates
19 that 10 percent of medicines worldwide are
20 counterfeit. More alarming, up to 50 percent of
21 medicines are counterfeit in parts of eastern
22 Europe, Africa and Asia.

23 When it comes to medicine and
24 medical equipment, most people do not know what is

0008

1 real and what is not. Instead, they are dependent
2 on the retailer where they purchase these items.
3 Unfortunately, there have been no studies or
4 statistics on the effect of counterfeit goods on
5 low-income consumers in this country, although
6 studies have been done in poor nations. It is an
7 urgent problem in America that demands further
8 study.

9 The Federal Food and Drug
10 Administration has issued warnings to educate the
11 public about the dangers of buying cheap
12 prescription drugs from web sites that do not have
13 the National Association of Boards of Pharmacies
14 Verified Internet Pharmacy Practice Sites program.

15 Our seniors, how many of them
16 know and understand this warning? We in
17 Pennsylvania need to do more to protect our
18 citizens.

19 House Bill 523 sends a clear
20 message that Pennsylvania will not tolerate
21 counterfeit goods in our state and in our
22 communities. It increases the number of items that
23 are considered counterfeit and stiffen the
24 penalties for transporting, distributing or selling

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1 these products.

2 I have supported similar
3 Pennsylvania legislation in the past and I intend
4 to support this current measure. I hope that we
5 can continue to discuss the devastating practice of
6 counterfeiting goods and work together to create
7 good, strong laws that protect both manufacturers
8 and consumers.

9 Thank you very much.

10 THE CHAIRMAN: Thank you, Senator
11 Kitchen. We appreciate your testimony.

12 I did want to mention Councilman
13 Frank Rizzo, Jr. and Councilwoman Janney Blackwell
14 who have joined us here today. I will turn it back
15 over to Rosita.

16 REPRESENTATIVE YOUNGBLOOD: Thank
17 you.

18 Does anybody on the panel have
19 any questions on Senator Kitchen's testimony?
20 Thank you, Senator.

21 At this time, Councilwoman
22 Blackwell would like to welcome us to the City of
23 Philadelphia.

24 COUNCILWOMAN BLACKWELL: Thank

0010

1 you very much, and let me say to Representative
2 Rosita Youngblood, certainly to Senator Kitchen,
3 and all the representatives and officials from
4 Harrisburg, from Kathy Manderino to Mr. Walko, Tom
5 Caltagirone, certainly on behalf of the Mayor and
6 the City Council, we welcome you. This is our
7 chambers. It's pretty nice. It's not as large as
8 yours, but it's just as pretty. We don't have the
9 paintings on the wall, but it's nice. But we
10 certainly welcome you.

11 We're absolutely overjoyed to
12 have a star in our midst, as Mary Wilson. I just
13 hung up from our radio show and told them I didn't
14 have time to talk on the radio because we would be
15 with the Representatives, and certainly, Ms.
16 Wilson. But this is a very, very important issue.
17 And when I speak on behalf of City Council,
18 obviously, I include my colleague, Councilman
19 Rizzo, as well as all the members who are here in
20 their offices listening, serving the Mayor with
21 whom we spoke this morning about this and saying
22 that we appreciate your focus on this as an issue.

23 In today's time, unfortunately,
24 we have many, many issues that affect our

0011

1 citizenry, and this is very, very important that
2 you focus on it. We thank you for bringing that
3 discussion to the citizens here in the City where
4 they can come and participate. And certainly,
5 finally, we thank you for all the work that you do
6 to make our city and certainly our area be all that
7 it can be. God bless you.

8 REPRESENTATIVE YOUNGBLOOD: Thank
9 you, Councilwoman Blackwell.

10 Our next testifier is Ms. Mary
11 Wilson.

12 MS. WILSON: Good morning,
13 everyone. And I want to first of all say I am the
14 real Mary Wilson of the Supremes and that I'm just
15 very honored, first of all, to be able to be here
16 to testify against this problem that I actually had
17 some awareness of many, many years ago.

18 As a Supreme -- before I read my
19 testimony I just want to say as a Supreme we
20 travelled all over the world in the '60s. And in
21 so doing, it was very funny because we would travel
22 to places like Hong Kong and Singapore, just all
23 over the world, and we would always buy these
24 little cassettes of different artists and, you

0012

1 know, we'd pick it up and say: Oh, we can get a
2 Marvin Gaye cassette for two dollars. We have just
3 got to buy it. And then when we get back to the
4 hotel room, open it up, it's not Marvin Gaye at
5 all. His picture's on the cover, but it's not
6 Marvin Gaye.

7 Now, this was back in 1965. So
8 this problem is not a new problem. It is something
9 that started many, many years ago. America is one
10 of the greatest countries in the world, and people
11 have always known it, and they have started copying
12 us many, many years ago. Now that it has started
13 to reach into the pocketbooks of corporations and
14 people who really are making money out there, now
15 people realize what a huge problem it is. I have
16 seen it for many, many years.

17 Mr. Chairman, may I say Tom,
18 members of the Committee, I would like to thank you
19 for giving me the opportunity to testify this
20 morning against this counterfeiting problem. As a
21 singer and a performer I have been aware of the
22 problems with counterfeiting and piracy in the
23 entertainment industry for years. It was not until
24 recently, however, that I became aware of the

0013

1 incredible size and scope of this problem of
2 counterfeiting. I am not only here as a performer
3 today but I'm also here as a mother and a
4 grandmother. I have eight grandchildren, which I'm
5 very, very proud of.

6 And I'm concerned. I'm concerned
7 about the safety of my family and everyone else's
8 family because I am a woman and I think women today
9 are really bringing these issues to the forefront
10 because we know what it means to nurture, and it is
11 starting to affect our families in that regard.

12 Until recently, if you said the
13 word counterfeit, most people's thoughts would have
14 turned to things like handbags, watches,
15 sunglasses, et cetera. Most don't realize that the
16 range of the products affected is far more
17 widespread and far more insidious. Nearly every
18 consumer product sector faces some level of
19 counterfeiting, from electrical products, from
20 pharmaceuticals to food and beverage and even our
21 children's toys.

22 As consumers, we seek out brands
23 we trust. I mean, I still use mascara from Max
24 Factor. I still use Fashion Fair. We like

0014

1 products that we can trust and produced by
2 companies that we know. Legitimate companies spend
3 considerable amount of money and time and effort to
4 build their reputations of quality goods.

5 The criminals who manufacture and
6 sell counterfeit goods, on the other hand, trade on
7 the goodwill of those legitimate businesses and
8 subvert our trust by passing off their shoddy and
9 often dangerous imitations as the real thing.
10 Recently, we have heard reports of counterfeit
11 toothpaste contaminated with a chemical normally
12 found in antifreeze. The most frightening part of
13 these recent events, though, is how lucky we were.
14 Just a few months earlier in Panama over 200 people
15 were killed after using cough syrup contaminated
16 with the same chemical. Now, we must not sit idly
17 by, as we are doing here today. We're trying to
18 educate people to know how important this is and
19 allow a similar tragedy to occur.

20 As an artist I, personally, can
21 attest to the counterfeiting problem, as I said, as
22 my recordings and music videos as a Supreme and
23 solo artist have been counterfeited by unscrupulous
24 individuals, in fact by a counterfeit ring right

0015

1 here in Pennsylvania. The counterfeiting problem
2 robbed me, my record company, shall I say my former
3 record company, Motown, of countless royalties and
4 results in a shoddy product that impacts the Mary
5 Wilson and the Supreme brand that I have built over
6 a 40-year career. I have been in business 48
7 years, I think, if I'm counting correctly.

8 I want to veer away from my
9 testimony for just a moment. As I said earlier,
10 this not only is about purses, sunglasses,
11 toothpaste, and this and that. There are also some
12 very intangible things that counterfeiting affects.
13 There's a legislation called Truth In Music where
14 there are many, many groups going around performing
15 as Supremes, Temptations, this and that. That's a
16 form of counterfeiting, as well.

17 So what is happening is that I
18 think Congresswoman Diane Watson from California
19 said we have got to start reteaching the public how
20 to be honest, how to do the right thing. So it's
21 now -- this is such a huge thing of counterfeiting
22 because it is encroaching upon our way of being as
23 human beings. So it's almost like children.
24 You've got to retrain the public, reeducate them to

0016

1 know that okay, I didn't know that it was
2 counterfeiting when you buy something on the
3 street. I didn't know. We have got to tell them:
4 This is wrong, folks, spank the hands. This is
5 wrong. Stop buying counterfeit goods.

6 As I said, it's not only the
7 tangible things, but it's the other areas, as
8 well. People are just saying: This is mine. I
9 can do this. I can be a Supreme, just because I
10 want to. No, you cannot. So we do need this
11 legislation for that.

12 Now, with the development of
13 digital music in the form of CDs and DVDs, the
14 problem has grown due to the ease and speed of
15 duplication, as we heard just earlier. The result
16 is that a poorly-made product ends up in consumers'
17 hands and damages the hard earned reputation and
18 brand, and the taxpayers get ripped off as
19 counterfeiters fail to pay sales taxes or income
20 taxes, thereby depriving state and local economies
21 of much needed revenues for social programs and
22 education.

23 In the end, my fans, the Supremes
24 fans, who grew up to our music, got married to our

0017

1 music, who studied to our music when they went to
2 college, whatever, they use our music to help them
3 get through life. Well, they're disappointed.

4 Who loses? The consumer public
5 who has been ripped off. I have just completed an
6 album that will be released shortly, and this is
7 not trying to sell album sales here, but there is
8 no question in my mind that the minute the product
9 hits the retail market the counterfeiters will be
10 there to copy and distribute the product I worked
11 so hard on without any compensation to me or my
12 publishing and programming company.

13 We need to have laws that can
14 impact the crime and take away the incentive of
15 thieves who would attempt to counterfeit a product
16 and harm artists, brands, consumers and the
17 taxpayers of the great Commonwealth of
18 Pennsylvania. The Bill before you shines a bright
19 light on the problem before us all and sends a
20 clear message to the criminals who traffic in
21 counterfeit products that we will not tolerate
22 their endangerment of our families.

23 I strongly urge your support of
24 HB 523. I thank you so much for allowing me to

0018

1 come here and to speak before you, and I thank all
2 of the legislators for doing such a great job for
3 bringing this before you. Thank you so much. And
4 I hope that I have helped to educate you to the
5 importance of this problem. It is not a new
6 problem, as some of you may think. It has been
7 going on for years, but now it is at a large, large
8 -- right now, if we don't do something about it,
9 we will become a third-world country, just by our
10 practices of allowing this to continue.

11 Thank you so much.

12 REPRESENTATIVE YOUNGBLOOD: Does
13 anyone on the panel have any questions of Ms.
14 Wilson? Thank you very much, Ms. Wilson.

15 Our next testifier is Matthew B.
16 Van Hook, Pharmaceutical Research and Manufacturers
17 of America.

18 MR. VAN HOOK: Thank you very
19 much, Chairman, Representative Youngblood and other
20 members. I think that's the toughest act I've ever
21 had to follow in my life. I grew up in the Detroit
22 area, so it's a real honor and a privilege to
23 follow you here today. And I must say, my family
24 and friends are much more impressed with my being

0019

1 here and hearing you then the subject matter.

2 I'm here today on behalf -- my
3 name is Matthew Van Hook. I'm a lawyer with a food
4 and drug law firm in Washington. I have been
5 working on counterfeit drug issues for quite some
6 time. I'm here today on behalf of PhRMA and the
7 trade association for the research-based industry,
8 whose members invested over 43 billion dollars in
9 2006 in discovering new medicines. And those
10 companies are the source of virtually all the new
11 medicines that are discovered worldwide.

12 And they have a deep concern
13 about ensuring that when you go to your pharmacy
14 here in Philadelphia or elsewhere in Pennsylvania
15 that you get what your doctor ordered. And so, if
16 I may, I'd like to address some of the concerns
17 about the system that's in place to try to keep the
18 drug distribution system secure and to address this
19 challenge of counterfeiting which, as Mary Wilson
20 explained, has been around for a while and it's
21 getting worse now.

22 Drugs present a very special
23 problem with counterfeit. Some people have
24 described it as the perfect crime because when

0020

1 drugs are counterfeit, not only is there a chance
2 you might be harmed, but if you have a counterfeit
3 drug that doesn't overtly harm you, you're missing
4 out on the cure or the treatment you're supposed to
5 be getting for your disease. So it can be very
6 insidious.

7 Why are more crooks getting
8 involved with counterfeiting drugs? Well, it's
9 becoming more and more lucrative. I saw an
10 interesting statement from someone involved in this
11 saying counterfeiting can be as profitable as
12 narcotics and your partners don't kill you. So
13 that's one reason why people are attracted to it.

14 In terms of deterring
15 counterfeit, drugs or any other kind of
16 counterfeit, there are no silver bullet answers,
17 and that's very much true in the case of medicines.
18 The FDA has issued reports on the challenge of
19 counterfeit medicines, recommending a whole range
20 of practices from better technologies, embedded
21 tags in medicines. You can have authentication
22 technologies. You can have special labelling. No
23 one of those things is a magic bullet, so work on
24 all fronts is very important.

0021

1 That's why House Bill 523 is so
2 welcome. It will help provide heightened state
3 compliance authority so that when someone does
4 counterfeit a trademark there will be heightened
5 resources by the authorities used to go after these
6 people and crack down.

7 I was at a drug counterfeit
8 conference a few years ago, right at the time they
9 introduced some of these fancy new -- at the time
10 it was \$20 bills, and the U.S. Treasurer was there
11 explaining all of these things, the little colored
12 threads and all sorts of water marks, and I was
13 very impressed. This was just a few weeks after
14 they have been introduced and she said counterfeits
15 were already appearing on the street. So as much
16 as those technologies help, there is no one answer.
17 So dealing with the challenge in counterfeit
18 medicines is going to take a lot of efforts, and
19 this Bill offers some important help in one of
20 those respects.

21 Now, Mary Wilson indicated this
22 has been a problem. Counterfeit is not a new
23 problem. In the case of drugs, just to give you a
24 brief history, in the late 1980s Congressman John

0022

1 Dingell had a series of hearings which led to the
2 passage of landmark, what is called the
3 Prescription Drug Marketing Act was passed that
4 included two important consumer protection measures
5 to help guarding counterfeiting. One was a
6 pedigree requirement for distributors that are not
7 authorized by the manufacturer to distribute their
8 products. If you're not an authorized distributor,
9 you have to pass a pedigree paper showing where the
10 drug came from, the manufacturer and all the steps
11 it had along the way to the pharmacy.

12 The second protection was
13 heightened wholesaler licensing. There's a
14 requirement that states like Pennsylvania license
15 wholesalers and track and control who is
16 distributing drugs. Both of those measures helped
17 a lot. Over the years there have been problems
18 identified with that. So there are efforts by
19 states, like Pennsylvania, to revisit those laws
20 and type them up even further. That's a separate
21 issue, but I just wanted to mention here today
22 Senate Bill 311, for example, would address
23 tightening up the pedigree paper aspects and
24 wholesaler licensing.

0023

1 A sister state, Maryland, just
2 passed similar legislation this year and it was
3 sort of a ratifying exercise. Different
4 stakeholders in the system and consumer
5 representatives have been working in that state,
6 both in developing the legislation and now
7 implementing it. So that's an area that is
8 promising, as well.

9 But to turn to the special
10 concerns of the medicines, just to underscore why
11 this kind of legislation is important, when you
12 have a counterfeit that is -- if you don't even
13 realize you're taking it, your condition goes
14 medicated. That's just -- it's really terrible.
15 Cancer medications have been counterfeited.
16 Lipitor, 600,000 Americans were using what they
17 thought was Lipitor but wasn't. You might recall
18 former President Clinton stopped -- without telling
19 his doctor stopped taking his heart medication and
20 it led to the surgery that he had. So that can be
21 an insidious thing when you're not taking what the
22 doctor ordered.

23 One of the states that has had
24 the worst problem initially with counterfeit was

1 the State of Florida. And I mention that in my
2 testimony. There's a link to a Florida State wide
3 grand jury report that details some of the bad acts
4 and practices that happened when crooks tried to
5 get involved in this. Those kind of issues were
6 also outlined in a book I bring to your attention
7 called Dangerous Doses by Kathryn Eban. Those are
8 both referenced in the testimony.

9 But just to give some examples of
10 what is going on in Florida and happening around
11 the United States. Again, the profits are such
12 that it arrives and the profits from narcotics,
13 you're getting some really bad actors involved.

14 How it is done? Counterfeiters
15 can relabel drugs that are expired or damaged in a
16 fire. They can overstate strength. They can
17 dilute. In case of some counterfeit injection
18 drugs, it's notorious up to 2,000 times and sell it
19 as a full strength medicine.

20 And what is really concerning,
21 when you talk about buying something off the
22 street, in the case of drugs, the worst thing that
23 can happen is it ends up in the pharmacy. That's
24 why there's so much integrity in regard to

1 distribution of that system, in fact, because the
2 last thing you want is for counterfeit drugs to
3 show up in pharmacies, but it can happen. There
4 was a notorious case documented in the Florida
5 grand jury report about a father who thought he was
6 getting a growth hormone for his son, turned out to
7 be someone substituted insulin. And he didn't buy
8 it out of a car or truck. He bought it out of a
9 pharmacy in Orlando. So there's a real need to
10 help close that stream of commerce.

11 Pennsylvania, just to note, this
12 state, of course, is not unaffected by this. In
13 January of this year an individual in Philadelphia
14 would purchase thousands of counterfeit drugs over
15 the internet from China, including fake Percocet,
16 Viagra and Cialis, including right here in the
17 Eastern District of Pennsylvania.

18 In my testimony today I've
19 included pictures of how labelling and drugs can be
20 counterfeited, and even experts have trouble
21 differentiating the difference between what is fake
22 and what is real. The examples given here are some
23 Neupogen. The real manufacturers of Ambien.
24 That's to help with white blood cells if you have

1 immunological problems. The other example is
2 Serostim, which is a growth hormone made by Serono.

3 When these are -- when you see
4 the packaging, the fake imaging, even the experts
5 in the companies have trouble. It can take a long
6 time and it's very difficult to distinguish that.
7 So the challenge is there. Since there is no
8 silver bullet protection against counterfeit, it
9 does take efforts on all these different fronts.

10 I mentioned pedigree papers
11 before. They're not perfect, but they give law
12 enforcement authorities a great tool. It's a great
13 tool for enforcement. It's a smoking gun for
14 prosecutors.

15 Similarly, the strength and
16 enforcement tools in HB 523 will give authorities
17 here in Pennsylvania the additional tools they need
18 to prosecute trademark counterfeiting. Just one
19 example from this Bill that is of special
20 importance to pharmaceuticals, this would revise
21 the law to provide that offenders knowingly or
22 recklessly cause bodily injury will face a felony
23 of the third degree. And it will also provide the
24 offenders that knowingly or recklessly violate will

0027

1 be guilty of a felony of the second degree. So
2 those stepped-up compliance tools we think are
3 important.

4 So in conclusion, I wanted to
5 thank you very much today for the opportunity to
6 talk here and thank you for your work on HB 523,
7 and I'm very glad to answer any questions, if you
8 have any.

9 THE CHAIRMAN: Thank you.

10 Questions?

11 REPRESENTATIVE MANDERINO: Thank
12 you for coming. It's a Philadelphia tradition to
13 applaud testifiers. We're not quite as used to it
14 in Harrisburg, so I apologize for stepping onto
15 your applause. Let me pose the questions that I
16 have, not necessarily expecting whether you have
17 the answers, but perhaps you can.

18 Most of the people who are going
19 to testify, it seems from their testimony, is going
20 to talk about the problem. So I was looking on the
21 agenda for who might have the expertise to address
22 the concern that I have about the Bill because I
23 think the problem is real. I want to do it right.
24 And my concerns go to some of the legal aspects of

0028

1 the language in the Bill, as proposed.

2 Most importantly, you had
3 mentioned, and if you don't have the answer but can
4 get it to me, that's fine. You had mentioned that
5 Maryland recently passed similar legislation. The
6 language that concerns me in House Bill 523, as
7 drafted, is that the bottom of the first page on
8 line 17 and 18, where it deals with the
9 presumption. Current law for -- is a -- may
10 permissive presumption, which I'm sure is
11 rebuttable.

12 I don't know legally what happens
13 when you change may to shall, which makes it sound
14 like a mandatory presumption with no additional
15 language in here about whether it's rebuttable. So
16 to you, and I have read further, if people want to
17 think ahead, there's somebody here from the
18 Counterfeiting Coalition that seems to have put
19 together this model legislation, and I know I have
20 written testimony from the DA's Office. They're
21 not going to testify, but they addressed some other
22 legal concerns. They didn't address the issue
23 about what we're being asked to do here about the
24 presumption, and that's what I'd like to have more

0029

1 clarification about.

2 MR. VAN HOOK: If I may, I'd
3 probably defer to them. But if I may clarify, the
4 reference to Maryland legislation was to drug
5 pedigree and wholesaler licensing aspects.

6 REPRESENTATIVE MANDERINO: So it
7 wasn't a criminal statute change?

8 MR. VAN HOOK: It was a change in
9 their food and drug -- the drug distribution
10 Wholesaler Board of Pharmacy.

11 REPRESENTATIVE MANDERINO: Thank
12 you.

13 MR. VAN HOOK: I would -- to the
14 extent that the language changes the presumption,
15 it would be helpful, because if someone's sitting
16 there with a pile of product, anything you can give
17 to prosecutors at least the presumption.

18 REPRESENTATIVE MANDERINO: I
19 agree with you and understand that. I just don't
20 want to get to the point where we have reached so
21 overly broad in what we have done we reach
22 Constitutional problems with how we drafted the
23 Bill.

24 REPRESENTATIVE WALKO: Thank you,

0031

1 reason for your concern and I suspect that the
2 Counterfeiting Coalition has more insight on this.

3 REPRESENTATIVE YOUNGBLOOD: Does
4 anyone else on the Committee have any questions?

5 Thank you.

6 MR. VAN HOOK: No problem.

7 REPRESENTATIVE YOUNGBLOOD: Our
8 next testifier will be Peter Capolino of Mitchell &
9 Ness.

10 MR. CAPOLINO: I want to say good
11 morning to everyone. It was a very easy trip for
12 me. Our offices are just around the corner and
13 down the street and our warehouse is just two miles
14 away, all in Center City, Philadelphia. I thought
15 I'd tell you a little bit about what Mitchell &
16 Ness is for a minute before I go into my written
17 testimony, which you have a copy of.

18 Mitchell & Ness is the oldest
19 sporting good store. We have been here since 1904.
20 My dad came to Mitchell & Ness in 1917 as an
21 orphan, an Italian immigrant, and Mr. Mitchell and
22 Mr. Ness took my dad in in 1917, and he eventually
23 lived there and stayed there and bought the company
24 in 1952. I grew up going to high school, college,

0032

1 military and working at Mitchell & Ness my entire
2 life. My father passed away in 1978 and I have
3 been running Mitchell & Ness ever since then.

4 I believe the reason, though,
5 that I'm here today is to give you an idea of the
6 impact on a small business of a major problem in
7 counterfeiting. So I'm really going to focus on
8 the impact of Pennsylvania and Philadelphia, as it
9 relates to my employees, my tax base that I pay the
10 city and the state and what happens when
11 counterfeiting permeates in a small specialty
12 company like Mitchell & Ness.

13 I start out talking about Ebay.
14 And the reason that I began talking about Ebay is
15 because of the magnitude of the counterfeiting that
16 goes on. Maybe I should take a moment and tell you
17 what I do before we go into this. We make all of
18 the historically-accurate jerseys for the NFL, the
19 NBA, Major League Baseball, the National Hockey
20 League, various colleges and other organizations,
21 as well. And in remaking these
22 historically-accurate uniforms, we become
23 relatively nationally known through all the
24 athletes and celebrities that own these uniforms.

0033

1 I also pay royalties to all of
2 the people who are represented. And I will just
3 tell you one quick royalty story. Some of you may
4 or may not remember Sammy Ball of the Washington
5 Redskins, who was a very famous football player in
6 the late '40s. Sammy is 93 years old now and he
7 called me one day and he said to me, he said:
8 Peter, I don't know why you're paying me all these
9 royalties for my 1948 Washington Redskins Jersey,
10 but it's more money than I ever made in the NFL.
11 Sammy is getting about \$900 a month for 14 or 15
12 months in a row, and that was very, very important
13 to him. Anyway, that gives you a little idea of
14 some of the things we do.

15 Between 2002 and 2007, I have
16 employed, at various times, over 100 people and
17 sometimes down to 30 or 40, it varies by the size
18 of my business. And by the way, I was just
19 thinking about this before testifying. I believe
20 that every single employee I have is a resident of
21 the State of Pennsylvania. I don't even think I
22 have a New Jersey employee on the staff.

23 Well, the counterfeiting of our
24 jerseys began in 2002. It impacted us on a

0034

1 national level. It went to Ebay. As you can see
2 in my testimony, we have 100,000 counterfeit
3 jerseys in a year we knock down on Ebay all the
4 time. In addition to the Ebay counterfeiting we
5 have experienced on a weekly basis consumers
6 walking the streets, coming into stores wearing
7 counterfeit jerseys. I have listed some of the
8 retailers in Philadelphia, our own store, Total
9 Sports, Sneakerville, a very prominent retailer in
10 Philadelphia, Modells, a national retailer,
11 Electronics Boutique and even the Philadelphia
12 Phillies organization.

13 Now, we have been involved with
14 search and seizures that work with individual
15 police forces, and it's been an ongoing problem
16 that affects my business tremendously. Our
17 spending in our small company has averaged \$250,000
18 a year to fight counterfeiting. As our sales have
19 gone down, our spending has gone down. I spend
20 about \$70,000 a year right now in legal fees.
21 Virtually every retailer in the country we sell to
22 has seen counterfeit Mitchell & Ness jerseys coming
23 through their doors and being offered.

24 I want to just give you a little

0035

1 -- and I'm trying to be conservative here because
2 I don't want to throw out numbers that are
3 meaningless. But in terms of our Philadelphia
4 business privilege tax, which is a tax of 1.665
5 percent on our gross receipts, I can certainly
6 calculate that we have missed about \$500,000 in
7 gross receipt taxes that we would be paying the
8 city over the past five years because of
9 counterfeiting.

10 Our net income tax for the city
11 and our net income tax for the state is probably,
12 very conservatively speaking, a quarter of a
13 million dollars a year in income taxes that if the
14 counterfeits didn't exist and I was allowed to make
15 my sales would be tax money that would be coming
16 into the city and the state. And I want small
17 business. I have no idea how many you multiply
18 that by and what that impact is to the city and the
19 state.

20 The problem with counterfeiting
21 is twofold. Young people buy the jerseys. They
22 take them home and wear them and wash them and they
23 fall apart, and it's like money has been stolen out
24 of their pocket. The other thing is it ruins the

0036

1 cache. I don't make a lot of these things. So if
2 you can buy them out of somebody's truck, it ruins
3 the affect and the cache we have created in
4 marketing specialty items and to running our
5 business.

6 I think that 30 percent of my
7 annual volume every year for the last seven years
8 has been affected by counterfeiting. I am one of
9 the most counterfeited brands in the country, and
10 for a company as small as I am to have that much
11 counterfeited, it can be destructive to our
12 company. I believe that counterfeiting has hurt
13 employment opportunities for people who want to
14 work for Mitchell & Ness.

15 I believe counterfeiting has
16 reduced my annual sales volume, which reduces my
17 tax base of what I'm paying people. There's a
18 trickle down effect in every area. The wages
19 people make, the sales that I do, the revenues that
20 we pay in taxes on the counterfeiting problem has
21 been very, very destructive to my company.

22 I hope that I have been some
23 assistance in giving you a point of view from a
24 small local businessman in Philadelphia.

0037

1 THE CHAIRMAN: Are there any
2 questions?

3 REPRESENTATIVE WALKO: Thank you
4 for your testimony. It was very compelling.

5 And do you think -- it seems like
6 this problem is pervasive in all areas. And I have
7 a question about how it works in a minute.

8 But do you think this Bill is a
9 solution, or do you think this Bill solves the
10 problem, or go a long way, or is there suggestions
11 you have?

12 MR. CAPOLINO: I think the Bill
13 will stop to make people think twice. There's
14 really no penalty for counterfeiting. I have been
15 in court. I have testified. There is -- they get
16 away with murder and they walk away from the courts
17 completely free, and I have seen it.

18 REPRESENTATIVE WALKO: Just one
19 quick self-indulging question in which I have
20 curiosity. If I made a knockoff of one of your
21 shirts, would you generally be able to tell?

22 I mean, is it the sort of thing
23 that -- I know all of the gymnastics they go
24 through to make currency difficult, counterfeit

0038

1 with the secret marks and threads that shine
2 different under different lights, and even there
3 it's not a perfect system.

4 If there was a historic Phillies
5 Jersey or something, would that be easy to make an
6 exact replica of, or would you be able to tell?

7 MR. CAPOLINO: No. We'd be able
8 to tell, absolutely. And testify to the
9 authenticity. We can't shut down Ebay. And what
10 is seen on the computer and seen on Ebay, we can
11 tell if it's counterfeit.

12 REPRESENTATIVE WALKO: Is there a
13 way I would understand that you can tell the
14 difference between yours?

15 MR. CAPOLINO: Some of them are
16 easy things, like, we sew all labels in the back of
17 our -- on all four sides, so you can't put your
18 finger through the label. All the counterfeiters,
19 they don't waste time doing extra sewing. So they
20 only sew on two sides. You can put your fingers
21 through.

22 The Phillies jerseys have three
23 Ls in them and nobody knows that. If you were to
24 see Jimmy Rollins today or Richie Ashburn in 1950

0039

1 there's three Ls in the jersey. It's hidden.
2 Counterfeiters don't know that. The number of
3 buttons on jerseys, counterfeiters do wrong and
4 they get the colors wrong.

5 REPRESENTATIVE WALKO: I'm
6 surprised they are so lazy about it. It seems like
7 you --

8 MR. CAPOLINO: A lot of
9 counterfeiters use fabrics that are on hand. They
10 make them quickly.

11 REPRESENTATIVE WALKO: Thank you.

12 MR. CAPOLINO: Sure.

13 REPRESENTATIVE MANDERINO: Thank
14 you. Thank you for your testimony.

15 Have you, your company, have you
16 been involved in -- do you have civil remedies, as
17 well as criminal remedies?

18 MR. CAPOLINO: Yes, we do. We do
19 a lot of cease and desist letters, and those turn
20 into legal documents that can be civil remedies.
21 And we have collected some money the
22 counterfeiters.

23 REPRESENTATIVE MANDERINO: If you
24 know, are your civil remedies limited only to

0040

1 actual damages?

2 What I'm getting to is sometimes
3 it seems to me that in cases like this, where it's
4 all about the profit, a dual line of exposure to
5 the counterfeiter is a good thing. And if you had
6 a civil remedy that had triple damages, or
7 something like that, now you've gone right to the
8 profit motive. Because if I catch you, it's not
9 just going to cost you what it is you produced.
10 It's going to cost you three times what it is to
11 produce. I just don't even know whether that's a
12 current remedy in the law, but it's something I
13 think to consider.

14 MR. CAPOLINO: I don't know the
15 answer to that. I know that I have gotten small
16 amounts of money back, but I don't know how it's
17 calculated.

18 REPRESENTATIVE MANDERINO: Is
19 there a problem identifying who the counterfeiters
20 are?

21 Is the problem kind of find who
22 it is, or is the problem really, they're easy to
23 find, it's getting a remedy, whether it's civil or
24 criminal?

0041

1 MR. CAPOLINO: They're easy to
2 find.

3 MR. RYAN: You mentioned some of
4 the larger stores, like Modells.

5 Have you found that they have
6 actually purchased counterfeited goods with your
7 trademark on them?

8 MR. CAPOLINO: We found that
9 Burlington Coat Factory purchased counterfeit and
10 we went in there and were able to get the goods out
11 of there. The major stores are pretty good. They
12 don't purchase counterfeit too much. It's the
13 counterfeiters outside of the stores in the parking
14 lots, around the shopping malls.

15 MR. RYAN: It's sort of that
16 chain outside of your normal industry, that's
17 somebody with a car outside in a with a trunk full
18 that is the biggest problem?

19 MR. CAPOLINO: Yes.

20 MR. RYAN: I was curious of
21 whether any of the large sporting good stores would
22 accept into their chain of merchandise items that
23 are not traced back to somebody like you.

24 MR. CAPOLINO: The problem is

0042

1 when they see too much counterfeiting, they're
2 reluctant to buy product from me because it's so
3 counterfeited. That's the domino affect.

4 MR. RYAN: They can't sell or
5 compete at the same prices. Thank you.

6 THE CHAIRMAN: Thank you.

7 We'll next hear from the
8 International Brotherhood of Electrical Workers,
9 local 898.

10 Jim Sternweis, Chief Financial
11 Officer, Eaton Electrical Group.

12 MR. STERNWEIS: Good morning. My
13 name is Jim Sternweis. I am Chief Financial
14 Officer of Eaton Electric Group located in Moon
15 Township, Pennsylvania. Eaton Electrical Group is
16 a division of Eaton Corporation, which has four
17 business segments, which includes the electrical
18 services and automotive and truck component. I
19 have submitted some lengthy remarks to let you know
20 a little bit more about Eaton and counterfeiting
21 electrical products industry, so it does revert.

22 The mention of counterfeiting
23 electrical products sends a pretty important
24 message where we really see the distinction between

0043

1 luxury goods, music videos and those products that
2 impact safety products used in residential and
3 commercial building construction factories and
4 electrical utilities. Both constitute illegal
5 trade from unscrupulous sources.

6 But in the electrical sector,
7 counterfeiting introduces a dangerous mention of
8 substandard, unsafe products causing risk of fire,
9 shock, personal injury and property damage. There
10 are a variety of electrical products that
11 counterfeiters target, and these are identified in
12 the written statements. In the limited time here
13 today I'd like to focus on counterfeit electrical
14 circuit breakers.

15 Circuit breakers pass a safety
16 device that, ideally, when everything is working
17 well, you never know it's there. You don't think
18 about it. They're designed to protect
19 short-circuit or overcurrent situations in your
20 electrical wiring systems, both of which can lead
21 to fire, shock, explosion in the electrical system.

22 We see the effects of the
23 dangerous consequences of electrical system
24 failures from house fires to severe burns to

0044

1 explosive impacts and short-circuits with
2 destructive force of electrical fault can be quite
3 severe, and in some cases, deadly.

4 Reliable, quality circuit
5 breakers are a fairly complex sensing and
6 mechanical device. It's designed to trip in a
7 rapid manner so the electricity will be shut down
8 on the circuit and the risk of arcing and the fire
9 is typically prevented. Counterfeit circuit
10 breakers are typically made of inferior designs and
11 do not trip in a timely manner. In many cases we
12 see devices where they will not trip under any
13 circumstances and obviously present significant
14 safety hazards.

15 We also see counterfeiting in
16 case of abused or damaged circuit breakers or
17 internal parts may be corroded, damaged or worn.
18 The outside of the circuit breaker is cleaned up to
19 make it look like a new device. The old labels are
20 removed and new labels are put on the device with
21 the company's trademarks. They will also be
22 labeled as certified by certification, a third
23 party certification organization, such as
24 Underwriters Laboratory or other testers indicating

0045

1 products are compliant with their standards.

2 In many cases, the labelling has
3 changed to describe the product as something
4 different than the original product that was
5 produced, and this can lead to cause the user of
6 the product to unsafely apply the product to an
7 unsafe application where the labeling that
8 identifies the standards are met by the product are
9 not actually what is inside the product, itself.

10 So these are our primary concerns
11 with the safety of customers' homes, businesses and
12 folks who do electrical systems. Our products are
13 designed to protect. Counterfeiters trade on
14 goodwill represented by the quality brands of the
15 electrical products and they have little or no
16 regard for public safety or consumer safety.

17 So Eaton invests significantly in
18 producing quality products that meet the National
19 Electric Code and Underwriters Laboratory. And
20 counterfeiters, on the other hand, do not make that
21 investment. This means the public is a victim.
22 Counterfeiting is not a victimless crime. And in
23 the case of electrical safety products,
24 consequences can be quite severe in terms of

0046

1 property damage and personal injury.

2 So House Bill 523 we believe
3 addresses many of those concerns and we feel
4 strongly should be enacted. We're really
5 interested in seeing that strong legislation that
6 will act as a deterrent. As we have heard from
7 other testifiers, that's basically not what is in
8 place today and we fall short. So the Bill making
9 knowingly trading counterfeit products will cause a
10 felony. We suggest that the Committee consider
11 including property damage as part of harm that
12 gives rise to a felony. In cases of counterfeits,
13 someone's house may burn down. There may be no
14 personal injury, but that's still a pretty severe
15 consequence.

16 523 makes trafficking in
17 counterfeit packaging and labels and containers a
18 crime. In some cases counterfeiters may look like
19 products with no brand markings on the product, but
20 the containers, the packaging and labelling makes
21 the product appear to the user to be original in
22 quality and standards. 523 as remedial provisions
23 of the statute will affect deterrents of
24 restitution, and like the federal law, mandates

0047

1 forfeiture of counterfeiting products.

2 We believe that public policy
3 must embrace a zero tolerance policy toward
4 counterfeiting, specifically when public safety is
5 at risk. And I have some -- actually some CDs, if
6 anyone is interested, that shows the impact of a
7 fatal circuit breaker and short-circuit testing and
8 the lethal force of explosion, fire, release of
9 gas, molten metal flying through the air. And
10 unfortunately, in our industry, where there are
11 faults and problems, we see some pretty dire
12 consequences, as I mentioned.

13 So I thank you for your attention
14 and appreciate the opportunity to testify and try
15 to answer any questions you may have.

16 MR. RYAN: If I may, you're
17 talking about an industrial product.

18 Where do you find the most common
19 introduction into the system for this type of
20 industrial product?

21 MR. STERNWEIS: It's also a
22 consumer product in that residential circuit
23 breakers are a particular target of counterfeiters.
24 Some of the larger, more severe damages may be more

0048

1 in the industrial setting. But the introduction of
2 the product -- again, counterfeiters, either from
3 foreign sources or -- which typically is what we
4 see when a product, a copycat product, if you will,
5 is made completely from a foreign source will be
6 introduced into a wholesale channel, internet sales
7 of the products will expose the public to the
8 products.

9 And also, the reintroduction of
10 -- as an example, there may be a factory that has
11 -- undergoes flood conditions in hurricane areas.
12 Insurance companies will pay damage, take
13 possession of the products, reintroduce them,
14 resell them into the market. Counterfeiters will
15 relabel them sell them as new, and electrically,
16 they will not operate properly and then present
17 real problems of safety.

18 So those are the kinds of
19 reintroduction avenues we see. And it's becoming
20 more and more prevalent everyday and is really, I
21 think, growing as a public safety issue.

22 MR. RYAN: Thank you.

23 REPRESENTATIVE YOUNGBLOOD: At
24 this time, I would like to acknowledge that we have

0049

1 Councilman Bill Greenlee in the room, as well as
2 Councilwoman Blondell Brown.

3 Nils Montan, president of
4 International AntiCounterfeiting Coalition.

5 MR. MONTAN: I'm bringing Travis
6 Johnson with me, who is associate counsel. Travis
7 has been instrumental in drafting a model bill,
8 which was the model for your Bill, Representative.
9 You might go able to help with some of the
10 technical questions. I want to thank Robin Reed
11 from the International, and Senator Kitchen, who is
12 my state senator. She is fantastic.

13 The IACC, International
14 AntiCounterfeiting Coalition, is a trade
15 association in Washington that was founded in 1979
16 to deal with these kind of issues of counterfeiting
17 and piracy. So it is a problem that has been
18 around a long time.

19 It is also a global issue, and
20 basically, I have a lot of testimony in my written
21 testimony, some of which has already been talked
22 about, the danger to health and safety of
23 counterfeit pharmaceuticals, automobile parts and
24 the like, the loss of tax revenue and so forth.

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1 And I think Peter was very elegant in talking about
2 the problem of small businesses.

3 Many of our members are large,
4 multinationals who can handle, in a sense, a
5 program that dampens counterfeiting to certain
6 levels. But small and medium-sized companies, they
7 can't afford the big program, which is bankrupting
8 them.

9 So I want to tell you a little
10 bit about how this Bill came in. For many years
11 many associations focused on federal government and
12 the federal government has done a lot in recent
13 years to address the problem of counterfeiting.
14 And markedly, in 2006, President Bush signed HR 32
15 which really made a very strong statement at the
16 federal level. And the Department of Homeland
17 Security and Customs and Border Protection has
18 increased the number of cases it has brought for
19 almost every year in recent years.

20 Unfortunately, that shows the
21 work that they're doing, even in a time that it did
22 shows how large a problem it is. In 80 percent of
23 seizures that are made by customs and border
24 protection at the various ports of the United

0051

1 States come from China, and these are counterfeit
2 jerseys, circuit breakers, counterfeit drugs and
3 the like. Our customs agents can only inspect
4 small portions of the containers that come into the
5 port. It's physically impossible to inspect them
6 all. So they do profiling and statistical
7 analysis, and they do a very good job, but it's
8 inevitable that a good quantity of counterfeit
9 product is going to get through customs, and they
10 do make mistakes.

11 So basically we came up with
12 legislation by the public authorities and
13 landowners. If you have the wherewithal, you have
14 to have a program in China where you can go back
15 there and many sites that manufacture. You have to
16 work with Chinese customs to try to deal with
17 exports from China. You have to work with our
18 federal officials to deal with seizures at the
19 border. And when it gets into the street of
20 commerce, whether it's sold in a big box store,
21 which occasionally does happen, though they are
22 very good, as the previous witness testified, or a
23 flea market on the street, wherever they show up,
24 you need good state laws to fight this problem.

1 There are civil remedies
2 available, however there is just a problem of
3 nabbing them properly. It's hard to have states
4 have a civil program that will really have light of
5 a criminal statute. So this effort in Pennsylvania
6 is just the tip of an iceberg in trying to remove
7 the penalties of counterfeiting from civil
8 penalties into having criminal penalties.

9 And you might have heard recently
10 that our government, through the United States
11 Trade Representatives Office, filed a case against
12 China. And the gravamen of the case is still
13 pending; the fact that China does not use criminal
14 penalties. They are very weak and basically
15 meaningless, and of course, there's a lot of
16 corruption in what they call transparency in
17 China. So that when you join the WU in China, you
18 said you would give up certain standards set forth
19 on behalf of the trade organization and you're not
20 doing it as an administrative system to continue
21 working.

22 So what we're talking about today
23 is we need more criminal cases. So what we're
24 talking about today is just one aspect of the

0053

1 global problem where we need criminal authorities
2 to have some life. We need to have prosecutors who
3 would be willing to bring the cases and real
4 penalties that will deter counterfeiters.

5 I also just wanted to address, if
6 I might, the presumption issue. I'm not
7 specifically, exactly sure which one you're
8 referring to, but there is the presumption that in
9 25 counterfeit items in your possession the
10 presumption is that have you them for sale; that
11 they're not for your personal use.

12 Now, that the way that was meant
13 to work was to shift the burden of the presumption
14 from the prosecution to the defendant and would be
15 a viable presumption. So if that needs
16 clarification, we'll make sure that you have our
17 contact information and Mr. Johnson's contact
18 information. And I understand that you did get
19 some comments from prosecutors that you also want
20 to carefully examine because this is a criminal
21 statute and you want to be careful.

22 So thank you very much for your
23 support. I do believe this is an important bill
24 and I want to thank Representative Youngblood for

0054

1 her leadership in this effort. And we're here for
2 any questions you might have.

3 MR. RYAN: Unless your counsel
4 with you wanted to address that issue. In
5 Pennsylvania we have a lot of different
6 presumptions. When our courts dealt with them,
7 they almost put it in a category that just about
8 any presumption of the criminal statute is
9 rebuttable, unless you have the establishment, a
10 strict liability crime.

11 MR. MONTAN: We'll take a hard
12 look at that after this hearing. Thank you for
13 bringing it to our attention.

14 MR. RYAN: Because currently it
15 says you may presume, and oftentimes, the
16 instruction you give to a jury will be that they
17 may presume. It wouldn't necessarily be mandatory,
18 and I think that's probably just a nuance in a
19 history of our criminal law and cases that deal
20 with our criminal presumptions.

21 MR. MONTAN: It's an important
22 point, though. We'll get back to you and staff and
23 make sure this comports with the normal procedure
24 of Pennsylvania.

1 REPRESENTATIVE MANDERINO: The
2 presumption issue was something that we looked at
3 fairly carefully. We discussed with prosecutors,
4 as well as law enforcement around the country, the
5 model that we developed, and it was intended as a
6 model not necessarily specific to Pennsylvania. So
7 as you say, it may be just in the context of
8 Pennsylvania law that there's a slightly different
9 meaning or understanding of the terms. But the
10 prosecutors and law enforcement that we spoke with
11 were opposed to the use of may rather than shall,
12 generally because they looked at it as the
13 permissiveness would seek to discourage prosecutors
14 from bringing smaller cases in those instances.
15 But it's never intended to be rebuttal for
16 presumption.

17 MR. RYAN: Just to clarify that
18 for you, being a former prosecutor for a number
19 years but now having a different responsibility
20 between what police and prosecutors want, as
21 opposed to what we think sometimes constitute or
22 make muster when it comes to Constitutional issues
23 can be different. Thank you.

24 REPRESENTATIVE YOUNGBLOOD: Our

0056

1 next testifier will be Patricia Wilson Aden,
2 executive director of the Rhythm and Blues
3 Foundation. Good morning.

4 MS. ADEN: Good morning. Good
5 afternoon. My name is Patricia Wilson Aden and I'm
6 pleased to present testimony on behalf of the
7 Rhythm and Blues Foundation in support of House
8 Bill 523 and its provisions regarding trademark
9 counterfeiting.

10 Now, what we hope to accomplish
11 here today is to help you understand how individual
12 artists and performers specifically should be
13 looked at as sort of miniature Mitchell & Nesses
14 because they suffer the same dire consequences. So
15 while you have heard a lot about consumer goods, in
16 the case of rhythm and blues artists, specifically
17 and artists in general, we're talking about the
18 impact of counterfeiting on their very livelihoods,
19 and this is both in the case of services that they
20 provide and the consumer goods that are offered to
21 the public.

22 The protection of trade names and
23 the imposition of legal consequences for
24 counterfeiting imposter groups is long overdue and

0057

1 is essential to protecting the integrity of
2 financial interest of America's most celebrated
3 vocal groups; just as in the case of consumers who
4 attempt to buy designer goods and those who
5 knowingly rob original performers of their identity
6 and defraud the public by advertising and otherwise
7 deceptively presenting themselves as original
8 vocalists and group members. The problem extends
9 to copyrighting music. And piracy right now is
10 rampant in the entertainment marketplace because
11 music is so easily inundated with our digital
12 technology today.

13 Legislation providing for
14 protection against trademark counterfeiting is
15 particularly meaningful to the Rhythm and Blues
16 Foundation. Founded in 1989 by vocalist Ruth Brown
17 and many other pioneers, the Foundation is a
18 non-profit organization dedicated to preserving
19 rhythm and blues music and promoting recognition of
20 the artists to contribute to its evolution as a
21 unique American musical genre. As a critical part
22 of our mission, the Foundation provides emergency
23 financial and medical assistance to artists from
24 the 1940s and '50s and '60s. Many of the artists

1 served by the Foundation were once thriving
2 performers with lucrative careers, but for a
3 variety of reasons, they now suffer financial
4 hardships.

5 The artists we assist are also
6 frequently victims of deceptive practices by the
7 imposter groups. The unfair effects of imposter
8 groups often compound the adversity that such
9 artists are already suffering, making it even more
10 difficult for them to reestablish themselves
11 professionally and personally.

12 Passage of House Bill 523 will
13 help protect the livelihoods of scores of early
14 rhythm and blues artists. Countless rhythm and
15 blues fans will also be shielded from the deceptive
16 practices of imposter groups who falsely portray
17 themselves and their products as the original
18 artists and the original music. Further, the
19 provision of meaningful penalties will discourage
20 those who promote and perform in imposter groups,
21 who we have found that there are very often repeat
22 offenders as they go from state to state, locale to
23 locale.

24 The Rhythm and Blues Foundation

0059

1 applauds State Senator Youngblood and the sponsors
2 of House Bill 523, and we urge members of the
3 General Assembly to vote in favor of its passage.
4 We have supported similar legislation in other
5 states as part of the music coalition and we are
6 very pleased that Pennsylvania's coming to the
7 forefront of those states; that it's looking into
8 this issue. We believe that this legislation will
9 provide critical protections for America's
10 musicians and their many fans.

11 If you have any questions.

12 REPRESENTATIVE YOUNGBLOOD: Thank
13 you. I'm very sorry. I overlooked Brad Huther,
14 senior advisor of AntiCounterfeiting and Piracy
15 Initiative. Please accept my apology.

16 MR. HUTHER: Thank you very much.
17 Your apology is accepted.

18 I represent the U.S. Chamber of
19 Commerce, which has more than three million
20 members, the vast majority of which are small or
21 medium sized. I also represent the Chambers
22 Coalition Against Counterfeiting and Piracy and
23 people who testify are members of that coalition
24 that now numbers about 450 trade associations and

0060

1 original companies who are very concerned about our
2 representatives to work hard in fighting against
3 the economic crime for the 21st century.

4 And if it only a business issue,
5 we could possibly stop there. But the Chamber and
6 its members have strong civic numbers that we know,
7 as I can show you with a couple of samples here.
8 If you take tests for diabetes, I have got some
9 counterfeit products right here that will give you
10 false results, a positive result every time,
11 because it's a cheap imitation of the legitimate
12 Johnson and Johnson pump.

13 I can also show you some
14 toothbrushes, which are marketed to children at the
15 five and seven year age bracket, and to identify
16 which one is a failure and which one isn't, the
17 average mother or child, for that matter, would be
18 concerned with the difference. It is very slight.

19 The Chamber has worked hard to
20 develop a national agenda around this issue. We
21 also work hard to develop international agenda. We
22 work with the European union. We work with the GA
23 countries. We work with the association in Asia
24 for economic cooperation and Asia specific

0061

1 cooperation group. We work with Canada and Mexico
2 a lot because of shipments of goods north and south
3 of this country are growing in number and
4 increasing numbers. But make no mistake about
5 this, we have counterfeiters and pirates in the
6 United States who are just as crafty about going
7 after local markets in ways they could never
8 penetrate to markets on the straightforward, up and
9 up competitive basis.

10 So what the Chamber wants and
11 seeks through your Bill is to establish the
12 connection that connects us between international
13 strategy, national strategy, and certainly a state
14 and business strategy. That's why we're very
15 pleased to see everyone in this room looking at
16 this, not in just a single context, but rather than
17 -- everything I have listened to this morning.
18 But this is a well understood issue within
19 Pennsylvania.

20 Suppose you were the CEO of Zippo
21 lighters out of Pennsylvania, when you had an
22 issue, layoff notices to more than 120 of your
23 employees about this time last year largely because
24 China found a way to take away 30 percent of your

0062

1 market share by copying the very famous
2 family-owned business of over 75 years duration is
3 very troubling. Suppose you were the federal
4 prosecutor in Pittsburgh who found over the last
5 three years 11 criminal prosecutions of everything
6 from counterfeit DVDs, such as Mary Wilson is
7 talking about, but more significantly, counterfeit
8 baby food, for which prosecution has been made.

9 Or suppose you were the local
10 shop owner in Pittsburgh where you had to suddenly
11 close your business because you learned that you
12 are now violating an obscure thing called the
13 Intellectual Property Laws in the United States.
14 Well, that's what this is all about.

15 The Chamber wants to educate
16 everybody who has a vested interest in this. And I
17 can tell you frankly, no one at any citizen level
18 that doesn't have a vested interest in this, but
19 more importantly, once we have educated about the
20 dangers and the choices that they have to make when
21 they make these purchases, whether they be at a
22 flea market, whether they be on a corner street
23 right now in Philadelphia about three blocks from
24 here -- I took a tour of Philadelphia last night,

0063

1 and I can tell you, counterfeit goods are being
2 sold within three blocks of City Hall.

3 And I can also say there is a
4 growing concern that we have that if we don't find
5 ways of enforcing not just the intellectual
6 property rights of brand rights and performers,
7 such as Mary Wilson or manufacturers, not only are
8 we doing harm to the economic aspect of American
9 life, I agree with those who already testified, the
10 very fabric of American society is at risk here.
11 We must find ways of making sure that our system of
12 supplying goods and services to the consumer is
13 based on fair and equitable business practices, as
14 well as things that take the consumers' interest to
15 heart and making sure those products are safe and
16 reliable and trustworthy.

17 If I could just add one comment
18 to your question earlier about shouldn't there be
19 something like trouble damages, there are trouble
20 damages, and they can be demonstrated. Willful
21 infringement. It's a very esoteric distinction,
22 but in patents, you cannot be prosecuted for a
23 patent right, whereas the trademarks and
24 copyrights, that is a criminal proceeding for which

0064

1 the judges are giving sentencing guidelines. The
2 more insidious the crime, the greater the penalties
3 imposed by the judge.

4 I'd like to close by saying that
5 the Chamber thinks this is one of its top
6 priorities. Our coalition stands ready to assist
7 the State of Pennsylvania and the City of
8 Philadelphia and other locations in the United
9 States. Mary Wilson was with the Chamber in its
10 efforts in Los Angeles just a couple of weeks ago.
11 Howard Berman, who is the chairman of the Judiciary
12 Committee of the Congress was there and lent his
13 support to the fact that this is an issue.

14 I submit to you that if we don't
15 count the dots and we don't connect the national
16 problem with the international problem and the
17 local problem, this thing is going to get so big
18 that you're going to be holding a hearing some day
19 like this where the consequences will be far more
20 severe than the ones you face today.

21 Thank you.

22 REPRESENTATIVE MANDERINO: Thank
23 you. Maybe this is more of a comment or a
24 suggestion, but I couldn't help but be struck as

0065

1 each and every one of you who came to testify today
2 made clear that this is a public and consumer
3 safety issue, even perhaps more than some people
4 think of it as the loss of business profit issue.
5 And I think Mary Wilson said when she stopped, we
6 just have to send a message that this is not
7 right. And it seems to me we also need a public
8 education campaign in a way that I don't think we
9 have ever really seen in this country.

10 As different folks who were
11 testifying, I was sharing with John Ryan, this goes
12 back more than 20 years ago, I remember not long
13 after I bought my first house, and I'd been to a
14 flea market and I bought some additional extension
15 cords. And then six months later I read an article
16 about the counterfeiting of the UL label in
17 electrical appliances. And in a panic, I'm running
18 around my house trying to figure out which were the
19 extension cords that I bought at that flea market
20 because maybe they were counterfeit. And knock on
21 wood, there was no electrical fire in my house.

22 But whether it's medicines, or
23 electrical appliances, or somebody who bought the
24 knock-off Tiffany bracelet for their daughter's

0066

1 birthday, knowing it was a knock-off and doing no
2 harm, and then finding out a year or two later that
3 what the product was finished with was toxic to
4 their child's health.

5 There are a lot of risks here
6 that I think we need to educate the public on, and
7 if we can do a two-pronged approach, I think we'll
8 have the most success.

9 REPRESENTATIVE YOUNGBLOOD: Thank
10 you very much.

11 Our next testifier will be YaYa
12 Horne submitting written testimony.

13 Loretta Tate Crump, director of
14 Lucien Crump Art Gallery has also submitted written
15 testimony that will be entered into the record.
16 And YaYa Horne's testimony will also be submitted
17 for the written record.

18 In addition, earlier we had the
19 Philadelphia District Attorney's Office here and
20 they had to return to -- I don't think anyone is
21 still here, but we do have a copy of their
22 testimony that they were going to do today in
23 testifying, and we'll make sure that it's also
24 submitted to the record.

1 THE CHAIRMAN: That completes our
2 hearing today. And I had said to my dear friend,
3 Rosita, that we're planning to tweak the Bill. I
4 think there are some minor changes that we talked
5 about here today, due to the language, because one
6 of the things that I have always been very proud of
7 with the staff and members is that whatever product
8 we put out of this Committee will become a product
9 and it is a product. We want to make absolutely
10 sure, as best we can, with the verbiage and, of
11 course, attorneys in the room and others know what
12 words can mean. And especially in a song, words
13 are so important. And, of course, in a court of
14 law, it certainly means an awful lot, too. So we
15 want to make sure we do it and do it right so we
16 don't have to revisit it sometime in the future.

17 But I'm hoping that when we get
18 back in session we can get the legislation under
19 consideration and get some clarifying language and
20 get the Bill to the House for a vote because I
21 think the cross-section of support we've seen here
22 today I think is very indicative of how important
23 this legislation is to a lot of people, the
24 entertainment industry, certainly the industry. We

0068

1 heard from people that produced products right
2 here, two, three blocks away from City Hall, and
3 how they're impacted in the business community
4 level, and the consumers and the protection that we
5 need to afford to them.

6 So with that, I'd like to
7 conclude the hearing today and thank my very dear
8 friend, Rosita, and we'll end with that.

9 Rosita?

10 REPRESENTATIVE YOUNGBLOOD: Thank
11 you, everyone, for coming.

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18 (Whereupon, the hearing was

19 concluded at 12:05 p.m.)

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C E R T I F I C A T E

STATE OF PENNSYLVANIA
COUNTY OF BUCKS

I, SUSAN L. SINGLAR, a Court
Reporter and Notary Public in and for the State of
Pennsylvania, do hereby certify that the foregoing
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SUSAN L. SINGLAR

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