

COIN WORLD

Protecting the hobby

By Armen Vartian | 03-09-12

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I'm often asked whether any federal laws relate specifically to coins. Of course, almost every year new legislation authorizes U.S. Mint coin programs, and many laws regulate the content and designs of U.S. coinage.

I'm usually stopped when I get to the Hobby Protection Act, and the questioner wants to know why Congress has the Federal Trade Commission regulate replicas of coins, as opposed to counterfeits, which are the subject to several federal criminal statutes enforced by the U.S. Secret Service.

I explain that the act has an important part to play to protect consumers in the coin marketplace, especially now.

Playing its part

The Hobby Protection Act and its corresponding regulations, located at 15 United States Code §2101 et seq. and 16 Code of Federal Regulations §304.1 et seq., prohibit the manufacture and importation into the U.S. of "original numismatic items" not marked "COPY" according to size and location parameters set forth in the regulations.

The act is enforceable through civil actions in federal district court by "any interested person" (15 U.S.C. §2102), through enforcement actions by the FTC (15 U.S.C. §2103), and "seizure and forfeiture" of nonconforming items by the U.S. Customs Service (15 U.S.C. §2104).

"Original numismatic items" are defined in the act as any "coinage or issue which has been used in exchange or which has been used to commemorate a person or event ... [I]nclud[ing] coins, tokens, paper money and commemorative medals."

In addition to all legal tender coins, according to the FTC "used in exchange" was meant to cover silver ingots that circulated in the Old West, and coins such as the Mexico 50-peso coins that traded at bullion value, but were never recognized by their governments as legal tender.

All the fake U.S. coins currently being imported in droves from China are covered by the act.

Chinese replicas

Even Chinese-made replicas of coins that never existed — such as 1878-O Morgan dollars, which were freely available on eBay until recently, would be covered by the act, based on a June 2005 federal court decision in New York that interprets the act as applying to "any item that 'purports to be, but in fact is not, an original numismatic item.'"

On the other hand, I have long believed that where a unique design was never made into coins used in exchange or as medals, then contemporary coins using those designs would not be covered by the act.

In fact, the Smithsonian Institution regularly raises funds for the National Numismatic Collection from royalties earned through licensing such designs to retailers.

One important difference between the Hobby Protection Act and the federal anti-counterfeiting laws is that the act does not require any fraudulent intent on the part of the importer or manufacturer, and imposes absolute liability on anyone importing or manufacturing unmarked replicas.

In other words, the FTC or a private plaintiff need not prove that a manufacturer or importer of these coins knew about the act and deliberately violated it.

A major weakness, however, is that the act covers only manufacture and importation, and not the sale, of unmarked replicas.

Through the leadership of several coin industry organizations, Congress is expected to take up this issue in the current session, and consumers may soon have another weapon against the counterfeit "invasion."

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