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Guides for the Jewelry, Precious Metals, and Pewter Industries

Action: Request For Public Comments On Proposed Amendments

Summary: The Federal Trade Commission (“FTC” or “Commission”) proposes revisions to its Guides for the Jewelry, Precious Metals, and Pewter Industries (“Jewelry Guides” or “Guides”). The proposed revisions aim to respond to changes in the marketplace and help marketers avoid deceptive and unfair practices. This document summarizes the Commission's proposed revisions to the Guides and includes the proposed revised Guides.

Dates: Comments must be received on or before April 4, 2016.

Addresses: Readers can find the Commission's complete analysis in the Statement of Basis and Purpose (“Statement”) on the FTC's Web site at <https://www.ftc.gov/public-statements/2015/12/statement-basis-purpose-proposed-revisions-jewelry-guides>. The Commission seeks comments on these proposed revisions and other issues raised in this document. Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below. Write “Jewelry Guides, 16 CFR part 23, Project No. G711001” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/jewelryguidesreview>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex O), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex O), Washington, DC 20024.

I. Surface Application of Precious Metals: The Commission proposes three revisions to its guidance on precious metal surface applications. First, to address the deceptive use of precious metal terms for silver and platinum products that are not composed throughout of the advertised metal, the Commission proposes to advise marketers against using silver or platinum terms to describe all, or part of, a coated product unless they adequately qualify the term to indicate the product has only a surface layer of the advertised precious metal.⁵ Second, based on new durability testing, the Commission proposes to update the

safe harbors for surface applications of gold.⁶ Specifically, this testing shows that the durability marketers intend to convey can be assured only at thicknesses higher than those specified in the current Guides. Additionally, this testing demonstrates that, for electrolytic applications, durability is assured only when marketers use gold or gold alloy of at least 22 karat fineness, rather than the 10 karat fineness currently provided. The Commission seeks evidence about consumer expectations regarding the durability of products with a surface application of precious metals as compared to products composed throughout of precious metals. As discussed in the Statement, the Commission does not propose guidance for new terms to describe surface applications of silver and platinum group metals not addressed in the Guides, nor does it propose guidance for new surface-application terms, such as “clad” and “bonded,” to describe gold and other surface applications. The Commission lacks sufficient evidence on which to base such guidance. Third, based on consumer perception evidence, the Commission proposes a new section advising marketers to disclose rhodium surface applications on products marked or described as precious metal, such as rhodium plated items marketed as “white gold” or silver.”⁷

II. Products Containing More Than One Precious Metal: Consistent with consumer perception evidence, the Commission proposes adding a new section that states it is unfair or deceptive to misrepresent the relative quantity of each precious metal in a product that contains more than one precious metal.⁸ The proposed guidance advises marketers generally to list precious metals in the order of their relative weight from greatest to least (*i.e.*, leading with the predominant metal). However, it includes examples illustrating that, in some contexts, consumers likely understand that a product contains a greater amount of one metal, even though another metal is listed first (*e.g.*, “14k gold-accented silver”). It also provides examples of marking and descriptions of terms that may be misleading (*e.g.*, use of the term “Platinum + Silver” to describe a product that contains more silver than platinum by weight).

III. Alloys With Precious Metals in Amounts Below Minimum Thresholds: The Commission proposes to revise the Guides to address gold and silver products containing precious metal in amounts below the levels currently specified in the Guides. The current Guides advise marketers to avoid using the terms “gold,” “silver,” or “platinum,” or their abbreviations, to describe or mark a product unless it contains the precious metal in an amount that meets or exceeds the levels specified in Section 23.4 (gold), 23.6 (silver), and 23.7 (platinum group metals). The Commission proposes adding new guidance to the gold and silver sections regarding marketers who have competent and reliable scientific evidence that below-threshold products have materially similar properties (*e.g.*, corrosion- and tarnish-resistance) to at- or above-threshold products. This proposed guidance advises that these marketers may non-deceptively reference these precious metals without additional disclosures other than purity.^[9] Further, the proposed guidance advises marketers selling below-threshold gold and silver alloys that materially differ from at- or above- threshold products (*e.g.*, 8 karat gold items that tarnish) that they may non-deceptively reference these metals if they disclose that the product may not have the same attributes or properties as jewelry made with the same precious metal at or above the threshold.^[10] Finally, the notes advise marketers to accurately disclose the

purity of the metal. ^[11] These changes should enable marketers to provide truthful information about precious metal content while dispelling the impression that a product will perform as well as one made with that precious metal in amounts at or above the threshold. For reasons described in the Statement, the Commission does not propose a corresponding note for platinum alloys containing less than 500 parts per thousand platinum.

IV. Lead-Glass-Filled Stones: The Commission proposes adding a new note to the section on “Misuse of the words ‘ruby,’ ‘sapphire,’ etc.” ^[12] Based on consumer perception evidence, this proposed note states it would be unfair or deceptive to describe products filled with a substantial quantity of lead glass: With the unqualified word “ruby” or name of any other precious or semi-precious stone; as a “treated ruby” or other “treated” precious or semi-precious stone; as a “laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” or “synthetic” ruby or other natural stone; or as a “composite ruby,” “manufactured ruby,” “hybrid ruby,” or other precious or semi-precious stone without qualification. The Commission also proposes some examples of terms marketers could use to describe these products non-deceptively (*e.g.*, use of the term “lead-glass-filled ruby” to describe a product made with ruby that is infused with lead glass). ^[13]

V. Varietals: The Commission proposes adding a new section that states it is unfair or deceptive to mark or describe a product with an incorrect varietal name. ^[14] Varietal names describe a division of gem species or genus based on color, type of optical phenomenon, or other distinguishing characteristic of appearance (*e.g.*, crystal structure). Based on consumer perception evidence, this proposed section provides two examples of markings or descriptions that may be misleading: (1) Use of the term “yellow emerald” to describe a golden beryl or heliodor, and (2) the use of the term “green amethyst” to describe prasiolite.

VI. “Cultured” Diamonds: Based on consumer perception evidence, the Commission proposes adding a new diamond example that states it is not unfair or deceptive to use the term “cultured” to describe laboratory-created diamonds if the term is immediately accompanied by “laboratory-created,” “laboratory-grown,” “[manufacturer name]-created,” “synthetic,” or by another word or phrase of like meaning. ^[15]

VII. Misuse of the Word “Gem”: Based on comments noting that the guidance on the term “gem” is circular and subjective, the Commission proposes eliminating Section 23.25 (“Misuse of the word ‘gem’”). In its place, the Commission proposes adding the term “gem” to Section 23.23 ^[16] (Misuse of the words “ruby,” “sapphire,” “emerald,” “topaz,” “stone,” “birthstone,” “gemstone,” etc.). The Commission also proposes eliminating Section 23.20(j) (misuse of the word “gem” as to pearls). As discussed in the Statement, the Commission does not propose further guidance for the term “gem” with regard to pearls.

VIII. Treatments to Pearl Products: Based on comments, the Commission proposes a new section addressing disclosures of treatments to pearls and cultured pearls. This

section advises marketers to disclose treatments to such products if the treatment: (a) Is not permanent; (b) creates special care requirements or (c) has a significant effect on the product's value.^[17] The guidance largely tracks the current guidance regarding gemstone treatments.^[18]

IX. Conclusion: For further analysis of comments and the proposed revised guidance, please see the Statement of Basis and Purpose on the FTC's Web site, available at <https://www.ftc.gov/public-statements/2015/12/statement-basis-purpose-proposed-revisions-jewelry-guides>.