



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Division of Enforcement  
Bureau of Consumer Protection

April 29, 1997

Arthur I. Winard, Esq.  
60 East 42nd Street, Suite 3419  
New York, NY 10165

Dear Mr. Winard:

This is in reply to your letter concerning the proper disclosures of treated sapphires. You state that your clients are purchasing genuine white sapphires that have been heat treated with blue corundum, which turns the outer coloring of the sapphires blue. You ask whether display cards for the jewelry can be marked "genuine sapphires" or "natural sapphires" with the word "enhanced" prominently shown in another portion of the display card, and whether the stones can be so described, with a similar disclosure that they are "enhanced," in advertising. You also state that your clients plan to place a hang tag that states "enhanced" on jewelry items containing these sapphires.

As you know, the Federal Trade Commission has issued Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 C.F.R. Part 23 ("the Guides"). The Commission's guides are administrative interpretations of the laws administered by the Federal Trade Commission to provide guidance for the public to conform with legal requirements. In particular, they provide guidance regarding compliance with section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), which declares "unfair or deceptive acts or practices in or affecting commerce" to be unlawful.

Section 23.22 of the Guides states that "[i]t is unfair or deceptive to fail to disclose that a gemstone has been treated in any manner that is not permanent or that creates special care requirements, and to fail to disclose that the treatment is not permanent." The Guides list heating and surface diffusion as examples of treatments that may not be permanent or that create special care requirements (depending on the gemstone being treated), and thus, should be disclosed to consumers. Section 23.22 also recommends disclosure of the special care requirements for the gemstone. Therefore, if the treatment of the sapphires that you describe is not permanent, or creates special care requirements, the treatment should be disclosed. If the treatment is not permanent, the fact that the treatment is not permanent also should be disclosed. Further, we recommend that if the treatment creates special care requirements, those requirements should be disclosed.

The Guides do not specify the language that should be used in making these disclosures. Note 2 to section 23.1 of the Guides provides guidance with respect to disclosures generally, and states:

To prevent deception, any qualifications or disclosures, such as those described in the guides, should be sufficiently clear and prominent. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

These items should be taken into consideration in determining the adequacy of the disclosures your clients plan to make. FTC staff does not have sufficient information about how consumers would interpret the suggested disclosure, "enhanced." If consumers understand the term to mean that the gemstone has been treated, or if the term prompts consumers to inquire about the gemstone treatment, then the disclosure may be adequate. More specific disclosures, however, such as "color enhanced" or "color treated," may be more effective in informing consumers about the treatment. As between the two terms "treated" or "enhanced," the term "treated" may be more informative to consumers. We note that in addition to disclosing the existence of the treatment, if the treatment of the sapphires is not permanent, the fact that the treatment is not permanent also should be disclosed. Also, we recommend disclosing the special care requirements, if any, that the treated sapphire require.

With regard to how the disclosures should be made, section 23.22 states that the disclosures "may be made at the point of sale, except that disclosure should be made in any solicitation where the product can be purchased without viewing (e.g., direct mail catalogs, on-line services), and in the case of televised shopping programs, on the air."

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, your request for advice, along with this response, will be placed on the public record.

Sincerely,

Constance M. Vecellio  
Attorney  
Division of Enforcement