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September 24, 2012

Via E-file

Donald S. Clarke  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

Re: Jewelry Guides<sup>1</sup>, 16 CFR Part 23; Project No. G711001

Dear Secretary Clarke:

On behalf of our client, MJJ Brilliant Jewelers, (hereinafter, "MJJ"), the following comments are submitted in response to the Federal Trade Commission ("FTC") *Request for Public Comments* published in the Federal Register on July 2, 2012<sup>2</sup>.

Steadily escalating prices of precious metals have necessitated, and fostered, technological advances in the manufacture, construction and composition of precious metal jewelry. These changes have outpaced the existing Jewelry Guides and implementing regulations of 16 CFR Part 23. In fact, many new precious metal compositions prevalent in the trade were not contemplated by the existing Jewelry Guides. These products have created an inherent conflict between existing regulatory provisions, making it impossible for the trade to comply with the existing guides while marketing products in a fair and non-deceptive manner. Accordingly, MJJ respectfully submits the following comments for the Commission's consideration.

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<sup>1</sup> Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 Code of Federal Regulations, Part 23.

<sup>2</sup> Federal Register Vol. 77, No. 127, page 39201.

### New Products

The escalating cost of precious metals, notably gold, coupled with increasing demand, has resulted in an industry demand for more reasonably priced alternatives. Numerous companies have invested significant resources in developing alternative alloy formulations that preserves the appearance and functionality of precious metal at a more affordable cost to consumers. By way of example, new gold alloy products have the look and feel, and to the consumer are indistinguishable from traditional 10 kt. and 14 kt. gold articles. Similar issues also arise with other precious metal formulations. In an effort to avoid consumer confusion, manufacturers and marketers must be able to accurately describe the precious metal content of their products. A failure to do so may reasonably lead a consumer to believe, based on look, feel, and price, that the article consists of precious metal content in excess of its actual composition.

### Conflicting Provisions in Existing Guides

The existing Jewelry Guides, at 16 CFR § 23.4(a), address misrepresentation as to gold content. Examples of markings or descriptions that “may be misleading” include, in part:

**(a) It is unfair or deceptive to misrepresent the presence of gold or gold alloy in an industry product, or the quantity or karat fineness of gold or gold alloy contained in the product...**

**(b) The following are examples of markings or descriptions that *may* be misleading (emphasis added):**

**(1) Use of the word “Gold” or any abbreviation, without qualification, to describe all or part of an industry product, which is not composed throughout of fine (24 karat) gold.**

**(2) Use of the word “GOLD” or any abbreviation to describe all or part of an industry product composed throughout of an alloy of gold, unless a correct designation of the karat fineness of the alloy immediately precedes the word “GOLD” or its abbreviation, and such fineness designation is of at least equal conspicuousness.**

**(9) Use of the word “Gold” or any abbreviation, or of a quality mark implying gold content (e.g., 9 karat), to describe all or part of an industry product that is composed throughout of an alloy of gold of less than 10 karat fineness.**

Subparagraph (c)(1) of 16 CFR § 23.4 provides an example of acceptable markings and descriptions, including:

**An industry product or part thereof, composed throughout of an alloy of gold of not less than 10 karat fineness, may be marked and described as “Gold” when such word “Gold,” wherever appearing, is immediately preceded by a correct designation of the karat fineness of the alloy...**

As currently written, the Jewelry Guides mandate that articles of precious metal jewelry be marketed and described in a manner that truthfully and accurately describes their precious metal content. At the same time, as set forth above, the Jewelry Guides prohibit the use of the term “Gold,” a significant element of the precious metal content of the complete article.

#### Intent of the Jewelry Guides

It is our understanding that the intent of the Jewelry Guides, as expressly stated in Section 23.1, is summarized as follows: “[1]t is unfair or deceptive to misrepresent the type, kind, grade, quality, quantity, metallic content, size, weight...or any other material aspect of an industry product.” Note 2 to § 23.1 further provides that **“To prevent deception, any qualifications or disclosures...should be sufficiently clear and prominent.”** Full disclosure to the consumer is integral to this stated intent. The Jewelry Guides have established quality mark standards and their use is clearly outlined. The Jewelry Guides do not, however, address the requirements for marketing and describing legitimate industry products that are constructed of alloys outside these recognized standards. Consumers are entitled to complete and accurate composition information to allow them to compare, and make an informed decision, on the purchase of industry products.

A prohibition on the use of the term “Gold,” with appropriate qualifying language, will unnecessarily lead to consumer confusion as to the composition of precious metal jewelry, contrary to the intent of the Jewelry Guides. The prohibition on a distributor from accurately describing the true precious metal content of its merchandise with limiting and qualifying language, will undoubtedly lead to consumer confusion surrounding unmarked goods. Based on look, feel and price, the absence of the true gold content will have the unintended and contrary effect of deceiving consumers into believing they are purchasing precious gold items at a discount. Permissible qualifying language will eliminate this possibility.

#### Proposed Revisions

The focus of this submission is in response to paragraph fourth, page 39203, and paragraph 23, page 39204, of the FTC’s solicitation of public comments. In sum, MJJ submits

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that the Jewelry Guides should be revised to allow for the complete, truthful and accurate description of the precious metal content of products that contain such metals in amounts below existing threshold levels. New product development and industry-wide acceptance and distribution of these products has necessitated this revision. Consumers are consistently offered precious metal jewelry in varying degrees of fineness. These items are indistinguishable in terms of look and feel, and are significantly more valuable than their base metal counterparts. The Jewelry Guides should allow the trade to truthfully and accurately describe these articles by identifying actual content, as required by 16 CFR § 23.4(c)(1) and Note 2 to § 23.1

An appropriate revision to the Jewelry Guides would be the addition of an exemplar to § 23.4(c)(1) authorizing the use of sufficient qualifications and disclosures for merchandise consisting of precious metal content below existing threshold levels, provided there is no misstatement of the precious metal content, and no misuse of karat fineness or other recognized quality marks. Such disclosures are necessary to sufficiently inform consumers of the intrinsic value of newly developed articles of precious metal alloys. These items are currently in widespread use, with no formal or practical guide on acceptable non-deceptive marketing standards. The revision is required, not as a change to existing fineness standards, but as a vehicle for distributors to provide full and accurate information to the consumer.

Thank you for your consideration

Sincerely,

  
C.J. Erickson

cc: MJJ Brilliant Jewelers

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