

September 25, 2012

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex O)
600 Pennsylvania Avenue NW
Washington, DC 20580

RE: Jewelry Guides, 16 CFR Part 23, Project No. G711001

The Gems & Jewelry Committee of the American Society of Appraisers (ASA)¹ appreciates the opportunity to answer the Federal Trade Commission's request for comments about possible revisions to the Commission's "Guide for Jewelry, Precious Metals and Pewter Industries" (the "Guide").

As appraisers of gems and jewelry, we are the first responders to many of the most troublesome marketing practices found in the jewelry industry. We see not with the eyes of naïve clients, but through the lens of professional gems and jewelry appraising, which has evolved greatly over the past thirty years. The process of determining value is no longer just a wild guess - this has profound implications on how to avoid deceptive or misleading practices in the trade and how to make fair disclosures to the consumer. We offer the Commission a unique perspective to ensure that the public interest in fair marketing in our trade is served.

Technological changes in the gems and jewelry business require that the Guide be changed within the context of an understanding of valuation science. These changes should be accompanied by modifications to the Commission's consumer and business education materials to better reflect this new understanding. Also, the Guide should discuss one of the fundamental principles of value in gemstones, that of rarity. Finally, we believe that the time has come to recognize publicly that minimum standards for proper gems and jewelry appraising, as well as qualified gems and jewelry appraisers already exist in the public realm. These Standards established by the Appraisal Foundation have been continually refined in the twenty-five years since the Foundation began. As the Foundation states, "The work of the Foundation is important to all disciplines of the appraisal profession as well as the consumer public."

Current Technological Issues and Gemstone Nomenclature

Recent technological changes in our business strike at the very heart of what makes gemstones valuable. What is a gemstone? As with any mineral, they are categorized by species and variety. Species is determined by chemical composition and crystal structure, while variety is defined by color, transparency and sometimes one of several optical phenomena, such as cat's-eye effect.

¹ ASA is a multi-disciplinary appraisal organization that teaches, tests and credentials its members for professional appraisal practice and appraisal review in personal property valuation (including machinery and equipment, fine art, antiques, gems and jewelry and the contents of homes and offices), real property valuation, and business valuation.

What makes a gemstone valuable? We have been taught that this depends on six factors: beauty, durability, rarity, demand (vogue), tradition and portability. Of these, the consumer sees only beauty, and is usually aware of tradition (as a birthstone, for example). The name of a gemstone dramatically affects consumers' perception of and desire for the gem.

A prime example of the impact of nomenclature on consumer perception is raised by the recent appearance in the marketplace of the manufactured product, 'ruby' that has been in-filled with so much lead glass that it is the glass that holds it together. This inexpensive, unstable material has been held out to consumers as "ruby," without disclosure of this process' impact on durability and rarity. "Ruby" means to a consumer a long history of beauty, rarity, and durability, with a price that can rival that of a diamond or emerald. But this new material is of a different nature; although it may possess a degree of beauty (even though its transparency is reduced), it has neither durability nor rarity. It approaches becoming a new class of manufactured product, in which the proportion of natural material and artificial substance is impossible to determine precisely. (This fact has led to widespread acceptance within the gemological community of the term "composite," and some support for the term "hybrid.") We have encountered many consumers who have paid fine ruby prices for this product. This situation should not be allowed to continue.

Another example of the potentially confusing impact of new technology on gemstone nomenclature (and, in turn, its effect on consumer perception of value) is the Commission's return to the rule governing the use of the term "cultured." In its letter of July 21, 2008, to various petitioners, the Commission states its guiding consideration: "How consumers actually perceive the meaning of the term "cultured," therefore, is central to the determination of whether the term is deceptive." The term has always been used exclusively in gemology to describe pearls produced by the farming of mollusks. In this respect, it follows the generally accepted meaning of helping organisms to grow by means of human intervention (as in "agriculture").

But also in the marketplace, the distinction between "natural" and "cultured" is not the same as between "natural" and the currently allowable terms ("laboratory-grown," "laboratory-created," "[manufacturer-name]-created," and "synthetic") to describe inorganic gemstones. In our appraisal practices, we have observed that most consumers associate all pearls with "cultured pearls." This is because natural pearls are so rare as almost never to be encountered in the marketplace. Their already great rarity has accelerated since the early twentieth century by the pollution of the waters where they occur naturally. With any other gem material, the natural material is the bulk of the supply, but the opposite is the case in the pearl business.

Two points are vital to understand regarding the term "cultured." First, if they become aware of the difference between natural and cultured pearls, consumers believe that pearl culturing follows closely the natural process, because mollusks are involved in both. They perceive a more intimate connection than exists between other naturally occurring gemstones and their "laboratory-grown" counterparts. This consumer perception will not be clarified merely by requiring those currently allowable terms mentioned above; rather, consumers will become confused.

Even more importantly, part of a gemstone's tradition is its natural origin. Just as "cultured" is taken as meaning more "natural" than "laboratory-grown," as consumers indicate to us, they also surely tell us that natural material will always command a higher price than what is produced purely by human cause, as long as they are informed of the difference.

The use of the term "cultured" to describe the newest generation of gem-quality laboratory-created diamonds, or to describe any other inorganic gemstone, implies organic origin and, at the least, would lead to confusion among consumers about how this material is produced. Moreover, if the precedent of its use in the pearling industry applies, it would suggest a level of predominance in the marketplace, to the near exclusion of its natural counterpart, which does not exist. Finally, it would take unfair advantage of the connotation of natural production to suggest a value that also does not exist, at least to a fully informed buying public.

Recommendation: That Section 23.22 of the Guide be amended to require that the phrase "manufactured product" is used to describe a gemstone that comprises significant natural and artificial components, with additional permissible terms to include "composite" or "hybrid."

Also, that Section 23.34 be amended to reserve the use of the term "cultured" to describe only the production of pearls by mollusks with the aid of human intervention.

Geography, Rarity and the Impact on Value

Another recent nomenclature issue emphasizes how accurate marketing prevents a false impression of rarity and thereby protects the consumer. An international group, the Gemstone Industry and Laboratory Conference (GILC), has approved the term "paraíba" to describe copper-bearing tourmalines found in western Africa. Before now, the trade has used the term for tourmaline that is found in the state of Paraíba, Brazil. This material has very high trace copper content, producing a more intense blue or blue-green (usually called "teal" in the trade) than is found anywhere else on earth. This resulting beauty and rarity drove up its value far above any tourmaline discovered before (or since) its discovery in 1989.

We speak of quality in colored gemstones as the product of the desirability of their color (as determined by trades people and connoisseurs) and their "liveliness," or brilliance, which is created by how well they are fashioned. These work together to create whatever is considered beauty by buyers, whose behavior also considers the other value elements of durability, rarity, passing vogue and long-term tradition to establish prices in various markets. The most frequently occurring prices ultimately define outcome: the abstract, but definable, concept of value.

A gemstone's quality and rarity are often implied by its place of origin to ordinary buyers, who are also not familiar with its other value factors, including its current market prices². This is the danger of allowing a geographic place name to be used to describe a material when it is not from that place. Some sellers have adopted the GILC's stance to offer "paraíba tourmaline" to unsuspecting buyers.

² Currently the Brazilian Paraíba tourmaline sells for many times more than the "paraiba" tourmaline material from western Africa; the resulting value of the Brazilian material being much more than the material from western Africa.

In our appraisal practices, we have encountered buyers who have responded to sellers in the mass media who have stated that they have bought up all or most of the supply of a gemstone from a particular locale, increasing the perception of quality and rarity, without proving that statement or the implication that no more of the material will become available. This creates a false sense of urgency, and leads consumers to make quick purchasing decisions for a price above what the stone would normally sell absent the seller's claims.

Recommendation: That the FTC adopt a new Section 23.27, entitled "Misuse of geographic or regional identification", whose text would appear as follows:

"It is unfair and deceptive to use a geographic or other term of regional significance in connection with the description of a stone when that stone does not come from that geographic location or region. An exception would be stones that utilize acceptable scientific suffixes such as 'tanzanite' or 'labradorite'".

Also, that Section 23.1 of the Guide should be amended to include "rarity" as one of the enumerated characteristics for which it is "unfair or deceptive to misrepresent" its effect on the value of a gemstone. Additionally, in the note to Section 23.1, text to the effect of the following should be included:

"Where a seller makes claims pertaining to a gemstone's rarity, that claim must be substantiated through documentation that an average consumer can understand as to the impact of rarity on the stone's value."

Defining the Terms "Appraiser" and "Appraisal"

It is essential to recognize that the practice of appraising has been in continuous review and refinement over the past three decades. The savings and loan crisis of the 1980's led to the birth of the Appraisal Foundation, which includes ASA among its members. This body promulgates the Uniform Standards for Professional Appraisal Practice (USPAP), which are revised biennially. These members form the foundation for correct appraisal practice for various federal functions. ASA members also adopt them for use in our general practices as well. We have found that USPAP has been successful in protecting the public interest in valuation standards for practitioners and their work product.

Many people of varying backgrounds perform gems and jewelry appraisals. Their appraisals vary significantly in development and reporting standards. Basic appraisal education, from whatever source, includes these standards and requirements as well as subscription to ethical guidelines. They also require minimum levels of experience and peer review for the professional designations they award their members, in addition to periodic renewal of those titles, through continuing education.

We believe that without these standards, consumers are misled by the terms "appraiser" and "appraisal." The consumer associates these terms with education, ethics, experience and peer review comparable to the requirements and professional standards for real estate appraising, since that is usually their first (and often only) experience with appraising. The Appraisal

Foundation and USPAP are unknown to these consumers, and yet, have directly influenced the public interest in ethical and accurate valuations.

Consumers make important financial decisions based on the values in gems and jewelry appraisals, such as insurance coverage and retail or second-hand sale and purchase. The time has come to let the public know that standards for appraisers and appraisals exist. This will help to relieve cynicism towards the jewelry industry, and increase the public's trust in commerce in general. We do not advocate rigid governmental control over our field. But, we believe recognition is long over due that the study and application of valuation science does benefit the consumer.

Recommendation: That Section 23.0(c) be amended to include an explicit reference to "appraisals" under the "claims and representations" clause. Also, that the Commission, either through the Guide or a subsequent proceeding, adopt requirements for the representation of an individual as an "appraiser" and for their valuation products as "appraisals," to the following effect:

When an individual represents himself or herself as an "appraiser," that person should be required to disclose, in writing, his or her education or training, background or experience, and any professional credentials, that lend credibility to his or her value opinion.

When a document is represented as an "appraisal," it should comply with the Uniform Standards of Professional Appraisal Practice or with the substance and principles of USPAP.

Once again, the Gems & Jewelry Committee of the ASA appreciates the opportunity to provide the Commission with comments on the Jewelry Industry Marketing Guides. If you would like to arrange a meeting or if you have any questions, please contact our government relations representatives: John Russell, ASA's Director of Government Relations,
or Peter Barash, government relations consultant to ASA,

Sincerely,
Gems & Jewelry Committee
American Society of Appraisers