

June 4, 2013

Donald S. Clark, Esq., Secretary  
Reenah L. Kim, Esq., Staff Attorney  
Federal Trade Commission  
Office of the Secretary  
Room H-113 (Annex O)  
600 Pennsylvania Avenue NW  
Washington, DC 20580

Dear Mr. Clark and Ms. Kim:

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

On behalf of our client, New Annex Plating, Inc. (“New Annex”), we hereby submit comments with regard to plating practices for the Jewelry, Precious Metals, and Pewter Industries (the “Jewelry Guides”).

New Annex has been operating for over three decades. It was purchased in 1985 by Robert Silverman. Mr. Silverman is a graduate chemist who worked at International Silver Co. before coming to Rhode Island in 1974 to manage Regal Plating Co. At International Silver, Mr. Silverman conducted original development work on X-Ray thickness testing in the 1 to 5 millionths of an inch range when the beta-scope could only test down to 10 millionths of an inch. He developed spectrographic analysis techniques for impurities in silver and atomic absorption spectroscopy analysis to replace wet chemistry for the analysis of metals. He also headed up the electrochemist lab and worked on the development of waste treatment for the plant. At Regal Plating, he developed procedures for uniform distribution of Gold & Silver on metals.

New Annex operates a state of the art fabrication facility which is capable plating gold and silver on base metals in very exacting quantities. New Annex is a major supplier of all types of plated jewelry, from expensive high fashion items to inexpensive ones, to the jewelry industry. A large part of its business is electroplating of medals, medallions and military insignia for the United States Armed Forces located throughout the world, including buttons, bars and insignia that are attached to uniforms. It also supplies gold and silver plated clad blanks that are used for various memorabilia.

New Annex appreciates the Commission's reexamination of the Jewelry Guides and the scheduling of the roundtable. New Annex agrees that the Jewelry Guides should take a unified approach in providing guidance regarding surface-layer applications of precious metals over an underlying less expensive metal. It disagrees, however, that such an approach should set rigid minimums by weight ratio or thickness of coating, depending on the method of application. One of the purposes of the Guides is to provide meaningful disclosure to consumers that are readily understandable. As illustrated by the Harris Interactive survey discussed *infra*, the method of application is not well understood by consumers, nor is it meaningful to them. Instead what is important to consumers in making a value determination is the weight and the purity (fineness) of the precious metal.

Moreover, consumer understanding is not furthered by the use of an ever expanding array of rigidly defined nomenclature. Technological innovations continue to generate new methods of applying increasingly expensive precious metals to consumer products. Marketers should not be limited to the use of terms that have little or no relevance to consumers. Thus, with the points of purity and weight being clearly disclosed to consumers, the Guides should provide a consistent approach as to the terms utilized to describe the key information pertaining to value -- how much precious metal is incorporated in the product.

#### Response to Certain Requests for Comments

1. *JVC has recommended a revision that would allow sellers to indicate on descriptive marketing materials (e.g. advertisements, labels, tags) that a product contains a precious metal in an amount below the standard as long as they accurately disclose the quantity of the metal by percentage. Does JVC's proposal provide adequate guidance for marketers to avoid consumer deception?*

Currently section 23.4 provides that it may be misleading to use the word "gold" or a quality mark implying gold contents to describe all or part of an industry product that is composed of an alloy of gold that is less than 10 karats. Similarly it is deceptive to describe a product as "silver" unless it is at least 925/1,000ths pure silver.

Commenters MJJ Brilliant Jewelers (MJJ) and Jewelers Vigilance Committee (JVC) believe that the Guides should be amended to permit complete and accurate descriptions of below standard alloy products as long as they accurately disclose the quantity of the metal by percentage, e.g., "8% gold", but should not be permitted to stamp the name of the below standard precious metal on the product itself.

New Annex believes that JVC's proposal does not go far enough to avoid consumer deception. Merely listing the purity of the precious metal (whether by percentage, decimal, fraction, etc.) does not disclose adequate consumer information to avoid customer confusion. Rather, it is also necessary to state the amount of precious metal by weight as well as the purity; e.g., "1 oz of .585 pure gold".

There should be no artificial minimums. New Annex believes that a seller should be permitted to describe a product containing any amount of gold, silver or other precious metal by

always using the name, weight and purity (fineness) of the precious metal. The description should be in a way that is simply understood by a reasonable consumer. This might include using a percentage, fraction, decimal or other readily understandable terms indicating how much of the precious metal is present and its purity.

As long as the information is provided in an accurate and understandable manner to the consumer, there should be no requirement to, nor prohibition on, stamping the information on the product. Rather, it should be the weight and purity of the precious metal content that is of primary concern to making sure the consumer receives information necessary to making an informed purchasing decision.

2. *Would stamping a quality mark on an alloy jewelry product to convey information about its precious metal content be more likely to lead to consumer deception than if such information were included in descriptive marketing materials such as advertisements, labels, and tags?*

New Annex believes that stamping a quality mark without clearly disclosing the amount of precious metal in the alloy by weight and purity would be inadequate. What is necessary is to advise prospective purchasers of the quantity of the precious metal contained in the alloy by both weight and purity; e.g., 5 oz of .999 pure silver or gold or 25 mg of 90% pure gold.

As long as the information is complete, accurate and understandable to the consumer, there should be no prohibition on stamping the said information on the product. Any marketing materials such as advertisements, labels and tags should, where applicable, be consistent with any stamping or marking in disclosing the weight and purity of the precious metal content. Such components are of primary importance to making sure the consumer receives key information to impact his or her purchasing decision and is not otherwise deceived.

3. *Is it sufficient to disclose the precious metal content of an alloy by percentage, or are other disclosures or qualifications necessary to avoid consumer deception?*

New Annex believes that any metals mentioned in advertising or marketing the product should be subject to a standard disclosure which includes the amount of that metal by weight and its purity, e.g. "1/10 oz. .999 pure gold", or "3 gm .925 pure silver". Merely disclosing the metal percentage of an alloy is not sufficient to avoid confusion.

A marketer should be permitted to describe a product containing any amount of gold, silver or other precious metal by always using the name, weight and purity (fineness) of the precious metal. The description should be stated in a way that is simply understood by a consumer. This might include using a weight measurement combined with a percentage, fraction, decimal or other readily understandable terms indicating the metal's purity.

4. *Would consumers fully comprehend the meaning of a gold content disclosure that is stated as a percentage, rather than karats (e.g., "33% gold" versus "8 karats")?*

New Annex believes that merely disclosing the gold content as a percentage as well as merely disclosing its karat quantity is insufficient to avoid consumer deception. Such descriptors disclose purity only. Rather, what is needed for proper disclosure is that the consumer be told

the weight as well as the purity of said metal, e.g. “2 oz of 8KT gold” or “2 oz of .33 pure gold” or “2 oz of 33% pure gold.” This type of simple description is easily understood by a consumer. Purity may be designated as a percentage, fraction, decimal or other readily understandable term.

5. *Should the Guides address surface-layer applications of precious metals other than gold and silver (e.g., platinum, palladium, iridium, rhodium, ruthenium, or osmium)?*

- (a) *If so, why? What guidance would be necessary to avoid consumer deception?*
- (b) *If not, why not?*
- (c) *Provide any evidence supporting your position.*

New Annex believes that any metal specifically used in marketing or advertising a product should be subject to a full weight and purity disclosure.

6. *Section 23.4(c)(3) of the Guides states that a marketer can mark or describe a product as “rolled gold plate,” without also disclosing as a fraction the portion of the weight of the metal accounted for by the plating in the entire article, when such plating constitutes at least 1/20th of the weight of the metal in the entire article and when the term is appropriately marked with a karat fineness designation.*

*JVC, however, suggested that marketers should be able to describe a product as “rolled gold plate” when such plating constitutes at least 1/40th of the weight of the metal in the entire article.*

- (a) *What amount of plating on a product described as “rolled gold plate” is necessary to assure reasonable durability of coverage?*
- (b) *How do consumers comprehend the term “rolled gold plate”?*
- (c) *Provide any evidence supporting your position.*

New Annex believes that the term “rolled gold plate” is not well understood by consumers, as is demonstrated by the extensive survey undertaken on behalf of JVC by Harris Interactive and set forth in JVC’s comments #560895-00027. (“over six in ten have never heard of the term...’rolled gold plate’ (61%)...”). Therefore, the Guides should not continue to permit the use of that description irrespective of the weight of the metal but should require the weight and purity of the precious metal to be disclosed in a way that is simply understood by a consumer.

7. *Is the term “rolled plate” used to describe surface applications of other precious metals, such as silver or platinum group metals?*

- (a) *If so, what amount of plating is necessary to assure reasonable durability of coverage on such products?*

- (b) *Does the amount of plating needed to assure durability differ depending on the metals used?*
- (c) *How do consumers comprehend the term “rolled plated” when used to describe surface applications of other precious metals?*
- (d) *Provide any evidence supporting your position.*

Since the survey undertaken by Harris Interactive on behalf of JVC demonstrated that consumers do not understand the term “rolled plate” it should not be used irrespective of the particular precious metal that is being affixed to the surface. Instead, the weight of the precious metal and its purity should be required to be disclosed, regardless of the particular precious metal that is used.

8. *The current Guides do not address the term “bonded.” JVC stated this term “indicates a durable product with a mechanically applied application of gold or gold alloy over a base of sterling silver that is at least 1/40th of the weight of the article,” and proposed that use of the term also be permitted for surface applications of precious metals other than gold.*

- (a) *Is the term “bonded” used to describe surface applications of other precious metals, such as silver or platinum group metals?*
- (b) *What amount of plating on a product described as “bonded” is necessary to assure reasonable durability of coverage?*
- (c) *Does the amount of plating needed to assure durability differ depending on the metals used? If so, how does it differ?*
- (d) *How do consumers comprehend the term “bonded”*
- (e) *Provide any evidence supporting your position.*

New Annex takes no position regarding use and consumer understanding of the word “bonded.” Durability is influenced by a great many factors, and is not limited to or defined by the thickness of any precious metal application. In fact, durability can be greatly influenced by 1) the surface metal being applied, 2) the substrate metal, and 3) any protective coatings applied to the item over the surface metal. Indeed, a thinner layer of surface metal, treated with a protective coating, can prove far more durable than a much thicker surface metal application which has not been treated.

Additionally, the necessary durability of an item should be predicated on the intended use of the item. For example, a jewelry item to be worn would require a much higher durability than a collectible item meant for display only.

9. *The current Guides do not address the term “clad.” JVC recommended marketers state a product is “[precious metal] clad” when the applied precious metal is at least 1/20th of the weight of the article.*

- (a) *What amount of plating on a product described as “clad” is necessary to assure reasonable durability of coverage?*
- (b) *Does the amount of plating needed to assure durability differ depending on the metals used? If so, how does it differ?*
- (c) *How do consumers comprehend the term “clad”?*
- (d) *Provide any evidence supporting your position.*

The commonly-used term “clad” is well understood by consumers to simply mean that a surface layer of a precious metal has been applied over an underlying less expensive metal base through some mechanical or electrolytically applied process.<sup>1</sup> It should be sufficient to avoid consumer confusion or deception if the amount of the precious metal by weight and purity is clearly disclosed e.g., “clad with 50 mg of .999 pure gold”, rather than re-defining “clad”, and words like it, to mean specific percentages and or thicknesses of metal in a finished product..

10. *Should the Guides continue to provide guidance on use of the terms “flashed,” “washed,” “overlay,” “Duragold,” “Diragold,” “Noblegold,” “Goldine,” or “layered gold”?*

- (a) *If so, why? If not, why not?*
- (b) *How do consumers comprehend these terms?*
- (c) *Provide any evidence supporting your position.*

The above terms and other marketing and advertising words should not be defined by the Guides. The proliferation of such words shows that skilled marketers may use an almost unlimited lexicon to describe a product. Such terms, in the absence of the disclosure of the precious metal name, weight and purity, are not meaningful to consumers, as demonstrated by the extensive survey undertaken by Harris on behalf of JVC, *supra*.

Consumers should clearly be told the weight and purity of the precious metal being used, e.g., 50 mg of 14KT gold, irrespective of the method that is used to affix the surface layer of precious metal to the base. Once those key elements are disclosed, a marketer should be permitted to utilize any term that fairly describes the method used to affix the precious metal. Such qualification ensures disclosure and consumer understanding independent of advertising and marketing descriptors.

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<sup>1</sup> See *The American Heritage Dictionary of the English Language, Fifth Edition* (2011), “1. To sheathe or cover (a metal) with a metal.”

11. *Sterling/Richline suggested that standards for certain terms used to describe gold electrolytic plating applications (“plate,” “plated,” “electroplate,” “electroplated,” “heavy electroplate,” “heavy electroplated,” and “vermeil”) should be stated in terms of “fine gold,” which has a 23.5 karat minimum. Do the current Guides provisions regarding these terms, which refer to platings or coatings of “gold” or “gold alloy of not less than 10 karat fineness” create consumer confusion or cause consumer injury?*

- (a) *If so, how? What is the injury to consumers?*
- (b) *Provide any evidence supporting your position.*

Requiring the use of a new term such as “fine gold” is likely to be misunderstood by consumers who are likely not aware of the meaning of the term. Instead, all confusion can be avoided by merely requiring a disclosure of the weight of the gold used and its purity, e.g., “1/25 oz. .900 pure gold” Giving the name, weight and purity of a precious metal component in any item should always be sufficient for meaningful disclosure and consumer understanding.

12. *Should the Guides advise marketers to disclose that the durability of a surface application of precious metal is not assured if suggested thickness or weight minimums are not met?*

- (a) *If so, why? If not, why not?*
- (b) *Would the issuance of guidance calling for such disclosure affect the costs and benefits of the Guides for consumers and businesses, particularly small businesses? If so, how?*
- (c) *Provide any evidence supporting your position.*

Durability is influenced by a great many factors, and is not limited to or defined by the thickness of any precious metal application. In fact, durability can be greatly influenced by 1) the surface metal being applied, 2) the substrate metal and 3) and protective coatings applied to the item over the surface metal. Indeed, a thinner layer of surface metal, treated with a protective coating, can prove far more durable than a much thicker surface metal application which has not been treated. Furthermore, technological advances will undoubtedly provide greater durability despite a lower thickness or minimum weight. Additionally, the necessary durability of an item should be predicated on the intended use of the item. For example, a jewelry item to be worn would require a much higher durability than a collectible item meant for display only.

New Annex accordingly does not believe that suggested thickness or weight minimums are necessary or appropriate. Discussions regarding durability are likely to result in consumer confusion. Issues of durability should be left to the terms and conditions of any product guarantees that are used between the marketer and the consumer.

13. *To the extent not addressed in your previous answers, please explain whether and how the Commission should revise the Guides to prevent consumer deception with respect to the*

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*marketing and sale of jewelry industry products that have a surface-layer application of precious metal.*

New Annex believes that the Guides should be revised to require that the amount of precious metal by weight and purity should be disclosed for all jewelry industry products, regardless of whether the item is comprised of an alloy or is coated with a precious metal. There should be no artificial minimums. The Guides should provide a flexible approach that permits marketers to accurately describe a product containing any amount of gold, silver or other precious metal by always using the name, weight and purity of the precious metal. The description should be in a way that is simply understood by a consumer. This might include using a percentage, fraction, decimal or other readily understandable descriptor.

We appreciate your consideration.

Sincerely,



Sheldon S. Lustigman