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The Industry's Guardian of Ethics and Integrity

August 3, 2011

By Electronic Submission:

<https://ftcpublic.commentworks.com/ftc/dotcomdisclosures>

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

Re: Dot Com Disclosures, P114506

These comments are submitted by the Jewelers Vigilance Committee (JVC) in response to the May 26, 2011 announcement of the Federal Trade Commission (Commission) regarding the *Dot Com Disclosure Business Guidance Publication (Dot Com Disclosure)*.

JVC was formed in 1912 to provide education and self-regulation to the jewelry industry. As the "Guardian of Ethics and Integrity," JVC is also the leading expert on matters of legal compliance and sound business practices for the jewelry trade. Its membership consists of approximately 1,100 firms, representing nearly 8,000 individual businesses from all segments of the jewelry industry, including manufacturers, retailers, wholesalers, diamond dealers, colored gemstone dealers, designers, laboratories and precious metal refiners.

JVC is grateful for the opportunity to comment on *Dot Com Disclosure*. As commerce is increasingly conducted over the web, guidance as to effective on-line disclosure is essential. This is particularly true for the jewelry trade, where disclosures as to diamond carat weight representations and gemstone treatments are of great importance. For that reason we consider *Dot Com Disclosure* to be a valuable resource, particularly as it contains sample advertisements for jewelry products.

Our comments concern those sample jewelry ads. While excellent in conveying general concepts about disclosure, several modifications are required to make the ads completely accurate. We believe that *Dot Com Disclosure* should be updated and revised to reflect the following concerns:

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FTC Fashion Jewelry

The fictional company “FTC Fashion Jewelry” is the name of the advertiser in each of the sample jewelry ads. The term “fashion,” in the jewelry industry, is typically used to describe costume, not fine, jewelry. Each of the sample ads, however, describes fine jewelry made of precious metals and stones. For this reason we suggest that the name of the company be changed so that the term “fashion” is not included.

Sample Ads for “3/4 Ct. Diamond Earrings:” Diamond Weight, Color and Clarity

- Diamond Carat Weight Range:

In the introduction to the sample ads in Exhibits 3 and 7, for “3/4 Ct. Diamond Earrings,” and at the bottom of Exhibit 3, the following language appears:

“...a 3/4 carat diamond may weigh between .70 and .84 carats.”

JVC advises its members and the industry that a reasonable tolerance for a diamond advertised as “3/4 Ct.” is between .72 and at least .75 carats. We believe that the tolerance stated in the sample ads, “between .70 and .84,” is unnecessarily broad, particularly as the value difference between the two ends of the weight range is considerable. For this reason we urge that the sentence be changed accordingly. We address this issue again in the context of the diamond carat weight chart that is hyperlinked to this, and other, sample ads for diamonds (discussed below).

- Carat Weight (CT) versus Total Weight (TW or TCW):

The sample ads for the “3/4 Ct. Diamond Earrings” do not make clear whether the total weight of the stones in both earrings combined is 3/4 carat., or whether each individual stone weighs 3/4 carat, for a total weight of one and 1/2 carats.¹ To avoid confusion, this should be made clear, by using either the abbreviation “tw” for total weight, or “tcw” for total carat weight. For example, if both diamonds together weigh a total of 3/4 carat they could be advertised as “3/4 tw Diamond Earrings” or “3/4 tcw Diamond Earrings.” Disclosures, of course, would still be necessary to alert consumers that the weight is approximate and to indicate a reasonable weight range.

- “Colorless” and “Slight Inclusions:”

An additional issue regarding the ads for the “3/4 Ct. Diamond Earrings” concerns the use of the terms “colorless” and “slight inclusions” in the second sentence at the bottom of the ad, beneath the picture, as follows:

“Our sparkling round-cut diamonds are colorless and have only slight inclusions.”

¹ The sample ads regarding the “3/4 Ct. Diamond Earrings” can be found in *Dot Com Disclosure Exhibits* 3, 6, 7, 10, 13, 14 and 16.

Given the precise grading systems used in the industry, the reference to “colorless” and “slight inclusions” is confusing and ambiguous. Diamond color and clarity are graded on scales which indicate minute gradations regarding both characteristics. For example, on the Gemological Institute of America (GIA) scale, diamonds are described as “colorless” even though they might fall into any of three letter grades: D, E or F. There is a significant value difference, however, between a diamond graded D and one graded F. Similarly, the term “slight inclusions” is equally vague, and we would advise industry members not to use it. A consumer, for example, might understand the reference to “slight inclusions” to indicate a diamond with a clarity grade of VVS1 on the GIA scale, while the seller might be describing a diamond with a grade of VS2. This is a difference of three grades with a substantial bearing on value. We therefore suggest that the indicated sentence be removed from the sample ads.

Click-Through Pages – “Jewelry Information, Diamonds” and “Jewelry Information, Colored Gemstones, Pearls, Diamonds”

A diamond carat weight tolerance chart is available by hyperlink in each of the sample diamond ads.² The guidance in *Dot Com Disclosure* regarding the importance of a tolerance chart is invaluable. We suggest, however, that several changes be made, as described here.

o Reference to Diamond Points:

The click-through pages contains the following sentence:

“Therefore, a .25 carat diamond may be referred to as a 25-point diamond.”

This sentence is inconsistent with the guidance offered in §23.17(b) of the FTC’s *Guides for the Jewelry, Precious Metals and Pewter Industries (Jewelry Guides or Guides)*, which states:

“It is unfair or deceptive to use the word “point” or any abbreviation in any representation, advertising, marking, or labeling to describe the weight of a diamond, unless the weight is also stated as decimal parts of a carat (e.g., 25 points or .25ct.).

We thus believe that the sentence quoted above is confusing and should be revised to conform with §23.17(b), perhaps as follows:

“Therefore, a .25ct. diamond may be referred to as a 25-point diamond, as long as the decimal weight of .25ct. is also stated.”

² Except for Exhibit 16, the click-through pages for each diamond ad is titled *Jewelry Information, Diamonds*. The click-through page for Exhibit 16 is titled *Jewelry Information, Colored Gemstones, Pearls, Diamonds*. The diamond weight tolerance chart, and related information about diamond weight, are the same on both versions of the click-through pages and so are discussed together here.

○ Fractional Diamond Weight Ranges in Decimals:

We urge the Commission to narrow the tolerances indicated in the charts as to several of the fractional weight representations so that they are more reasonable and protective of consumers. For example, the weight range disclosed for a diamond advertised as “1/2 ct.” starts at .45ct and ends at .59ct. This is a wide range with a significant value difference from one end of the range to the other, and (in a non-fictional world), little likelihood that a consumer would end up with a diamond at the high end.

In general, we recommend to industry members that, for smaller carat weights, up to approximately 1/4 carat, the range not exceed two points below the equivalent decimal weight. For example, a reasonable weight range disclosure for a product advertised as “1/5ct” (with an equivalent decimal weight of .20ct) would be “.18ct to at least .20ct.” For carat weights between 1/4 carat and one carat, we recommend that the range not exceed three points below the equivalent decimal weight. For example, a reasonable weight range disclosure for a product advertised as “1/3ct” (with an equivalent decimal weight of .33 ct) would be “.3 ct to at least .33ct.” In order to protect consumers, we suggest to the Commission that it revise its carat weight tolerance charts to reflect the narrower ranges described here.

○ Diamonds that Weigh One Carat or More:

In the interests of accuracy and clarity in marketing diamonds, JVC recommends to industry members that they use decimals, not fractions, in advertising single diamonds that weigh a carat or more. JVC may advocate more fully regarding this issue and how it might be handled in the *Jewelry Guides* at the time that the Commission conducts its comprehensive review of the *Guides* in 2012. In the interim, we suggest that references to diamonds weighing one carat or more be removed from the sample charts on the “Jewelry Information” pages, as reasonable weight ranges can be illustrated without reference to the larger stones.

○ Pearls:

In the click-through page linked to Exhibit 16, *Jewelry Information, Colored Gemstones, Pearls, Diamonds*, the following sentence appears under the heading *Pearls*:

“Imitation pearls are man-made with glass, plastic or organic materials.”

The reference to “organic materials” may have been a mistake, as imitation pearls are made from inorganic materials, such as glass and plastic – as noted in the sentence. “Organic” material derives from living organisms, and is thus a confusing term to use in the context of imitation pearls. *Jewelry Guides* at §23.20 (e). For that reason we suggest that the Commission change the word “organic” to “inorganic” in the indicated sentence.

We submit the above recommendations in the interests of protecting consumers and providing the industry with clear and comprehensive guidance in a dynamic on-line environment. Thank you for your consideration of our comments.

Respectfully submitted,

Cecilia L. Gardner, Esq. ^U
President, CEO and General Counsel