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JEWELERS
VIGILANCE
COMMITTEE

Ethics. Integrity. Compliance.

June 17, 2014

BY EMAIL AND FEDEX

Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Attention: Donald S. Clark, Esq., Secretary

Re: Advisory Opinion Request; "Made in the USA" Claims for Jewelry Products Comprised of Gold or other Metals Recycled in the U.S.

Dear Secretary Clark:

The following request for an advisory opinion is made by the Jewelers Vigilance Committee (JVC), the Manufacturing Jewelers and Suppliers of America (MJSA), Jewelers of America (JA), the American Gem Trade Association (AGTA) and the Richline Group, Inc. (Richline). JVC, MJSA, JA and AGTA are non-profit trade associations that together represent thousands of companies in the jewelry industry, including manufacturers, wholesalers, dealers and retailers. Richline, a wholly-owned subsidiary of Berkshire Hathaway Inc., is a jewelry manufacturer, distributor and marketer.

The above-referenced entities seek guidance on a "Made in the USA" claim for jewelry products made of minerals and metals that have been recycled in the United States. As explained below, we believe that such a claim is appropriate because, upon recycling, these materials begin a "new life cycle" and acquire a new origin in this country.

This request is submitted in accordance with §1.3 (c) of the Federal Trade Commission Rules of Practice, 16 C.F.R. §1.3(c).

Background: Recycled Gold

LARGE QUANTITIES OF RECYCLED GOLD ARE USED TO MANUFACTURE JEWELRY

Gold is virtually indestructible. While some gold has been lost, almost all the gold mined over the years still exists. It is fully recoverable from most

applications and can be melted, refined and reused. Much of the gold jewelry produced in the United States is composed of recycled material.

Recycling starts with the collection of used jewelry, coins, electronic and industrial components, investment bars and manufacturing by-products. Most recycled gold originates from pre-owned jewelry, with smaller amounts deriving from other sources. The material is melted, then undergoes the same chemical refining process as would newly mined gold to produce a bar that is at least 99.5% gold for use by jewelry manufacturers.

DETERMINING ORIGIN FOR RECYCLED GOLD

The jewelry industry in the United States is currently very focused on the origin of gold. This is driven in large part by the “conflict minerals” provisions of the Dodd-Frank Act.¹ These provisions require that companies listed with the Securities and Exchange Commission determine whether the conflict minerals they use, including gold, originated in the Democratic Republic of the Congo or any adjoining country. If the mineral was sourced in that region, then the companies must exercise supply chain due diligence to determine if it benefited armed groups or otherwise funded conflict. Products made of minerals that did not fund conflict, wherever it was sourced, may be described as “DRC conflict free.”

Similarly, products made of recycled minerals may also be described as “DRC conflict free.” This approach recognizes that it is not possible to determine the original sources of minerals – that is, the various and widespread mines of extraction – in used jewelry, scrap and other recyclable material.

In its rules implementing Dodd-Frank,² the SEC specifically acknowledged the due diligence guidance developed by the Organisation for Economic Co-operation and Development, which includes a supplement on gold.³ Notably, according to the OECD *Guidance*, the origin of recyclable gold is the point in the supply chain where the gold is returned to the refiner.⁴ It is at this point, the *Guidance* explains, that recyclable

¹ Section 1502 of the *Wall Street Reform and Consumer Protection Act* (2010), Pub. L. No. 111-203, § 929-Z, 124 Stat. 1376, 1871 (2010) (codified at 15 U.S.C. § 78o).

² 17 CFR PARTS 240 and 249b (2012), page 28, <http://www.sec.gov/rules/final/2012/34-67716.pdf>.

³ OECD *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, 2nd Edition* (2013). <http://www.oecd.org/corporate/mne/GuidanceEdition2.pdf>.

⁴ The OECD definition of “Recyclable Gold” is as follows: “Gold that has been previously refined, such as end-user, post-consumer and investment gold and gold-bearing products, and scrap and waste metals and materials arising during refining and product manufacturing, which is returned to a refiner or other downstream intermediate processor to begin a new life cycle as ‘recycled gold.’ The *origin* of Recyclable Gold is considered to be the point in the gold supply chain where the gold is returned to the refiner or other downstream intermediate processor or recycler.” [Emphasis in original]. OECD *Guidance* at page 68.

material begins “a new life cycle as recycled gold.” Thus, the origin of gold that has been recycled in the United States would be the United States – and not the original mines of extraction, wherever those may have been.

While Dodd-Frank only covers SEC-listed companies, its impact is on the entire supply chain of those companies, totaling thousands of businesses in the jewelry trade. Companies throughout the jewelry industry have thus developed supply chain due diligence processes based on the OECD *Guidance* to help determine the source of their gold. Many refiners in the United States now clearly indicate, and even certify, not only that the gold they produce is conflict free, but whether it is recycled.

Silver, Platinum, Palladium and Tungsten

The jewelry industry uses other materials besides gold, including silver, platinum, palladium and tungsten. Like gold, silver is recycled in large quantities. Recycled platinum is less common than recycled gold or silver for the simple reason that platinum has become a popular component of jewelry fairly recently, so that recyclable platinum material is far less available than recyclable gold or silver material. The same holds true for palladium and tungsten, since their use in jewelry is even more recent than platinum.

The OECD did not address the issue of origin regarding recyclable materials in the context of any substance other than gold. Nonetheless, the important facts that support assigning a new origin to recycled gold also support assigning a new origin to recycled silver, platinum, palladium and tungsten. As in gold, the new origin should be the country where the refiner is located, as that is the point in the supply chain where used jewelry and scrap of unknown origin is returned for recycling and begin a “new life cycle.”

“Made in the USA” Claims; Jewelry Made of Recycled Material

The FTC’s standard for advertising a product as “Made in the USA” is that the product must be “all or virtually all” made in the United States. As explained by the FTC, “all or virtually all” means that all significant parts and processing that go into the product must be of U.S. origin.

The purpose of this request is to determine whether, in the view of the staff of the Bureau of Consumer Protection, a “Made in the USA” claim could be made regarding a product composed of minerals or metals that have been recycled in the United States. We believe the answer should be in the affirmative, given the significant time and resources that go into collecting recyclable material, delivering it to refiners in the United States, and then processing to a purity level of almost 100%. It makes sense to equate the recycling process with a “new life cycle” and to assign a new origin to recycled material, the approach adopted by the OECD in the case of gold. Thus, a product made of a mineral or metal that was recycled in the United States should qualify for a claim of “Made in the USA.”

Conclusion

In accordance with §1.3 (c) of the Federal Trade Commission Rules of Practice, we respectfully request that the Staff of the Bureau of Consumer Protection issue an advisory opinion confirming that a "Made in the USA" claim may be made for products made of minerals or metals that have been recycled in the United States.

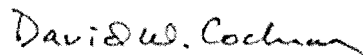
Should you require any additional information please do not hesitate to contact Suzan Flamm at 212-997-2002 or suzan@jvclegal.org.

Thank you for your consideration of this request.

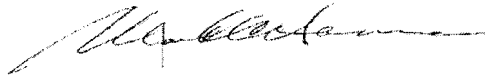
Sincerely,



Cecilia L. Gardner
President, CEO and General Counsel
Jewelers Vigilance Committee



David Cochran
President and CEO
Manufacturing Jewelers and Suppliers of America



Mark Hanna
Chief Marketing Officer
Richline Group, Inc.



David Bonaparte
President and CEO
Jewelers of America



Doug Hucker
CEO
American Gem Trade Association, Inc.