

**STATEMENT OF BASIS AND PURPOSE: FINAL REVISIONS TO THE JEWELRY
GUIDES**

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I. BACKGROUND

A. The Jewelry Guides

The Guides for the Jewelry, Precious Metals, and Pewter Industries (“Jewelry Guides” or “Guides”) (16 CFR Part 23) address claims for precious metal, pewter, diamond, gemstone, pearl, and other industry products.¹ The Guides explain how to avoid making deceptive claims and, for certain products, when disclosures should be made to avoid unfair or deceptive practices.²

The Commission completed its last comprehensive review of the Jewelry Guides in 1996, and has modified them four times since.³ As a result of the 1996 review, the Commission consolidated certain provisions of the former Watch Band Guides with the Jewelry Guides, added new provisions (such as those regarding use of the terms vermeil and pewter, and disclosure of certain treatments to diamond and gemstone products), and eliminated or substantively revised several existing provisions.⁴ Immediately after completing the review, the Commission revised the section addressing platinum products to simplify and align its guidance more closely with international standards.⁵ In 1999, the Commission amended the Guides again

¹ After a 1918 trade practice conference, the Commission promulgated trade practice rules on jewelry issues. The Commission re-issued these rules as guides in 1979.

² The Commission issues industry guides to help the industry act in conformity with legal requirements. 16 CFR Part 17. Industry guides are administrative interpretations of the law; they do not have the force of law and are not independently enforceable. Failure to follow industry guides may result, however, in enforcement action under Section 5 of the Federal Trade Commission (“FTC”) Act, 15 U.S.C. §45. In any such action, the Commission must prove that the act or practice at issue is unfair or deceptive in violation of Section 5.

³ The Commission generally initiates its review of its regulations and guides ten years after implementation and ten years after the completion of each review. With each review, the Commission publishes a notice in the Federal Register seeking public comments on the continuing need for the rule or guide, as well as associated costs and benefits to consumers and businesses. Based on this feedback, the Commission may modify or repeal the rule or guide to address public concerns or changed conditions, or to reduce undue regulatory burden.

⁴ 61 FR 27178 (May 30, 1996). As part of these changes, the industry guides formerly known as “Guides for the Jewelry Industry” were renamed “Guides for the Jewelry, Precious Metals, and Pewter Industries.”

⁵ 62 FR 16669 (Apr. 8, 1997).

to remove a footnote reference to the Watch Guides, which it had rescinded earlier.⁶ In response to petitions from jewelry trade associations, the Commission revised the Guides again in 2000 to provide for disclosure of permanent gemstone treatments that significantly affect value, such as the laser-drilling of diamonds.⁷ In 2010, the Commission amended the platinum section to provide guidance on how to non-deceptively mark and describe certain platinum alloys.⁸

B. The Jewelry Guides Review

The Commission commenced its current review in July 2012. At that time, the Commission sought comments on the Guides' overall costs, benefits, necessity, and economic impact, and asked whether revisions or additional guidance is needed.⁹ Based on responses,¹⁰ the FTC conducted a public roundtable to explore further issues relating to precious metals jewelry in greater depth.¹¹

In January 2016, the Commission published a Federal Register Notice ("2016 Notice") discussing the comments and information obtained through the roundtable, and proposing several modifications and additions to the Guides.¹² The 2016 Notice sought comments on all aspects of the proposed Guides. In response, the Commission received 62 non-duplicative comments.¹³

During this review, the Commission received information regarding technological developments and related changes in industry practices and consumer perception that affect

⁶ 64 FR 33193 (June 22, 1999).

⁷ 65 FR 78738 (Dec. 15, 2000).

⁸ 75 FR 81443 (Dec. 28, 2010).

⁹ 77 FR 39201 (July 2, 2012) ("2012 Notice").

¹⁰ The Commission received 22 non-duplicative comments in response to the 2012 Notice.

¹¹ 78 FR 26289 (May 6, 2013) (announcing June 19, 2013 roundtable). The Commission received 13 non-duplicative comments in response to the May 2013 Federal Register Notice ("2013 Notice").

¹² 81 FR 1349 (Jan. 12, 2016) ("2016 Notice").

¹³ See <https://www.ftc.gov/policy/public-comments/initiative-634>. The Commission abbreviates commenters' names in this Statement. See Appendix (listing commenters' full names and abbreviations).

certain provisions of the Guides. Based on this information, and after considering the whole record, the Commission now amends the Guides and adopts the resulting final guidance.

C. The Commission’s Review Process

The final guidance was developed in accordance with Section 5 of the Federal Trade Commission Act (“FTC Act”), which prohibits deceptive or unfair acts or practices.¹⁴ Under Section 5, an act or practice is deceptive if it involves a material statement or omission that would mislead a consumer acting reasonably under the circumstances.¹⁵ The Guides focus on advising marketers how to make non-deceptive claims about jewelry products, rather than preventing unfair practices.¹⁶

As administrative interpretations of Section 5, the Commission’s Jewelry Guides do not impose legal obligations. Rather, the Guides provide the Commission’s interpretation of Section 5’s prohibition of deceptive practices in connection with jewelry products, to help marketers avoid deceptive practices. To comply with Section 5, marketers must consider how reasonable consumers will view their ad as a whole, assessing the net impression conveyed by all of its elements (including the text, product names, and depictions).¹⁷

To prevent deceptive acts and practices, the Commission’s guidance must be based on how consumers reasonably interpret claims. Thus, the Commission tried to use available consumer perception evidence whenever possible to develop its guidance. To avoid chilling the use of truthful terms that may be useful to consumers, the Commission issues new guidance only

¹⁴ 15 U.S.C. §45.

¹⁵ FTC Policy Statement on Deception, appended to *Cliffdale Assoc., Inc.*, 103 FTC 110 (1984); *see also FTC v. Verity Int’l*, 443 F.3d 48, 63 (2d Cir. 2006); *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994).

¹⁶ Although the Guides focus on deception, the FTC can also address unfair practices should the need arise. An act or practice is unfair if it causes or is likely to cause substantial injury that consumers could not reasonably avoid, and the injury is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. §45(n).

¹⁷ *See generally* Deception Policy Statement, appended to *Cliffdale Assoc., Inc.*, 103 FTC 110, 179 (1984).

when supported by sufficient evidence that doing so is necessary to prevent deception. Moreover, because marketers have relied on these Guides for decades and made significant expenditures based on them, the Commission revises existing provisions only when there is a firm record supporting revision.

D. Outline of this Statement

Part II of this Statement addresses general issues, including the Guides' benefits and burdens, harmonization with international standards, industry compliance, and consumer and business education. Part III discusses specific issues related to precious metal, gemstone, pearl, and handmade products. Part IV sets out the final Guides as revised.

II. GENERAL ISSUES

In its 2016 Statement proposing revisions to the Guides ("2016 Statement"),¹⁸ the Commission discussed four broad issues: (A) benefits and burdens; (B) international laws and standards; (C) industry compliance; and (D) consumer and business education.¹⁹ This section addresses the comments received on these topics and the Commission's analysis.

A. Benefits and Burdens of the Guides

Based on commenters' overwhelming support for the Guides, the Commission announced in the 2016 Statement that it planned to retain them. In response, several commenters expressed additional support, noting the Guides' benefits to consumers and industry members alike. The Jewelers Vigilance Committee (JVC), for instance, stated that "the Guides function as accepted standards within the trade, helping to create a level playing field and to sustain

¹⁸ The 2016 Statement accompanied the Commission's 2016 Notice. See <https://www.ftc.gov/policy/federal-register-notices/16-cfr-part-23-guides-jewelry-precious-metals-pewter-industries>.

¹⁹ See 2016 Statement at 4-10.

consumer confidence.”²⁰ Similarly, Poteat described the Guides as an “invaluable tool . . . in a market which has always been ripe for deception.”²¹ No commenter suggested eliminating the Guides. The Commission therefore retains them, with several changes discussed in Part III (Specific Issues).

B. International Standards

Commenters responding to the 2012 Notice recommended the Guides incorporate international standards. The Commission declined to do so generally, explaining in its 2016 Statement that, while it tries to harmonize its guidance with international standards when possible, it must base its guidance on Section 5 of the FTC Act. In contrast, many international standards are developed through an industry consensus-building process based not on Section 5’s standards for preventing deception and unfairness, but other considerations such as facilitating trade and promoting international cooperation. Those standards are thus not solely, or necessarily, based on protecting consumers from deceptive and unfair practices.²² Diamond Foundry, a producer of man-made diamonds, agreed, stating that adopting uniform international standards would “stifle innovation and consumer understanding.”²³ In response to the 2016 Notice, some commenters asked the Commission to revise the Guides to align with international standards concerning precious metal alloys and use of the term “cultured diamonds.” The Commission declines to do so for the reasons discussed below in Part III (Specific Issues).

²⁰ JVC comment 82 at 1. *See also* Richline comment 85 at 1.

²¹ Poteat comment 86 at 2.

²² *See, e.g.*, <https://www.iso.org/developing-standards.html>

²³ Diamond Foundry comment 74 at 4.

C. Industry Compliance

According to JVC, in the absence of rules for jewelry manufacturing and sale, most of the industry pays careful attention to the Guides.²⁴ In commenters' view, clear guidance and enforcement is key for ensuring better compliance.²⁵ The Commission agrees. To that end, among other measures, the FTC collects complaints about business practices in Consumer Sentinel, a secure online database available to more than 2,000 law enforcement agencies.²⁶ The FTC and other agencies use the data to research cases, identify victims, and track targets. The Commission will continue to monitor developments in the jewelry industry, coordinate with other law enforcement agencies, and take enforcement action when appropriate to protect consumers.

D. Consumer and Business Education

Several commenters urged the Commission to increase its efforts to educate industry and consumers about the Guides.²⁷ As part of the FTC's commitment to providing consumers with the tools they need to make informed decisions, and giving businesses guidance to help them comply with Section 5, the Commission will therefore revise its existing consumer and business education materials to reflect the revisions resulting from this proceeding. Industry members and other groups can order and distribute free copies of these materials, which will be available to the public on the FTC website.²⁸

²⁴ JVC comment 82 at 1.

²⁵ 2016 Statement at 7-8.

²⁶ Consumers and businesses may file complaints with the FTC at <https://www.ftccomplaintassistant.gov/#crnt&panel1-1>

²⁷ 2016 Statement at 9.

²⁸ See <https://www.ftc.gov/news-events/media-resources/tools-consumers/jewelry-guides>; see also <https://www.bulkorder.ftc.gov/>

III. SPECIFIC ISSUES

The following sections address: (A) surface application of precious metals; (B) alloys with precious metals in amounts below minimum thresholds; (C) products containing more than one precious metal; (D) gold content disclosures; (E) palladium; (F) composite gemstone products; (G) varietals; (H) “cultured” diamonds; (I) use of “real,” “genuine,” and “natural” to describe man-made gemstones; (J) qualifying claims about man-made gemstones; (K) gemstone treatment disclosures; (L) gem/gemstone; (M) geographic and regional identifiers; (N) pearl treatment disclosures; (O) deception generally and misleading illustrations; (P) use of the term “handmade”; (Q) “blue white” diamonds; (R) diamond definition; (S)-(T) other diamond issues, including appraisals and diamond grading; and (U) exemptions recognized in the assay for gold, silver, and platinum. Each section (1) summarizes previous guidance on the issue, (2) discusses the Commission’s proposed revisions (if any) and requests for information, (3) reviews the comments, and (4) provides the Commission’s analysis and final guidance.

A. Surface Application of Precious Metals

1. Previous Guides

The previous Guides addressed precious metal surface applications in Sections 23.4 (gold), 23.5 (vermeil), and 23.6 (silver), as outlined below.

a) Gold

The gold section included the most detailed guidance, distinguishing claims based on whether manufacturers used an electrolytic or mechanical application process,²⁹ and specifying minimum coating thickness or weight ratio (precious metal coating as a fraction of the entire article’s weight) in examples of non-deceptive claims. Among other things, Section 23.4(a)

²⁹ An electrolytic application involves immersing an object in a solution and using electric current to create a surface deposition, whereas a mechanical application typically uses heat and high pressure to fuse metal surfaces.

cautioned marketers not to misrepresent the karat fineness, thickness, weight ratio, or application method of a product's coating.³⁰

Section 23.4(b) provided examples of potentially misleading markings or descriptions:

- using “gold” or any abbreviation to describe all or part of a product that was not composed throughout of gold or gold alloy, unless the term was adequately qualified (*e.g.*, indicating the surface-plating);³¹
- using “gold plate(d)” or any abbreviation unless the coating, applied by any process, was of such thickness and coverage to assure reasonable durability;³²
- using “gold filled,” “rolled gold plate(d),” “gold overlay,” or any abbreviation unless a mechanical process applied the coating to such thickness and coverage to assure reasonable durability; and an equally conspicuous, correct designation of the alloy's karat fineness immediately preceded the term;³³
- using “gold plate(d),” “gold filled,” “rolled gold plate(d),” “gold overlay,” or any abbreviation where a base metal coated with a thin wash of gold covered the primary gold layer, unless the gold-washed base-metal covering was disclosed;³⁴ and
- using “gold electroplate(d)” or any abbreviation unless the electroplating was of such karat fineness, thickness, and coverage to assure reasonable durability.³⁵

³⁰ 16 CFR 23.4(a).

³¹ 16 CFR 23.4(b)(3).

³² 16 CFR 23.4(b)(4).

³³ 16 CFR 23.4(b)(5).

³⁴ 16 CFR 23.4(b)(6).

³⁵ 16 CFR 23.4(b)(7). A note to Section 23.4(b) stated these provisions applied to “Duragold,” “Diragold,” “Noblegold,” “Goldine,” “Layered Gold,” and similar terms. 16 CFR 23.4(b) Note.

Section 23.4(c) provided three examples of markings and descriptions consistent with these principles. In the first, marketers could non-deceptively use “gold plate(d)” or any abbreviation thereof if any process (mechanical or electrolytic) affixed a coating of at least 10 karats that was of “substantial thickness” on all significant surfaces.³⁶ Specifically, such coating had a minimum thickness throughout equivalent to 0.5 microns (approximately 20 millionths of an inch) of fine gold.³⁷

In the second example, marketers could non-deceptively use “gold filled,” “gold overlay,” “rolled gold plate,” or any abbreviation thereof if a mechanical process affixed a coating of at least 10 karats of “substantial thickness” on all significant surfaces. Specifically, such coating had a 1/20th weight ratio, and an equally conspicuous designation of the coating’s karat fineness immediately preceded the term.³⁸ This example also stated that marketers could use “gold overlay” and “rolled gold plate” for items that did not meet the 1/20th minimum weight ratio if an equally conspicuous fraction accurately disclosing the coating’s weight ratio immediately preceded the karat fineness designation (*e.g.*, “1/40th 12 Kt. Rolled Gold Plate” or “1/40th 12 Kt. R.G.P.”).³⁹

In the third example, marketers could non-deceptively use “gold electroplate(d)” or any abbreviation if an electrolytic process affixed a coating of at least 10 karats with a minimum thickness throughout equivalent to 0.175 microns (approximately 7 millionths of an inch) of fine

³⁶ This provision noted that “substantial thickness” means all plating areas are sufficiently thick to assure durable coverage, and the thickness does not necessarily have to be uniform for all items or different surface areas of individual items, since items may comprise surfaces and parts subject to different degrees of wear.

³⁷ 16 CFR 23.4(c)(2). A product containing 1 micron (1 μ) of 12 karat gold is equivalent to one-half micron of 24 karat gold. 16 CFR 23.4(c)(2) n.4.

³⁸ 16 CFR 23.4(c)(3).

³⁹ *Id.*

gold on all significant surfaces.⁴⁰ The example also stated that marketers could use “gold flashed” or “gold washed” when the electroplating met the minimum fineness (10 karats), but not the minimum thickness.⁴¹ Furthermore, the example indicated marketers could non-deceptively use “heavy gold electroplate(d)” when the electroplating was at least 10 karats and had a minimum thickness throughout equivalent to two-and-one-half (2½) microns (approximately 100 millionths of an inch) of fine gold.⁴²

b) Vermeil

Vermeil describes a particular type of gold surface application on sterling silver. Section 23.5 stated a product could non-deceptively be described or marked as “vermeil” if it consisted of a sterling silver base which is coated or plated on all significant surfaces with gold or gold alloy (at least 10 karats) that was of “substantial thickness,” with a minimum thickness throughout equivalent to two-and-one-half (2½) microns (approximately 100 millionths of an inch) of fine gold.⁴³

c) Silver

The silver section included general guidance regarding surface applications, but did not discuss coating terms in detail. Among other things, Section 23.6(a) stated it is unfair or deceptive to misrepresent that a product has a silver plating, electroplating, or coating.⁴⁴ Section 23.6(d) stated it is unfair or deceptive to mark, describe, or otherwise represent all or part of a

⁴⁰ 16 CFR 23.4(c)(4).

⁴¹ *Id.*

⁴² When electroplatings qualifying for the terms “gold electroplate(d)” or “heavy gold electroplate(d)” have been applied using a particular electrolytic process, the marking may be accompanied by identification of this process (e.g., “gold electroplated (X process)” or “heavy gold electroplated (Y process)”). 16 CFR 23.4(c)(4).

⁴³ 16 CFR 23.5(b).

⁴⁴ 16 CFR 23.6(a).

product as plated or coated with silver, unless all significant surfaces contained a silver plating or coating of “substantial thickness.”⁴⁵

2. Proposed Revisions

In its 2016 Notice, the Commission proposed the following revisions:

a) Unqualified Precious Metal Claims Regarding Coated Products

To address the deceptive use of precious metal terms for products not composed throughout of the advertised metal, the Commission proposed keeping the guidance concerning unqualified gold claims,⁴⁶ and extending the same principles to silver and platinum. Specifically, the Commission proposed retaining the existing guidance in Section 23.4(b)(3)⁴⁷ (gold) and adding new guidance in Sections 23.6(b)(3) (silver) and 23.7(b)(1) (platinum)⁴⁸ advising marketers against using silver or platinum terms to describe all, or part of, a coated product unless they adequately qualify the term to indicate the product has only a surface layer of the advertised precious metal.⁴⁹

b) Qualifying Claims for Coated Products

The Commission proposed retaining the guidance on gold surface application terms generally, but also proposed several changes to make this advice consistent with Section 5 of the FTC Act. First, the Commission proposed clarifying that the term “reasonable durability” is based on consumer expectations. Second, the Commission proposed revising the gold and vermeil examples, reorganizing a provision regarding the use of “gold plate(d)” to describe

⁴⁵ *Id.*

⁴⁶ An unqualified claim implies the coated item is composed throughout of that precious metal.

⁴⁷ Renumbered as Section 23.3(b)(3)

⁴⁸ Renumbered as Sections 23.5(b)(3) and 23.6(b)(1)

⁴⁹ 81 FR at 1350.

surface layers applied by any process, and revising minimum thickness and karat fineness amounts for certain terms. Third, the Commission proposed eliminating a note concerning “Duragold” and similar outdated terms. Lastly, the Commission proposed new guidance advising marketers to disclose rhodium coatings on products described as precious metal.

i. Reasonable Durability

The previous Guides advised marketers they could use certain terms to describe a product non-deceptively as long as its gold alloy surface coating was of such thickness and coverage to assure “reasonable durability.”⁵⁰ The Commission proposed clarifying that “reasonable durability” refers to consumer expectation of durability. Specifically, it proposed stating this term conveys that “all areas of the plating are of such thickness as to assure coverage that reasonable consumers would expect from the surface application.”⁵¹ As proposed, the revised Guides advised sellers to assure such reasonable durability for products described as “gold plate(d),” “gold electroplate(d),” “gold filled,” “rolled gold plate(d),” or “gold overlay,” and any product described as having a silver coating.⁵²

ii. Gold and Vermeil “Safe Harbors”

(a) “Gold Plate(d)” – Any Application Process

For clarity, the Commission proposed eliminating Section 23.4(c)(2), which gave examples of non-deceptive markings and descriptions using “gold plate(d)” to describe coatings

⁵⁰ They also gave examples of non-deceptive markings and descriptions which referred to coatings of “substantial thickness,” meaning “all areas of the plating are of such thickness as to assure a durable coverage of the base metal to which it has been affixed.” 16 CFR 23.4(c)(2) n.3. The previous Guides did not explain what “reasonable durability” meant.

⁵¹ 81 FR at 1350 n.6. The record indicated that coating thickness is a significant factor affecting durability. 2016 Statement at 38-44. The Commission retained the previous guidance noting also that “[s]ince industry products include items having surfaces and parts of surfaces that are subject to different degrees of wear, the thickness of the surface application for all items or for different areas of the surface of individual items does not necessarily have to be uniform.” 81 FR at 1352 n.2.

⁵² 81 FR at 1352-54 (proposed Sections 23.3(b)(4), 23.3(b)(5), 23.3(b)(7), 23.5(b)(4)).

affixed by any process (electrolytic or mechanical), and adding this term to other sections that separately addressed mechanical and electrolytic applications.⁵³

(b) Electrolytic and Mechanical Applications

The Commission also proposed updating the gold and vermeil sections' safe harbor provisions based on JVC tests that assessed the relative wear rates of different thicknesses.⁵⁴ These tests indicated that the durability marketers intend to convey⁵⁵ can be assured only at thicknesses higher than those specified in the previous Guides, and that for electrolytic applications, manufacturers can only assure durability when they use gold or gold alloy of at least 22 karats.⁵⁶ Based on these tests, the Commission proposed updates to the examples for most electrolytic and mechanical applications.

(1) Electrolytic Safe Harbors

For electrolytic applications, the Commission proposed guidance advising marketers they may non-deceptively use the terms “gold electroplate(d)” and “gold plate(d)”⁵⁷ for products with an electrolytic application of gold or gold alloy of at least 22 karat fineness with a minimum coating thickness of 0.381 microns (approximately 15 millionths of an inch).⁵⁸ The Commission

⁵³ Section 23.4(c)(2) advised that marketers may use “gold plate(d)” without qualification (other than karat fineness) to describe products on which at least 10K gold has been applied by any process and the coating has a minimum thickness throughout equivalent to 0.5 micron of fine gold (approximately 20 millionths of an inch). 16 CFR 23.4(c)(2).

⁵⁴ The test reports indicated that coating thickness affects a product's abrasion resistance (as reflected by the rate at which the coating wears off) and thus its durability.

⁵⁵ *Thompson Medical Co.*, 104 F.T.C. 648, 791 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir.1986), *cert. denied*, 479 U.S. 1086 (1987) (marketer's intent to make a claim supports conclusion that its ad makes the intended claim).

⁵⁶ 2016 Statement at 19-22, 40-41.

⁵⁷ Section 23.4(c)(3), renumbered as 23.3(c)(3).

⁵⁸ 81 FR at 1353. This proposed change increased the minimum thickness and karat fineness. Specifically, the previous “gold electroplate(d)” guidance provided an example for electrolytic applications of gold or gold alloy of at least 10 karats with a minimum thickness throughout “equivalent to” 0.175 microns (approximately 7 millionths of an inch) of fine gold (24 karats). 16 CFR 23.4(c)(4). Under this previous guidance, a coating of 22 karats met the

also proposed guidance that marketers may non-deceptively use the term “heavy gold electroplate(d)” for products coated with gold or gold alloy of at least 22 karats with a minimum thickness of 2.54 microns (approximately 100 millionths of an inch).⁵⁹ Similarly, the Commission proposed advising marketers that they may non-deceptively use the term “vermeil”⁶⁰ when a sterling silver base has been coated with gold or gold alloy of at least 22 karats and a minimum thickness throughout of 2.54 microns (approximately 100 millionths of an inch).⁶¹

(2) Mechanical Safe Harbors

For mechanical surface applications, the Commission proposed advising marketers that they may non-deceptively use the terms “gold filled,” “gold overlay,” “rolled gold plate(d),” and “gold plate(d),” to describe products with a mechanically applied coating of gold alloy (at least 10 karats) that has a minimum thickness throughout of 4.3 microns (approximately 170 millionths of an inch) when the coating constitutes at least 1/20th of the weight of the metal in the entire article and an equally conspicuous designation of the coating’s karat fineness

“gold electroplate(d)” safe harbor if it was at least 0.191 microns thick (*i.e.*, the equivalent to 0.175 microns of 24 karats). In contrast, under the proposed revision, a coating of 22 karats needs a thickness of at least 0.381 microns.

⁵⁹ 81 FR at 1353. By eliminating the “equivalent to” provision, the proposed guidance in effect decreased the minimum thickness while increasing the minimum karat fineness. The previous Section 23.4(c)(4) advised a coating of gold or gold alloy of at least 10 karats with a minimum thickness throughout “equivalent to” 2.5 microns (approximately 100 millionths of an inch) of fine gold (24 karats) for marketers to use the “heavy gold electroplate(d).” 16 CFR 23.4(c)(4). Thus, under the previous guidance, a coating of 22 karats had to be at least 2.73 microns thick to satisfy the “heavy gold electroplate(d)” safe harbor (*i.e.*, the equivalent to 2.5 microns of 24 karats). Under the proposed revision, however, a coating of 22 karats satisfied the guidance when it had a thickness of 2.54 microns.

⁶⁰ Although the previous vermeil guidance did not specify an application method, its example set a minimum thickness indicating an electrolytic application, and the record indicates that the industry appears to use this term only for electrolytic applications. 2016 Statement at 45 n.158.

⁶¹ 81 FR at 1354. The previous guidance provided the “vermeil” example for coatings of gold or gold alloy of at least 10 karats with a minimum thickness throughout “equivalent” to 2.5 microns (approximately 100 millionths of an inch) of fine gold. 16 CFR 23.5(b). Thus, as with the proposed change to the “heavy gold electroplate(d)” example, eliminating the “equivalent to” provision in effect decreased the minimum thickness while increasing the minimum karat fineness. *See* note 59 *supra*.

immediately precedes the term.⁶² The Commission also proposed retaining the guidance advising that marketers may non-deceptively use these terms (other than “gold filled”)⁶³ to describe products that meet the specifications other than the 1/20th weight ratio, provided they accurately disclose the coating’s actual weight ratio (*e.g.*, “1/40th 12 Kt. R.G.P.”).⁶⁴

iii. Other Terms Describing Gold Surface Applications

The Commission proposed deleting guidance regarding certain outdated terms in the Note to Section 23.4(b) (discussing use of the words “Duragold,” “Diragold,” “Noblegold,” “Goldine,” “Layered Gold,” and similar terms) because the record indicated marketers no longer use these terms.⁶⁵

The Commission also declined to propose new guidance for “clad,” “bonded,” and “over” because it lacked consumer perception evidence for these terms, but asked several questions to determine whether additional guidance is needed to prevent deception.⁶⁶

iv. Rhodium Coating Disclosure

The Commission proposed new guidance based on evidence indicating that consumers are likely to be deceived if they buy rhodium-coated jewelry because it will change appearance once the coating wears away.⁶⁷ Specifically, the Commission proposed advising marketers to disclose rhodium surface applications on products marked or described as precious metal, such

⁶² 81 FR at 1353 (proposed Section 23.3(c)(2)).

⁶³ For “gold filled,” the proposed guidance retained the existing guidance advising marketers to use this term only for products meeting the 1/20th weight ratio.

⁶⁴ 81 FR at 1353 (proposed Note to Section 23.3(c)(2)).

⁶⁵ Despite some commenters’ suggestions, the Commission proposed to retain “flashed” and “washed” because marketers still appear to use these terms to describe coated jewelry. 2016 Statement at 45.

⁶⁶ 2016 Statement at 46.

⁶⁷ Rhodium is a platinum group metal used to enhance the white color of silver and white gold jewelry.

as rhodium-coated items marketed as “white gold” or silver.⁶⁸ Much like the guidance advising marketers to disclose gemstone treatments that are not permanent or create special care requirements, the proposed disclosure sought to help prevent deception by alerting consumers that the product’s surface, and therefore its color, may not be permanent and may require re-plating.

3. Comments

The Commission received eight comments discussing precious metal surface applications. Commenters addressing the issue all supported the new guidance concerning unqualified silver or platinum claims. They also supported the Commission’s proposed clarification that “reasonable durability” is based on consumer expectation, but recommended the Guides advise sellers to assure reasonable durability for any product described as having a precious metal coating. Additionally, many commenters supported the Commission’s proposed reorganization of the separate provision addressing “gold plate(d).” However, most opposed the proposed changes to the gold and vermeil safe harbors’ minimum thickness and karat fineness thresholds. Commenters supported eliminating the note regarding “Duragold” and similar outdated terms, and two recommended new guidance for other terms. In addition, though not addressed by the Commission’s proposed revisions, several commenters recommended amending the Guides to advise karat fineness disclosures for any coated product described by reference to its gold content. Lastly, most commenters supported the new guidance advising rhodium coating disclosures.

a) Unqualified Precious Metal Claims Regarding Coated Products

Commenters addressing the issue unanimously supported the Commission’s proposed

⁶⁸ 81 FR at 1350, 1355 (proposed Section 23.7).

guidance advising marketers against using silver or platinum terms to describe coated products unless they adequately qualify the term to indicate the product has only a surface layer of the advertised precious metal.⁶⁹ JVC, for example, stated that “as a matter of basic consumer protection,” it is important to inform buyers that a product that looks like a precious metal throughout may only have a surface application.⁷⁰ JVC went further, stating that this concern applies not only to platinum, but also to any platinum group metal (“PGM”) used as a surface layer, such as rhodium.⁷¹

b) Qualifying Claims for Coated Products

i. Reasonable Durability

Commenters addressing the issue all supported the Commission’s proposed clarification regarding “reasonable durability,” but further recommended the Guides more broadly require reasonable durability for any product represented as having a precious metal surface application.⁷²

JVC stated that the factors affecting a surface application’s durability, tarnish resistance, and consistency may change with technology, and that the terms used to describe coated products could also change.⁷³ Rather than attempt to “anticipate every permutation” and devise “detailed standards” for each, JVC recommended the Guides provide “a baseline standard” by

⁶⁹ JVC comment 82 at 34-35; Corti comment 78; Richline comment 85 at 2.

⁷⁰ JVC comment 82 at 24.

⁷¹ *Id.* at 35.

⁷² Richline comment 85 at 2, 83 at 7; JVC comment 82 at 11; Corti comment 78. In the Commission’s proposed Guides, guidance concerning reasonable durability appeared in the provisions addressing products described as “gold plate(d),” “gold electroplate(d),” “gold filled,” “rolled gold plate(d),” or “gold overlay,” and any product described as having a silver coating. It did not appear, however, in the guidance regarding platinum coatings or other gold terms such as “flashed” and “washed.”

⁷³ JVC comment 82 at 11.

advising that reasonable durability must be assured for any product represented as having a precious metal surface application.⁷⁴

JVC further stated that its recent consumer perception survey conducted by Harris Interactive (“2016 Harris study”) shows that most consumers do not fully understand many of the Guides’ coating terms, but it is not aware that a lack of detailed familiarity is contributing to consumer deception.⁷⁵ JVC explained this is likely because most consumers do not expect coated products to perform as well as products composed throughout of precious metal based on their lower price.⁷⁶ JVC further noted that the 2016 Harris study indicated a majority of consumers expect products coated with gold, silver, or platinum to tarnish sooner and be less durable than products composed throughout of the same precious metal.⁷⁷

However, the 2016 Harris study also showed that most consumers expect there to be a minimum coating thickness for products described as having a precious metal surface application.⁷⁸ Interpreting these results to indicate that consumers have expectations regarding

⁷⁴ *Id.* at 12. Richline supported JVC’s recommendation. Richline comment 83 at 9. Corti recommended that reasonable durability be required for platinum and virtually all gold surface applications. Corti comment 78.

⁷⁵ For example, in responding to several different questions in the 2016 Harris survey, majorities of consumers indicated they do not know whether the following statements were true: “a gold-filled item must be made of at least 25% gold” (59%); “rolled gold plate and gold overlay are the same thing” (58%); “gold electroplated typically lasts longer than gold washed” (57%); “gold layered items are typically more durable than gold electroplated items” (56%); “gold washed and gold flashed are just as thick as gold-plated” (55%). Moreover, minorities in each case answered the questions correctly or incorrectly. JVC comment 82, exh. 2 at 22-24.

⁷⁶ *Id.* at 38.

⁷⁷ *Id.*, exh. 2 at 20-21 (73% expect products coated with gold will tarnish sooner than products composed throughout of gold, and 69% expect that coated products will be less durable), 27 (73% expect that silver-coated products will tarnish sooner, and 72% expect they will be less durable), and 28-29 (66% expect that platinum-coated products will tarnish sooner, and 68% expect them to be less durable).

⁷⁸ Specifically, the 2016 Harris study showed that 84 percent of respondents either “somewhat” or “strongly” agree “that if a product is described as having a coating of gold, [] there should be a minimum thickness required for that coating.” *Id.*, exh. 2 at 21. Similarly, nearly nine in ten either “somewhat” or “strongly” agree that for products described as having silver or platinum coatings, there is a required minimum thickness for such coatings. *Id.* at 27 (88% for silver) and 29 (87% for platinum). In response to a different question, however, 54 percent responded they did not know whether there are “standard thickness requirements for items that are heavy gold electroplated.” *Id.* at 23.

the durability of coated products, JVC stated that its recommendation that all coated products be reasonably durable would help address any gap between consumer expectations and specific standards.⁷⁹

JVC further recommended the Commission retain the Guides' detailed guidance specifying minimum karat fineness and coating thickness thresholds associated with "traditional" terms used to describe gold-coated products.⁸⁰ According to JVC, notwithstanding consumers' lack of detailed understanding, many manufacturers and retailers are familiar with the various coating terms and seek to abide by the Guides' advice to create reliable products.⁸¹

ii. Gold and Vermeil Safe Harbors

(a) "Gold Plate(d)" – Any Application Process

Four commenters addressed Section 23.4(c)(2)'s guidance regarding "gold plate(d)" for coatings affixed by any process. One commenter supported the Commission's proposal to eliminate this provision, and to add "gold plate(d)" instead to other sections that separately address mechanical and electrolytic applications; another supported joining the guidance for "gold plate(d)" with that for "gold electroplate(d)." The remaining two contended that "plated" cannot be used for both mechanical and electrolytic processes, and recommended retaining Section 23.4(c)(2)'s guidance for "plate."

JVC supported the Commission's proposed revision, stating that consumers generally do not demonstrate a detailed familiarity with the term "plate(d)."⁸² Moreover, according to JVC,

⁷⁹ *Id.* at 11-12.

⁸⁰ Richline agreed with this aspect of JVC's recommendation. Richline comment 83 at 9.

⁸¹ JVC comment 82 at 33.

⁸² *Id.* at 36. Nearly half of respondents in the 2016 Harris survey (49%) did not know whether "gold over and gold plated are the same thing," and 54 percent did not know whether "rolled gold plate and gold plated items are created by two different processes." *Id.*, exh. 2 at 22, 24.

the industry often uses “plate(d)” as a “generic term” for precious metal surface applications.⁸³ JVC stated that the previous guidance is therefore unnecessary and may be eliminated without risk to consumers, as long as the Guides include the term in revised examples for mechanical and electrolytic applications.⁸⁴ Similarly, Jenner & Block (Jenner)⁸⁵ recommended the Commission consolidate guidance regarding “gold plate(d)” and “gold electroplate(d).”⁸⁶

In contrast, two commenters stated that “plated” cannot be used for both mechanical and electrolytic processes, and must be named and described separately.⁸⁷ Both recommended keeping the previous Section 23.4(c)(2) to set a minimum 0.5 micron threshold (approximately 20 millionths of an inch) for “plate.” Neither, however, specified whether this guidance would apply to mechanical or electrolytic applications.⁸⁸ Additionally, neither contended that consumers understand the term “plated” differently from “plate,” nor did they submit consumer perception evidence on this issue.

(b) Electrolytic Applications – Minimum Thickness

Commenters addressing the issue opposed the Commission’s proposal to increase the minimum thickness for gold electrolytic applications described as “gold plate(d)” or “gold electroplate(d)” from 7 millionths of an inch to 15 millionths of an inch (0.175 microns to 0.381

⁸³ *Id.* at 36.

⁸⁴ JVC comment 82 at 36.

⁸⁵ Jenner & Block submitted its comment on behalf of several unidentified jewelry retailers.

⁸⁶ Jenner comment 77 at 4. Jenner did not discuss whether “gold plate(d)” should also be included in the guidance for mechanical applications.

⁸⁷ Corti comment 78 at 2; Richline comment 83 at 6. Signet’s comment stated that it supported Richline’s submission in its entirety, but did not specifically address surface applications. Signet comment 84 at 1.

⁸⁸ Section 23.4(c)(2) provided a safe harbor for coatings affixed “by any process” marked or described as “gold plate” or “gold plated.” 16 CFR 23.4(c)(2). These commenters also recommended (a) for mechanical applications, advising a minimum 10K fineness with a required karat quality disclosure, weight ratio disclosure if less than 1/20th, and reasonable durability assurance, but no minimum thickness; and (b) for electrolytic applications, advising a minimum 10K fineness with a required karat quality disclosure, reasonable durability assurance, and at least 0.175 microns (7 millionths of an inch) thickness. Corti comment 78 at 2; Richline comment 83 at 6.

microns).⁸⁹ They stated an increase is unnecessary because the existing guidance is adequate to meet consumer expectations, and no evidence shows that guidance misleads reasonable consumers.⁹⁰

JVC explained it previously submitted a report prepared by Leach Garner that appeared to support a minimum thickness of 15 millionths of an inch for gold electrolytic applications.⁹¹ To clarify, JVC submitted a supplemental statement from Grigory Raykhtsaum, one of the metallurgists who authored the 2013 Leach Garner report. In his 2016 statement, Raykhtsaum explained that the 2013 tests subjected samples to “severe” conditions corresponding to a degree of prolonged wear likely to exceed the life of actual jewelry, and asserted the tests were therefore “not helpful in determining the appropriate minimum thickness for products that are exposed to normal wear.”⁹²

JVC further stated that the wear test reports by Taber Industries and Tanury Industries submitted with its 2013 comment more accurately simulated “normal” wear conditions and showed that the Guides’ existing minimum thickness (7 millionths of an inch (0.175 microns)) is adequate to assure reasonable durability.⁹³ According to JVC, coating thickness does not impact

⁸⁹ JVC comment 82 at 4; Richline comment 83 at 6 (agreeing with JVC); Signet comment 84 at 1 (supporting Richline); Corti comment 78 at 2; Jenner comment 77 at 2-3. Jewelry Television (JTV) generally concurred with JVC, but stated it is “indifferent” regarding JVC’s recommendation for gold electroplating minimum thickness because JTV’s own vendor specifications require at least 0.5 microns, which is higher than both JVC’s recommendation (0.175 microns) and the Commission’s proposal (0.381 microns). JTV comment 80 at 2.

⁹⁰ JVC comment 82 at 4; Jenner comment 77 at 2-3.

⁹¹ JVC comment 82 at 4-5. Specifically, in the concluding section of his 2013 report, Leach Garner metallurgist Grigory Raykhtsaum stated that the data supported a minimum thickness of 15 millionths of an inch (0.174 microns) for gold electroplate.

⁹² JVC comment 82 at 5, exh. 1 at 2-3.

⁹³ JVC also stated it has “no record at JVC, or institutional memory, of ever receiving complaints related to [the existing] standard.” *Id.* at 4, 36. Likewise, Corti and Richline stated that the Guides should advise a minimum thickness of at least 7 millionths of an inch (0.175 microns) of 10 karats or higher, and require sellers to assure reasonable durability and disclose karat quality. Corti comment 78 at 2; Richline comment 83 at 6. Signet stated that it supported Richline’s entire comment, but did not specifically address surface applications. Signet comment 84 at 1.

tarnish or corrosion resistance, but does affect “wearability” because the thicker the application, the longer it will take to wear off (assuming the manufacturer uses an “appropriate chemistry” to achieve the thicker coating).⁹⁴ Similarly, Jenner stated that the existing guidance can meet consumer expectations because it provides acceptable wear characteristics when a product is subjected to normal wear conditions.⁹⁵

One commenter addressed the Commission’s proposed guidance for “heavy gold electroplate(d).” Stating there should be no minimum thickness, the commenter recommended a 10 karat minimum and guidance advising marketers to disclose karat quality and assure reasonable durability.⁹⁶ The commenter did not explain why the Commission should eliminate the Guides’ advice concerning thickness.

(c) Electrolytic Applications – Minimum Karat Fineness

The three commenters who specifically addressed the Commission’s proposed revisions to the minimum karat fineness amounts for gold electrolytic surface applications opposed the changes. Two others did not address the proposed increase to 22 karats, but used a 10 karat minimum in their recommended guidance for gold electroplating terms.

Contrary to its 2013 recommendation, JVC stated that increasing the minimum from 10 to 22 karats is not necessary to meet consumer expectations. JVC suggested that the Guides instead advise sellers to disclose the coating’s karat fineness, and further advise sellers to assure reasonable durability.⁹⁷

⁹⁴ JVC comment 82 at 36.

⁹⁵ Jenner comment 77 at 3-4.

⁹⁶ Corti comment 78 at 3.

⁹⁷ JVC comment 82 at 9. Richline agreed with these aspects of JVC’s comment. Richline comment 83 at 7-8.

Explaining its revised position, JVC stated that its recent research indicates consumer expectations regarding coated products are “low.”⁹⁸ Specifically, the 2016 Harris study showed that a majority of consumers expect that products coated with gold, silver, or platinum will tarnish sooner, and be less durable, than products composed throughout of that precious metal.⁹⁹

JVC also stated that manufacturers often mitigate tarnishing characteristics by applying a flash coat of high karat gold or polymer clear coat – applications that, while not long lasting, may provide basic protection adequate to meet consumer expectations.¹⁰⁰ Jewelry Television (JTV) agreed with JVC, reiterating that, in addition to gold karat fineness, underlying metals and substrates can also be important factors that contribute to the durability, tarnish resistance, and final color of a gold electroplated product.¹⁰¹ Similarly, Jenner recommended the Commission retain the Guides’ 10 karat minimum. Jenner asserted that the existing guidance, including the fine gold equivalent plating allowance, meets consumer expectations for reasonable durability, and stated that a product coated with lower-karat gold maintains its color and finish longer than a higher-karat coating because the lower-karat gold contains metals such as copper or zinc, which create a harder coating than pure gold.¹⁰²

Additionally, JVC stated that research conducted since its 2013 recommendation indicates the Commission’s proposed 22 karat minimum may have an unintended impact on the

⁹⁸ JVC comment 82 at 9.

⁹⁹ *Id.*, exh. 2 at 20-21.

¹⁰⁰ *Id.* at 9.

¹⁰¹ JTV stated that the manufacturing specifications for jewelry it markets as “gold over” are either 14K or 18K, producing the gold finish colors (including rose gold) its customers desire. In further support of its comment, JTV submitted a report from its marketing vice president, which claimed that recent customer satisfaction surveys and warranty usage rates indicate little customer dissatisfaction with the durability and tarnish resistance of JTV’s 14K and 18K “gold over” products. JTV comment 80 at 2.

¹⁰² Jenner comment 77 at 3-4. With respect to the equivalency provision, JVC’s comment did not make explicit whether its revised position contemplated a coating of at least 10 karats “equivalent to” 7 millionths of an inch (0.175 microns) of fine gold (24 karats), or simply 7 millionths of an inch (0.175 microns) that is at least 10 karats.

marketing of “rose” gold and other popular colors because it is difficult to manufacture these products at higher karat levels.¹⁰³

In their recommended guidance for gold electroplating terms, two other commenters suggested guidance advising coatings of at least 10 karats with the same thickness as the existing guidance, but did not discuss why they disagreed with the Commission’s proposed increase to 22 karats.¹⁰⁴

(d) Mechanical Applications

JVC also opposed the Commission’s proposed amendments for mechanical surface applications, changing its recommendation on which the Commission based its proposed guidance. Two other commenters appeared to concur with some, but not all, aspects of JVC’s revised position.

JVC stated that the Commission’s proposed new minimum thickness is not necessary to meet consumer expectations and would provide “no added benefit to consumers.”¹⁰⁵ Instead, JVC recommended the Commission: (a) retain the existing 1/20th weight ratio for using the term “gold filled,” (b) retain the guidance advising marketers to disclose the weight ratio if it falls below 1/20th when using “rolled gold plate” and “gold overlay,” and extend it to “gold plate(d)” (mechanical application), and (c) amend the Guides to advise marketers against using

¹⁰³ JVC comment 82 at 8-10. For instance, achieving the rose color requires including copper in the alloy at a level that reduces the quality fineness of the gold component to about 18 karats. *Id.* at 3, exh. 3 (Statement of Richard DePoto).

¹⁰⁴ Richline comment 85 at 1-2; Corti comment 78 at 2-3. Another commenter stated that most consumers familiar with vermeil expect a sterling silver base, but also expect the gold to be a higher fineness than the existing Guides reflect. The commenter did not specify the fineness or submit supporting evidence on this point. Poteat comment 86 at 5.

¹⁰⁵ JVC comment 82 at 6. Richline agreed with this aspect of JVC’s comment. Richline comment 83 at 6-7.

gold terms to describe mechanical applications when the ratio falls below 1/40th.¹⁰⁶ JVC cited three reasons for its revised position.

First, it stated that it based its previous recommendation on the 2013 tests performed by Leach Garner, which subjected samples to “severe, not normal, wear” and therefore do not support a thickness requirement.¹⁰⁷ To clarify, JVC submitted a supplemental statement from Grigory Raykhtsaum, one of the metallurgists who conducted the 2013 test. In his 2013 report, Raykhtsaum had recommended a minimum thickness of 170 millionths of an inch for mechanically applied gold coatings. In his 2016 supplemental statement, Raykhtsaum stated he has since concluded it is not necessary to impose a minimum thickness for mechanical applications. Specifically, he explained the recommended thickness was “based on a severe wear test” corresponding to a degree of prolonged handling and wear likely to exceed the life of actual jewelry. Raykhtsaum further stated that he now recommends a 1/40th weight ratio, consistent with a statement he submitted with JVC’s 2012 comment.¹⁰⁸ According to JVC, 1/40th is already “accepted in the industry as the minimum standard for mechanical applications of gold alloy.”¹⁰⁹

Second, JVC submitted new consumer perception evidence indicating consumers do not expect a high level of performance from coated products. Specifically, the 2016 Harris study showed that most consumers expect items coated with a precious metal to be less durable than

¹⁰⁶ JTV generally concurred with JVC, and did not specifically address mechanical applications in its own comment. JTV comment 80 at 2.

¹⁰⁷ JVC comment 82 at 6-7.

¹⁰⁸ In his 2012 statement, Raykhtsaum stated that “reasonable durability is achieved when the amount of precious metal in the product . . . constitutes at least 1/40th of the weight of the metal in the entire article.” JVC comment 82 at 7, exh. 1 at 3-4.

¹⁰⁹ *Id.* at 6-7.

products composed throughout of the same metal, and that such coated products will tarnish sooner.¹¹⁰

Third, JVC stated that imposing a minimum thickness may “lead to unintended consequences” interfering with the manufacturing process. JVC explained that although a thickness of 170 millionths of an inch (4.3 microns) is “common” in articles conforming to a 1/40th weight ratio, this is not always so because design and size variables may result in different coating thicknesses on all or part of a product meeting this weight ratio.¹¹¹

Rather than adding a minimum thickness, JVC recommended the Commission retain its existing guidance on weight ratios, with one change. Specifically, under the existing guidance, marketers may non-deceptively use the term “gold filled” when the plating constitutes 1/20th of the weight of the metal in the entire article. The guidance also advises marketers to disclose weight ratio when using “gold plate(d)” (mechanical applications), “rolled gold plate,” and “gold overlay” if it falls below 1/20th.¹¹² In addition to retaining this guidance, JVC recommended amending the Guides to advise marketers against using gold terms to describe mechanical applications when the ratio falls below 1/40th.¹¹³ According to JVC, many in the industry already believe the Guides advise a 1/40th minimum because the safe harbor examples use this

¹¹⁰ *Id.* at 7, exh. 2 at questions 775, 800, 805, 810, 815. In addition, JVC stated it did not receive any complaints during the April 2013-April 2016 period relating to the thickness of a precious metal surface application. *Id.*

¹¹¹ *Id.*

¹¹² Responding to questions in the Commission’s 2016 Notice, JVC stated it is unaware of evidence indicating whether consumers better comprehend one method of disclosing precious metal content in the outer layer of a surface application versus another (*e.g.*, weight ratio versus percentage, versus coating thickness). However, JVC noted that in the 2012 survey it commissioned, which was conducted by Harris Interactive (“2012 Harris study”), a majority of respondents (56 percent) stated they would choose to know the percent of precious metal content in an entire item rather than the thickness of the metal’s plating when buying plated jewelry, whereas 24 percent would choose to know the plating’s thickness. *Id.* at 35. JVC also stated it is “unaware of any consumer testing on the issue of weight ratio disclosures,” but noted that the previous Guides’ recommended weight ratio disclosures for use of the terms “rolled gold plate” and “gold overlay” “has been industry practice for decades, and has not resulted in consumer complaints.” *Id.*

¹¹³ *Id.*

weight ratio.¹¹⁴ JVC stated that revising the guidance to make this more explicit would eliminate any confusion.¹¹⁵

Two other commenters appeared to concur with some, but not all, of JVC's revised position. Richline and Corti agreed with the recommendation to retain the existing guidance for use of the term "gold filled" advising a minimum 1/20th weight ratio, without a minimum thickness.¹¹⁶ Corti stated that the terms "gold plate(d)" (mechanical applications), "rolled gold plate," and "gold overlay" should refer to a mechanically applied surface layer of at least 10 karats, with a reasonable durability requirement and karat fineness disclosure, as well as a weight ratio disclosure if the coating has less than a 1/20th weight ratio, but no thickness requirement.¹¹⁷ Neither commenter discussed whether the Guides should also advise a minimum 1/40th weight ratio for any gold mechanical application.

(e) Other Terms Describing Gold Surface Applications

"Duragold," "Diragold," "Noblegold," "Goldine," and "Layered Gold." The three commenters addressing the issue all supported the Commission's proposal to delete the note to the previous Section 23.4(b), which addressed the words "Duragold," "Diragold," "Noblegold," "Goldine," "Layered Gold," and "any words or terms of similar meaning."¹¹⁸

¹¹⁴ *Id.* at 7 (citing 16 CFR 23.4(c)(3)).

¹¹⁵ *Id.* at 7-8.

¹¹⁶ Richline comment 83 at 7; Corti comment 78 at 2.

¹¹⁷ Corti comment 78 at 2. Similarly, Richline indicated that when using these terms, marketers should disclose the weight ratio if less than 1/20th, with no minimum thickness. Richline comment 85 at 1. Elsewhere in its comment, however, Richline stated that the Guides should advise against using "mechanically applied gold plate," "rolled gold plate," and "gold overlay" if the weight ratio falls below 1/20th. *Id.* at 7.

¹¹⁸ JVC comment 82 at 40; Corti comment 78 at 3; Richline comment 85 at 1.

“Flashed” and “Washed.” Corti stated that the Commission should retain the existing guidance regarding “flashed” and “washed.”¹¹⁹ Richline recommended the Commission revise the guidance to advise that “gold flash(ed)” describes products coated with at least 3 millionths of an inch of electrolytically-applied gold that is at least 10 karats, and that marketers disclose the karat fineness and assure reasonable durability.¹²⁰ Elsewhere in its comment, however, Richline indicated that “gold flashed” and “gold washed” should refer to electrolytic applications of at least 10 karat gold without a minimum thickness.¹²¹ No commenter submitted consumer perception evidence.¹²²

“Clad,” “Bonded,” and “Over.” Two commenters suggested the Commission issue new guidance regarding “clad,” “bonded,” and “over.” Specifically, Corti recommended that “gold clad” refer only to a mechanically-applied surface layer of at least 10 karat gold with reasonable durability and a minimum weight ratio of 1/20th, but no thickness requirement. In contrast, Richline indicated that “gold clad” should refer to a mechanically-applied surface application of at least 10 karats with reasonable durability, but no minimum thickness, and that marketers should disclose weight ratio if less than 1/20th. Corti and Richline both stated “gold bonded” should refer to a mechanically-applied gold surface application of at least 10 karats over a sterling silver base with reasonable durability and a minimum weight ratio of 1/20th, but no minimum thickness.¹²³ Additionally, Corti recommended that “gold over” refer to a coating of

¹¹⁹ Corti comment 78 at 2 (recommending that reasonable durability also be required).

¹²⁰ Richline comment 83 at 7.

¹²¹ Richline comment 85 at 1.

¹²² The 2012 Harris study indicated that the percentages of consumers that were familiar with the term “washed” or considered it to be “helpful” were comparable to those for other terms JVC recommended for inclusion in the Guides. 2016 Statement at 45.

¹²³ Corti comment 78 at 2; Richline comment 85 at 1.

least 10 karats with reasonable durability, but no minimum thickness.¹²⁴ In contrast, Richline recommended that this term refer to an electrolytically-applied surface layer of at least 10 karats with reasonable durability and a minimum thickness of 3 millionths of an inch.¹²⁵ The 2016 Harris study did not include “clad” or “bonded,” and no commenter submitted consumer perception evidence regarding these terms.¹²⁶

“*Gold tone*” and “*gold layered*.” For “gold tone” and “gold layered,” Corti recommended guidance advising marketers that the coating be at least 10 karat gold, but with no minimum thickness, and advising marketers to disclose karat fineness and assure reasonable durability.¹²⁷ Corti did not submit evidence regarding how consumers understand these terms, and the 2016 Harris survey did not study them. No other commenter addressed these terms.

iii. Karat Fineness Disclosures

Several commenters recommended amending the Guides to advise marketers to make karat fineness disclosures for any gold surface application described by its gold content. JVC explained that karat quality is one of the factors that impact a product’s tarnish resistance, plating consistency, and value, and that a majority of consumers understand that the proportion of gold in a product affects tarnish resistance.¹²⁸ JVC stated that although Section 23.3(b)(2) (regarding gold alloys) might already suggest such disclosures, the absence of karat fineness designations in Section 23.3(c)(3)’s electrolytic application examples has caused confusion, particularly because

¹²⁴ Corti comment 78 at 3.

¹²⁵ Richline comment 83 at 7. For all of their suggested terms (clad, bonded, over), Corti and Richline both stated that marketers should give a karat fineness disclosure.

¹²⁶ As for “over,” nearly half of respondents (49%) in the 2016 Harris survey did not know whether “gold over and gold plated are the same thing,” while 22 percent thought this was true and 29 percent thought it was not. Separately, 58 percent of respondents did not know whether “gold over” uses “low karat gold (less than 10K),” 28 percent thought this was true, and 14 percent disagreed. JVC comment 82, exh. 2 at 22.

¹²⁷ Corti comment 78 at 3.

¹²⁸ JVC comment 82 at 10-11, exh. 2 at 16-18.

the mechanical application examples in Section 23.3(c)(2) include such disclosures.¹²⁹

Therefore, JVC recommended the Commission revise the examples in proposed Section 23.3(c)(3) to include karat fineness designations when describing gold electrolytic surface applications.

Similarly, Jenner recommended the Guides advise marketers to abide by the same guidelines for gold surface applications as alloy products – *i.e.*, by disclosing the karat fineness of the gold coating (*e.g.*, “14k Gold Plated” or “10K G.E.P.”). Jenner stated this approach would benefit manufacturers and sellers as well as consumers by allowing a full range of plating options while also enabling consumers to understand what they are purchasing.¹³⁰

iv. Rhodium Coating Disclosure

Seven commenters addressed the Commission’s proposed guidance advising marketers to disclose rhodium surface applications on products marked or described as precious metal. As discussed below, most supported the new guidance, subject to modification.

Five commenters supported the Commission’s proposed guidance; four of whom additionally recommended that guidance advising reasonable durability also apply to rhodium coatings.¹³¹ Poteat supported the new guidance without change, stating that all plating eventually wears off, and most consumers are unaware of the care requirements associated with heavy wear,

¹²⁹ JVC comment 82 at 10. Richline agreed, stating that the Guides appear to advise karat disclosures for mechanical applications described as “gold plate(d),” “gold filled,” “rolled gold plate(d),” and “gold overlay,” but not for mechanical applications described using something other than one of the aforementioned four terms, nor for any electrolytic applications. *See, e.g.*, 81 FR at 1353, proposed Section 23.3(c)(2) “(for example, ‘14 Karat Gold Filled,’ ‘14 Kt. Gold Filled,’ ‘14 Kt. G.F.,’ ‘14 Kt. Gold Overlay,’ or ‘14K. R.G.P.’).” Richline noted, for example, that under the existing Guides, products may be described simply as “gold electroplate” or “gold overlay” without any indication of karat quality. Richline comment 83 at 8.

¹³⁰ Jenner comment 77 at 4. As an alternative, Jenner suggested the Guides may advise marketers that fineness disclosures may not be necessary when using the terms “gold plate(d)” or “gold electroplate(d),” as long as the gold electrolytic surface application is at least 22 karats and 15 millionths of an inch (approximately 0.381 microns).

¹³¹ Corti comment 78 at 3; JVC comment 82 at 11-12; Richline comment 85 at 2 (agreeing with JVC); JTV comment 80 at 2 (generally concurring with JVC, though not specifically addressing rhodium surface applications).

which requires re-plating to maintain color.¹³² JVC stated that in the three-year period from April 2013 to April 2016, it received approximately 40 complaints regarding sellers who did not inform consumers that a rhodium coating created the color of the white gold product they had purchased. According to JVC, these consumers were disappointed when the coating wore off, revealing the gold substrate which was not as white.¹³³

Jenner supported the Commission’s proposed guidance, but only for coatings on precious metals that are a materially different color than rhodium, such as white gold – not sterling silver. Jenner contended that a “mandate” to disclose rhodium coatings over sterling silver provides no “additional benefit” because such coatings create products that already exceed consumer expectations.¹³⁴ Specifically, Jenner explained that once a rhodium coating over sterling silver wears off, there is no immediate change in color because rhodium has essentially the same color as non-tarnished sterling silver. Jenner stated that, unlike white gold, a rhodium coating on sterling silver does not “hide” the underlying color; rather, it delays the tarnishing process and thus provides an “inherent” benefit over similar pieces without rhodium coating.¹³⁵ To address this distinction, Jenner recommended the Commission amend proposed Section 23.7 to advise marketers to disclose a rhodium surface application on products marked or described as precious metal when the underlying precious metal has a materially different color than the rhodium coating.¹³⁶

¹³² Poteat comment 86 at 4-5.

¹³³ JVC comment 82 at 9 n.18.

¹³⁴ Jenner comment 77 at 1.

¹³⁵ *Id.* at 6.

¹³⁶ *Id.* at 7.

Another commenter opposed the Commission's proposed guidance, stating that disclosure is unnecessary because rhodium plating is a "traditionally used process."¹³⁷

4. Analysis and Final Guidance

Based on the record, the Commission issues the final Guides largely as proposed, but with several changes to address issues raised by the commenters. Specifically, the final guidance cautions marketers against making unqualified gold, silver, or platinum claims about coated products. It also addresses: (i) reasonable durability; (ii) safe harbors; (iii) purity disclosures; and (iv) rhodium coating disclosures.

a) Unqualified Precious Metal Claims

The Commission adds new guidance as proposed to address unqualified silver and platinum claims regarding coated products. This advice is consistent with the existing guidance for gold, which helps marketers avoid deceptive claims when using gold terms to describe coated products. Specifically, the new guidance in Sections 23.5(b)(3) and 23.6(b)(1) cautions marketers against using silver or platinum terms to describe all or part of a coated product unless they adequately qualify the term to indicate the product has only a surface layer of the advertised precious metal.

Although the Commission also issues new guidance addressing surface applications of rhodium (discussed separately below),¹³⁸ it declines to extend the platinum guidance to other PGMs (iridium, palladium, ruthenium, osmium) because it lacks evidence regarding what consumers expect based on claims about jewelry made with these metals.¹³⁹ The Commission

¹³⁷ Michael Richards comment 4.

¹³⁸ Section 23.7.

¹³⁹ See 2016 Statement at 37 n. 140, 75-76. Moreover, the record indicates the other PGMs are not widely used in surface applications. See 2016 Statement at 27 (noting that manufacturers cannot easily create mechanical surface

therefore has no basis to conclude that additional guidance is necessary to prevent consumer deception. It reminds sellers, however, that to the extent they offer jewelry coated with any PGM, the general guidance in Sections 23.6(a) and 23.1 addressing misrepresentations still applies.¹⁴⁰

b) Describing Coated Products

Under Section 5, a claim is deceptive if it materially misleads consumers acting reasonably. Therefore, to prevent deception, the Commission’s guidance must be based on how consumers reasonably interpret claims. Given this legal framework, the Guides provide information that helps prevent deception. Although longstanding guidance about specific surface application terms may not be grounded in consumer understanding of these particular applications, rather than completely eliminate this guidance upon which industry has relied, the Commission revises the Guides to bring them closer in line with Section 5.

As discussed below, for sellers that choose to advertise their products’ precious metal coatings, the final Guides advise how to market them non-deceptively. First, the Guides advise sellers to assure reasonable durability for any product marketed by its gold, silver, or platinum coating. Second, the Guides include revised gold safe harbor guidance, providing examples of surface applications that are reasonably durable. They do not, however, set standards for new coating terms or other precious metal coatings. Third, the Guides advise marketers to disclose the purity of coatings made with a gold, silver, or platinum alloy that falls below the thresholds

applications of other PGMs, and that rhodium and ruthenium are particularly difficult to work with using mechanical processes). The Commission’s separate guidance on rhodium surface layers concerns electrolytic applications.

¹⁴⁰ Section 23.6(a) cautions marketers against using PGM terms (including the words “iridium,” “palladium,” “ruthenium,” and “osmium,” and any abbreviation) to mark or describe a product if doing so misrepresents the product’s composition. Section 23.1 advises marketers generally to avoid misrepresenting, among other things, the type, kind, quality, metallic content, color, character, treatment, substance, durability, serviceability, value, or any other material aspect of a product.

for unqualified use of these precious metal terms. Fourth, the Guides include new advice regarding rhodium coatings.

i. Reasonable Durability

The final Guides advise sellers that any product advertised by reference to its gold, silver, or platinum surface layer must meet reasonable consumer expectations for durability (*i.e.*, be reasonably durable). Therefore, the Commission clarifies the term “reasonable durability” as denoting that “all areas of the plating are sufficiently thick to assure coverage that reasonable consumers would expect from the surface application.”¹⁴¹

The Commission makes these revisions to ensure that claims for products advertised by their precious metal coatings comply with Section 5. The record indicates that consumers’ unfamiliarity with the terminology used to differentiate coated products likely hinders their understanding of product durability.¹⁴² For example, a substantial percentage of respondents in the 2016 Harris study (61%) did not know whether “gold flashed items are generally very durable.”¹⁴³ Although a majority indicated that they expect products coated with gold, silver, or platinum to be less durable than alloys composed throughout of that precious metal, most also expect such coated products to have a minimum coating thickness. Thus, the study suggests most consumers expect coated products to have some degree of durability.¹⁴⁴ However, the record does not specify how long consumers expect coated products to last.

¹⁴¹ The Guides further note that “[s]ince industry products include items having surfaces and parts of surfaces that are subject to different degrees of wear, the thickness of the surface application for all items or for different areas of the surface of individual items does not necessarily have to be uniform.”

¹⁴² A large number of consumers are unable to distinguish among various coating terms. *See* 2016 Statement at 37-38.

¹⁴³ JVC comment 82, exh. 2 at 23.

¹⁴⁴ *See* 2016 Harris study, JVC comment 82, exh. 2 at 20-21, 27-29.

Moreover, the record does not differentiate the duration of different surface applications. JVC did not specify, for instance, the time periods replicated by the Leach Garner’s “severe” wear test or Tanury/Tabor’s “normal” wear test. Additionally, no commenter provided evidence showing how the tests produced results consistent with consumer expectations. There is no evidence, for example, demonstrating the number of months or years that consumers expect gold electroplating to last, or under what conditions. Consumers likely have different expectations regarding the durability of different types of coated products sold at different prices. For example, they might expect the gold coating on a brooch worn only on occasion to last longer than the coating on a ring worn daily. Therefore, the revised guidance on “reasonable durability” brings the Guides closer in line with Section 5 by tying the concept to durability that reasonable consumers would expect in the circumstances (*e.g.*, taking into account the product’s anticipated wear and use).

The previous Guides advised sellers to assure reasonable durability only for some coated products, but not others. Specifically, the reference to reasonable durability only appeared in guidance regarding certain gold terms (“gold plate(d),” “gold electroplate(d),” “gold filled,” “rolled gold plate(d),” “gold overlay”) and products coated with silver¹⁴⁵ – but not gold-coated products described with other terms or platinum-coated products. To correct this discrepancy, the Commission retains the existing guidance and amends the gold and platinum sections to advise against describing any product, or part thereof, as having a surface layer of gold or platinum unless all significant surfaces contain a coating that is reasonably durable.¹⁴⁶

¹⁴⁵ 81 FR at 1352-54 (proposed Sections 23.3(b)(4), 23.3(b)(5), 23.3(b)(7), 23.5(b)(4)).

¹⁴⁶ Sections 23.3(b)(3) and 23.6(b)(1). When marketers use a precious metal term to describe a coated product, it implies reasonable durability. To the extent sellers do not advertise a product’s precious metal coating, however, the guidance advising reasonable durability would not apply.

ii. Safe Harbor Examples

The previous Guides addressed when sellers could non-deceptively use various terms traditionally associated with gold-coated products. The guidance contained detailed information specifying gold karat fineness and coating thickness or weight ratio for non-deceptive use of each term (*e.g.*, “gold plate,” “gold filled,” “vermeil”). Although the record indicates that many consumers do not understand the distinctions among these coating terms,¹⁴⁷ the Commission does not eliminate this guidance because the industry has long relied on it. Instead, to assist sellers, the Commission updates the gold safe harbor examples based on testing evidence indicating the amounts (*i.e.*, karat fineness and coating thickness or weight ratio) that assure reasonable durability for electrolytic and mechanical applications. However, the Commission does not expand the guidance to add new coating terms or address precious metal coatings other than gold because it lacks a sufficient basis to do so.

(a) “Gold Plate(d)” – Any Application Process

The Commission deletes the previous example addressing gold coatings affixed by any process and described as “gold plate(d)” because it is no longer applicable. When initially creating this guidance, the Commission found that consumers are unlikely to distinguish between products based on plating method, focusing instead on durability.¹⁴⁸ The previous Guides therefore recommended a uniform thickness regardless of the application method.

A single thickness, however, is no longer a useful proxy for durability. Specifically, for electrolytic applications, the advised 0.5 microns thickness (20 millionths of an inch) exceeds

¹⁴⁷ See 2016 Statement at 37-38.

¹⁴⁸ 61 FR 27178, 27187 (1996). Two commenters stated that the term “plated” should not be used for both mechanical and electrolytic processes, yet both apparently recommended keeping a single provision for “plate.” Corti comment 78 at 2; Richline comment 83 at 6. There is no evidence that consumers distinguish “plate” from “plated,” or that their expectations differ depending on which term marketers use to describe a product. Indeed, the previous Section 23.4(c)(2) guidance referred both to “gold plate” and “gold plated.”

what is necessary to ensure reasonable durability; testing shows that only 0.175 microns (7 millionths of an inch) is sufficient. Additionally, although the record indicates that mechanically applied coatings require more precious metal than electrolytic ones to ensure the same durability, the Commission does not have a sufficient basis to conclude that 0.5 micron is enough.¹⁴⁹

Because the previous Guides' uniform thickness is not suitable for either application, the Commission removes this provision and transfers the term "gold plate(d)" to guidance that separately addresses mechanical and electrolytic applications.¹⁵⁰

(b) Electrolytic Applications

In the final Guides, the Commission retains the previous examples' minimum thickness and karat fineness amounts, including the fine gold equivalent provisions (*i.e.*, advising a coating of at least 10 karats with a minimum thickness "equivalent to" the specified thickness of fine gold),¹⁵¹ for the reasons detailed below. Additionally, it removes "gold flashed" and "gold washed" from the examples because it does not have a sufficient basis to give specific guidance on how marketers may non-deceptively use these terms.

In the 2016 Notice, the Commission proposed increasing the minimum thickness for "gold plate(d)" and "gold electroplate(d)" based on test reports submitted by JVC. That testing suggested a greater thickness than the Guides advised may be needed to meet consumers' expectations. Specifically, JVC submitted data from Leach Garner with its 2013 comment which recommended a minimum of 15 millionths of an inch, without specifying whether it allowed for

¹⁴⁹ See 2016 Statement at 39. Commenters indicated only that 4.3 microns (170 millionths of an inch) is more than is needed, but did not provide evidence of a minimum thickness that assures reasonable durability.

¹⁵⁰ See Sections 23.3(c)(2) and 23.3(c)(3).

¹⁵¹ For example, a product containing 1 micron (1 μ) of 12 karat gold is equivalent to one-half micron of fine (24 karat) gold. 16 CFR 23.4(c)(2) n.4.

gold alloy plating as low as 10 karats.¹⁵² Additionally, commenters claimed that using lower-karat gold (*e.g.*, 10 karats) for electrolytic applications affects the coating’s appearance and tarnish resistance, and that applying greater amounts of 10 karat gold (pursuant to the Guides’ “equivalent to” provisions) would not ensure the surface layer retains its original appearance.¹⁵³ Therefore, the Commission also proposed increasing the minimum karat fineness for “gold plate(d),” “gold electroplate(d),” “heavy gold electroplate(d),” and “vermeil” to 22 karats.

Commenters’ responses to the 2016 Notice, however, indicate that the existing minimum thicknesses and karat fineness are adequate to assure reasonable durability. Correcting a confusion in the record, JVC stated that the tests by Taber Industries and Tanury Industries support the existing minimum (7 millionths of an inch), and that the 2013 Leach Garner test on which the Commission based its proposed change is irrelevant because it assessed severe, not normal wear.¹⁵⁴

The record also indicates that increasing the minimum karat fineness in the examples from 10 to 22 karats, as JVC and others previously suggested, is not necessary. Specifically, commenters stated that the existing guidance, which advises at least 10 karats and includes the fine gold equivalent provisions, meets consumer expectations for reasonable durability. One commenter explained that a product coated with lower-karat gold actually maintains its color and finish longer than a higher-karat coating because lower-karat gold includes elements that create a harder coating than pure gold.¹⁵⁵

¹⁵² *See* 2016 Statement at 40-41.

¹⁵³ *Id.* at 10-11.

¹⁵⁴ JVC comment 82 at 5, 36.

¹⁵⁵ Jenner comment 77 at 3-4.

Additionally, commenters explained that factors other than karat fineness (such as the identity of the underlying metals and substrates) affect durability, tarnish resistance, and color. For instance, in withdrawing its previous suggestion that the Commission increase the minimum fineness to 22 karats, JVC asserted that manufacturers often mitigate tarnishing characteristics by applying a flash coat of high karat gold or protective coat of clear polymer – applications that, while not long lasting, may provide basic protection adequate to meet consumer expectations.¹⁵⁶

Based on this new information, the Commission retains the previous Guides’ minimum thickness and karat fineness examples because the record confirms they demonstrate one method that sellers may use to assure reasonable durability.¹⁵⁷ As discussed above, the Guides advise sellers to assure reasonable durability for any product marketed by its gold coating. Thus, marketers may also non-deceptively describe products that do not have the minimum thickness and karat fineness suggested in the examples as “gold plate(d)” and “gold electroplate(d)” if those products are reasonably durable (*e.g.*, through the use of protective coatings).¹⁵⁸

Based on the updated record, the Commission also removes “gold flashed” and “gold washed” from the electrolytic examples. The previous Guides advised that marketers could non-deceptively use these terms for electroplated items that had the recommended 10 karats, but not the minimum coating thickness.¹⁵⁹ However, the current perception evidence demonstrates that consumers do not understand “gold flashed” and “gold washed” to mean coatings that are thinner

¹⁵⁶ JVC comment 82 at 9.

¹⁵⁷ The examples have referenced these same minimum thickness and karat fineness amounts for decades. *See, e.g.*, 22 FR 4567, 4573 (June 28, 1957) (FTC Trade Practice Rules for the Jewelry Industry §23.22(c)(2)).

¹⁵⁸ The examples provide the Commission’s views on how reasonable consumers likely interpret certain claims. Industry members may use an alternative approach if the approach satisfies the requirements of Section 5 of the FTC Act. 16 CFR 23.0(e).

¹⁵⁹ 16 CFR 23.4(c)(4).

than those described as “gold electroplate(d)” (which meet both the minimum thickness and karat fineness amounts).¹⁶⁰ The basis for the previous guidance is thus no longer valid.

The Commission, however, does not issue guidance cautioning marketers against ever using these terms. Depending on the net impression of the particular advertising context, consumers may not be deceived by sellers’ claims about products described as “gold flashed” or “gold washed.” For example, consumers might expect that low-priced “flashed” or “washed” costume jewelry displayed in a basket at a clothing store (not secured in a case) does not contain significant amounts of gold and likely will not be as durable as other gold jewelry. Without further consumer perception evidence, however, the Commission does not have a sufficient basis to give specific guidance regarding the non-deceptive use of these terms.

(c) Mechanical Applications

Based on updated evidence, the Commission amends the Guides’ examples relating to mechanical application terms (“gold plate(d),” “gold overlay,” “rolled gold plate”) to advise that such products contain a 1/40th minimum weight ratio. Although JVC previously proposed a minimum coating thickness, it submitted new evidence from a metallurgist stating that a 1/40th weight ratio – not a coating thickness – assures durability for mechanical applications.

Moreover, this guidance likely will not impose significant burdens on industry. JVC stated that 1/40th is the current industry standard, and many in the industry already believe the Guides advise this minimum weight ratio because of the existing examples.¹⁶¹ The Commission therefore clarifies the guidance by amending the mechanical safe harbor explicitly to reflect the 1/40th weight ratio.

¹⁶⁰ In fact, a substantial percentage of respondents in the 2016 Harris study (61%) did not know whether “gold flashed items are generally very durable.” JVC comment 82, exh. 2 at 23.

¹⁶¹ See 16 CFR 23.4(c)(3).

In addition, the Commission retains the existing guidance advising a 1/20th weight ratio for coated products described as “gold filled,” and advising marketers to disclose weight ratio when using “gold overlay” or “rolled gold plate” for coated products below 1/20th. Marketers have relied on this guidance for decades; it has helped consumers distinguish “gold overlay” and “rolled gold plate” products from “gold filled” items containing more gold (*i.e.*, at least 1/20th by weight). Without evidence that this guidance is no longer needed, the Commission declines to remove it.

However, the Commission declines to issue similar guidance advising weight ratio disclosures for “gold plate(d)” coatings that fall below 1/20th. There is no evidence that advising such disclosures is necessary to prevent deception. Therefore, the final Guides advise that such products meet the recommended 1/40th weight ratio to assure reasonable durability, but do not further advise that sellers disclose weight ratio for products that meet the 1/40th minimum, but fall below 1/20th.

(d) Other Coating Terms and Precious Metals

The Commission declines to issue new guidance for other coating terms (such as “flashed,” “washed,” “clad,” “bonded,” “over,” “gold tone,” and “gold layered”) specifying minimum thickness and weight ratios because there is no evidence that such guidance is needed to help marketers avoid deception.¹⁶² For the same reason, the Commission does not set detailed standards for terms used to describe silver or platinum coatings.

Given the potential for confusion, the Commission will continue to monitor this area, and reminds marketers that their claims remain subject to Section 5 of the FTC Act. Thus, they must

¹⁶² The 2016 Harris survey, as did the 2012 Harris survey, demonstrates that large numbers of consumers are not familiar with these terms and do not fully understand them.

qualify claims appropriately to avoid consumer deception and must ensure they can substantiate all reasonable interpretations of their claims.¹⁶³

iii. Purity Disclosures

The final Guides advise marketers to disclose the purity of coatings made with alloys that fall below the thresholds for unqualified use of “gold,” “silver,” and “platinum” terms and abbreviations. The previous Guides already advised sellers to disclose the purity of alloy products, or parts thereof, containing gold, silver, or platinum in amounts less than the recommended thresholds. However, they did not clearly advise purity disclosures for products coated with these precious metals, and thus allowed for potential deception because claiming that a product is made or coated with a precious metal alloy without specifying the purity in many situations likely implies the product has more of the advertised precious metal than it actually does. For instance, because the previous Guides only included karat disclosures in the examples for gold mechanical surface applications, a seller might have believed it could non-deceptively use an unqualified gold term (*e.g.*, “gold plated”) to market an electrolytically coated item with less gold than a “14K gold” product, or a mechanically coated “10K gold overlay” item.¹⁶⁴

¹⁶³ As proposed, the final Guides do not include the note that accompanied the previous Section 23.4(b) (regarding “Duragold,” “Diragold,” “Noblegold,” “Goldine,” “Layered Gold,” and similar terms) because the record indicates these terms are no longer in use. In response to the 2016 Notice, the Commission observed that some marketers describe coated products as “gold layered,” which sounds similar to “layered gold.” The 2016 Harris study, however, indicates that consumers do not appear meaningfully to distinguish “layered” from other terms used to describe coating terms. *See* JVC comment 82, exh. 2 at 21-22.

¹⁶⁴ The record indicates that electrolytic applications do not require as thick a coating as mechanical applications to ensure durability. *See* 2016 Statement at 39. Commenters stated there may be confusion regarding whether marketers should disclose karats to describe coated products because the previous Guides’ examples included such disclosures for mechanical, but not electrolytic, surface applications. *Compare* 16 CFR 23.4(b)(5) with 23.4(b)(4) and 23.4(b)(7). Similarly, the previous guidance included karat designations in the marking and description examples for mechanical application terms (“filled,” “overlay,” “rolled gold plate”), but not electrolytic (“plate(d),” “electroplate(d),” “flashed,” “washed,” “heavy gold electroplate(d)”). *Compare* 16 CFR 23.4(c)(2) with 16 CFR 23.4(c)(3).

To clarify that the guidance advising purity disclosures for alloys applies equally to coated products, the Commission amends the guidance to advise that, for alloys containing less than 24K gold, 925 PPT silver, or 950 PPT platinum, marketers qualify their use of gold, silver, or platinum terms to describe “all or part” of the product, “*including the surface layer of a coated product,*” with equally conspicuous, accurate purity disclosures. In addition, the Commission amends the gold section to include karat fineness disclosures in the description and marking examples for electrolytic applications.

iv. Rhodium Coatings

Based on the record, the Commission issues the final guidance as proposed, advising marketers to disclose rhodium surface applications on products marked or described as precious metal, such as rhodium-coated items marketed as “white gold” or silver (Section 23.7). As with other precious metal applications, sellers must assure the reasonable durability of rhodium coatings. By alerting consumers that the product’s surface coating may not be permanent, the new rhodium coating disclosure will likely inform consumers’ reasonable expectations for the application’s durability and therefore prevent deception.

The Commission declines to amend the guidance to differentiate rhodium coatings applied over sterling silver from those applied to other substrates such as white gold. Absent evidence that consumers’ expectations differ depending on the color of the underlying metal, the Commission advises marketers to disclose rhodium coatings over any product marketed as precious metal, whether the base is sterling silver or white gold. If, as the commenter seeking the amendment suggested, rhodium coatings provide an added benefit when applied over sterling silver because they improve the product (*i.e.*, by delaying the tarnishing process), marketers already have an incentive to disclose this fact. If they do not provide such a benefit, marketers may not choose to disclose, and consumers may not know that the product’s initial color (in this

case, an apparently non-tarnished silver) is not permanent and will require re-plating to restore its appearance. The guidance advising disclosure will therefore help prevent such deception.

B. Alloys with Precious Metals in Amounts Below Minimum Thresholds

1. Previous Guides

The previous Guides cautioned marketers against using the words “gold,” “silver,” “platinum,” or their abbreviations to describe or mark all or part of a product unless it contained the precious metal in an amount that met or exceeded certain thresholds.

Specifically, Section 23.4 advised against using gold terms, abbreviations, or quality marks (*e.g.*, “9K”) to describe products or parts composed of less than 10 karat gold.¹⁶⁵ It also advised marketers not to use “gold” or any abbreviation unless immediately preceded by an equally conspicuous designation of the alloy’s karat fineness.¹⁶⁶ Similarly, Section 23.6 cautioned against using “silver,” “solid silver,” “Sterling Silver,” “Sterling,” or the “Ster.” abbreviation unless the product or part was at least 925/1,000ths pure silver.¹⁶⁷ It also cautioned against using “coin” or “coin silver” unless the product or part was at least 900/1,000ths pure silver.¹⁶⁸ Finally, Section 23.7 advised different disclosures depending on the percentage of pure platinum in a product and the extent to which it was alloyed with other platinum group metals (PGMs).¹⁶⁹ This section further cautioned against using “platinum” or any abbreviation to mark

¹⁶⁵ 16 CFR 23.4(b)(9).

¹⁶⁶ 16 CFR 23.4(b)(2). The section also advised against unqualified use of the word “gold” or any abbreviation to describe products or parts not composed throughout of “fine (24 karat) gold.” 16 CFR 23.4(b)(1).

¹⁶⁷ 16 CFR 23.6(b).

¹⁶⁸ 16 CFR 23.6(c).

¹⁶⁹ In addition to platinum, the PGMs include iridium, palladium, ruthenium, rhodium, and osmium.

or describe a product not composed throughout of at least 500 parts per thousand pure platinum.¹⁷⁰

2. Proposed Revisions

In the 2016 Notice, the Commission proposed addressing four types of alloy products with either existing or new guidance: (i) products containing precious metals in amounts meeting or exceeding the thresholds; (ii) below-threshold gold and silver products that meet consumer expectations; (iii) below-threshold gold and silver products that do not; and (iv) below-threshold platinum products.

First, for products meeting or exceeding the thresholds,¹⁷¹ the Commission proposed retaining the existing guidance advising that marketers could non-deceptively use gold, silver, and platinum terms or abbreviations to describe or mark all or part of the product. The Commission found this guidance remained necessary because the thresholds helped distinguish products that always have certain performance attributes material to consumers, such as tarnish and corrosion resistance, from those that may not. The record suggested that technological advances have made it possible for some below-threshold alloys to meet consumer expectations for properties formerly associated with higher-content jewelry.¹⁷² However, without a sufficient basis to change any threshold by a particular amount, the Commission proposed to retain the guidance referencing the thresholds at their existing levels.

Second, for below-threshold gold products with characteristics that are materially similar to above-threshold products, the Commission proposed new guidance advising that marketers could non-deceptively reference gold content if they had competent and reliable scientific

¹⁷⁰ 16 CFR 23.7(b)(3).

¹⁷¹ 10 karats for gold, 925/1,000ths for silver, and 500 parts per thousand for platinum.

¹⁷² 2016 Statement at 65.

evidence that the product's material characteristics were substantially similar to those of products containing at least 10 karats. This proposed guidance advised the marketer to provide an equally conspicuous, correct disclosure of the alloy's purity (karat fineness) immediately preceding the gold term.

Similarly, the Commission proposed a new note advising that marketers could non-deceptively use the word "silver" to describe products containing less than 925/1,000ths pure silver if the seller had competent and reliable scientific evidence showing the product did not materially differ from a sterling silver item (*i.e.*, containing at least 925/1,000ths) with respect to corrosion resistance, tarnish resistance, and any other attribute or property material to consumers (other than purity). The guidance advised marketers to provide an equally conspicuous, correct disclosure of the alloy's purity immediately preceding the silver term.¹⁷³ In contrast, the Commission proposed to keep the guidance reserving "solid silver," "sterling silver," "sterling," and the "Ster." abbreviation for products that were at least 925/1,000ths pure silver, and reserving "coin" and "coin silver" for products that were 900/1,000ths, based on their longstanding use and therefore probable consumer understanding. Rather than merely signaling the presence of silver, these terms likely denoted specific purity levels (*e.g.*, that "coin silver" contains less silver than "sterling silver").

Third, for below-threshold gold and silver products that materially differ from above-threshold products (*e.g.*, 8 karat gold items that tarnish), the Commission proposed new guidance advising that marketers could non-deceptively reference these precious metals only if they made additional disclosures. Specifically, the new notes advised marketers to (i) accurately disclose

¹⁷³ 81 FR at 1354 (proposed Note to 23.5(b)(1) and (2)). Marketers also should adhere to the other guidance in Section 23.5 (previously 23.6) prohibiting misrepresentations.

the identified metal's purity with the same terminology used to describe above-threshold alloys (*i.e.*, karats for gold, PPT for silver); and (ii) disclose that the product may not have the same attributes or properties as jewelry made with the same precious metal in amounts that meet the threshold.¹⁷⁴ The guidance also advised marketers they could non-deceptively stamp items with quality marks accurately disclosing precious metal content.

Finally, the Commission did not propose new guidance for below-threshold platinum alloys. The record showed that, unlike gold (which has traditionally been mixed with base metals to create jewelry), consumers expect platinum products to be substantially composed of pure platinum.¹⁷⁵ Therefore, additional guidance advising platinum content disclosures for products that do not meet those expectations may be deceptive.

3. Comments

Commenters focused primarily on the Commission's proposed guidance for gold. Many stated there is a significant market for below-threshold alloys, which offer lower-cost alternatives to higher-karat products. However, they disagreed about whether the Commission's proposal helps sellers avoid deception. Two stated that the new guidance strikes an appropriate balance, allowing sellers to disclose gold content accurately while protecting consumers. The remaining commenters disagreed. JVC and Richline/Signet stated the Commission's proposed guidance would reverse longstanding practice and be virtually impossible to enforce, causing consumer confusion. They each proposed alternate guidance for gold and silver alloys, which they contended would better distinguish below-thresholds from traditional jewelry. Other commenters simply urged the Commission to keep the existing gold threshold, or stated that

¹⁷⁴ See 81 FR at 1353-1354 (proposed Notes to 23.3(b)(9) and 23.5(b)(1) and (2)).

¹⁷⁵ 2016 Statement at 68.

sellers should not stamp precious metal content on below-threshold alloys without additional disclosures, but did not discuss how sellers can avoid deception when marketing below-threshold products. Finally, commenters addressing platinum alloys agreed that no change to the existing thresholds is necessary.

a) Supporting the Proposed Guidance for Gold Alloys

JTV stated the Commission’s proposed guidance for gold alloys fully protects consumers by advising disclosures that ensure they are reasonably informed. It further stated that the guidance “has the wisdom” of adapting to market changes associated with technology.¹⁷⁶

Another commenter stated that consumers “need to understand” new products as they become available, and that “lowering the limit for karat designations is probably the least deceptive way to do this.”¹⁷⁷

b) Disagreeing with the Proposed Guidance for Gold and Silver

JVC challenged the basis for the Commission’s proposal in two respects. First, it disputed whether sellers can produce below-threshold alloys that meet consumer expectations. JVC asserted nothing has changed since the Commission considered revising the gold and silver thresholds in 1996, when the record indicated that such alloys tend to tarnish and corrode.¹⁷⁸ In a supporting statement, metallurgist Stewart Grice opined that all below-threshold gold alloys are “inferior” to those with at least 10 karats with respect to tarnish and corrosion resistance.¹⁷⁹

¹⁷⁶ JTV comment 80 at 2-3.

¹⁷⁷ Poteat comment 86 at 6.

¹⁷⁸ JVC comment 82 at 14.

¹⁷⁹ Grice did not quantify the extent to which those alloys are “inferior,” such as by providing data specifically showing a difference in the time period over which one alloy maintained its appearance as compared to another.

Grice further stated that, even though “fine silver” will react with sulfur and eventually tarnish, alloys with more copper tarnish more quickly and to a greater degree.¹⁸⁰

Second, JVC asserted it is not possible to develop the competent and reliable scientific evidence the guidance contemplates because there are no standardized, repeatable tests to establish that a below-threshold alloy does not materially differ from those at or above threshold.¹⁸¹ As an initial matter, JVC stated that not all threshold alloys perform similarly. To illustrate, JVC submitted several 10K gold samples to Underwriters Laboratories (UL). The UL report indicated that, when the samples were subjected to wear/abrasion tests that simulated the wear and corrosion on a coated article over two years of typical use, each sample’s tarnish rate differed.¹⁸² JVC also stated that a seller cannot reliably test its alloy to ensure it meets consumer expectations under all circumstances.¹⁸³ According to JVC, there is no industry consensus on a testing method for tarnish and corrosion resistance, and no current industry test demonstrates performance under actual wear conditions, which include variations affecting results. An alloy can be more or less tarnish-resistant depending on its microstructure and how it is processed.¹⁸⁴ Furthermore, JVC stated that “no standardized test could ever be developed that would provide

¹⁸⁰ According to Grice, using elements other than copper does not fully address the tarnishing issue, and adding such elements usually has detrimental effects such as reduced hardness, or inferior color and luster. JVC comment 82, exh. 5 at 2-3.

¹⁸¹ JVC comment 82 at 14.

¹⁸² *Id.* at 14, exh. 4.

¹⁸³ *Id.* at 15.

¹⁸⁴ Grice stated that, due to the variety of alloys, there are no uniformly applicable, standardized tests that account for the different conditions in which jewelry is worn, and results will vary greatly depending on the testing entity and test. He explained that current testing subjects samples to an accelerated, chemically-created atmosphere, not “real-life” conditions. For example, a sample’s small grain size aids tarnish resistance, but alloys made into jewelry cannot replicate this grain size. Moreover, if an alloy has a non-homogenous microstructure, this produces areas rich in base metals more susceptible to tarnishing. Whether the alloy has a clear plastic coating also affects results. According to Grice, a manufacturer could use an alloy that does not pass tarnish tests when processed under standard jewelry-making conditions, but does when processed in a different manner. *Id.*, exh. 5 at 3.

comparable results when performed in artificially created circumstances” because each alloy is designed for different wear features, but testing cannot be tailored to every alloy and condition.¹⁸⁵

Therefore, in JVC’s view, the Commission’s proposed guidance would allow a wide range in the quality and type of evidence proffered to support sellers’ claims, creating an unenforceable system.¹⁸⁶ Moreover, JVC contended that sellers offering evidence about their own products would always be able to “manipulate” results by altering the way an alloy is tested to ensure it “passes.”¹⁸⁷ Consequently, the proposed guidance would essentially eliminate the use of minimum thresholds for gold and silver jewelry.

In addition, JVC asserted that the guidance would “reverse generations of consumer education and industry practice regarding the quality of gold or silver jewelry.”¹⁸⁸ It stated consumers are “well aware that there are minimum required amounts of precious metal in the jewelry items they purchase,” and that the amount impacts a product’s color, likelihood of tarnishing and corroding, overall durability, and resale value.¹⁸⁹ In JVC’s view, the Commission’s proposed guidance would therefore cause consumer confusion.

Stating that specific guidance is needed to ensure consumers know that below-threshold products substantially differ from traditional jewelry, JVC urged the Commission to adopt a revised version of the guidance it proposed in 2012. In this alternate proposal, JVC recommended the Commission revise the Guides to advise that sellers may use “gold” to

¹⁸⁵ *Id.* at 15. In Grice’s opinion, alloy designers and test laboratories should collaborate to develop a baseline alloy that would tarnish in a repeatable manner over a test’s duration. To produce reliable results, an accredited test laboratory should perform testing in standardized conditions that replicate actual use (such as with respect to ambient temperature and humidity). He stated, however, that it is not possible to create such an alloy and test. *Id.*, exh. 5 at 3.

¹⁸⁶ *Id.* at 15.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 13.

¹⁸⁹ *Id.*

describe products below 10 karats, but only for products that are at least 8 karats, provided they: (i) accurately disclose gold purity in karats or parts per thousand; (ii) describe the product using “Low Gold” (*e.g.*, “8 Kt. Low Gold”); (iii) stamp the product with the karat quality and “Low Gold” or “LG” designation (*e.g.*, “8K LG”); and (iv) advise consumers that the article materially differs with respect to tarnish and corrosion resistance from a product made with at least 10K gold.¹⁹⁰

JVC explained that its 8K “floor” is based on the international market. Eight karats is the standard in Denmark and Greece, and nine is the standard in the United Kingdom, France, Austria, Portugal, and Ireland. JVC asserted that if marketers were allowed to describe products containing less than eight karats as gold, confusion and deception would be “inevitable.”¹⁹¹ It stated that allowing a one-karat alloy that resembles 18 karat white gold, for example, to be identified as “1K Low Gold,” even if accompanied by a disclosure regarding the material differences in performance, would be “an extreme departure from established norms, and contrary to long-held conceptions of ‘gold’ as valuable, and thus desirable.”¹⁹²

JTV strongly objected to JVC’s “low gold” term.¹⁹³ JTV stated that, to its knowledge, the industry does not use this term, and it is unnecessary to communicate that 8K is “lower” (in content, fineness, and value) than 10K and above. It further stated that using such a “degrading” term is unnecessary and unwarranted if marketers disclose how the below-threshold product differs from one that meets the threshold.¹⁹⁴

¹⁹⁰ *Id.* at 2-3. Under JVC’s proposal, if a marketer chooses not to identify an alloy’s gold content, it would not have to make these disclosures.

¹⁹¹ *Id.* at 17-18.

¹⁹² *Id.* at 17.

¹⁹³ JTV did not address JVC’s proposal for silver.

¹⁹⁴ JTV comment 80 at 3.

For silver, JVC recommended the Commission revise the Guides to advise that sellers may use “silver” to describe products below the 925/1,000ths threshold, but only if they: (i) accurately disclose the product’s purity; (ii) describe the product using “Low Silver” (*e.g.*, “750 PPT Low Silver”); (iii) stamp the product to indicate the parts per thousand of silver and “Low Silver” or “LS” designation; and (iv) advise consumers that the article materially differs with respect to tarnish and corrosion resistance from a product made with at least 925 PPT Silver.¹⁹⁵ Unlike its recommendation for gold, JVC did not propose a “floor” below which marketers would not be allowed to inform consumers that a product contains silver.¹⁹⁶

Although Richline and Signet agreed with many of JVC’s concerns about the Commission’s proposed guidance,¹⁹⁷ they disagreed with JVC’s new recommendations.¹⁹⁸ Instead, Richline/Signet proposed: (i) for below-threshold gold, to “allow disclosure by percentage (PPT) ONLY of fine gold content, and only if all other elements are reasonably disclosed, but no marking,” and “make it absolutely mandatory that no stamping be allowed below 10K;” and (ii) for below-threshold silver, to “allow disclosure, not marking, by percentage (PPT) ONLY of fine silver content, only if all other elements are reasonably disclosed.”¹⁹⁹

¹⁹⁵ JVC comment 82 at 2-3.

¹⁹⁶ Another commenter stated the threshold should not be changed, and observed that lower fineness silvers are more prone to tarnish, corrode, and stain, and have poorer color. Corti comment 78 at 1. He stated that lower silver materials should be “marked with silver content and other metal content (%) but not described as Silver.” Corti comment 78 at 2.

¹⁹⁷ For instance, Richline and Signet agreed that the Commission’s proposed guidance would lead to significant confusion among consumers and manufacturers by creating “a system that cannot be reliably monitored or policed.” Richline comment 83 at 4-5; Signet comment 84 at 1. Richline also stated it had additionally and independently surveyed “top industry metallurgists” and received “unanimous concurrence that there is not now, nor can there be, a single standard that would allow any marketer to make the claims as suggested” by the Commission’s proposal. It did not, however, submit any written statements from those metallurgists. Richline comment 83 at 4-5.

¹⁹⁸ Richline comment 83 at 6; Signet comment 84 at 1.

¹⁹⁹ Richline comment 83 at 5. Richline’s comment did not clarify whether its proposed alternative would advise disclosures only by percentage (*e.g.*, “33%”), parts per thousand (PPT – *e.g.*, “333”), or a combination. Signet’s comment, which supported Richline’s, stated that below-threshold gold disclosures “would be by PPT or percentage only,” and below-threshold silver disclosures “would be by percentage (PPT) only.” Signet comment 84 at 2.

Richline stated this method would allow lower gold-content product “without diminishing the prestige and value assumption of Karat Gold products.”²⁰⁰

Finally, many commenters urged the Commission to keep the existing gold threshold, without addressing how sellers can avoid deception when marketing below-threshold products.²⁰¹

Others opposed the Commission’s proposed guidance because they contended that stamping below-threshold alloys “without additional disclosures will confuse consumers and reverse longstanding jewelry education and practices.”²⁰²

c) Platinum Alloy Thresholds

Commenters addressing the issue all agreed the Commission should not change the existing thresholds for platinum alloys.²⁰³

4. Analysis and Final Guidance

The Commission makes two changes to its proposed guidance addressing gold and silver alloys. First, the final Guides advise marketers they may use the word “gold” or any abbreviation to describe a product or part thereof composed throughout of gold alloy – whether above or below 10 karats – if they qualify the gold term with an equally conspicuous, accurate karat fineness disclosure. Second, the final Guides advise they may use “silver” to describe a

Moreover, Richline/Signet did not explain what they meant by suggesting that “all other elements are reasonably disclosed.” It is unclear, for instance, whether their suggested guidance would advise marketers to disclose each of an alloy’s other constituent elements, or whether it would advise only that marketers make performance disclosures.

²⁰⁰ Richline comment 83 at 6.

²⁰¹ PM Technology Consultants comment 75; Lorraine S. Costello comment 29; Michael Richards comment 4. Several stated simply that they “oppose lowering the gold standard to 6 karats,” which is not what the Commission proposed. Mark Matlack comment 42; Michael Zibman comment 41; Thomas Costigan comment 39; Tyler Nogai comment 24. Another commenter urged the Commission to increase the threshold to 12 karats [i.e., 50%], stating “anything less than 50% gold is misleading.” Argo & Lehne comment 34. *See also* IOGC/Parle Jewelry Designs comment 32 (arguing that labeling any product below 12 karats as gold “leads to deception and should be outlawed”).

²⁰² LaBiche comment 60; PM Technology Consultants comment 75; Robbins Delaware Diamonds LLC comment 59.

²⁰³ JVC comment 82 at 46; Richline comment 83 at 5; Signet comment 84 at 2.

product or part thereof composed throughout of an alloy containing less than 925 parts per thousand of silver, as long as an equally conspicuous, accurate PPT designation immediately precedes the silver term. Finally, the Commission retains the existing guidance regarding platinum alloys without change.

First, the Commission eliminates the previous Guides' 10 karat threshold for gold alloys because new evidence indicates it is no longer necessary to prevent deception. In past proceedings, the Commission received test reports showing that alloy jewelry tended to tarnish and corrode at a significantly increased rate when the gold content fell below 10 karats.²⁰⁴ Based on that record, the Commission determined that consumers might be deceived or confused if they knew that a product contained a small amount of gold, but did not also realize it would not maintain the same qualities as traditional gold jewelry. It therefore advised against using gold terms to describe or mark alloys below the 10K threshold.²⁰⁵

The Commission has since learned of consumer perception evidence suggesting it is no longer necessary to maintain the 10-karat threshold. Specifically, the 2016 Harris study indicates a majority of consumers are aware that the amount of gold in an alloy impacts its color, likelihood of tarnishing and corroding, overall durability, and resale value.²⁰⁶ This suggests most consumers will understand that a product containing less gold than traditional gold jewelry may

²⁰⁴ 43 FR 30538 (July 17, 1978).

²⁰⁵ The 10 karat gold minimum has been used since at least 1933, when it first appeared in Commercial Standard CS 67-38, promulgated by the former Bureau of Standards of the U.S. Department of Commerce. In 1957, the Commission incorporated the minimum into the Trade Practice Rules for the Jewelry Industry. 61 FR 27178, 27185 n.99. The Commission subsequently rescinded those trade rules and reissued most of them as industry guides in 1979. 44 FR 11185 (Feb. 27, 1979).

²⁰⁶ Specifically, a majority thought that the proportion of gold in an alloy has either a "major" or "moderate" impact on resale value (78%), overall durability (71%), color (65%), likelihood of tarnishing (62%), and likelihood of corroding (62%). JVC comment 82, exh. 2 at 16.

perform differently from higher karat gold – *i.e.*, that an 8K ring would have different color, performance, and resale value than a 14K ring.

Further, according to JVC, even products that meet the existing threshold perform differently from each other, and a seller cannot reliably test its alloy for corrosion and tarnish resistance under all circumstances in which the jewelry will be worn.²⁰⁷ Consequently, maintaining a 10K threshold does not guarantee that only products marked and described as “gold” are ones that meet a particular level of performance for gold jewelry with respect to corrosion and tarnish resistance, or that they always meet consumer expectations. Therefore, the Commission removes the 10K threshold, so that products containing less than 10 karats are subject to the same guidance as higher karat gold alloys. Specifically, to the extent sellers choose to identify that their product contains gold, they must qualify the gold term by disclosing the gold’s karat fineness.²⁰⁸

Second, the Commission eliminates the previous Guides’ 925 PPT threshold for “silver” because it is not necessary to prevent deception. In response to questions in the Commission’s 2016 Notice, commenters stated that even “fine silver” (*i.e.*, 925 PPT) eventually tarnishes. However, the record indicates that the amounts of silver and other elements in an alloy affect its tarnish rate and properties such as color, luster, and hardness, as well as resale value. Moreover, a majority of consumers in the 2016 Harris study are aware of this fact.²⁰⁹ Therefore, maintaining a 925 PPT threshold for any use of the word “silver” is not necessary. If marketers

²⁰⁷ JVC contended that no industry test can reliably demonstrate an alloy’s performance under actual wear conditions. Yet, it relies on reports of wear tests conducted by Leach Garner and Tanury/Tabor to support its recommendations for gold surface applications.

²⁰⁸ Section 23.3(b)(2) (previously 23.4).

²⁰⁹ Specifically, a majority of consumers said that the proportion of silver in an alloy has either a “major” or “moderate” impact on likelihood of tarnishing (72%), resale value (71%), overall durability (71%), likelihood of corroding (65%), and color (63%). JVC comment 82, exh. 2 at 24-25.

qualify their use of the word “silver” with quality fineness disclosures (*i.e.*, disclosing the amount in PPT), it should alert consumers that lower-content silver jewelry will not be as tarnish-resistant as traditional sterling silver. However, the Commission retains the existing guidance advising thresholds for certain terms (925 PPT for “solid silver,” “Sterling Silver,” “Sterling,” and the “Ster.” abbreviation; 900 PPT threshold for “coin” and “coin silver”) because they likely denote specific purity levels.

JVC and other commenters contended that sellers should not use gold and silver terms to describe products below the previous Guides’ thresholds, but their arguments do not provide a sufficient basis for the Commission to adopt the alternate guidance they seek. For instance, JVC stated that eliminating the thresholds would cause consumer confusion by disrupting longstanding traditions. The Commission has no evidence, however, that amending the Guides to advise that sellers may provide truthful information about the gold and silver content of their below-threshold alloy products would result in deception. Further, commenters’ suggestions that marketers disclose below-threshold gold alloy content in PPT or percentages would likely increase confusion because it would be more difficult for consumers to compare products above and below 10 karats. Similarly, their recommendation that sellers use “Low Gold” and “Low Silver,” or “LG” and “LS” product stamps, for below-threshold items would likely cause confusion. These terms do not appear to be used in the market, and there is no evidence that they would convey meaningful differences between products that purity disclosures do not.

Finally, the Commission retains the existing guidance regarding platinum alloys. The record indicates that, unlike gold and silver, which have traditionally been mixed with base

metals to create jewelry, consumers expect platinum products to be substantially composed of pure platinum.²¹⁰

C. Products Containing More than One Precious Metal

1. Previous Guides

The previous Guides did not specifically address the marking or description of items containing two or more precious metals.²¹¹

2. Proposed Revision

In its 2016 Notice, the Commission proposed adding a new Guide section stating it is unfair or deceptive to misrepresent the relative quantity of each precious metal in products containing more than one precious metal.²¹² The proposed section advised marketers generally to list precious metals in order of their relative weight from greatest to least, and provided examples of marking or descriptions that may be misleading (*e.g.*, use of the term “Platinum + Silver” to describe a product that contains more silver than platinum).²¹³ However, the proposed section also advised that listing metals in order of relative weight is unnecessary when the context makes clear that the metal listed first is not predominant.²¹⁴ The Commission requested comment on

²¹⁰ 2016 Statement at 65, 68.

²¹¹ The Guides’ general deception section, however, stated “[i]t is unfair or deceptive to misrepresent the . . . metallic content . . . or any other material aspect of an industry product.” 16 CFR 23.1.

²¹² 81 FR at 1350.

²¹³ 81 FR at 1355 (proposed Section 23.8).

²¹⁴ For example, “900 platinum over silver” likely conveys that the product has a mere surface layer application of platinum. Similarly, “14k gold-accented silver” likely signals that a product contains more silver than gold, even though the term gold appears first. 81 FR at 1355 (proposed Section 23.8(c) (listing examples of markings and descriptions that are not considered unfair or deceptive)).

whether this proposed guidance would affect the Guide provisions concerning precious metal surface applications, or alter how marketers describe products coated with precious metals.²¹⁵

3. Comments

Commenters addressing this issue all supported the Commission's new guidance.²¹⁶ Moreover, in response to the Commission's questions, JVC stated that the guidance would not alter how surface-plated products are described. JVC also stated that the proposed examples of non-deceptive descriptions and markings in the new Section 23.8(c) are appropriate.²¹⁷

4. Final Guidance

Based on the record, including the comments in response to questions regarding the new section, the Commission issues the final guidance as previously proposed.

D. Describing Gold Quality

1. Previous Guides

Section 23.4 provided that it is unfair or deceptive to misrepresent the presence, quantity, or karat fineness of gold or gold alloy in a product. This section stated it may be misleading to use the word "gold" or any abbreviation to describe all or part of a product composed throughout of gold alloy unless an equally conspicuous, correct designation of the alloy's karat fineness immediately preceded the term.²¹⁸ In addition, the section provided examples of markings and descriptions consistent with these principles, all of which expressed gold quality in karats.

²¹⁵ The Commission asked, for instance, whether a provision regarding use of the term "gold overlay" would have to be amended to advise marketers to describe the product instead as "silver with gold overlay." 2016 Statement at 135.

²¹⁶ JVC comment 82 at 41; Corti comment 78 at 3; Richline comment 85 at 2. Signet stated that it supported Richline's submission in its entirety, but did not specifically address products containing more than one precious metal. Signet comment 84 at 1.

²¹⁷ JVC comment 82 at 41.

²¹⁸ 16 CFR 23.4(b)(2).

2. 2016 Statement Analysis

In its 2016 Statement, the Commission declined JVC's request to add examples to Section 23.4 advising marketers that they may alternatively describe and mark gold quality in parts per thousand (*e.g.*, "750 gold" or "750," rather than "18Kt gold" or "18Kt").²¹⁹ The Commission explained that, rather than preventing deception, such a change could actually confuse consumers. The consumer perception evidence indicated that consumers cannot translate karats into parts per thousand because they are unaware of how many karats are in pure gold.²²⁰ To explore this issue more thoroughly, the Commission posed several questions.

3. Comments

Two commenters supported the Commission's analysis. One stated that although parts per thousand (PPT) fineness designations are widespread internationally, switching the designation format "would confuse the public."²²¹ Another stated that switching from karats to PPT would require "a long transition period" for U.S. sellers and consumers, but noted it would be beneficial if sellers began listing such information on marketing materials.²²²

In contrast, two commenters advocated for the use of PPT or percentage disclosures. JVC stated there is "substantial use" of PPT, and that it is "standard practice" in the trade to use one method of precious metal weight disclosure per item. JVC therefore asked the Commission to revise the Guides' gold section to include examples that describe and mark gold quality using

²¹⁹ 2016 Statement at 73-74.

²²⁰ Thus, consumers likely may not be able to determine that an 18 karat ring (75 percent pure gold) is purer than a 600 parts per thousand ring (60 percent pure gold).

²²¹ Corti comment 78 at 2.

²²² Poteat comment 86 at 6. Two other commenters asserted that karats and PPT should both be "allowed," but did not indicate whether they supported PPT disclosures in lieu of karat fineness designations. PM Technology Consultants comment 75; Richline comment 85 at 1 ("allow PPT and karat gold with similar criteria"). Signet stated that it supported Richline's submission in its entirety, but did not specifically address PPT and karat disclosures for gold, other than to note, in the context of below-threshold gold alloys, that it advocated "the retention of 'Karat Gold' as the only identifier of industry gold products exceeding 10K." Signet comment 84 at 2.

only PPT, in addition to the existing karat examples.²²³ Another commenter stated that the existing karat method is “outdated and a disservice to the consumer” because “very few consumers know what a karat is, or that a 14k gold ring is 58.5% pure.” She recommended the Commission adopt “the European system” of simply marking fineness as a percentage of total weight, contending that “anything less than this time-tested approach will result in ongoing confusion.”²²⁴

4. Analysis

The Commission does not advise marketers that they may describe and mark gold quality in parts per thousand (PPT) as an alternative to karats because the requested change is not necessary to prevent consumer deception. A number of commenters agreed that, rather than helping prevent deception, PPT-only disclosures would likely create consumer confusion. The previously submitted consumer perception evidence demonstrates that such disclosures would confuse consumers who are unable to translate PPT to karats, and therefore unable to compare karats with PPT to make informed purchasing decisions. No commenter submitted new information contradicting this evidence.

Two commenters contended the Commission should add non-karat examples to the Guides because it would be consistent with international marking practices and “useful” for sellers marking their items with PPT. Although the Commission strives to harmonize its guidance with international standards whenever possible, such standards are not necessarily based on deception or unfairness.²²⁵ In contrast, the FTC Guides are solely based on preventing

²²³ JVC comment 82 at 48.

²²⁴ Teresa Frye comment 73.

²²⁵ Commenters did not cite a particular international standard or regulation on this issue, but stated that PPT disclosures are commonly used outside the United States.

deception. Here, the record shows that adding an example illustrating the use of PPT as an alternative to karats would likely increase the likelihood of consumer confusion. The Commission therefore declines to make this change. It notes, however, that the Guides do not preclude marketers from using PPT (or percentages) in addition to karat disclosures.

E. Palladium

1. Previous Guides

Section 23.7 stated it is unfair or deceptive to use the words “platinum,” “iridium,” “palladium,” “ruthenium,” “rhodium,” and “osmium” (referred to as the “Platinum Group Metals” or “PGMs”), or any abbreviation, to mark or describe all or part of a product, if doing so misrepresented the product’s true composition.²²⁶

2. 2016 Statement Analysis

In its 2016 Statement, the Commission declined JVC’s request to propose amendments that specifically address palladium. The Commission explained that the existing guidance in Section 23.7 already advised marketers not to use the term “palladium” in a manner that misrepresented a product’s composition.²²⁷ Unlike the evidence that supported the detailed platinum guidance, the perception data did not explain which qualities or attributes consumers specifically associate with palladium. Moreover, there was no evidence of how much palladium would be needed for a product to satisfy consumer expectations, and the record did not reveal whether the presence of base metals in a palladium alloy (rather than other PGMs) would materially alter performance.²²⁸ The Commission therefore lacked a basis for proposing further guidance.

²²⁶ 16 CFR 23.7(a).

²²⁷ *Id.*

²²⁸ 2016 Statement at 75-77.

3. Comments

Two commenters addressed palladium. One referenced palladium in the context of “PGMs generally,” stating that fineness standards should be consistent with other jewelry metals because the public “need[s] assurance of the value and integrity of their jewelry.”²²⁹ The other simply noted that a standard should be required for palladium, but did not elaborate.²³⁰ No commenter submitted consumer perception data or other evidence regarding palladium.

4. Analysis

For the reasons previously explained in its 2016 Statement, the Commission declines to issue new guidance addressing palladium. However, it reminds marketers that claims regarding products containing palladium are still subject to existing guidance. Specifically, Section 23.6 advises marketers not to use “palladium” or any abbreviation to mark or describe all or part of a product if doing so misrepresents the product’s true composition. Additionally, Section 23.1 states “[i]t is unfair or deceptive to misrepresent the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, price, value, preparation, production, manufacture, distribution, or any other material aspect of an industry product.”

F. Composite Gemstone Products

1. Previous Guides

The previous Guides contained two sections relevant to the issue of composite gemstones. First, Section 23.23 advised against using the unqualified words “ruby,” “sapphire,” “emerald,” “topaz,” or the name of any other precious or semiprecious stone to describe a

²²⁹ Corti comment 78 at 3.

²³⁰ Richline comment 85 at 2.

product that is not in fact a “natural stone of the type described.”²³¹ This section also advised against using the name of any precious or semiprecious stone to describe a lab-created product unless it had essentially the same optical, physical, and chemical properties as the named stone, and an equally conspicuous “laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” or “synthetic” disclosure immediately preceding the gemstone name.²³²

Second, Section 23.22 advised marketers to disclose treatments to gemstones if the treatment: (i) was not permanent; (ii) created special care requirements; or (iii) had significant effect on the stone’s value.²³³

2. Proposed Revisions

In the 2012 Notice, the Commission sought information about products comprising a mixture of ruby/corundum and lead glass, which are often called “composite rubies,” “hybrid rubies,” or “glass-filled rubies.” The record indicates that manufacturers of such products often use low-quality, opaque corundum that does not qualify as “ruby.”²³⁴ They inject the corundum with considerable amounts of lead glass that augments the mineral’s natural color, producing a composite of low-grade corundum and lead glass that looks like a transparent stone. Infusing the product with lead glass adds significant weight, and manufacturers often use the glass to bind multiple pieces that otherwise would not hold together as a single stone. The resulting products are inseparable combinations of natural material with artificial binders and fillers lacking the properties of naturally occurring rubies. For example, commenters stated that a composite

²³¹ 16 CFR 23.23(a).

²³² 16 CFR 23.23(b)-(c). This section also advised marketers to use “imitation” and “simulated” to qualify their use of gemstone names when describing imitation products.

²³³ 16 CFR 23.22.

²³⁴ Ruby is a varietal of the corundum mineral species. Rubies form when trace elements of chromium become part of the mineral’s crystal structure and cause a naturally occurring red color with good transparency. 2016 Statement at 84.

product comprises singly refractive lead glass, which often includes contraction bubbles and is prone to scratches, abrasion, and breakage.²³⁵ Unlike rubies, ordinary household chemicals and routine repair could significantly damage these products.²³⁶

For these reasons, commenters stated it would be inaccurate to use the unqualified word “ruby” to describe composite gemstone products because they are, in fact, manufactured, not naturally occurring, stones. Moreover, many agreed that describing these products as “treated rubies” would be misleading, and that qualifying “ruby” with “laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” or “synthetic” would also be deceptive because the products do not have the same optical, physical, and chemical properties as naturally occurring rubies.²³⁷

Based on the record, the Commission proposed a note specifically addressing “products filled with a substantial quantity of lead glass.”²³⁸ Consistent with existing guidance, this note cautioned marketers not to describe such products with the unqualified name of a precious or semiprecious stone (*e.g.*, “ruby”) or as a “treated” stone (*e.g.*, “treated ruby”) because they are not, in fact, naturally occurring stones of the type described.²³⁹ The note also advised against using “laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” or “synthetic” in conjunction with the stone’s name (*e.g.*, “laboratory-created ruby”) because the record shows these products do not have the same optical, physical, and chemical properties as the named stone.

²³⁵ In contrast, mined rubies are doubly refractive and do not contain lead. Additionally, commenters stated that composite products exhibit a distinct bluish and orange color flash, and a golden to red body color in the lead glass. *See* 2016 Statement at 84-87.

²³⁶ 2016 Statement at 86-87.

²³⁷ *Id.*

²³⁸ 81 FR at 1358 (proposed Note to Section 23.25).

²³⁹ Consumers expect that stones described as “treated” are otherwise natural. 2016 Statement at 91.

In addition, the Commission proposed new guidance cautioning against certain terms, and suggesting examples of others marketers could use non-deceptively to describe lead-glass-filled products. Specifically, the guidance advised sellers not to use “composite [stone],” “hybrid [stone],” or “manufactured [stone]” without qualification. The Commission based this guidance on perception evidence indicating these terms would likely deceive consumers,²⁴⁰ and concerns that consumers might confuse “manufactured” with terms used to describe lab-created gemstones (e.g., “[manufacturer name]-created”). To help sellers avoid deception, it suggested other terms that might accurately describe these products depending on their composition. For products made of low-grade corundum (not ruby) infused with lead glass, the proposed guidance advised the terms “lead-glass-filled corundum” or “lead-glass-filled composite corundum.” For products made of ruby infused with lead glass, it advised that marketers use “lead-glass-filled ruby” or “lead-glass-filled composite ruby.”

To better help formulate guidance, the Commission sought evidence regarding how consumers perceive the proposed terms. It questioned, for example, whether “lead-glass-filled corundum” deceptively implies that a product is a single stone infused with lead glass, and asked whether the fact that the product is made with a single stone, rather than multiple pieces, is material to consumers.²⁴¹

²⁴⁰ For instance, although more than half of respondents in the 2012 Harris study considered “composite ruby” to be an accurate descriptor, over 42 percent did not. An even greater percentage (approximately 57 percent) indicated that “manufactured ruby” and “hybrid ruby” were not entirely accurate. 2016 Statement at 92-93.

²⁴¹ *Id.* at 93-94.

3. Comments

Commenters addressing the issue agreed there is a need for guidance.²⁴² A few supported the Commission’s proposed guidance without change. The rest recommended revisions concerning the types of products to which the guidance should apply and terms that non-deceptively describe them.

a) Supporting the Proposed Guidance

Three commenters supported the proposed guidance.²⁴³ JTV stated the Commission’s suggested terms accurately and appropriately distinguish “composites” (products containing disparate bits of gemstone bonded together with filler) from “true lead-glass-filled product,” which is “made from a single piece of gemstone to which a filler is added.” It also agreed the Guides should caution marketers against using “manufactured” due to the lack of consumer perception evidence regarding this term.²⁴⁴

b) Disagreeing with the Proposed Guidance

The remaining commenters asked that the Commission revise the guidance to apply to a broader range of gemstone products: those made with any amount of any type of filler or binder – not only those “filled with a substantial quantity of lead glass.”²⁴⁵ They stated a disclosure should alert consumers that the product is “not a natural gemstone,” and that special care is necessary.²⁴⁶ They explained that even a “very tiny amount” of lead glass, or other binder or

²⁴² Peter & Co. comment 61; Eric Phillips comment 22; Zibman comment 41; AGA comment 88 at 3; JVC comment 82 at 18.

²⁴³ JTV comment 80 at 3-4; Richards comment 4 (stating it “will help protect the buying public”); Thai comment 43.

²⁴⁴ JTV comment 80 at 3-4.

²⁴⁵ 81 FR at 1358 (proposed Note to Section 23.25).

²⁴⁶ A disclosure would also protect retail and bench jewelers repairing the products. If unaware of the product’s composition, the jewelers would use a pickling solution to clean it (as is common for traditional gemstones) and be held responsible for the ensuing damage. JVC comment 82 at 21.

filler, permanently impacts the physical properties affecting a product's appearance, durability, permanence, quality, and value.²⁴⁷ Moreover, manufacturers continue developing new methods of combining “low-grade base gemstone” with materials other than lead glass, such as polymers, inexpensive or imitation gemstone material, and other filler or binder material that interacts poorly with cleaners and other common substances.²⁴⁸

These commenters disagreed, both with the Commission and each other, regarding terms that non-deceptively describe lead-glass-filled/composite stones. Several raised concerns with the terms suggested in the Commission's proposed guidance. One commenter objected to “lead-glass-filled ruby,” stating that “calling it a ruby in any form” would be confusing and misleading.²⁴⁹ Similarly, another stated that sellers should not use “ruby” or “sapphire” at all because the products are not a single stone, will not hold up under normal wear, and require special care during cleaning and repair.²⁵⁰ JVC contended that “lead-glass-filled” is inaccurate and “should not be allowed” because it incorrectly implies the products “started with intact stones that simply required filling.”²⁵¹ The Accredited Gemologists Association (AGA) asked

²⁴⁷ For instance, any amount that comes into contact with a household cleaner, jeweler's pickling solution, or lemon juice will ruin the product. JVC comment 82 at 21. A small amount of lead can also affect the product's carat weight because it distorts the apparent weight of the ruby/corundum component. AGA comment 88 at 1, 3. In their view, the presence of any amount of binder or filler should be disclosed. JVC comment 82 at 19, 21, 50; Peter & Co. comment 61; LaBiche Jewelers comment 60; Robbins Delaware comment 59.

²⁴⁸ JVC comment 82 at 19. Commenters therefore asked that the Commission revise the guidance so it applies to products containing any amount of any type of filler or binder, whether lead glass or another substance. JVC comment 82 at 22; AGA comment 88 at 2, 4; Peter & Co. comment 61; LaBiche Jewelers comment 60; Robbins Delaware comment 59. Two commenters suggested the Commission clarify that its guidance applies to products consisting of any precious or semi-precious stone, whether ruby or other gemstone. They stated that manufacturers create composite products by combining lead glass with gemstone materials other than ruby/corundum, such as sapphire and turquoise. JVC comment 82 at 22; AGA comment 88 at 1, 4.

²⁴⁹ McMinn comment 31.

²⁵⁰ Zibman comment 41.

²⁵¹ JVC comment 82 at 18, 20. *See also* Eric Phillips comment 22 (stating that the term “glass filled ruby” exacerbates confusion).

the Commission to caution marketers against using “lead-glass-filled ruby” or “lead treated ruby” because consumers understand these terms to indicate a “treated ruby.”²⁵²

Many commenters further contended that the Commission’s proposed terms inappropriately use “composite” to distinguish products made of one piece from those comprising multiple bits. They stated this distinction is inconsistent with industry practice.²⁵³ Specifically, JVC explained that laboratories, manufacturers, and retailers use the term to describe a manufactured product that combines two materials (gemstone material and filler) to create a single stone product that can be cut and polished like a “natural” stone.²⁵⁴ In its view, whether a product consists of one piece of gemstone material or many is “not the central issue.” Rather, it is the addition of filler that triggers a disclosure obligation.²⁵⁵

Several commenters asked the Commission to revise the guidance to suggest new terms. Many recommended using “composite” or “manufactured composite,” rather than “lead-glass filled.”²⁵⁶ Specifically, JVC’s suggested revision would advise marketers to use “composite corundum” or “manufactured composite corundum” to describe a product made with low-grade

²⁵² AGA comment 88 at 2. Although AGA stated that its own research demonstrated a majority of respondents misconstrue “lead-glass-filled ruby” and “lead treated ruby” to mean “treated ruby,” the survey submitted with its comment did not show this.

²⁵³ JVC comment 82 at 22; Peters & Co. comment 61; LaBiche Jewelers comment 60; Robbins Delaware comment 59. They also argued that the Commission’s proposed use of this term conflicts with the dictionary, which defines “composite” to mean “made up of distinct parts.”

²⁵⁴ Moreover, it claimed the Commission’s proposed use of “composite” is inconsistent with the pearl guidance, which states that a cultured pearl is a “composite product created when a nucleus (usually a sphere of calcareous mollusk shell) planted by humans inside the shell or in the mantle of a mollusk is coated with nacre by the mollusk.” 16 CFR 23.18(b) (renumbered as 23.19(b)).

²⁵⁵ JVC comment 82 at 19, 50. Additionally, commenters noted it is difficult for sellers to determine whether a product is made of one piece or many because the tests that make this determination severely damage or destroy the product in the process. It is therefore impractical for marketers at the end of the supply chain to ascertain the nature of a product they purchased from a distributor without destroying the product through testing. AGA comment 88 at 2-3; Scott Gordon comment 62 at 21; JVC comment 82 at 20; Peter & Co. comment 61; LaBiche Jewelers comment 60; Robbins Delaware comment 59.

²⁵⁶ JVC comment 82 at 18; Peter & Co. comment 61; LaBiche Jewelers comment 60; Robbins Delaware comment 59; Zibman comment 41.

corundum (not ruby) that is infused with lead glass, and to use “composite ruby” or “manufactured composite ruby” to describe a product made with ruby that is infused with lead glass.²⁵⁷ JVC stated these terms accurately convey the product is a combination of ruby/corundum that has been heavily bound or melded together with another material such as lead glass.²⁵⁸ Relatedly, it disagreed with the Commission’s proposed guidance cautioning marketers against using “manufactured [gemstone name].” JVC stated that because these stones are “always a manufactured product,” marketers should not be restricted from using this descriptor because it is accurate.²⁵⁹

Other commenters recommended a variety of other terms. AGA stated that gem testing laboratories already use “lead-glass-filled composite corundum” and “lead-glass-filled manufactured product,” and additionally suggested “lead-glass imitation [gemstone name].”²⁶⁰ Gordon suggested “imitation” or “corundum/glass composite,” stating they are the only terms that truly reflect the product’s character and value.²⁶¹ Phillips suggested “glass-ruby composite.”²⁶² Zibman opposed any use of the word “ruby” and recommended the Guides

²⁵⁷ JVC comment 82 at 23. JVC supported the Commission’s proposed distinction between base material that begins as ruby from material that begins as corundum. It stated that some products start as ruby which combines with lead glass to create one stone; others start as “low-grade red corundum which, with the introduction of lead glass, can appear solidly red to the naked eye,” but “should never be called ruby.” *Id.* at 22, 50. Another commenter, however, argued that guidance advising sellers to identify whether the starting material is corundum or ruby “seems plainly unworkable.” Scott Gordon comment 62 at 2.

²⁵⁸ JVC comment 82 at 18, 20. In contrast, JTV contended that JVC’s approach would not properly distinguish between composite and “true lead-glass-filled product,” and would “unnecessarily foreclose a higher quality product from the market. JTV comment 80 at 3.

²⁵⁹ JVC comment 82 at 20.

²⁶⁰ AGA comment 88 at 4.

²⁶¹ Scott Gordon comment 62 at 2.

²⁶² Eric Phillips comment 22.

instead advise simply using the term “composite stone.”²⁶³ None of these commenters provided perception evidence showing how consumers understand their suggested terms.

4. Analysis and Final Guidance

Based on the record, the Commission issues new guidance addressing products made with gemstone material and any amount of filler or binder such as lead glass. This guidance cautions sellers not to describe such products using an unqualified gemstone name, or to describe them as a “treated [gemstone name].” The Guides also advise against using the terms “laboratory-grown [gemstone name],” “laboratory-created [gemstone name],” “[manufacturer name]-created [gemstone name],” or “synthetic [gemstone name].” Finally, the Guides caution marketers against using “composite [gemstone name],” “hybrid [gemstone name],” or “manufactured [gemstone name]” unless the term is effectively qualified to convey that the product does not have the same properties as the named stone, and that it requires special care.

Pursuant to the comments, the Commission broadens the category of products to which the guidance applies in two respects. Specifically, the final Guides address products made with (i) any amount of (ii) any type of filler or binder – not only those filled with a substantial quantity of lead glass. The record indicates that manufacturers combine gemstone with materials other than lead glass, and it is the presence of this filler or binder, not the amount, that permanently affects the resulting product’s physical properties. For instance, commenters stated that even a small amount of lead glass will ruin the product when it comes into contact with lemon juice or household cleaner.

Furthermore, a number of commenters stated that, in addition to ruby and corundum, manufacturers combine lead glass with sapphire or turquoise, and suggested the Commission

²⁶³ Zibman comment 41.

clarify that its guidance addresses such products. The mixture of lead glass and other binders or fillers with gemstone material other than ruby/corundum presents the same risk of consumer deception. The Commission therefore revises the final Guides to include examples involving gemstones other than ruby/corundum to make clear that its guidance also applies to these other products.

Consistent with existing guidance, the new guidance cautions marketers against using certain terms to describe these composite gemstone products. Specifically, Section 23.25(d) cautions marketers not to use an unqualified gemstone name because these products are manufactured items, not mined stones. Similarly, because consumers expect that “treated” stones are otherwise “natural” (*i.e.*, mined from the earth),²⁶⁴ this section advises against calling these products “treated [gemstone name].” Additionally, it cautions against describing composite gemstone products as “laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” or “synthetic” because these terms describe products that have essentially the same optical, physical, and chemical properties as the named gemstone. Therefore, using the terms to describe composite products would be inaccurate and misleading because such products do not share the gemstone’s properties.

Finally, the Guides caution marketers against using the unqualified terms “composite [gemstone name],” “hybrid [gemstone name],” or “manufactured [gemstone name]” because the 2012 survey conducted by Harris Interactive and commissioned by JVC (“2012 Harris study”) indicated they would likely deceive consumers.²⁶⁵

²⁶⁴ 2016 Statement at 91.

²⁶⁵ *Id.* at 93-94.

Although several commenters recommended that the Guides advise marketers to use “composite” or “manufactured composite,” they did not submit consumer perception evidence regarding these terms. Many also objected to the terms suggested in the Commission’s previously proposed guidance (“lead-glass-filled corundum,” “lead-glass-filled composite corundum,” “lead-glass-filled ruby,” or “lead-glass-filled composite ruby”), contending they are inaccurate, but they also did not provide perception evidence. The Commission therefore does not have a sufficient basis to advise that marketers may non-deceptively use specific words to describe composite gemstone products. To the extent sellers choose to use “composite,” “hybrid,” or “manufactured” to describe their products, the Guides recommend additional disclosures. Specifically, the Guides advise marketers to qualify their use of the term by clearly and conspicuously disclosing that the product: (i) does not have the same characteristics as the named stone; and (ii) requires special care. As with the existing guidance regarding treatments to gemstones, Section 23.25(d) recommends that sellers disclose what the special care requirements are, in addition to disclosing that the product has such requirements.

G. Varietals

1. Previous Guides

Although the previous Guides cautioned marketers not to misrepresent, among other things, the “type,” “kind,” “quality,” “character,” “substance,” “origin,” “value,” or “any other material aspect of an industry product,”²⁶⁶ they did not specifically address gemstone varietal names. Varietal names describe divisions of gem species or genus based on color, type of optical phenomenon, or other distinguishing characteristic of appearance (*e.g.*, crystal structure).

²⁶⁶ 16 CFR 23.1.

2. Proposed Revisions

In response to the 2012 Notice, JVC urged the Commission to modify the Guides to state that marketers should not misrepresent varietal names. JVC explained that certain gemstones historically have been marketed using the mineral varietal name (*e.g.*, emerald, amethyst, ruby), rather than the mineral species (*e.g.*, beryl, quartz, corundum).²⁶⁷ JVC expressed concern that some marketers, for example, describe a golden beryl as “yellow emerald,” thereby invoking the “traditional value association to link their differently-colored product with the traditional product in the mind of a consumer, and thus charge a higher price.”²⁶⁸ In fact, emerald is green beryl, and the correct varietal name for golden beryl is heliodor. JVC also submitted evidence from a consumer perception survey (the 2012 Harris study) suggesting that misrepresentation of varietal names deceived consumers. Specifically, respondents gave a higher retail value to “yellow emeralds” than to “heliodors” or “golden beryls.”²⁶⁹ For example, 41 percent of respondents stated that “yellow emeralds” are higher in value than “heliodors,”²⁷⁰ and 41 percent stated that “yellow emeralds” are more valuable than “golden beryls.”²⁷¹ Similarly, 44 percent stated that “green amethyst” is more valuable than “prasiolite.”²⁷²

²⁶⁷ 2016 Statement at 98-99.

²⁶⁸ *Id.*

²⁶⁹ The study also found, however, that the vast majority of respondents were unfamiliar with these terms. Specifically, 94 percent were unfamiliar with the mineral species “golden beryl.” Ninety-three percent were unfamiliar with the incorrect varietal name for this mineral species (“yellow emerald”), and 96 percent were unfamiliar with the correct varietal name (“heliodor”). Likewise, the vast majority (85%) “never heard of” prasiolite, while 29 percent had heard of “green amethyst,” but were not familiar with it. This may indicate that marketers do not use widely use these terms. *See* 2016 Statement at 99-100.

²⁷⁰ Forty-five percent stated they are equal in value, and 14 percent perceived “heliodor” to be more valuable. *Id.*

²⁷¹ Forty-three percent stated they are equal in value, and 16 percent perceived “golden beryl” to be more valuable. *Id.*

²⁷² Forty-four percent thought they are equal in value, and 12 percent thought prasiolite to be more valuable. *Id.* While prasiolite and amethyst are both members of the quartz species, the prasiolite varietal is green, whereas the amethyst varietal is purple.

Based on this information, the Commission proposed a new section (23.27) cautioning marketers not to mark or describe a product with an incorrect varietal name.²⁷³ This section also provided two examples of misleading uses of varietal names: “yellow emerald” to describe a heliodor or golden beryl, and “green amethyst” to describe prasiolite.²⁷⁴

3. Comments

Three commenters addressing this issue endorsed the Commission’s proposed guidance without change. JVC stated it would prevent retailers from “unfairly leveraging” premium varietal names to deceive consumers about a product’s true identity and value.²⁷⁵ Similarly, the Thai Industrial Standards Institute stated it would “avoid any confusion in trade,”²⁷⁶ and a third commenter opined it was “needed and useful in the protection of the buying public.”²⁷⁷

Others, however, requested that the Commission either not adopt Section 23.27, or issue it with modifications. Jenner opposed the proposed guidance, contending the evidence does not demonstrate that using “yellow emerald” or “green amethyst” is deceptive, and further arguing that disclosures could “overcome” any “perceived misperception.”²⁷⁸ Jenner claimed that a “color designation” such as yellow or green clearly alerts consumers that the products differ from emeralds and amethysts lacking such color designations.²⁷⁹ Asserting, without supporting consumer perception data, that consumers are familiar with “yellow emerald” and “green

²⁷³ 81 FR 1349, 1358 (proposed Section 23.27). A proposed Note states that a “varietal name is given for a division of gem species or genus based on a color, type of optical phenomenon, or other distinguishing characteristic of appearance.”

²⁷⁴ *Id.* at Section 23.27(b).

²⁷⁵ JVC comment 82 at 51-52.

²⁷⁶ Thai comment 43 at 1.

²⁷⁷ Michael Richards comment 4.

²⁷⁸ Jenner comment 77 at 1. Jenner did not specifically address the findings from the 2012 Harris study.

²⁷⁹ *Id.* at 8-9. Moreover, Jenner stated that consumers seeking information about these terms can find their definitions on the internet.

amethyst,” Jenner stated these terms are “most likely helpful to the customer since the terminology provides a frame of reference with which they are familiar.”²⁸⁰ In Jenner’s view, therefore, the Commission’s proposed guidance would create confusion. In the alternative, it recommended the Guides advise marketers that they may use terms such as “yellow emerald,” provided they also inform consumers of the product’s “more scientific” gemstone name. Specifically, Jenner suggested the Commission modify Section 23.27 to caution marketers against using an incorrect varietal name “unless the related promotion conspicuously discloses that the product is different from a product of the varietal name.”²⁸¹ Jenner also suggested providing the following as a non-deceptive example: “The beautiful hue of the green amethyst gemstone used in this ring is created by heat treating quartz, whereas amethysts are purple quartzes.”²⁸² Jenner did not submit evidence showing how consumers understand its proposed disclosures.

Yellow Emerald Mining Co. (YEM) opposed the proposed provision advising marketers against using “yellow emerald” to describe a heliodor or golden beryl (proposed Section 23.27(b)(1)).²⁸³ YEM stated that its “yellow emerald” products (also marketed as “Emeryl gemstones”) are the same species (beryl) as emeralds and “extremely similar” in most respects, except that emeralds contain traces of chromium (creating their green color), while “yellow

²⁸⁰ Jenner claimed that because well-known designers and retailers currently use “green amethyst,” the term has become “somewhat familiar” to consumers. Jenner also noted that in 2011, the U.S. Patent and Trademark Office denied trademark registration for “yellow emerald,” finding that the “purchasing public has come to know golden-colored beryl gemstones as ‘yellow emeralds,’” and that the mark was “merely descriptive.” Jenner comment 77 at 8-9.

²⁸¹ *Id.* at 10.

²⁸² *Id.*

²⁸³ YEM comment 76 at 1.

emeralds” (heliodors) contain traces of iron, creating their yellow color.²⁸⁴ YEM claimed its use of “yellow emerald” and “Emeryl” is not misleading, but “fairly descriptive, and provides useful information to the consumer.”²⁸⁵ Therefore, in its view, Section 23.27(b)(1) would have a “chilling” effect on its marketing and “impede the opportunity for consumers to have an alternative choice to overpriced green emeralds.”²⁸⁶

Additionally, YEM challenged the probative value of the 2012 Harris study on several grounds.²⁸⁷ First, it claimed the vast majority of respondents are not likely to be jewelry purchasers because 79 percent had not purchased fine jewelry in the prior year.²⁸⁸ Consequently, YEM contended their responses do not reflect the knowledge of “the actual jewelry-buying population” (*i.e.*, individuals it presumes would learn more about products at a retail establishment before purchase).²⁸⁹ In YEM’s view, the study’s finding that most respondents had never heard of “yellow emeralds,” gold beryls, or heliodors is therefore irrelevant to whether “yellow emerald” is likely to mislead actual consumers.²⁹⁰ Second, YEM questioned the probative value of the fact that approximately half of respondents (41%) thought “yellow emeralds” were more

²⁸⁴ *Id.* at 2-3. YEM also stated that its “yellow emerald/Emeryl” gemstones are “clearly different” from “typical” yellow beryls and golden heliodors because they have “significantly greater clarity, comparable to green emeralds,” and are “much more rare,” characteristics which YEM contends makes them more valuable.

²⁸⁵ *Id.* at 1. Two sellers submitted similar comments about YEM’s “Emeryls.” One asserted that consumers who buy this product are not confused and do not believe they are buying green emeralds or products of equivalent market value because sales staff are trained to say it is a form of beryl, and sales materials include this information. Grader Jewelers comment 66. Another seller claimed customers know when they purchase an “Emeryl” that it is not a green emerald because sales staff inform them they are purchasing a yellow/golden beryl. Moreover, “the color difference between a green emerald and Emeryl is vast.” Sujanani comment 72.

²⁸⁶ YEM comment 76 at 4.

²⁸⁷ Noting that the study was sponsored by JVC (which YEM stated consists primarily of traditional emerald sellers and supporting firms), YEM argued it was therefore “undertaken to prove a point, not to provide unbiased evidence.” *Id.* at 4.

²⁸⁸ YEM acknowledged that the study excluded respondents who indicated they “will not consider at all” buying jewelry in the next year. *Id.* at 3.

²⁸⁹ *Id.* at 3-4.

²⁹⁰ YEM asserted, however, that the study’s finding that 80 percent of respondents associated green with emeralds, while only 13 percent made the same association for yellow, demonstrated “a notable lack of confusion.” *Id.* at 4.

valuable than heliodor or gold beryl because the survey asked them to give their “best guess” if they were not sure.²⁹¹ Third, YEM stated that no conclusions can be drawn from the study because it was an online survey, and there is “no way to tell” whether the respondents are a representative sample of the general population.²⁹²

Finally, Stone Group Labs (SGL) asked the Commission to revise the proposed “green amethyst” example in Section 23.27(b)(2). SGL noted that prasiolite is “a very rare stone,” and that “these green quartzes are actually amethysts that have been irradiated to the green color.” Therefore, SGL suggested the Commission modify the provision to state that “the use of the term ‘green amethyst’ to describe irradiated green quartz” may be misleading.²⁹³

4. Analysis and Final Guidance

The final Guides adopt the Commission’s proposed guidance advising marketers not to use incorrect varietal names (Section 23.27). Based on the record, the Commission concludes that using an incorrect varietal name (*e.g.*, using “yellow emerald” to describe heliodor, or “green amethyst” for prasiolite) is likely to be deceptive. For instance, the 2012 Harris study showed that consumers (including consumers unfamiliar with varietal types and distinctions among them) attributed greater value to a stone marketed using an incorrect varietal name than to one described more accurately.²⁹⁴ The study also showed that most respondents are unfamiliar with the terms “yellow emerald,” “heliodor,” and “golden beryl.” In contrast, consumers

²⁹¹ *Id.* at 3.

²⁹² *Id.* at 4.

²⁹³ SGL comment 7.

²⁹⁴ Specifically, 41 percent of respondents believed a “yellow emerald” to be more valuable than a heliodor or yellow beryl, and 44 percent believed a “green amethyst” to be more valuable than a prasiolite. *See* 2016 Statement at 99-100.

typically associate “emerald” with the color green.²⁹⁵ Likewise, most consumers are unfamiliar with the terms “green amethyst” and “prasiolite.”

YEM’s criticism of the 2012 Harris study does not alter the Commission’s conclusion. That the majority of respondents had not purchased fine jewelry in the preceding year does not mean they are unlikely to be jewelry purchasers; fine jewelry is likely not an item most people buy every year. Moreover, the Guides aim to protect all consumers, not just those who regularly purchase fine jewelry. Lastly, although an internet panel may not be a perfectly representative sample of the general population, the Harris study was designed to produce results that nonetheless reflect the views of a broad population.²⁹⁶ Using “emerald” to describe a different varietal implies that the other stone (heliodor) has all the qualities traditionally associated with an emerald’s value, such as rarity, when, in fact, it does not.²⁹⁷ Therefore, guidance is necessary to prevent such deception in the market. To help sellers avoid making deceptive claims, Section 23.27 includes examples of incorrect varietal names that are likely to be deceptive: “yellow emerald” and “green amethyst.”²⁹⁸

Jenner contended that disclosures could address any misperception caused by the misuse of varietal names. There is no evidence, however, that disclosures would effectively cure the

²⁹⁵ The dictionary reflects this traditional usage and understanding. *See* Merriam-Webster Dictionary (defining the noun “emerald” as “a rich green variety of beryl prized as a gemstone” and “any of various green gemstones . . .,” and defining the adjective as “brightly or richly green”).

²⁹⁶ For example, the study employed methods such as demographic and propensity score weighting to obtain estimates of national views from its internet panel. *See* JVC comment 27, exh. 2 at 4.

²⁹⁷ Although all beryls are colorless in their pure mineral form, varying geologic conditions transform them into varieties with different properties. A beryl may meld with different elements, resulting in a varietal stone with different molecular bonding, crystallization, and color. In rare instances, a beryl may combine with chromium and vanadium to form an intensely green stone, *i.e.*, an emerald. More commonly, beryl may combine with iron to form a heliodor (or golden beryl), a yellow stone. *See* 2016 Statement at 99 n.361.

²⁹⁸ The Commission declines to adopt SGL’s suggested change to the “green amethyst” example because, as written, it accurately conveys that it is likely deceptive for marketers to use the term “amethyst” (the purple varietal of quartz) to describe prasiolite (the green varietal).

misrepresentation. A disclosure such as the one Jenner suggested, for example,²⁹⁹ would have to explain that a “green amethyst” is actually not an amethyst (or that a “yellow emerald” is not an emerald), creating an inherent contradiction that would likely exacerbate consumer confusion.³⁰⁰

H. Cultured Diamonds

1. Previous Guides

The previous Guides did not specifically address using “cultured” to describe laboratory-created diamonds and other gemstones. Section 23.23, however, cautioned marketers against using any gemstone name (*e.g.*, diamond) to describe any man-made product unless an equally conspicuous “laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” “synthetic,” “imitation,” or “simulated” disclosure immediately preceded the name.³⁰¹ This section further advised marketers to use “laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” and “synthetic” only for products with essentially the same optical, physical, and chemical properties as the named stone.³⁰² Section 23.11 addressed the definition and misuse of the word “diamond,” but did not discuss the term “cultured.”³⁰³

2. Proposed Revisions

In the 2012 Notice, the Commission sought information concerning the use of “cultured” to describe laboratory-created diamonds and other gemstones.³⁰⁴ Based on the record, the

²⁹⁹ *I.e.*, a disclosure qualifying the use of “green amethyst” by stating: “The beautiful hue of the green amethyst gemstone used in this ring is created by heat treating quartz, whereas amethysts are purple quartzes.”

³⁰⁰ *E.g.*, *FTC v. Direct Marketing Concepts*, 624 F.3d 1, 12 (1st Cir. 2010) (disclaimers not effective when competing and contrary claims left “an overall impression of nonsense, not clarity”).

³⁰¹ 16 CFR 23.23(b).

³⁰² 16 CFR 23.23(c).

³⁰³ 16 CFR 23.11.

³⁰⁴ 77 FR 39201, 39204 (July 2, 2012). In connection with several industry group petitions in 1986 and 2006, the Commission previously considered whether to caution marketers against describing lab-created gemstones as “cultured.” After reviewing the record at those times, the Commission determined there was insufficient evidence to

Commission proposed cautioning marketers against using the unqualified term “cultured” to describe laboratory-created diamonds. Specifically, the proposed guidance advised it is not unfair or deceptive to use “cultured” to describe such products “if the term is immediately accompanied, with equal conspicuousness, by the words ‘laboratory-created,’ ‘laboratory-grown,’ ‘[manufacturer name]-created,’ ‘synthetic,’ or by some other word or phrase of like meaning, so as to clearly disclose that it is a laboratory-created product.”³⁰⁵

The Commission based this proposed guidance on consumer perception evidence from the 2012 Harris study. This survey indicated that unqualified “cultured diamond” claims may lead consumers to believe that such diamonds were created naturally. For example, 53 percent of respondents thought a “cultured diamond” was a “natural product,” not “manufactured.” However, qualifying these claims essentially prevented such deception. For instance, when “cultured diamond” was qualified with “laboratory-created” (*e.g.*, “laboratory-created cultured diamond”), only 13 percent thought the stone was natural. Moreover, there was minimal difference between the percentage of respondents who thought “laboratory-created cultured diamonds” were natural (13 percent) and those who thought the same of “laboratory-created diamonds” (10 percent), indicating that the deception caused by the term “cultured” was essentially eliminated.³⁰⁶

3. Comments

Twenty-one commenters addressed lab-created “cultured” diamonds. All disagreed with the Commission’s proposed guidance, but for different reasons.

conclude that using “cultured” would be deceptive or unfair if marketers effectively qualified the term as Section 23.23(b) advised. 2016 Statement at 100-101.

³⁰⁵ 81 FR at 1356 (proposed Section 23.12(c)(3) (formerly Section 23.11)).

³⁰⁶ 2016 Statement at 103-04.

a) Recommending “Cultured” and Similar Terms

Three commenters contended marketers may non-deceptively use “cultured” without “immediate” qualifiers like “laboratory-grown” or “laboratory-created.”³⁰⁷ The International Grown Diamond Association (IGDA) and Diamond Foundry explained that, as with pearl culturing, humans create an environment that enables diamond growth. Once they place a “seed”³⁰⁸ and establish proper heat and pressure, “nature takes control of the growth process.”³⁰⁹ Citing Merriam Webster, IGDA stated that the plain dictionary definition of “cultured” means “grown or made under controlled conditions,” which accurately describes lab-grown diamonds as well as cultured pearls.³¹⁰

Moreover, according to Diamond Foundry, the Commission’s proposed guidance is “overly restrictive” and commercially impractical.³¹¹ For instance, it argued that combining “cultured” with “laboratory-created” or “laboratory-grown” forms a lengthy descriptor that hinders marketing on mobile devices.³¹² IGDA stated this “additional burden” is unnecessary when marketers can effectively qualify the term with “proper context in an advertisement.”³¹³

In IGDA’s view, consumer research confirms that “cultured diamond” is “itself a qualification” that appropriately conveys “the product is grown or made under controlled

³⁰⁷ IGDA comment 81 at 6; Diamond Foundry comment 74 at 3; Deans comment 38.

³⁰⁸ Diamond Foundry stated that its products begin with an “earth-extracted diamond.” Diamond Foundry comment 74 at 2. IGDA indicated it uses a “real (mined or laboratory grown) diamond seed.” IGDA comment 81 at 2.

³⁰⁹ IGDA comment 81 at 3. Similarly, Deans stated that “cultured diamond” is “extremely accurate and applicable” because, much like a cultured pearl’s surface layers consist of the same substance as a natural pearl, a synthetic diamond is composed of the same substance as a natural diamond. Deans comment 38.

³¹⁰ IGDA comment 81 at 13.

³¹¹ Diamond Foundry comment 74 at 1-2.

³¹² *Id.* at 2.

³¹³ IGDA comment 81 at 10.

conditions and is not the same as a mined diamond.”³¹⁴ Citing its 2016 Opinions Ltd. consumer survey (“2016 Opinions survey”), IGDA contended that consumers understand a “cultured diamond” is not “taken out of the ground.”³¹⁵ In the Opinions survey, similar majorities of respondents correctly identified “cultured diamonds” (72%) and “lab-grown diamonds” (77%) as “created in above-ground facilities,” while similar minorities incorrectly believed they were “taken out of the earth” (10% for “cultured diamonds,” 9% for “lab-grown diamonds”).³¹⁶ IGDA therefore recommended the Commission revise the Guides’ examples of non-deceptive descriptors to include “cultured diamond” and “[manufacturer name]-grown.”³¹⁷ In addition, Diamond Foundry stated that qualifiers such as “foundry,” “created,” and “grown” accurately communicate the man-made nature of their products, which are “made in a foundry, not a

³¹⁴ *Id.*

³¹⁵ *Id.* at 12. Another commenter asserted that consumers understand “cultured diamonds” are not “naturally occurring” stones, but cited no supporting consumer perception evidence. Deans comment 38.

³¹⁶ IGDA comment 81 at 13, exh. B at 8-13. The survey used virtually identical advertisements featuring a prominent caption (“Lab-Grown Diamonds” or “Cultured Diamonds”) above an image of diamond rings, with a smaller-print disclosure beneath that read either “Lab-Grown Diamonds are high-quality beautiful diamonds grown under carefully controlled conditions suitable for crystallization of diamonds” or “Cultured Diamonds are high-quality beautiful diamonds grown under carefully controlled conditions suitable for crystallization of diamonds.”

Separately, IGDA challenged the Commission’s reliance on the 2012 Harris study in two respects. First, it criticized the finding that consumers interpret an unqualified “cultured diamond” claim to mean the product is “natural.” IGDA contended this does not mean consumers interpret “cultured diamond” to describe something taken from the earth. In IGDA’s view, the survey question forced respondents to choose between two undefined, not mutually exclusive terms (“natural” versus “manufactured”) to describe “a process that has characteristics of both.” A consumer thinking that “natural” means “unadulterated” or “not artificial,” for instance, might correctly regard a lab-grown diamond as “natural.” Second, IGDA stated that the study demonstrated the limits of consumers’ knowledge, but did not establish they are materially misled. IGDA claimed the study also showed that consumers differentiated “diamonds” from “cultured diamonds” when assigning value (84 percent perceived “diamond” to have the highest value, whereas 10 percent chose “cultured diamond,” and one percent chose “laboratory-grown diamond”), which IGDA interpreted to indicate a lack of confusion. *Id.* at 11.

³¹⁷ IGDA did not submit evidence regarding consumers’ perceptions of “[manufacturer name]-grown.”

laboratory.”³¹⁸ It therefore recommended the Guides also include these terms as acceptable descriptors (in addition to “cultured diamond” without modifiers).³¹⁹

IGDA further argued that qualifying terms such as “synthetic” and “imitation” are, in fact, deceptive, and recommended the Commission “prohibit” marketers from using them to describe lab-grown diamonds.³²⁰ IGDA contended that competitors use “synthetic” and “imitation” to disparage lab-grown diamonds and confuse consumers, who mistakenly believe the terms describe simulated products made from glass, plastic, or cubic zirconium.³²¹ For instance, in the 2016 Opinions survey, 56 percent of respondents thought a “synthetic diamond” is an “imitation or fake that looks like a mined diamond.”³²² The survey also indicated that consumers most often used “fake,” “man-made,” “cubic zirconia,” “cheap,” and “artificial” to describe a “synthetic diamond.”³²³ IGDA stated that in another survey, most respondents (74%) thought, even after being “educated,” that a “synthetic diamond” was “fake” or “artificial.”³²⁴

³¹⁸ It noted, for instance, that “foundry” is commonly understood to mean a place of production. Diamond Foundry comment 74 at 3.

³¹⁹ Ethical Markets Media also recommended using “created” to help consumers distinguish lab-created diamonds from mined stones, but did not specifically address “cultured.” Ethical Markets Media comment 65. Neither Diamond Foundry nor Ethical Markets submitted perception evidence regarding their suggested terms.

³²⁰ IGDA comment 81 at 6.

³²¹ *Id.* at 14.

³²² *Id.*, exh. B at 17.

³²³ *Id.*, exh. B at 21. IGDA stated that a 2012 joint survey by Antwerp World Diamond Center and Bain & Company similarly reported that consumers most often used “cheap” and “fake” to describe “synthetic diamonds,” and that they associated “synthetic” and “fake” diamonds with simulants such as cubic zirconia and moissanite. *Id.* at 15. Diamond Foundry stated it conducted surveys (not submitted with its comment) showing that “synthetic” would be misleading because consumers expect such products to lack a “basis or lineage to natural material.” Diamond Foundry comment 74 at 2. Another commenter stated there is “longstanding” confusion over the difference between “synthetic (man-made)” and “simulant (imitation)” diamonds. Poteat comment 86 at 17.

³²⁴ IGDA comment 81 at 16-17 (citing 2014 research by Frost & Sullivan).

b) Opposing Qualified Use of “Cultured”

In contrast, other commenters contended that even qualified “cultured” claims confuse consumers.³²⁵ They stated that lab-created diamonds are not “natural,” and asserted that marketers use the term to make consumers associate these products with “organic” pearl cultivation methods.³²⁶ Citing new consumer perception evidence, they further argued that adding disclosures does not remedy the confusion. Finally, several stated that the Commission’s proposal conflicts with international standards and the Guides’ pearl section.

Many of these commenters argued it is inaccurate to describe a lab-grown diamond as “cultured” because it is not “natural” like a mined diamond or cultured pearl. For instance, the Diamond Producers Association (DPA) stated the term misleadingly conveys that a synthetic diamond is “natural,” but its “wholly man-made and industrial” creation process does not replicate mined diamond formation.³²⁷ Some commenters asserted that, contrary to what “cultured” implies, there is no “natural” component to synthetic diamond manufacturing because it “begins and ends in a factory” under controlled conditions – unlike cultured pearl growth, which entails “a symbiotic relationship between man and nature.”³²⁸ Others contended the Guides should therefore restrict “cultured” to describe only products that result from natural, “organic processes,” like cultured pearls.³²⁹

³²⁵ Diamond Producers Association (DPA) comment 69 at 4-6; Richards comment 4; Coan comment 27; AGA comment 88 at 4-5; Poteat comment 86 at 17; JVC comment 82 at 24. Richline, Signet, and Gold in Art submitted separate comments stating that they support JVC’s position. Richline comment 83 at 1; Signet comment 84; Gold in Art comment 63.

³²⁶ Zibman comment 41; Newman comment 44; LaBiche comment 60; Peter & Co. comment 61; Robbins Delaware comment 59; Thai comment 43; Winward comment 40; Gordon comment 62.

³²⁷ DPA comment 69 at 2-4.

³²⁸ AGA comment 88 at 4-5; JVC comment 82 at 25; Poteat comment 86 at 17-18; Zibman comment 41; Newman comment 44. Zibman and Newman also stated that cultured pearl growth entails more time than synthetic diamond creation (months to years, rather than “mere days”).

³²⁹ Gordon comment 62 at 3; LaBiche comment 60; Peter & Co. comment 61; Robbins Delaware comment 59.

JVC also argued that marketers use “cultured” to mislead consumers into associating synthetic diamond production with “positive organic methods,” deceptively elevating the product’s “desirability and value by making factually erroneous claims.”³³⁰ Specifically, JVC stated that, by using “cultured” to associate synthetic diamonds with “organic” pearl cultivation, marketers make misleading “green” claims implying that their products are more “environmentally friendly” than mined diamonds.³³¹

Citing the 2016 Harris study, JVC and DPA claimed that consumers best understand a laboratory-created diamond is man-made when the product description does not include the word “cultured.” In their view, the study shows that consumers have a “very low awareness and understanding of what synthetic diamonds, by any name, really are,” and that adding “cultured” to a description exacerbates consumer confusion.³³² JVC observed that almost half of respondents in this survey (43-45%) did not know whether adding “cultured” in front of “[manufacturer name]-created,” “laboratory-created,” “laboratory-grown,” and “synthetic” changed the term’s meaning, while one-third (33-34%) thought it did not (*e.g.*, indicating that “laboratory-created diamond” and “cultured laboratory-created diamond” mean the same).³³³ DPA contended the survey shows that using “cultured” inappropriately increases consumers’ perception that the synthetic product is “more appealing” because they believe it is comparable to a “natural” diamond with respect to value, rarity, formation, and other properties.³³⁴

³³⁰ JVC comment 82 at 25.

³³¹ *Id.* at 26.

³³² *Id.* at 52; DPA comment 69 at 6.

³³³ JVC comment 82 at 52, exh. 2 at 7-8.

³³⁴ DPA comment 69 at 7. Specifically, six percent of respondents thought a “laboratory-grown” diamond is as valuable as a “natural diamond,” whereas 12 percent thought the same of a “cultured laboratory-grown diamond.” Similarly, 10 percent thought a “laboratory-created” diamond has the same value as a “natural diamond,” whereas 14 percent thought a “cultured laboratory-created” diamond does. Eighteen percent thought a “laboratory-grown”

These commenters further stated that even qualified use of “cultured” would be confusing. For example, DPA argued that adding disclosures such as “laboratory-grown” or “laboratory-created” to “cultured” cannot cure the confusion because it creates an “inherently deceptive” oxymoron.³³⁵ A number of commenters asserted that, given this confusion, sellers would likely “drop” the qualifying terms.³³⁶

Additionally, several commenters stated that the Commission’s proposed guidance is inconsistent with international standards which ban even qualified use of “cultured” to describe synthetic diamonds. For example, a standard adopted by the International Organization for Standardization (ISO) in 2015 prohibits using “cultured” and “cultivated” to describe synthetic diamonds and requires sellers to describe such products as “synthetic,” “laboratory-grown,” or “laboratory-created.”³³⁷ JVC contended that the purpose of the ISO standard is “fully aligned” with the FTC Jewelry Guides.³³⁸

diamond holds its value like a “natural” diamond, whereas 21 percent thought a “cultured laboratory-grown diamond” does. Likewise, 21 percent thought a “laboratory-created” diamond “holds its value over time like a natural diamond,” whereas 23 percent thought this of a “cultured laboratory-created” diamond. *Id.*, exh. 2 at 12 (attaching copy of 2016 Harris study).

Other commenters stated that using “cultured” to describe lab-created diamonds is confusing, but did not specifically address the effect of qualifying disclosures. LaBiche comment 60; Peter & Co. comment 61; Zibman comment 41; Robbins Delaware comment 59. One commenter stated that marketers may also use “cultured” to describe other lab-created gemstones, which would likewise confuse consumers. Thai comment 43.

³³⁵ DPA comment 69 at 4. Similarly, AGA stated that using “cultured” creates “contradictory terminology.” AGA comment 88 at 6.

³³⁶ Winward comment 40; AGA comment 88 at 6.

³³⁷ JVC comment 82, exh 7 at 1 (ISO 18323:2015(E) §2.4) and 4 (ISO 18323:2015(E) §3.4). The standard further states that, where there is “no acceptable local direct translation” for “laboratory-grown” or “laboratory-created,” only the translation for “synthetic diamond” should be used. *Id.* at 1. *See also* LaBiche comment 60; Peter & Co. comment 61; Robbins Delaware comment 59; DPA comment 69 at 7-8 (citing, in addition to ISO, the World Jewellery Confederation (CIBJO) Diamond Book, the Responsible Jewellery Council Code of Practices, and the Signet Jewelers’ Responsible Source Protocol).

³³⁸ For example, the ISO standard states: “This document is specifically designed to be understood by the consumer and seeks to address the potential for confusion by setting out clear and accurate guidelines on accepted nomenclature.” It further notes the industry concern that “without clear and accurate labelling, the increased availability of synthetic diamonds to consumers can cause confusion over exactly what type of product is being sold to them.” JVC comment 82, exh. 7 at v (ISO 18323:2015(E), Introduction). The standard “includes a series of

Additionally, commenters contended that guidance advising non-deceptive use of “cultured” to describe synthetic diamonds would be materially inconsistent with the existing guidance regarding cultured pearls, and therefore the Commission’s proposed guidance would risk confusion and potential deception.³³⁹ Specifically, JVC stated that the pearl section³⁴⁰ cautions marketers against using “synthetic” or similar terms to describe cultured or imitation pearls, whereas the Commission’s proposed guidance³⁴¹ advises them to use “synthetic” or similar terms to qualify “cultured diamond.”³⁴² JVC argued the Guides should construe “identical or similar terms . . . in the same way,” rather than give a single term “two diametrically opposed meanings and permitted usages.”³⁴³

For all the foregoing reasons, these commenters asked the Commission to advise that even qualified use of “cultured” or any other term suggesting “an organic or natural process” (e.g., “cultivated”) to describe lab-grown diamonds is deceptive and misleading.³⁴⁴

4. Analysis and Final Guidance

The final Guides address the term “cultured” when used to describe laboratory-created diamonds in three ways. They advise against using the term without qualification. Additionally, they state that marketers may use the term non-deceptively when qualified and suggest possible

definitions which aim to provide further clarity for traders and maintain consumer confidence in the diamond industry as a whole.” *Id.* at 1 (ISO 18323:2015)(E), Scope).

³³⁹ JVC comment 82 at 24; Thai comment 43; DPA comment 69 at 5; Poteat comment 86 at 17.

³⁴⁰ 16 CFR 23.20(k). Renumbered as 23.21(j).

³⁴¹ 81 FR at 1356 (proposed Section 23.12(c)(3)).

³⁴² JVC comment 82 at 24.

³⁴³ *Id.*

³⁴⁴ DPA comment 69 at 9; JVC comment 82 at 23-24. No commenter provided evidence of how consumers perceive the term “cultivated.”

qualifications. Finally, the Commission removes the term “synthetic” from the examples of possible qualifications.

First, consumer perception evidence strongly suggests that a large percentage of consumers interpret an unqualified “cultured diamond” claim to mean a product is “natural” (*i.e.*, a mined stone). For example, over half (53%) of respondents in the 2012 Harris study thought a “cultured diamond” is “a natural product,” not “manufactured.”³⁴⁵ Because mined diamonds cost more,³⁴⁶ this confusion is likely to cause harm. The final Guides therefore advise marketers against making unqualified “cultured diamond” claims to describe lab-created diamonds.

Second, the Commission declines to issue guidance cautioning against any use of “cultured.” Because Section 5 of the FTC Act is the Guides’ legal underpinning, the Commission will not advise against any use of a term unless all uses are likely to be deceptive. Otherwise, the Commission would be chilling truthful, potentially valuable commercial speech. Here, the consumer perception evidence demonstrates “cultured diamond” can effectively be qualified. For instance, the 2012 Harris study demonstrated that adding a “laboratory-created” disclosure to “cultured diamond” significantly reduces the likelihood that consumers mistakenly believe the diamond was mined from the earth. Specifically, while 53 percent of respondents thought a “cultured diamond” was a “natural product” (not manufactured), only 13 percent thought the same of a “laboratory-created cultured diamond.”³⁴⁷ Moreover, it appears that the false impression harbored by most of this 13 percent is not due to the claim “cultured.” Specifically, in the 2016 Opinions survey, 10 percent of respondents mistakenly thought a “cultured diamond” came from the earth, but 9 percent thought the same of a “lab grown

³⁴⁵ 2016 Statement at 103.

³⁴⁶ *See* IGDA comment 81 at 2-3; Diamond Foundry comment 74 at 3.

³⁴⁷ 2016 Statement at 103-04.

diamond,” indicating that the misimpression is not based on the marketers’ use of the term “cultured,” instead of “lab-grown.” Although the 10 percent of consumers in this survey who thought a “cultured diamond” claim qualified by a disclosure that “[c]ultured diamonds are high-quality beautiful diamonds grown under carefully controlled conditions suitable for crystallization of diamonds” referred to diamonds “taken out of the earth,” a substantial majority (72%) understood that they were “created in above-ground facilities,” while the rest indicated “neither.”³⁴⁸

JVC and others made several arguments opposing the use of “cultured” to describe lab-created diamonds. As discussed below, none provides a sufficient basis for issuing the guidance they requested. For instance, several commenters contended that using “cultured” is inaccurate and misleading because these diamonds are not “natural” like mined diamonds or cultured pearls, and recommended the Guides reserve “cultured” to describe only pearls. However, the Commission finds no evidence that consumers would be deceived by marketers’ use of “cultured” to describe diamonds as well as pearls, provided the “cultured diamond” claim is appropriately qualified as the final Guides advise.

JVC and DPA also claimed the 2016 Harris study supports their contention that adding “cultured” to “laboratory-created,” “laboratory-grown,” and other qualifying disclosures increases consumer confusion. Specifically, JVC relied on the fact that approximately 44 percent of respondents did not know whether adding “cultured” to a “laboratory-created” claim changed the claim’s meaning, while only one-third thought it did not. A closer analysis of the 2016 survey, however, does not support their argument. To understand why, it is useful to divide the 2016 respondents into three categories: those that thought adding “cultured” did not change

³⁴⁸ IGDA comment 81, exh. B at 8-13.

the meaning of “laboratory-created;” those that did not know; and those that thought the meaning changed.

JVC agreed that “laboratory-created diamond” accurately describes man-made diamonds. Thus, the one-third that thought adding “cultured” to the claim did not change the meaning were not deceived – they presumably continued to think the diamonds were man-made. The second group did not know whether “cultured” changed the meaning of “laboratory created.” Assuming again that “laboratory-created” alone accurately describes a man-made diamond, it is possible some, if not all, of these respondents ignored the “cultured” qualifier altogether. The remaining 23 percent that did think there was some change in meaning did not necessarily interpret that change in a manner that would be deceptive. For example, they may have interpreted “cultured” to mean that the product had the same optical, physical, and chemical properties as mined diamonds, thus alleviating deception.³⁴⁹ Moreover, in some instances, consumers’ perception of diamond products described as “cultured” were more accurate than ones described without using the word.³⁵⁰

DPA claimed the 2016 Harris study demonstrated that adding “cultured” to “laboratory-created” changed consumers’ perception of value. However, only 2-6 percent of that survey’s respondents indicated that the term “cultured” would increase the value of a man-made diamond to that of a mined stone.³⁵¹

³⁴⁹ For example, the survey showed that adding “cultured” to “laboratory-created” increased consumers’ perception that the product “has exactly the same properties” (increasing 20% to 31%) and “is the same as” a “natural diamond” (13% to 21%). JVC comment 82, exh. 2 at 12.

³⁵⁰ For example, adding “cultured” slightly decreased consumers’ perception that the product was “as rare as a natural diamond” (decreasing 9% to 7% for “laboratory-created,” and 7% to 6% for “laboratory-grown”). *Id.*, exh. 2 at 12.

³⁵¹ *See* note 334 *supra*. Moreover, this finding is subject to multiple interpretations concerning how respondents understood “value” when answering the questions. For instance, it is possible they perceived value – *i.e.*, an attractive bargain – in “cultured” lab-grown diamonds, which have many of the properties of traditional mined

Additionally, JVC and other commenters asked the Commission to align the Jewelry Guides with international standards. As indicated previously, while the Commission strives to harmonize its guidance with international standards, it cannot always do so. International standards often are based on considerations other than, or in addition to, deception, while the sole purpose of the Guides is to help marketers avoid deceptive and unfair practices prohibited by Section 5 of the FTC Act. Because the evidence shows that “cultured diamond” claims can be qualified effectively, the Commission lacks a sufficient basis under Section 5 to advise marketers against using the term.

Third, some commenters argued that advising marketers they could use “synthetic” to qualify “cultured diamond” claims would conflict with the Commission’s pearl guidance, which advises against using “synthetic” to describe cultured or imitation pearls. The record indicates many consumers mistakenly believe “synthetic” means an artificial product such as cubic zirconia, which lacks a diamond’s optical, physical, and chemical properties.³⁵² Given the likelihood of consumer confusion, the final Guides do not include “synthetic” among the examples of terms that marketers may non-deceptively use to qualify claims about man-made diamonds, thus eliminating the contradiction. Despite another commenter’s request, however, the Commission does not “prohibit” marketers from ever using “synthetic” to “disparage” lab-grown diamonds. It lacks a sufficient basis for doing so because the evidence does not establish

stones, but at a fraction of the price. It is also possible that consumers tend to undervalue “laboratory-created” diamonds because they confuse them with imitations, and the “cultured” qualifier more accurately signals their true worth.

³⁵² For example, the Opinions survey showed that a majority of consumers (56%) thought a “synthetic diamond” is an “imitation” or “fake.” IGDA comment 81, exh. B at 17.

that the term would be deceptive in every instance. If a marketer uses “synthetic” to imply that a competitor’s lab-grown diamond is not an actual diamond, however, this would be deceptive.³⁵³

A number of commenters asked the Commission to add “[manufacturer-name]-grown,” “foundry,” “created,” and “grown” to the Guides’ list of non-deceptive qualifying terms. However, no commenter submitted perception evidence demonstrating how consumers understand these terms. Therefore, unlike the examples in the final Guides (“laboratory-created,” “laboratory-grown,” “[manufacturer-name]-created”), the Commission lacks a basis for advising marketers that any of these terms alone can be used non-deceptively to qualify the word “diamond.” It notes, however, that the Guides do not limit sellers to using only the enumerated qualifiers. Rather, they advise that marketers may also use “some other word or phrase of like meaning.” If the commenters’ suggested terms could be used non-deceptively in context (*e.g.*, as part of an ad highlighting that the product is man-made), there is nothing to prevent marketers from doing so.

Finally, the Commission notes that all necessary qualifications and disclosures should be clear, prominent, and understandable. Generally, to make disclosures clear and prominent, marketers should use plain language and sufficiently large type, place disclosures in close proximity to the qualified claim, and avoid making inconsistent statements or using distracting elements that could undercut or contradict the disclosure.³⁵⁴ Some lab-created diamond sellers may choose to emphasize their products’ man-made nature throughout their advertisement to appeal to consumers seeking diamonds that are not traditionally mined.³⁵⁵ In such cases, adding

³⁵³ See discussion *infra* at pages 93-94.

³⁵⁴ See, *e.g.*, Section 23.1, Note 2; Guides for the Use of Environmental Marketing Claims, 16 CFR 260.3(a); Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 CFR 255.2(b)-(c).

³⁵⁵ See, *e.g.*, IGDA comment 81 at 2-3; Diamond Foundry comment 74 at 3.

disclosures (e.g., “laboratory-created”) immediately adjacent to the “cultured diamond” claim may not be necessary to prevent deception. Therefore, instead of advising that “cultured” be “immediately accompanied” by words like “laboratory-created” or “laboratory-grown,” the final Guides advise marketers more generally to qualify their use of “cultured” by disclosing clearly and conspicuously that the product is not a mined stone.³⁵⁶

I. Use of “Real,” “Genuine,” and “Natural” to Describe Man-Made Diamonds

1. Previous Guides

Section 23.24 cautioned marketers against using the words “real,” “genuine,” “natural,” or similar terms to describe a product that is “manufactured or produced artificially.”³⁵⁷

2. Analysis

Because no commenter sought changes to this section, the Commission has no basis to change its guidance. Section 23.24 cautioned marketers against using the words “real,” “genuine,” “natural,” or similar terms to describe a product that is “manufactured or produced artificially.” After the comment period closed, JVC and Diamond Producers Association, representing mined diamond producers, as well as International Grown Diamond Association, separately spoke to FTC staff, expressing opposing concerns about the use of the terms “real” and “genuine” to describe both mined and manufactured diamonds. These discussions raised pressing concerns that were not addressed in the current record. Therefore, the Commission is

³⁵⁶ In contrast, because there is no corresponding evidence demonstrating how consumers understand similar disclosures for claims about other lab-created gemstones (e.g., ruby, sapphire, emerald, topaz), the Commission leaves largely unchanged the existing guidance in Section 23.25(b), which advises marketers to qualify such claims by adding an equally conspicuous “laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” or “synthetic” immediately preceding the gemstone name. To avoid chilling the use of truthful terms that may be helpful to consumers, however, the Commission revises this guidance to advise that, when qualifying claims about lab-created gemstones other than diamonds, in addition to the terms listed (“laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” “synthetic”), marketers may use other words or phrases that convey the same meaning. See discussion *infra* at page 93-94.

³⁵⁷ 16 CFR 23.24.

interested in consumer perception evidence that shows whether “real,” “genuine,” “natural,” and similar terms can be used non-deceptively to describe lab-grown diamonds, and encourages stakeholders to submit such evidence if available. Furthermore, to the extent it would be appropriate to modify the existing guidance in Section 23.24 based on consumer perception evidence, the Commission invites interested parties to submit a petition for revision and provide any supporting evidence. However, the Commission cautions marketers that it would be deceptive to use the terms “real,” “genuine,” “natural,” or “synthetic” to imply that a lab-grown diamond (*i.e.*, a product with essentially the same optical, physical, and chemical properties as a mined diamond) is not, in fact, an actual diamond. As discussed below, the Commission no longer defines a “diamond” by using the term “natural” because it is no longer accurate to define diamonds as “natural” when it is now possible to create products that have essentially the same optical, physical, and chemical properties as mined diamonds.³⁵⁸

J. Qualifying Claims About Man-Made Gemstones

1. Previous Guides

Section 23.23 advised against using the words “ruby,” “sapphire,” “emerald,” “topaz,” or the name of any other precious or semiprecious stone, or the word “stone,” “birthstone,” “gemstone,” or similar term, to describe a lab-created product unless an equally conspicuous “laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” or “synthetic” disclosure immediately preceded the term.³⁵⁹

³⁵⁸ See discussion *infra* at pages 114 to 115.

³⁵⁹ This section also advised against using gemstone names to describe an imitation product unless the words “imitation” or “simulated” immediately preceded the name. 16 CFR 23.23(b).

2. Analysis and Final Guidance

To ensure the Guides do not impose stricter requirements than Section 5, the Commission extends the increased flexibility in its new guidance addressing cultured diamonds to the guidance for other man-made gemstones. Specifically, the final Guides advise marketers of man-made gemstones sharing the same optical, physical, and chemical properties as the named stone that they may use words or phrases immediately preceding the gemstone name other than the ones listed (“laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” “synthetic”) if they clearly and conspicuously disclose that the product is not a mined stone. This increased flexibility should alleviate chilling the use of truthful terms that may be helpful to consumers. Sellers remain responsible for ensuring they do not make deceptive claims that violate Section 5.

Additionally, to the extent sellers choose to use the word “cultured” to describe a laboratory-created gemstone product that has essentially the same optical, physical, and chemical properties as the named stone (*e.g.*, “cultured ruby”), the Guides advise them to qualify the term with a clear and conspicuous disclosure conveying that the product is not a mined stone. This is consistent with the Commission’s guidance addressing use of the word “cultured” to describe lab-created diamonds.³⁶⁰

K. Disclosing Treatments to Gemstones

1. Previous Guides

Section 23.24 cautioned marketers against using the word “natural” or similar terms to describe any product “that [was] manufactured or produced artificially.”³⁶¹ Additionally, Section

³⁶⁰ See discussion of the Commission’s analysis *supra* at page 88-94.

³⁶¹ 16 CFR 23.24 (renumbered as 23.26).

23.22 advised marketers to disclose that a gemstone has been treated if the treatment: (i) was not permanent; (ii) created special care requirements; or (iii) had a significant effect on a stone's value.³⁶²

2. Request for Information

In the 2016 Notice, the Commission sought consumer perception evidence regarding the term “natural.” It also asked whether the guidance advising disclosure of gemstone treatments continues to be necessary to prevent deception.³⁶³ These inquiries addressed issues raised by two commenters in response to the Commission's 2012 Notice. Specifically, AGA and the Jewelers Ethics Association (JEA) contended there are two categories of “natural” stones – treated and untreated. They stated that untreated stones are significantly more valuable than treated stones with a similar appearance, and argued that using the unqualified term “natural” likely misleads consumers unaware of these differences. To address this distinction, these commenters suggested two changes. First, they recommended that the Guides define “natural” to mean gemstones “occurring in nature without the interference or assistance of man, and which have been mined or extracted, and cleaned, polished, and/or faceted.” Second, they recommended that the Commission revise its guidance to advise disclosing any gemstone treatment other than cleaning, polishing, cutting, and faceting.³⁶⁴

³⁶² 16 CFR 23.22 (renumbered as 23.24).

³⁶³ 2016 Statement at 97-98.

³⁶⁴ 2016 Statement at 95-96.

3. Comments

No commenter submitted evidence demonstrating how consumers understand the term “natural.” Two (JVC and Poteat) addressed the guidance advising gemstone treatment disclosures. They agreed the existing guidance is still necessary to prevent deception and recommended the Commission retain it without change.³⁶⁵

4. Analysis and Final Guidance

The Commission declines to issue new guidance limiting the use of “natural” because it lacks a basis to do so. The existing guidance³⁶⁶ cautions against using “natural” to describe manufactured products, and the record does not establish that additional guidance is needed to prevent consumer harm. Moreover, there is no evidence that consumers understand “natural” to mean a mined gemstone that has been cleaned, cut, and polished, but otherwise untreated, as AGA and JEA contended. Insofar as a treatment significantly affects a stone’s value, the Guides already advise disclosing it.³⁶⁷

L. Gem/Gemstone

1. Previous Guides

Section 23.25 of the previous Guides addressed misuse of the word “gem.” Section 23.25(a) stated “[i]t is unfair or deceptive to use the word ‘gem’ to describe, identify, or refer to a ruby, sapphire, emerald, topaz, or other industry product that does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem.”³⁶⁸ Section 23.25(b) advised marketers against using “gem” to describe a laboratory-created product unless it met the

³⁶⁵ JVC comment 82 at 50-51; Poteat comment 86 at 6-7.

³⁶⁶ Section 23.26.

³⁶⁷ Section 23.24(c) (advising disclosure of a treatment that has “a significant effect on the stone’s value”).

³⁶⁸ 16 CFR 23.25(a).

requirements of 23.25(a) and the claim was immediately accompanied by an equally conspicuous disclosure such as “laboratory-grown,” “laboratory-created,” “[manufacturer-name]-created,” “synthetic,” or other word or phrase of like meaning.³⁶⁹ A note to 23.25 advised that marketers generally should not describe laboratory-created stones as “gems” because such products lack the necessary qualifications.³⁷⁰

Similarly, Section 23.20(j) advised against using “gem” to describe a pearl or cultured pearl “that does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem.”³⁷¹ The accompanying note cautioned marketers to avoid using “gem” to describe cultured pearls because few possess the necessary qualifications.³⁷²

2. Proposed Revisions

Based on comments, the Commission proposed to eliminate Section 23.25 and Section 23.20(j) because they provided circular, inadequate guidance that relied on highly subjective judgments. Moreover, separate guidance for “gem” and “gemstone” is likely unnecessary because consumers probably interpret these terms as synonymous. To ensure marketers do not use either term deceptively, the Commission also proposed to add “gem” to its general guidance addressing gemstones in Section 23.23 (renumbered as 23.25).³⁷³ The Commission did not, however, propose further guidance regarding pearls because the remainder of Section 23.20 and

³⁶⁹ 16 CFR 23.25(b).

³⁷⁰ 16 CFR 23.25, Note.

³⁷¹ 16 CFR 23.20(j).

³⁷² 16 CFR 23.20(j), Note.

³⁷³ Specifically, this guidance advises marketers against using the name of any precious or semi-precious stone, or the word “stone,” “birthstone,” “gem,” “gemstone,” or similar term to describe a laboratory-grown product unless an equally conspicuous qualifier (such as “laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” “synthetic,” “imitation,” or “simulated”) immediately precedes the term to disclose that the product is not a natural gemstone. 81 FR at 1358 (proposed Section 23.25(b)).

Section 23.19 (renumbered as 23.21 and 23.20) provide sufficiently detailed guidance to prevent deception.

The Commission solicited consumer perception evidence regarding how consumers understand “gem” and “gemstone,” whether they differentiate these terms, and how they understand the word “gem” when used to describe pearls.³⁷⁴

3. Comments

The commenters addressing this issue generally supported the Commission’s proposed changes. Though none provided consumer perception evidence, they agreed that “gem” and “gemstone” are used interchangeably.³⁷⁵ JVC stated that marketers also use “gem” to describe pearls, and that eliminating the separate provision in the pearl section regarding use of the word would not create consumer confusion or injury.³⁷⁶

4. Analysis and Final Guidance

Based on the record, the Commission issues the final guidance as previously proposed.

M. Geographic and Regional Identifiers

1. Previous Guides

Section 23.1 stated it is unfair or deceptive to misrepresent “the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, price, value, preparation, production, manufacture, distribution, or any other material aspect of an industry product.”³⁷⁷

³⁷⁴ 2016 Statement at 107-09.

³⁷⁵ JVC comment 82 at 52-53, Richline comment 83 at 3 (adopting JVC’s position); Signet comment 84 at 1 (adopting JVC’s position); Poteat comment 86 at 15.

³⁷⁶ JVC comment 82 at 52-53. In contrast, the Thai Industrial Standards Institute stated that “[n]ot to define the pearl as ‘Gem’ may cause confusion to consumers as pearl has been classified in the category of ‘Organic Gem’ which is a group of gem materials in any literature.” Thai comment 43 at 1.

³⁷⁷ 16 CFR 23.1.

More specifically, Section 23.20 addressed the misuse of regional designations and other terms relating to pearls. For example, Section 23.20(g) stated it is unfair or deceptive to use the term “South Sea pearl” (or “South Sea cultured pearl”) unless it described, identified, or referred to a pearl (or cultured pearl) taken from (or formed in) a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia.³⁷⁸

Section 23.21 of the Guides addressed misrepresentations regarding cultured pearls. Specifically, this section stated it is unfair or deceptive to misrepresent “the manner in which cultured pearls are produced, . . . the value and quality of cultured pearls compared with the value and quality of pearls and imitation pearls, or any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls.”³⁷⁹

2. 2016 Notice Analysis

In the 2016 Notice, the Commission declined commenters’ requests to amend the Guides to address geographic or regional identification claims about pearls and gemstones. The Commission found no evidence that using a term signifying a geographic or regional identification to describe a product not from the identified location is always a material misrepresentation.³⁸⁰ In circumstances where the geographic or regional identification of a particular product is material, the Guides already address false claims about origin in the general deception provision (Section 23.1).³⁸¹ The Guides also advise marketers against misrepresenting any material matter relating to cultured pearl production, which may include the particular

³⁷⁸ 16 CFR 23.20(g).

³⁷⁹ 16 CFR 23.21.

³⁸⁰ For example, consumers are probably not deceived if marketers advertise their Wisconsin-made cheese as “Cheddar,” even though it was not made in the village of Cheddar in England, where cheddar cheese originated.

³⁸¹ This section advises marketers not to misrepresent a product’s type, kind, quality, color, character, substance, origin, value, or other material aspect. 16 CFR 23.1.

location in which a cultured pearl formed to the extent this aspect is material to consumers.³⁸²

The record did not demonstrate the need for additional guidance to prevent deception. The Commission posed several questions concerning these issues to obtain additional information.

3. Comments

Two commenters addressed the issue of geographic and regional identifiers. One discussed geographic origin claims regarding cultured pearls; the other gemstones.

JVC recommended the Commission revise Section 23.22 (formerly 23.21) to clarify that it is unfair or deceptive to misrepresent the location in which cultured pearls are produced. JVC contended it is deceptive to use a regional name to indicate pearl type when that pearl was not actually produced in that region. JVC stated that its own interpretation of the Guides “does not allow marketers to describe or sell pearl products using names or terms that indicate a geographical or regional designation other than the location where the pearl formed,” and noted it has received approximately 32 complaints over the past four years regarding misrepresentations of a pearl’s origin, most often concerning “South Sea” and “Tahitian” designations.³⁸³

Another commenter suggested the Commission add a provision to Section 23.25 (formerly 23.23) (“Misuse of the words ‘ruby,’ ‘sapphire,’ ‘emerald,’ ‘topaz,’ ‘stone,’ ‘birthstone,’ ‘gem,’ ‘gemstone,’ etc.”) that would state “it is unfair or deceptive to use the terms like [sic] ‘Kashmir,’ ‘Burma,’ ‘Paraiba,’ or any word, term, or phrase of like meaning to describe, identify, or refer to any industry product other than a gemstone taken from the region

³⁸² Section 23.22 states it is unfair or deceptive to misrepresent “the manner in which cultured pearls are produced” or “any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls.” 81 FR at 1357 (proposed Section 23.22). In addition, the Commission separately proposed new guidance stating it is unfair or deceptive to use the incorrect varietal name of a product. 81 FR at 1358 (proposed Section 23.27).

³⁸³ JVC comment 82 at 54.

and of the distinctive appearance and type obtained from the region and recognized in the jewelry trade as a Kashmir gemstone.”³⁸⁴ The commenter provided no consumer perception evidence or other information to support this proposal.

4. Analysis

The Commission declines to amend the Guides as JVC suggested. There is no evidence that using a geographic or regional identifier to describe a cultured pearl not produced in the identified location is always a material misrepresentation. To the extent it is in a particular situation, the Guides already advise marketers against making such misrepresentations in Sections 23.1 and 23.22.³⁸⁵ Thus, no additional guidance is necessary.³⁸⁶

Likewise, the Commission does not amend the Guides specifically to address “Kashmir,” “Burma,” “Paraiba,” and similar gemstone names because the Commission received no new information in response to questions in its 2016 Notice regarding consumer perception and industry use of these terms.³⁸⁷ One commenter responding to the 2012 Notice argued that a gemstone’s place of origin often makes implied claims about the stone’s rarity and value.³⁸⁸ However, despite the Commission’s request for information, no commenter submitted evidence

³⁸⁴ Poteat comment 86 at 9.

³⁸⁵ JVC acknowledged that, under its own interpretation of the Guides, it cautions marketers not to misuse names or terms that indicate a geographical or regional designation other than where the pearl formed. JVC comment 82 at 54.

³⁸⁶ In contrast, the Commission previously issued guidance specifically advising marketers not to misuse “South Sea [cultured] pearl” and “Biwa cultured pearl” based on evidence that marketers used these terms deceptively. *See* Statement at 115. Section 23.21(g) already addresses the complaints that JVC stated it has received concerning the misuse of “South Sea” descriptors. As for the complaints JVC mentioned regarding “Tahitian,” the existence of complaints alone is not a sufficient basis to provide further guidance specifically addressing this term, particularly when the Guides already caution against misrepresenting origin and other material matters relating to cultured pearl production.

³⁸⁷ The record indicated that marketers have begun using this term to describe copper-bearing tourmalines that are found in Africa as well as Brazil, and which are similar in at least some respects. However, the extent to which “[P]araiba” conveys an established trade name, varietal, or geographic identifier remains unclear, and there is no evidence showing how consumers understand this term, or of consumer injury resulting from misuse of the term.

³⁸⁸ 2016 Statement at 113-14.

showing whether or how complete information concerning gemstone rarity would impact consumer perception of the product's value, or whether such information would otherwise be material to consumers. The only commenter responding to the Commission's question on this issue stated that the existing guidance is adequate.³⁸⁹ The record thus does not establish that additional guidance is necessary to prevent deception.

N. Disclosure of Treatments to Pearls

1. Previous Guides

The previous Guides did not specifically advise marketers to disclose pearl treatments. However, Section 23.21 stated it is unfair or deceptive to misrepresent “the manner in which cultured pearls are produced, . . . the value and quality of cultured pearls as compared with the value and quality of pearls and imitation pearls, or any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls.”³⁹⁰

Section 23.22 advised marketers to disclose that a gemstone had been treated if the treatment was not permanent, created special care requirements, or had significant effect on the stone's value.³⁹¹ The Guides did not define “gemstone” either to include or exclude pearls. Section 23.0, however, stated that the Guides apply to “jewelry industry products, which include . . . gemstones and their laboratory-created and imitation substitutes; natural and cultured pearls and their imitations. . . .”³⁹² Section 23.0 thus implied that “gemstones” and “pearls” are separate product categories.

³⁸⁹ JVC comment 82 at 55.

³⁹⁰ 16 CFR 23.21.

³⁹¹ 16 CFR 23.22.

³⁹² 16 CFR 23.0.

2. Proposed Revisions

In its 2016 Notice, the Commission proposed guidance specifically to address pearl treatments.³⁹³ The proposed Section 23.23 advised marketers to disclose that a pearl or cultured pearl had been treated if the treatment is not permanent, creates special care requirements, or has significant effect on the product's value.³⁹⁴ Given the disagreements among commenters regarding whether certain treatments meet one of the three conditions, the Commission declined to propose amendments specifically identifying which treatments should be disclosed pursuant to this framework.

3. Comments

Commenters addressing this issue generally supported the Commission's proposed guidance, but many sought additions.³⁹⁵ Specifically, as discussed below, four of the five commenters recommended amendments (i) requiring sellers to disclose special care requirements; and (ii) advising affirmative disclosure when a pearl product has been dyed.

Responding to questions in the Commission's 2016 Notice, JVC supported the new guidance.³⁹⁶ JVC also agreed that the guidance recommending that sellers identify the special care requirements is necessary to prevent deception, but urged the Commission to make this disclosure "mandatory." Specifically, JVC asked the Commission to amend this section to state

³⁹³ 81 FR at 1351.

³⁹⁴ 81 FR at 1358 (proposed Section 23.23). The new guidance largely mirrors existing guidance regarding treatments to gemstones. As with the gemstone guidance, the Commission also proposed a Note to the new Section 23.23 advising that the recommended disclosures apply to sellers at every level of trade and may be made at the point of sale prior to sale, except where a product can be purchased without personally viewing the product, in which case the Note advises that sellers make the disclosures in the solicitation for, or description of, the product.

³⁹⁵ The Thai Industrial Standards Institute supported the new guidance without changes. Thai Industrial Standards Institute comment 43 ¶5. JVC, JTV, Richline Group, and Signet recommended several changes. JVC comment 82 at 30; JTV comment 80 at 2 (concurring with JVC); Richline comment 83 at 1 (same); Signet comment 84 at 1 (same).

³⁹⁶ Additionally, JVC agreed that it is material to consumers to know about a treatment that significantly affects a product's value, even when it is permanent and does not create special care requirements. JVC comment 82 at 56.

it is unfair or deceptive to fail to identify a treated pearl product's special care requirements.³⁹⁷

JVC explained that, without such a requirement, consumers may not be informed about the articles they purchase and could risk damaging them. JVC further asserted that, although the internet has made much of this information readily available, a marketer cannot rely on every consumer's ability to access such information. JVC contended that consumers should not bear the burden of acquiring this information, and that sellers should therefore disclose any special care requirements at, or before, the point of purchase.³⁹⁸

In addition, JVC and other commenters recommended the Commission add a note to Section 23.23 stating that sellers must affirmatively disclose if a pearl product has been dyed. They contended that, without such a note, marketers may not know which of the section's three provisions³⁹⁹ "triggers" the disclosure.⁴⁰⁰ JVC noted that the 2012 Harris study indicated most consumers (92 percent) think it is important to be told that a dyeing procedure gives brightly colored pearls their color, even when the treatment is permanent and does not require special care.⁴⁰¹ JVC also stated that when consumers purchase dyed pearls, they often do not know that dyeing, rather than "an organic process" within the pearls during growth, created the color.⁴⁰² According to JVC, several jewelry organizations already encourage or require sellers to disclose pearl dyeing, to educate consumers and prevent deception.⁴⁰³

³⁹⁷ *Id.* at 56; JTV comment 80 at 2 (concurring with JVC); Richline comment 83 at 1 (same); Signet Jewelers comment 84 at 1 (same).

³⁹⁸ JVC comment 82 at 56.

³⁹⁹ *I.e.*, disclose if a treatment is not permanent, creates special care requirements, or has significant effect on the product's value.

⁴⁰⁰ JVC comment 82 at 31; JTV comment 80 at 2 (concurring with JVC); Richline comment 83 at 1 (same); Signet Jewelers comment 84 at 1 (same).

⁴⁰¹ JVC comment 82 at 30.

⁴⁰² *Id.*

⁴⁰³ *Id.*

4. Analysis and Final Guidance

Based on the record, the Commission declines to amend Section 23.23 and issues this guidance as proposed for the following reasons.

First, the Commission does not make disclosing special care requirements “mandatory,” as some commenters suggested, because there is no evidence that, having already disclosed that a pearl has been treated and has special care requirements, a seller’s failure also to disclose what those requirements are would be deceptive.

The Guides advise marketers to make disclosures when doing so is necessary to prevent deception, but not if the disclosure would merely be helpful. Disclosing that a pearl product has been treated and has special care requirements is necessary. In contrast, additional disclosure of what the special care requirements entail would be helpful, but not necessary to prevent deception. The Guides therefore suggest that sellers disclose the special care requirements, but there is no basis for the Commission to make such disclosure “mandatory.”

The Commission previously addressed a similar issue when developing parallel guidance for gemstone treatments in 1996. At the time, it considered whether to advise sellers to disclose special care requirements in writing.⁴⁰⁴ The Commission determined that disclosing that a product has been treated and has special care requirements would likely be enough to prompt a consumer acting reasonably under the circumstances to inquire about the process and learn what the requirements are; thus, advising marketers to give an additional written disclosure would be unnecessary.⁴⁰⁵ Changes in the market have since made it even more likely that reasonable consumers would learn of a product’s care requirements. As JVC acknowledged, the internet has

⁴⁰⁴ Commenters stated the Guides should not require written disclosure, and several claimed it would impose a costly burden on retailers. 61 FR 27178, 27207-08 (May 30, 1996).

⁴⁰⁵ 61 FR 27178, 27207-08 (May 30, 1996).

made much of the pertinent information accessible to consumers, and consumers lacking internet access or the ability to research can obtain this information by asking the seller.⁴⁰⁶ The extent to which the information is readily available reduces any potential harm to consumers.

Second, the Commission declines to add a note advising marketers to disclose pearl dyeing because there is insufficient evidence that failing to disclose would be deceptive. The record is inconclusive regarding whether this practice falls within one of the three conditions for which the Guides advise disclosure of treatments. In response to the 2012 Notice, JVC stated that dyeing is permanent, does not create special care requirements, and does not affect value. Other commenters gave different or unspecified reasons why they thought pearl dyeing should be disclosed.⁴⁰⁷ Moreover, to the extent information about a dyeing treatment is material, the Guides already address it. Specifically, Section 23.22 advises marketers not to misrepresent “the manner in which cultured pearls are produced, . . . the value and quality of cultured pearls as compared with the value and quality of pearls and imitation pearls, or any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls.”⁴⁰⁸

O. Deception Generally and Misleading Illustrations

1. Previous Guides

Section 23.1 (“Deception (general)”) cautioned marketers against misrepresenting “the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, price, value, preparation, production, manufacture,

⁴⁰⁶ JVC comment 82 at 56.

⁴⁰⁷ JVC stated that although pearl dyeing is “prolific,” it is not a “routine practice that is required to bring the product to market.” 2016 Statement at 123-24. The 2012 Harris study indicated that many respondents were unfamiliar with pearl dyeing practices, and that most respondents thought it would be “important” to be informed if a pearl product had been dyed. However, these findings do not demonstrate that a marketer’s failure to disclose pearl dyeing would always be deceptive. *Id.* at 124.

⁴⁰⁸ Section 23.22.

distribution, or any other material aspect of an industry product.”⁴⁰⁹ Section 23.0 (“Scope and application”) explained that the Guides apply to claims and representations (including “through words, symbols, emblems, logos, illustrations, depictions, product brand names, or through any other means”) in advertising, promotional materials, and all other forms of marketing.⁴¹⁰

Separately, Section 23.2 reiterated this guidance, advising marketers not to “use, as part of any advertisement, packaging material, label, or other sales promotion matter, any visual representation, picture, televised or computer image, illustration, diagram, or other depiction which, either alone or in conjunction with any accompanying words or phrases” misrepresented any material aspect of a product.⁴¹¹ The Note to this section advised that an illustration or depiction of a diamond or other gemstone that portrayed the item as larger than its actual size could mislead consumers unless a disclosure was made about its true size.⁴¹²

2. Proposed Revisions

To streamline the Guides, the Commission proposed eliminating Section 23.2 as superfluous, and transferring its note about illustrations of diamond and gemstone size to Section 23.1’s general deception provision.⁴¹³ Section 23.2 gave examples of the types of misrepresentations that the guidance in Sections 23.1 and 23.0(c) addressed.

3. Comment

One commenter questioned the deletion of Section 23.2, citing the importance of its marketing examples. She recommended the Commission incorporate these examples into the

⁴⁰⁹ 16 CFR 23.1.

⁴¹⁰ 16 CFR 23.0(c).

⁴¹¹ 16 CFR 23.2.

⁴¹² 16 CFR 23.2, Note.

⁴¹³ See 81 FR at 1352 (proposed Note 3 to Section 23.1).

general deception provision (23.1), to improve its “vaguer language” and strengthen the guidance in Section 23.0(c), which addresses the Guides’ scope and application.⁴¹⁴

4. Analysis and Final Guidance

The final Guides eliminate the previous Section 23.2 (Misleading illustrations) and transfers its note about illustrations of diamond and gemstone size to the general deception provision (23.1). Section 23.1 cautions marketers against misrepresenting “the type, kind, grade, quality, quantity . . . or any other material aspect of an industry product.”⁴¹⁵ Section 23.0(c) explains that this guidance applies to claims and representations (including “through words, symbols, emblems, logos, illustrations, depictions, product brand names, or through any other means”) in all forms of marketing.⁴¹⁶ Therefore, it is unnecessary to repeat these marketing examples in Section 23.1.

P. Use of the Term “Handmade”

1. Previous Guides

Section 23.3 of the previous Guides addressed misuse of the terms “handmade,” “hand-polished,” and others. Section 23.3(a) advised marketers not to represent a product as “handmade or hand-wrought unless the entire shaping and forming of such product from raw materials and its finishing and decoration were accomplished by hand labor and manually-controlled methods which permitted the maker to control and vary the construction, shape, design, and finish of each part of each individual product.”⁴¹⁷ A note to Section 23.3(a) explained that “raw materials” include “bulk sheet, strip, wire, and similar items that have not

⁴¹⁴ Poteat comment 86 at 3.

⁴¹⁵ Section 23.1

⁴¹⁶ 16 CFR 23.0(c).

⁴¹⁷ 16 C.F.R. 23.3(a).

been cut, shaped, or formed into jewelry parts, semi-finished parts, or blanks.”⁴¹⁸ Section 23.3(b) further advised marketers not to claim that a product was “hand-forged,” “hand-engraved,” “hand-finished,” “hand-polished,” or “has been otherwise been hand-processed” unless the operation described was accomplished by hand labor and manually-controlled methods.⁴¹⁹

2. Proposed Revision

Based on a comment, the Commission proposed revising the Note to 23.3(a) (renumbered as 23.2(a)) to include precious metal clays, ingots, and casting grain as “raw materials.” The Commission declined to propose new guidance advising that the term “handmade” includes products cast from hand-carved or hand-modeled wax or cast from handmade molds because it lacked a basis to conclude that such guidance would reflect consumers’ understanding of “handmade” products. The commenter requesting this amendment did not demonstrate how cast jewelry products meet the Guides’ “handmade” criteria. The Commission stated, however, that for products that meet the criteria, marketers may non-deceptively use “handmade” to describe them.⁴²⁰

3. Comments

Only one commenter addressed the Commission’s proposal to add precious metal clays, ingots, and casting grain to the “raw materials” included in the Note to 23.3(a). This commenter supported the revision, stating it was unaware of any evidence that the change would risk consumer deception.⁴²¹

⁴¹⁸ 16 C.F.R. 23.3(a), Note.

⁴¹⁹ 16 C.F.R. 23.3(b).

⁴²⁰ 2016 Statement at 127-29

⁴²¹ JVC comment 82 at 57.

Several commenters addressed the Commission’s decision not to propose guidance specifically advising that marketers may non-deceptively describe hand-cast jewelry as “handmade.” They explained that hand-cast jewelry is usually made from molds created using hand-carved or hand-crafted models.⁴²² Individual pieces are then cast by hand-pouring molten metal into the mold, and finished by hand-sanding and hand-polishing.⁴²³

Stating that there is confusion in the industry about when marketers may non-deceptively describe jewelry as handmade or hand-wrought, JVC urged the Commission to add the following language to Section 23.3(a): “An industry product that has been hand-cast from hand-carved or hand-modeled wax or hand-cast from handmade molds may be described as ‘handmade’ or ‘hand-wrought.’”⁴²⁴ In support of its recommendation, JVC submitted the results of a 2016 Survey Monkey survey showing 76 percent of respondents agreed that a “bracelet with all parts hand crafted and assembled” is “handmade,” and 66 percent agreed that a “ring that was cast in a hand-carved wax mold and then hand finished” is “handmade.”⁴²⁵

A number of commenters further recommended that, in advising when marketers may non-deceptively describe cast jewelry as “handmade,” the Guides should distinguish items created as a single piece or part of a “limited series”⁴²⁶ from “large-scale” and “mass” or “industrially” produced jewelry.⁴²⁷ However, none provided consumer perception evidence

⁴²² JVC comment 82, attach 10 at 2; Hough comment 67; Rock Your World comment 52; Zahnle comment 56; Elements Jewelry comment 47; Alaska Gold comment 49; Lewis comment 50; Hill comment 45.

⁴²³ JVC comment 82, attach. 10 at 3; Cyr comment 55; Zahnle comment 56; Alaska Gold comment 49.

⁴²⁴ JVC comment 82 at 31.

⁴²⁵ *Id.*, attach. 11 at 2. The survey also showed that less than half of the respondents believed jewelry containing machine-made components could be described as handmade. *Id.*

⁴²⁶ Loder comment 53.

⁴²⁷ Allison White comment 52; Loder comment 53; Russillo comment 57; Wheeler Design comment 46; McIntyre comment 48; Mary Ann White comment 51.

showing it would be deceptive to use “handmade” to describe jewelry produced in large numbers using casting methods that meet the criteria in Section 23.3(a). They also did not provide thresholds that would demarcate a “limited series” from a “large-scale” or “mass” production.

4. Analysis and Final Guidance

Based on the record, the Commission revises the Note to 23.2(a) to add precious metal clays, ingots, and casting grain to its list of raw materials.

The Commission declines to add language addressing hand-cast jewelry to Section 23.2(a) because it lacks evidence that such guidance would prevent deception. While the JVC-commissioned survey shows that a majority of respondents agreed a “ring that was cast in a hand-carved wax mold and then hand finished” is “handmade,” it also suggests a significant percentage (almost 34 percent) did not agree. It is unclear from the survey whether those consumers did not think such an item meets their expectations for “handmade” jewelry, or they simply did not know. The consumer perception evidence therefore does not support adopting JVC’s proposed language. To the extent a hand-cast product meets the criteria in Section 23.2 (formerly 23.3), however, marketers may non-deceptively describe it as handmade.

Additionally, the Commission lacks a basis for providing guidance that specifically addresses commenters’ concerns about “large-scale” and “mass” or “industrially” produced jewelry. Specifically, the record contains insufficient evidence for the Commission to provide guidance regarding production level thresholds where consumers believe that jewelry ceases to be considered “handmade.” However, marketers remain responsible for ensuring that their claims do not deceive reasonable consumers. Given commenters’ concerns, the Commission urges marketers to exercise caution when making “handmade” claims about mass-produced jewelry.

Q. “Blue White” Diamonds

1. Previous Guides

Section 23.14 advised against using “blue white” terms to describe “any diamond that under normal, north daylight or its equivalent shows any color other than blue or bluish.”⁴²⁸ The Commission did not propose changes to this guidance.

2. Comment

One commenter sought to change the lighting condition for assessing whether a diamond may non-deceptively be described as “blue white.” Cowing contended the existing guidance is deficient because it references “normal, north daylight,” which contains a strong ultraviolet (UV) component that masks a diamond’s yellowish or brownish color. Specifically, he explained “blue-white” diamonds sometimes appear bluish in daylight due to the stimulation of blue fluorescence by the light’s UV component. Some “blue fluorescent” diamonds retain a “high white” appearance when viewed in artificial light lacking a UV component. Others reveal a yellowish or brownish color that would otherwise be “masked” by the blue fluorescence. He contended the Commission should prohibit sellers from describing such diamonds as “blue white” by revising the guidance to advise the term may only describe diamonds that appear blue or bluish when viewed “under artificial daylight balanced illumination, absent fluorescence-stimulating UV.”⁴²⁹

3. Analysis

The Commission declines to make the requested change because it lacks a basis to revise the existing guidance. The Commission has no evidence of consumer expectation regarding “blue white” diamonds, and the record does not demonstrate that consumer harm results from the

⁴²⁸ 16 CFR 23.14 (now 23.15).

⁴²⁹ Cowing comment 87.

identified issue.

R. Diamond Definition

1. Previous Guides

Section 23.11 addressed the definition and misuse of the word “diamond.” Section 23.11(a) stated: “A diamond is a natural mineral consisting essentially of pure carbon crystallized in the isometric system. It is found in many colors. Its hardness is 10; its specific gravity is approximately 3.52; and it has a refractive index of 2.42.”⁴³⁰ The Commission did not propose changes to this section.

2. Comment

Diamond Foundry asked that the Commission remove “natural” from the diamond definition. It contended, “[t]he fact that diamonds exist in the soil of Earth” is “not a necessary attribute.”⁴³¹

3. Analysis

The Commission agrees. The final Guides therefore eliminate the word “natural” from the diamond definition. When the Commission first used this definition in 1956,⁴³² there was only one type of diamond product on the market – natural stones mined from the earth. Since then, technological advances have made it possible to create diamonds in a laboratory. These stones have essentially the same optical, physical, and chemical properties as mined diamonds. Thus, they are diamonds. The distinctions between these lab-created diamonds and mined stones are addressed elsewhere in the Guides.⁴³³ Because it is no longer correct to define diamonds as

⁴³⁰ 16 CFR 23.11(a) (now 23.12(a)).

⁴³¹ Diamond Foundry comment 74 at 4.

⁴³² See FTC Trade Practice Rules for the Diamond Industry (Feb 10, 1956).

⁴³³ See Sections 23.12(c) and 23.25.

“natural,” the final Guides do not include “natural” in the diamond definition.

S. Other Diamond Issues

1. Comment

In addition to advocating for guidance addressing “cultured diamond” claims and a revision to the diamond definition,⁴³⁴ Diamond Foundry suggested the Commission make two other changes. First, it requested the Commission require marketers to label “industrially mined” diamonds because it would be competitively unfair to impose “marketing restrictions” on one diamond source (*i.e.*, non-mined products), but not the other.⁴³⁵ Second, it asked the Commission to address use of the words “ethical” and “conflict free” to describe diamonds and other gemstones, asserting that marketers use these terms in ways that confuse and mislead consumers. It therefore recommended prohibiting marketers from using “ethical” or “conflict free” to describe diamonds originating from a place that “violates American legal standards of human rights, corruption (as defined by the Foreign Corrupt Practice Act), labor laws, and fair trade.”⁴³⁶ Moreover, it contended marketers should not use “ethical” to describe a diamond with a carbon footprint.⁴³⁷

2. Analysis

The Commission does not make the requested changes. There is no evidence demonstrating how consumers interpret the terms “industrially mined,” “ethical,” or “conflict free” diamonds, and the record does not establish that new guidance addressing these terms is necessary to prevent consumer harm. The Commission therefore lacks a basis for issuing such

⁴³⁴ Discussed *supra* at p. 81-83, 113.

⁴³⁵ Diamond Foundry comment 74 at 5.

⁴³⁶ *Id.*

⁴³⁷ *Id.*

guidance. Sellers must nonetheless comply with Section 5, and are therefore responsible for ensuring they do not make deceptive claims. For example, they must be able to substantiate consumers' reasonable understanding of claims about "ethical" or "conflict free" products if they use those terms.

T. Appraisals and Diamond Grading

1. Previous Guides

Section 23.1 stated it is unfair or deceptive to misrepresent the "type, kind, grade, quality, . . . size, weight, cut, color, character, . . . substance, . . . value, . . . or any other material aspect" of a product.⁴³⁸ It further advised that if a seller made "any representation . . . as to the grade assigned the product, the identity of the grading system used should be disclosed."⁴³⁹ The Commission did not propose changes relating to this guidance.

2. Comments

One commenter asked the Commission to amend the Guides to incorporate the Uniform Standards of Professional Appraisal Practice (USPAP) definitions of "appraiser," "appraisal," and "value."⁴⁴⁰ He claimed many appraisals "are actually sales statements containing unsupported value claims and undisclosed sellers' interests," which has adversely affected jewelry purchasing and insurance decisions. Therefore, he stated the Guides should reserve the term "appraisal" for appraisals that follow USPAP standards for ethics, valuation methodology, and reporting.⁴⁴¹

⁴³⁸ 16 CFR 23.1.

⁴³⁹ 16 CFR 23.1, Note 1.

⁴⁴⁰ Scott Gordon comment 62 at 3.

⁴⁴¹ *Id.*

Separately, four commenters sought changes to address fraudulent diamond grading. They explained that most diamond grading laboratories use GIA (Gemological Institute of America) terminology. Although diamond grading is to some degree subjective, grading performed in accordance with GIA standards has a “reasonable tolerance range.” Different labs employing these standards might differ in their results, but only by one color or clarity.⁴⁴² According to these commenters, some sellers issue grading reports using GIA terminology, but do not apply GIA grading standards and therefore “overgrade” diamonds.⁴⁴³

These commenters asked the Commission to amend the Guides to state “it is an unfair business practice to communicate the grade of a diamond using GIA terminology while applying non-GIA standards that systematically overgrade” the diamond’s quality (*i.e.*, by representing that the diamond has a color or clarity that deviates by more than one below the color or clarity determined by GIA).⁴⁴⁴ They also asked that the Guides require a seller to issue a full refund for any diamond it described using GIA terminology that is found, when graded by GIA, to be more than one color or clarity below the grade the seller represented.⁴⁴⁵

3. Analysis

The Commission declines to issue the requested new guidance. The Guides already advise against misrepresenting any material aspect of a product, such as its “type, kind, grade, quality, . . . size, weight, cut, color, character, . . . substance, . . . [and] value.” They also advise

⁴⁴² Rapaport comment 33.

⁴⁴³ In one commenter’s view, this “gross misrepresentation of diamond quality by unscrupulous diamond laboratories, dealers and retailers has become rampant, . . . is destroying a level playing field, and constitutes unfair competition.” Rapaport comment 33.

⁴⁴⁴ Rapaport comment 33; Burland Jewelry Center comment 23(supporting Rapaport comment); Texas Retailers Association comment 25; Diamond Manufacturers and Importers Association of America (DMIA) comment 68.

⁴⁴⁵ Rapaport comment 33; Burland Jewelry Center comment 23; Texas Retailers Association comment 25. In the alternative, Rapaport requested that the Commission amend the Guides to state that results generated by the GIA Gem Trade Laboratory shall be the standard for diamond grading that uses GIA terminology.

sellers to disclose the identity of the grading system used when making any representation about a product’s grade.⁴⁴⁶ The record does not show that additional guidance is necessary to prevent deception. There is no basis to conclude, for instance, that the Commission’s endorsement of GIA grading standards would prevent unscrupulous dealers from misrepresenting a diamond’s clarity or color.⁴⁴⁷ Moreover, there is no evidence that only the GIA standards consistently meet consumer expectations.⁴⁴⁸ Finally, specifying the circumstances in which sellers would be “required” to issue full refunds for “overgraded” diamonds is beyond the scope of the Jewelry Guides. The purpose of the Commission’s guidance is to help sellers avoid making claims that are deceptive or unfair under Section 5 of the FTC Act; the Guides cannot confer rights or remedies independent of Section 5.⁴⁴⁹

U. Exemptions Recognized in the Assay for Gold, Silver, and Platinum

1. Previous Guides

The Appendix to the previous Guides listed items that the industry recognized as exempt from assays because their presence in a product did not deceive consumers about the product’s precious metal content.⁴⁵⁰ These items are functional components of precious metal products that typically need to be made of sturdier metals in order to function properly. Such items include pin stems (used to fasten brooches) and locket bezels (separable inner metal rings that hold pictures in place inside the locket). The previous Guides advised that exempt items were “not to

⁴⁴⁶ Section 23.1.

⁴⁴⁷ Commenters stated that professional, reputable industry members already apply GIA grading standards when using GIA terminology. DMIA comment 68.

⁴⁴⁸ To the extent diamond grading reports prepared in accordance with GIA standards are always more reliable and trustworthy, it would be more appropriate for the market – not the Commission – to promote their continued use.

⁴⁴⁹ See Section 23.0(d).

⁴⁵⁰ In this context, an assay is a test that determines the quantity of precious metal in a product compared to the entire product’s weight.

be considered in any assay for quality” of certain precious metals products, and listed separately in the Appendix the recognized exemptions for five types of products: (i) gold alloy; (ii) mechanical surface applications of gold; (iii) silver; (iv) silver in combination with gold; and (v) platinum.⁴⁵¹

2. Comment

Though the Commission did not propose any revisions, in the 2016 Notice it asked whether it should retain the Appendix, and whether any changes are needed to address consumer deception. In response, JVC asked that the Commission include a component known as a “bracelet and necklace snap tongue”⁴⁵² among the exemptions listed for each type of precious metal product.⁴⁵³ The sections addressing the exemptions for mechanically-coated gold products, silver products, and platinum products⁴⁵⁴ list bracelet and necklace snap tongues among other items that are exempt from assay. However, the sections addressing products made of gold alloy, and those made of silver in combination with gold,⁴⁵⁵ do not. No other commenters addressed this issue.

3. Analysis and Final Guidance

The Commission adds bracelet and necklace snap tongues to the exempted items listed in the Appendix for gold alloy products, and for products made of silver in combination with gold. When first issuing the Appendix, the Commission explained that consumers likely do not expect exempted components to be made of a product’s advertised precious metal because the industry practice for years was to use base metals to manufacture such components. Consequently, the

⁴⁵¹ 16 CFR 23, Appendix.

⁴⁵² This component constitutes the clasp that fastens a bracelet or necklace.

⁴⁵³ JVC comment 82 at 40.

⁴⁵⁴ Sections (b), (c), and (e) of the Appendix.

⁴⁵⁵ Sections (a) and (d) of the Appendix.

Commission found that a marketer's claim that a bracelet was silver, for example, would not be deceptive even though the bracelet's clasp was made of a sturdier, more functional base metal.⁴⁵⁶

The basis for the Commission's decision to include bracelet and necklace snap tongues among the exemptions for mechanically-coated gold products, silver products, and platinum products applies equally to products made of gold alloy, and those made of silver in combination with gold. Therefore, the Appendix to the final Guides lists bracelet and necklace snap tongues in each section addressing assay exemptions.⁴⁵⁷

IV. REVISED JEWELRY GUIDES

- 23.0 Scope and application.
- 23.1 Deception (general).
- 23.2 Misuse of the terms "handmade," "hand-polished," etc.
- 23.3 Misrepresentation as to gold content.
- 23.4 Misuse of the word "vermeil."
- 23.5 Misrepresentation as to silver content.
- 23.6 Misuse of the words "platinum," "iridium," "palladium," "ruthenium," "rhodium," and "osmium."
- 23.7 Disclosure of surface-layer application of rhodium.
- 23.8 Misrepresentation as to products containing more than one precious metal.
- 23.9 Misrepresentation as to content of pewter.
- 23.10 Additional guidance for the use of quality marks.

⁴⁵⁶ 61 FR 27178, 27194 (May 30, 1996).

⁴⁵⁷ Furthermore, the Commission removes an outdated provision in paragraph (e) of the Appendix regarding platinum. The provision listed additional exemptions for items marked in accordance with guidance that once addressed products containing less than 500 PPT platinum. Because the Commission eliminated this guidance in a prior proceeding, the corresponding list of assay exemptions is no longer necessary. *See* 62 FR 16669, 16674 (Apr. 8, 1997). The final Appendix therefore retains the exemptions for platinum products, but does not include additional exemptions for products with less than 500 PPT.

- 23.11 Misuse of “corrosion proof,” “non-corrosive,” “corrosion resistant,” “rust proof,” “rust resistant,” etc.
- 23.12 Definition and misuse of the word “diamond.”
- 23.13 Misuse of the words “flawless,” “perfect,” etc.
- 23.14 Disclosure of treatments to diamonds.
- 23.15 Misuse of the term “blue white.”
- 23.16 Misuse of the term “properly cut,” etc.
- 23.17 Misuse of the words “brilliant” and “full cut.”
- 23.18 Misrepresentation of weight and “total weight.”
- 23.19 Definitions of various pearls.
- 23.20 Misuse of the word “pearl.”
- 23.21 Misuse of terms such as “cultured pearl,” “seed pearl,” “Oriental pearl,” “natura,” “kultured,” “real,” “gem,” “synthetic,” and regional designations.
- 23.22 Misrepresentation as to cultured pearls.
- 23.23 Disclosure of treatments to pearls and cultured pearls.
- 23.24 Disclosure of treatments to gemstones.
- 23.25 Misuse of the words “ruby,” “sapphire,” “emerald,” “topaz,” “stone,” “birthstone,” “gemstone,” etc.
- 23.26 Misrepresentation as to varietal name.
- 23.27 Misuse of the words “real,” “genuine,” “natural,” “precious,” etc.
- 23.28 Misuse of the words “flawless,” “perfect,” etc.

APPENDIX TO PART 23—EXEMPTIONS RECOGNIZED IN THE ASSAY FOR QUALITY OF GOLD ALLOY, GOLD FILLED, GOLD OVERLAY, ROLLED GOLD PLATE, SILVER, AND PLATINUM INDUSTRY PRODUCTS

§ 23.0 Scope and application.

- (a) These guides apply to jewelry industry products, which include, but are not limited to, the following: gemstones and their laboratory-created and imitation substitutes;

natural and cultured pearls and their imitations; and metallic watch bands not permanently attached to watches. These guides also apply to articles, including optical frames, pens and pencils, flatware, and hollowware, fabricated from precious metals (gold, silver, and platinum group metals), precious metal alloys, and their imitations. These guides also apply to all articles made from pewter. For the purposes of these guides, all articles covered by these guides are defined as “industry products.”

(b) These guides apply to persons, partnerships, or corporations, at every level of the trade (including but not limited to manufacturers, suppliers, and retailers) engaged in the business of offering for sale, selling, or distributing industry products.

NOTE TO PARAGRAPH (b): To prevent consumer deception, persons, partnerships, or corporations in the business of appraising, identifying, or grading industry products should utilize the terminology and standards set forth in the guides.

(c) These guides apply to claims and representations about industry products included in labeling, advertising, promotional materials, and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, illustrations, depictions, product brand names, or through any other means.

(d) These guides set forth the Federal Trade Commission’s current thinking about claims for jewelry and articles made from precious metals and pewter. The guides help marketers and other industry members avoid making claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. 45. They do not confer any rights on any person and do not operate to bind the FTC or the public. The Commission, however, may take action under the FTC Act if a marketer or other industry member makes a claim inconsistent with the guides. In

any such enforcement action, the Commission must prove that the challenged act or practice is unfair or deceptive in violation of Section 5 of the FTC Act.

(e) The guides consist of general principles, specific guidance on the use of particular claims for industry products, and examples. Claims may raise issues that are addressed by more than one example and in more than one section of the guides. The examples provide the Commission's views on how reasonable consumers likely interpret certain claims. Industry members may use an alternative approach if the approach satisfies the requirements of Section 5 of the FTC Act. Whether a particular claim is deceptive will depend on the net impression of the advertisement, label, or other promotional material at issue. In addition, although many examples present specific claims and options for qualifying claims, the examples do not illustrate all permissible claims or qualifications under Section 5 of the FTC Act.

§ 23.1 Deception (general).

It is unfair or deceptive to misrepresent the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, price, value, preparation, production, manufacture, distribution, or any other material aspect of an industry product.

NOTE 1 TO § 23.1: If, in the sale or offering for sale of an industry product, any representation is made as to the grade assigned the product, the identity of the grading system used should be disclosed.

NOTE 2 TO § 23.1: To prevent deception, any qualifications or disclosures, such as those described in the guides, should be sufficiently clear and prominent. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims

that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

NOTE 3 TO § 23.1: An illustration or depiction of a diamond or other gemstone that portrays it in greater than its actual size may mislead consumers, unless a disclosure is made about the item's true size.

§ 23.2 Misuse of the terms “handmade,” “hand-polished,” etc.

(a) It is unfair or deceptive to represent, directly or by implication, that any industry product is handmade or hand-wrought unless the entire shaping and forming of such product from raw materials and its finishing and decoration were accomplished by hand labor and manually-controlled methods which permit the maker to control and vary the construction, shape, design, and finish of each part of each individual product.

NOTE TO PARAGRAPH (a): As used herein, “raw materials” include bulk sheet, strip, wire, precious metal clays, ingots, casting grain, and similar items that have not been cut, shaped, or formed into jewelry parts, semi-finished parts, or blanks.

(b) It is unfair or deceptive to represent, directly or by implication, that any industry product is hand-forged, hand-engraved, hand-finished, or hand-polished, or has been otherwise hand-processed, unless the operation described was accomplished by hand labor and manually-controlled methods which permit the maker to control and vary the type, amount, and effect of such operation on each part of each individual product.

§ 23.3 Misrepresentation as to gold content.

(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,

or the karat fineness, thickness, weight ratio, or manner of application of any gold or gold alloy plating, covering, or coating on any surface of an industry product or part thereof.

(b) The following are examples of markings or descriptions that may be misleading:⁴⁵⁸

(1) Use of the word “Gold” or any abbreviation, without qualification, to describe all or part of an industry product, including the surface layer of a coated 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 (including the surface layer of a coated product) composed throughout of an alloy of gold (*i.e.*, gold that is less than 24 karats), 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.

(3) Use of the word “Gold” or any abbreviation to describe all or part of an industry product that is not composed throughout of gold or a gold alloy, but is surface-plated or coated with gold alloy, unless the word “Gold” or its abbreviation is adequately qualified to indicate that the product or part is only surface-plated.

(4) Marking, describing, or otherwise representing all or part of an industry product as being plated or coated with gold or gold alloy unless all significant surfaces of the product or part contain a plating or coating of gold or gold alloy that is of reasonable durability.⁴⁵⁹

⁴⁵⁸ See paragraph (c) of this section for examples of acceptable markings and descriptions.

⁴⁵⁹ For the purpose of this section, “reasonable durability” means that all areas of the plating are sufficiently thick to assure coverage that reasonable consumers would expect from the surface application. Since industry products include items having surfaces and parts of surfaces that are subject to different degrees of wear, the thickness of the surface application for all items or for different areas of the surface of individual items does not necessarily have to be uniform.

(5) Use of the term “Gold Plate,” “Gold Plated,” or any abbreviation to describe all or part of an industry product unless such product or part contains a surface-plating of gold alloy, applied by any process, which is of such thickness and extent of surface coverage that reasonable durability⁴⁶⁰ is assured, and unless the term is immediately preceded by a correct designation of the karat fineness of the alloy that is of at least equal conspicuousness as the term used.

(6) Use of the terms “Gold Filled,” “Rolled Gold Plate,” “Rolled Gold Plated,” “Gold Overlay,” or any abbreviation to describe all or part of an industry product unless such product or part contains a surface-plating of gold alloy applied by a mechanical process and of such thickness and extent of surface coverage that reasonable durability⁴⁶¹ is assured, and unless the term is immediately preceded by a correct designation of the karat fineness of the alloy that is of at least equal conspicuousness as the term used.

(7) Use of the terms “Gold Plate,” “Gold Plated,” “Gold Filled,” “Rolled Gold Plate,” “Rolled Gold Plated,” “Gold Overlay,” or any abbreviation to describe a product in which the layer of gold plating has been covered with a base metal (such as nickel), which is covered with a thin wash of gold, unless there is a disclosure that the primary gold coating is covered with a base metal, which is gold washed.

(8) Use of the term “Gold Electroplate,” “Gold Electroplated,” or any abbreviation to describe all or part of an industry product unless such product or part is electroplated with gold or a gold alloy and such electroplating is of such karat fineness, thickness, and extent of surface coverage that reasonable durability⁴⁶² is assured, and unless the term is immediately

⁴⁶⁰ See footnote 2.

⁴⁶¹ See footnote 2.

⁴⁶² See footnote 2.

preceded by a correct designation of the karat fineness of the alloy that is of at least equal conspicuousness as the term used.

(9) Use of any name, terminology, or other term to misrepresent that an industry product is equal or superior to, or different than, a known and established type of industry product with reference to its gold content or method of manufacture.

(c) The following are examples of markings and descriptions that are consistent with the principles described above:

(1) An industry product or part thereof, composed throughout of an alloy of gold 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, and such karat designation is of equal conspicuousness as the word “Gold” (for example, “14 Karat Gold,” “14 K. Gold,” “14 Kt. Gold,” “9 Karat Gold,” or “9 Kt. Gold”). Such product may also be marked and described by a designation of the karat fineness of the gold alloy unaccompanied by the word “Gold” (for example, “14 Karat,” “14Kt.,” “14 K.,” or “9 K.”).

NOTE TO PARAGRAPH (c)(1): Use of the term “Gold” or any abbreviation to describe all or part of a product that is composed throughout of gold alloy, but contains a hollow center or interior, may mislead consumers, unless the fact that the product contains a hollow center is disclosed in immediate proximity to the term “Gold” or its abbreviation (for example, “14 Karat Gold-Hollow Center,” or “14 K. Gold Tubing,” when of a gold alloy tubing of such karat fineness). Such products should not be marked or described as “solid” or as being solidly of gold or of a gold alloy. For example, when the composition of such a product is 14 karat gold alloy, it should not be described or marked as either “14 Kt. Solid Gold” or as “Solid 14 Kt. Gold.”

(2) An industry product or part thereof on which there has been affixed on all significant surfaces by soldering, brazing, welding, or other mechanical means a plating of gold alloy of not less than 10 karat fineness and of reasonable durability⁴⁶³ may be marked or described as “Gold Plate,” “Gold Plated,” “Gold Overlay,” “Rolled Gold Plate,” “Rolled Gold Plated,” or an adequate abbreviation, when such plating constitutes at least 1/40th of the weight of the metal in the entire article and when the term is immediately preceded by a designation of the karat fineness of the plating which is of equal conspicuousness as the term used (for example, “14 Kt. Gold Overlay,” or “14K. R.G.P.”). When such plating constitutes at least 1/20th of the weight of the metal in the entire article, the term “Gold Filled” may be used. The terms “Gold Overlay,” “Rolled Gold Plate,” and “Rolled Gold Plated” may be used when the karat fineness designation is immediately preceded by a fraction accurately disclosing the portion of the weight of the metal in the entire article accounted for by the plating, and when such fraction is of equal conspicuousness as the term used (for example, “1/40th 12 Kt. Rolled Gold Plate” or “1/40 12 Kt. R.G.P.”).

(3) An industry product or part thereof on which there has been affixed on all significant surfaces by an electrolytic process an electroplating of gold, or of a gold alloy of not less than 10 karat fineness, which is of reasonable durability⁴⁶⁴ and has a minimum thickness throughout equivalent to 0.175 microns (approximately 7/1,000,000ths of an inch) of fine gold,⁴⁶⁵ may be marked or described as “Gold Plate,” “Gold Plated,” “Gold Electroplate” or “Gold Electroplated,” or so abbreviated, if the term is immediately preceded by a designation of the

⁴⁶³ See footnote 2.

⁴⁶⁴ See footnote 2.

⁴⁶⁵ A product containing 1 micron (otherwise known as 1 μ) of 12 karat gold is equivalent to one-half micron of 24-karat gold.

karat fineness of the plating which is of equal conspicuousness as the term used (*e.g.*, “12 Karat Gold Electroplate” or “12K G.E.P.”). When the electroplating is of the minimum fineness specified above and of a minimum thickness throughout equivalent to two and one half (2½) microns (or approximately 100/1,000,000ths of an inch) of fine gold, the marking or description may be “Heavy Gold Electroplate” or “Heavy Gold Electroplated.” When electroplatings qualify for the term “Gold Electroplate” (or “Gold Electroplated”), or the term “Heavy Gold Electroplate” (or “Heavy Gold Electroplated”), and have been applied by use of a particular kind of electrolytic process, the marking may be accompanied by identification of the process used, as for example, “Gold Electroplated (X Process)” or “Heavy Gold Electroplated (Y Process).”

(d) The provisions of this section relating to markings and descriptions of industry products and parts thereof are subject to the applicable tolerances of the National Stamping Act or any amendment thereof.⁴⁶⁶

NOTE TO PARAGRAPH (d): Exemptions recognized in the assay of karat gold industry products and in the assay of gold filled, gold overlay, and rolled gold plate industry products, and not to be considered in any assay for quality, are listed in the appendix.

§ 23.4 Misuse of the word “vermeil.”

(a) It is unfair or deceptive to represent, directly or by implication, that an industry product is “vermeil” if such mark or description misrepresents the product’s true composition.

⁴⁶⁶ Under the National Stamping Act, articles or parts made of gold or of gold alloy that contain no solder have a permissible tolerance of three parts per thousand. If the part tested contains solder, the permissible tolerance is seven parts per thousand. For full text, see 15 U.S.C. 295, et seq.

(b) An industry product may be described or marked as “vermeil” if it consists of a base of sterling silver coated or plated on all significant surfaces with gold, or gold alloy of not less than 10 karat fineness, that is of reasonable durability⁴⁶⁷ and a minimum thickness throughout equivalent to two and one half (2½) microns (or approximately 100/1,000,000ths of an inch) of fine gold.

NOTE 1 TO § 23.4: It is unfair or deceptive to use the term “vermeil” to describe a product in which the sterling silver has been covered with a base metal (such as nickel) plated with gold unless there is a disclosure that the sterling silver is covered with a base metal that is plated with gold.

NOTE 2 TO § 23.4: Exemptions recognized in the assay of gold filled, gold overlay, and rolled gold plate industry products are listed in the appendix.

§ 23.5 Misrepresentation as to silver content.

(a) It is unfair or deceptive to misrepresent that an industry product contains silver, or to misrepresent an industry product as having a silver content, plating, electroplating, or coating.

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

(1) Use of the unqualified word “silver” to mark, describe, or otherwise represent all or part of an industry product, including the surface layer of a coated product, unless an equally conspicuous, accurate quality fineness designation indicating the pure silver content in parts per thousand immediately precedes the term (*e.g.*, “750 silver”).

(2) Use of the words “solid silver,” “Sterling Silver,” “Sterling,” or the abbreviation “Ster.” to mark, describe, or otherwise represent all or part of an industry product unless it is at least 925/1,000ths pure silver.

⁴⁶⁷ See footnote 2.

(3) Use of the words “coin” or “coin silver” to mark, describe, or otherwise represent all or part of an industry product unless it is at least 900/1,000ths pure silver.

(4) Use of the word “silver” to mark, describe, or otherwise represent all or part of an industry product that is not composed throughout of silver, but has a surface layer or coating of silver, unless the term is adequately qualified to indicate that the product or part is only coated.

(5) Marking, describing, or otherwise representing all or part of an industry product as being plated or coated with silver unless all significant surfaces of the product or part contain a plating or coating of silver that is of reasonable durability.⁴⁶⁸

(c) The provisions of this section relating to markings and descriptions of industry products and parts thereof are subject to the applicable tolerances of the National Stamping Act or any amendment thereof.⁴⁶⁹

NOTE 1 TO § 23.5: The National Stamping Act provides that silver plated articles shall not “be stamped, branded, engraved or imprinted with the word ‘sterling’ or the word ‘coin,’ either alone or in conjunction with other words or marks.” 15 U.S.C. 297(a).

NOTE 2 TO § 23.5: Exemptions recognized in the assay of silver industry products are listed in the appendix.

§ 23.6 Misuse of the words “platinum,” “iridium,” “palladium,” “ruthenium,” “rhodium,” and “osmium.”

(a) It is unfair or deceptive to use the words “platinum,” “iridium,” “palladium,” “ruthenium,” “rhodium,” and “osmium,” or any abbreviation to mark or describe all or part of

⁴⁶⁸ See footnote 2.

⁴⁶⁹ Under the National Stamping Act, sterling silver articles or parts that contain no solder have a permissible tolerance of four parts per thousand. If the part tested contains solder, the permissible tolerance is ten parts per thousand. For full text, see 15 U.S.C. 294, et seq.

an industry product if such marking or description misrepresents the product's true composition. The Platinum Group Metals (PGM) are Platinum, Iridium, Palladium, Ruthenium, Rhodium, and Osmium.

(b) The following are examples of markings or descriptions that may be misleading.⁴⁷⁰

(1) Use of the word "Platinum" or any abbreviation to describe all or part of a product that is not composed throughout of platinum, but has a surface layer or coating of platinum, unless the word "Platinum" or its abbreviation is adequately qualified to indicate that the product or part is only coated.

(2) Marking, describing, or otherwise representing all or part of an industry product as being plated or coated with platinum unless all significant surfaces of the product or part contain a plating or coating of platinum that is of reasonable durability.⁴⁷¹

(3) Use of the word "Platinum" or any abbreviation, without qualification, to describe all or part of an industry product (including the surface layer of a coated product) that is not composed throughout of 950 parts per thousand pure Platinum.

(4) Use of the word "Platinum" or any abbreviation accompanied by a number indicating the parts per thousand of pure Platinum contained in the product without mention of the number of parts per thousand of other PGM contained in the product, to describe all or part of an industry product that is not composed throughout of at least 850 parts per thousand pure platinum, for example, "600Plat."

⁴⁷⁰ See paragraph (c) of this section for examples of acceptable markings and descriptions.

⁴⁷¹ See footnote 2.

(5) Use of the word “Platinum” or any abbreviation thereof, to mark or describe any product that is not composed throughout of at least 500 parts per thousand pure Platinum.

(6) Use of the word “Platinum,” or any abbreviation accompanied by a number or percentage indicating the parts per thousand of pure Platinum contained in the product, to describe all or part of an industry product that contains at least 500 parts per thousand, but less than 850 parts per thousand, pure Platinum, and does not contain at least 950 parts per thousand PGM (for example, “585 Plat.”) without a clear and conspicuous disclosure, immediately following the name or description of such product:

(i) Of the full composition of the product (by name and not abbreviation) and percentage of each metal; and

(ii) That the product may not have the same attributes or properties as traditional platinum products. *Provided, however,* that the marketer need not make disclosure under § 23.6(b)(6)(ii), if the marketer has competent and reliable scientific evidence that such product does not differ materially from any one product containing at least 850 parts per thousand pure Platinum with respect to the following attributes or properties: durability, luster, density, scratch resistance, tarnish resistance, hypoallergenicity, ability to be resized or repaired, retention of precious metal over time, and any other attribute or property material to consumers.

NOTE TO PARAGRAPH (b)(6): When using percentages to qualify platinum representations, marketers should convert the amount in parts per thousand to a percentage that is accurate to the first decimal place (*e.g.*, “58.5% Platinum, 41.5% Cobalt”).

(c) The following are examples of markings and descriptions that are not considered unfair or deceptive:

(1) The following abbreviations for each of the PGM may be used for quality marks on articles: “Plat.” or “Pt.” for Platinum; “Irid.” or “Ir.” for Iridium; “Pall.” or “Pd.” for Palladium; “Ruth.” or “Ru.” for Ruthenium; “Rhod.” or “Rh.” for Rhodium; and “Osmi.” or “Os.” for Osmium.

(2) An industry product consisting of at least 950 parts per thousand pure Platinum may be marked or described as “Platinum.”

(3) An industry product consisting of 850 parts per thousand pure Platinum, 900 parts per thousand pure Platinum, or 950 parts per thousand pure Platinum may be marked “Platinum,” provided that the Platinum marking is preceded by a number indicating the amount in parts per thousand of pure Platinum (for industry products consisting of 950 parts per thousand pure Platinum, the marking described in § 23.7(b)(2) above is also appropriate). Thus, the following markings may be used: “950Pt.,” “950Plat.,” “900Pt.,” “900Plat.,” “850Pt.,” or “850Plat.”

(4) An industry product consisting of at least 950 parts per thousand PGM, and of at least 500 parts per thousand pure Platinum, may be marked “Platinum,” provided that the mark of each PGM constituent is preceded by a number indicating the amount in parts per thousand of each PGM (*e.g.*, “600Pt.350Ir.,” “600Plat.350Irid.,” “550Pt.350Pd.50Ir.,” or “550Plat.350Pall.50Irid”).

(5) An industry product consisting of at least 500 parts per thousand, but less than 850 parts per thousand, pure Platinum, and not consisting of at least 950 parts per thousand PGM, may be marked or stamped accurately, with a quality marking on the article, using parts per thousand and standard chemical abbreviations (*e.g.*, “585 Pt., 415 Co.”).

NOTE TO § 23.6: Exemptions recognized in the assay of platinum industry products are listed in the appendix.

§ 23.7 Disclosure of surface-layer application of rhodium.

It is unfair or deceptive to fail to disclose a surface-layer application of rhodium on products marked or described as precious metal.

§ 23.8 Misrepresentation as to products containing more than one precious metal.

(a) It is unfair or deceptive to misrepresent the relative quantity of each precious metal in a product that contains more than than one precious metal. Marketers should list precious metals in the order of their relative weight in the product from greatest to least (*i.e.*, leading with the predominant metal). Listing precious metals in order of relative weight is not necessary where it is clear to reasonable consumers from context that the metal listed first is not predominant.

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

(1) Use of the terms “Platinum + Silver” to describe a product that contains more silver than platinum by weight.

(2) Use of the terms “14K/Sterling” to describe a product that contains more silver than gold by weight.

(c) The following are examples of markings and descriptions that are not considered unfair or deceptive:

(1) For a product comprised primarily of silver with a surface-layer application of platinum, “900 platinum over silver.”

(2) For a product comprised primarily of silver with visually distinguishable parts of gold, “14k gold-accented silver.”

(3) For a product comprised primarily of gold with visually distinguishable parts of platinum, “850 Platinum inset, 14K gold ring.”

§ 23.9 Misrepresentation as to content of pewter.

(a) It is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as “Pewter” or any abbreviation if such mark or description misrepresents the product’s true composition.

(b) An industry product or part thereof may be described or marked as “Pewter” or any abbreviation if it consists of at least 900 parts per 1000 Grade A Tin, with the remainder composed of metals appropriate for use in pewter.

§ 23.10 Additional guidance for the use of quality marks.

As used in these guides, the term *quality mark* means any letter, figure, numeral, symbol, sign, word, or term, or any combination thereof, that has been stamped, embossed, inscribed, or otherwise placed on any industry product and which indicates or suggests that any such product is composed throughout of any precious metal or any precious metal alloy or has a surface or surfaces on which there has been plated or deposited any precious metal or precious metal alloy. Included are the words “gold,” “karat,” “carat,” “silver,” “sterling,” “vermeil,” “platinum,” “iridium,” “palladium,” “ruthenium,” “rhodium,” or “osmium,” or any abbreviations thereof, whether used alone or in conjunction with the words “filled,” “plated,” “overlay,” or “electroplated,” or any abbreviations thereof. Quality markings include those in which the words or terms “gold,” “karat,” “silver,” “vermeil,” “platinum” (or platinum

group metals), or their abbreviations are included, either separately or as suffixes, prefixes, or syllables.

(a) *Deception as to applicability of marks.*

(1) If a quality mark on an industry product is applicable to only part of the product, the part of the product to which it is applicable (or inapplicable) should be disclosed when, absent such disclosure, the location of the mark misrepresents the product or part's true composition.

(2) If a quality mark is applicable to only part of an industry product, but not another part which is of similar surface appearance, each quality mark should be closely accompanied by an identification of the part or parts to which the mark is applicable.

(b) *Deception by reason of difference in the size of letters or words in a marking or markings.* It is unfair or deceptive to place a quality mark on a product in which the words or letters appear in greater size than other words or letters of the mark, or when different markings placed on the product have different applications and are in different sizes, when the net impression of any such marking would be misleading as to the metallic composition of all or part of the product. (An example of improper marking would be the marking of a gold electroplated product with the word "electroplate" in small type and the word "gold" in larger type, with the result that purchasers and prospective purchasers of the product might only observe the word "gold.")

NOTE 1 TO § 23.10: Legibility of markings. If a quality mark is engraved or stamped on an industry product, or is printed on a tag or label attached to the product, the quality mark should be of sufficient size type as to be legible to persons of normal vision, should be so placed

as likely to be observed by purchasers, and should be so attached as to remain thereon until consumer purchase.

NOTE 2 TO § 23.10: Disclosure of identity of manufacturers, processors, or distributors. The National Stamping Act provides that any person, firm, corporation, or association, being a manufacturer or dealer subject to section 294 of the Act, who applies or causes to be applied a quality mark, or imports any article bearing a quality mark “which indicates or purports to indicate that such article is made in whole or in part of gold or silver or of an alloy of either metal” shall apply to the article the trademark or name of such person. 15 U.S.C. 297.

§ 23.11 Misuse of “corrosion proof,” “noncorrosive,” “corrosion resistant,” “rust proof,” “rust resistant,” etc.

(a) It is unfair or deceptive to:

(1) Use the terms “corrosion proof,” “noncorrosive,” “rust proof,” or any other term of similar meaning to describe an industry product unless all parts of the product will be immune from rust and other forms of corrosion during the life expectancy of the product; or

(2) Use the terms “corrosion resistant,” “rust resistant,” or any other term of similar meaning to describe an industry product unless all parts of the product are of such composition as to not be subject to material damage by corrosion or rust during the major portion of the life expectancy of the product under normal conditions of use.

(b) Among the metals that may be considered as corrosion (and rust) resistant are: pure nickel; gold alloys of not less than 10 Kt. fineness; and austenitic stainless steels.

§ 23.12 Definition and misuse of the word “diamond.”

(a) A diamond is a mineral consisting essentially of pure carbon crystallized in the isometric system. It is found in many colors. Its hardness is 10; its specific gravity is approximately 3.52; and it has a refractive index of 2.42.

(b) It is unfair or deceptive to use the unqualified word “diamond” to describe or identify any object or product not meeting the requirements specified in the definition of diamond provided above, or which, though meeting such requirements, has not been symmetrically fashioned with at least seventeen (17) polished facets.

NOTE TO PARAGRAPH (b): It is unfair or deceptive to represent, directly or by implication, that industrial grade diamonds or other non-jewelry quality diamonds are of jewelry quality.

(c) The following are examples of descriptions that are not considered unfair or deceptive:

(1) The use of the words “rough diamond” to describe or designate uncut or unfaceted objects or products satisfying the definition of diamond provided above; or

(2) The use of the word “diamond” to describe or designate objects or products satisfying the definition of diamond but which have not been symmetrically fashioned with at least seventeen (17) polished facets when, in immediate conjunction with the word “diamond,” there is either a disclosure of the number of facets and shape of the diamond or the name of a type of diamond that denotes shape and that usually has less than seventeen (17) facets (*e.g.*, “rose diamond”).

(3) The use of the word “cultured” to describe laboratory-created diamonds that have essentially the same optical, physical, and chemical properties as mined diamonds if the term is

qualified by a clear and conspicuous disclosure (for example, the words “laboratory-created,” “laboratory-grown,” “[manufacturer name]-created,” or some other word or phrase of like meaning) conveying that the product is not a mined stone.

NOTE TO PARAGRAPH (c): Additional guidance about imitation and laboratory-created diamond representations and misuse of the words “real,” “genuine,” “natural,” “precious,” “semi-precious,” and similar terms is set forth in §§ 23.25 and 23.27.

§ 23.13 Misuse of the words “flawless,” “perfect,” etc.

(a) It is unfair or deceptive to use the word “flawless” to describe any diamond that discloses flaws, cracks, inclusions, carbon spots, clouds, internal lasering, or other blemishes or imperfections of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in diamond grading.

(b) It is unfair or deceptive to use the word “perfect,” or any representation of similar meaning, to describe any diamond unless the diamond meets the definition of “flawless” and is not of inferior color or make.

(c) It is unfair or deceptive to use the words “flawless” or “perfect” to describe a ring or other article of jewelry having a “flawless” or “perfect” principal diamond or diamonds, and supplementary stones that are not of such quality, unless there is a disclosure that the description applies only to the principal diamond or diamonds.

§ 23.14 Disclosure of treatments to diamonds.

A diamond is a gemstone product. Treatments to diamonds should be disclosed in the manner prescribed in § 23.24 of these guides (Disclosure of treatments to gemstones).

§ 23.15 Misuse of the term “blue white.”

It is unfair or deceptive to use the term “blue white” or any representation of similar meaning to describe any diamond that under normal, north daylight or its equivalent shows any color or any trace of any color other than blue or bluish.

§ 23.16 Misuse of the term “properly cut,” etc.

It is unfair or deceptive to use the terms “properly cut,” “proper cut,” “modern cut,” or any representation of similar meaning to describe any diamond that is lopsided, or is so thick or so thin in depth as to detract materially from the brilliance of the stone.

NOTE TO § 23.16: Stones that are commonly called “fisheye” or “old mine” should not be described as “properly cut,” “modern cut,” etc.

§ 23.17 Misuse of the words “brilliant” and “full cut.”

It is unfair or deceptive to use the unqualified expressions “brilliant,” “brilliant cut,” or “full cut” to describe, identify, or refer to any diamond except a round diamond that has at least thirty-two (32) facets plus the table above the girdle and at least twenty-four (24) facets below.

NOTE TO § 23.17: Such terms should not be applied to single or rose-cut diamonds. They may be applied to emerald-(rectangular) cut, pear-shaped, heart-shaped, oval-shaped, and marquise-(pointed oval) cut diamonds meeting the above-stated facet requirements when, in immediate conjunction with the term used, the form of the diamond is disclosed.

§ 23.18 Misrepresentation of weight and “total weight.”

(a) It is unfair or deceptive to misrepresent the weight of a diamond.

(b) 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 .25 carat).

NOTE TO PARAGRAPH (b): A carat is a standard unit of weight for a diamond and is equivalent to 200 milligrams (1/5 gram). A point is one one-hundredth (1/100) of a carat.

(c) If diamond weight is stated as decimal parts of a carat (*e.g.*, .47 carat), the stated figure should be accurate to the last decimal place. If diamond weight is stated to only one decimal place (*e.g.*, .5 carat), the stated figure should be accurate to the second decimal place (*e.g.*, “.5 carat” could represent a diamond weight between .495–.504).

(d) If diamond weight is stated as fractional parts of a carat, a conspicuous disclosure of the fact that the diamond weight is not exact should be made in close proximity to the fractional representation and a disclosure of a reasonable range of weight for each fraction (or the weight tolerance being used) should also be made.

NOTE TO PARAGRAPH (d): When fractional representations of diamond weight are made, as described in paragraph (d) of this section, in catalogs or other printed materials, the disclosure of the fact that the actual diamond weight is within a specified range should be made conspicuously on every page where a fractional representation is made. Such disclosure may refer to a chart or other detailed explanation of the actual ranges used. For example, “Diamond weights are not exact; see chart on p. X for ranges.”

§ 23.19 Definitions of various pearls.

As used in these guides, the terms set forth below have the following meanings:

(a) *Pearl*: A calcareous concretion consisting essentially of alternating concentric layers of carbonate of lime and organic material formed within the body of certain mollusks, the

result of an abnormal secretory process caused by an irritation of the mantle of the mollusk following the intrusion of some foreign body inside the shell of the mollusk, or due to some abnormal physiological condition in the mollusk, neither of which has in any way been caused or induced by humans.

(b) *Cultured pearl*: The composite product created when a nucleus (usually a sphere of calcareous mollusk shell) planted by humans inside the shell or in the mantle of a mollusk is coated with nacre by the mollusk.

(c) *Imitation pearl*: A manufactured product composed of any material or materials that simulate in appearance a pearl or cultured pearl.

(d) *Seed pearl*: A small pearl, as defined in paragraph (a), that measures approximately two millimeters or less.

§ 23.20 Misuse of the word “pearl.”

(a) It is unfair or deceptive to use the unqualified word “pearl” or any other word or phrase of like meaning to describe, identify, or refer to any object or product that is not in fact a pearl, as defined in § 23.19(a).

(b) It is unfair or deceptive to use the word “pearl” to describe, identify, or refer to a cultured pearl unless it is immediately preceded, with equal conspicuousness, by the word “cultured” or “cultivated,” or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

(c) It is unfair or deceptive to use the word “pearl” to describe, identify, or refer to an imitation pearl unless it is immediately preceded, with equal conspicuousness, by the word “artificial,” “imitation,” or “simulated,” or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

(d) It is unfair or deceptive to use the terms “faux pearl,” “fashion pearl,” “Mother of Pearl,” or any other such term to describe or qualify an imitation pearl product unless it is immediately preceded, with equal conspicuousness, by the word “artificial,” “imitation,” or “simulated,” or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

§ 23.21 Misuse of terms such as “cultured pearl,” “seed pearl,” “Oriental pearl,” “natura,” “kultured,” “real,” “synthetic,” and regional designations.

(a) It is unfair or deceptive to use the term “cultured pearl,” “cultivated pearl,” or any other word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

(b) It is unfair or deceptive to use the term “seed pearl” or any word, term, or phrase of like meaning to describe, identify, or refer to a cultured or an imitation pearl, without using the appropriate qualifying term “cultured” (*e.g.*, “cultured seed pearl”) or “simulated,” “artificial,” or “imitation” (*e.g.*, “imitation seed pearl”).

(c) It is unfair or deceptive to use the term “Oriental pearl” or any word, term, or phrase of like meaning to describe, identify, or refer to any industry product other than a pearl taken from a salt water mollusk and of the distinctive appearance and type of pearls obtained from mollusks inhabiting the Persian Gulf and recognized in the jewelry trade as Oriental pearls.

(d) It is unfair or deceptive to use the word “Oriental” to describe, identify, or refer to any cultured or imitation pearl.

(e) It is unfair or deceptive to use the word “natura,” “natural,” “nature’s,” or any word, term, or phrase of like meaning to describe, identify, or refer to a cultured or imitation pearl. It is unfair or deceptive to use the term “organic” to describe, identify, or refer to an

imitation pearl, unless the term is qualified in such a way as to make clear that the product is not a natural or cultured pearl.

(f) It is unfair or deceptive to use the term “cultured,” “semi-cultured pearl,” “cultured-like,” “part-cultured,” “premature cultured pearl,” or any word, term, or phrase of like meaning to describe, identify, or refer to an imitation pearl.

(g) It is unfair or deceptive to use the term “South Sea pearl” unless it describes, identifies, or refers to a pearl that is taken from a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia. It is unfair or deceptive to use the term “South Sea cultured pearl” unless it describes, identifies, or refers to a cultured pearl formed in a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia.

(h) It is unfair or deceptive to use the term “Biwa cultured pearl” unless it describes, identifies, or refers to cultured pearls grown in fresh water mollusks in the lakes and rivers of Japan.

(i) It is unfair or deceptive to use the word “real,” “genuine,” “precious,” or any word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

(j) It is unfair or deceptive to use the word “synthetic” or similar terms to describe cultured or imitation pearls.

(k) It is unfair or deceptive to use the terms “Japanese Pearls,” “Chinese Pearls,” “Mallorca Pearls,” or any regional designation to describe, identify, or refer to any cultured or imitation pearl, unless the term is immediately preceded, with equal conspicuousness, by the word “cultured,” “artificial,” “imitation,” or “simulated,” or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is a cultured or imitation pearl.

§ 23.22 Misrepresentation as to cultured pearls.

It is unfair or deceptive to misrepresent the manner in which cultured pearls are produced, the size of the nucleus artificially inserted in the mollusk and included in cultured pearls, the length of time that such products remained in the mollusk, the thickness of the nacre coating, the value and quality of cultured pearls as compared with the value and quality of pearls and imitation pearls, or any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls.

§ 23.23 Disclosure of treatments to pearls and cultured pearls.

It is unfair or deceptive to fail to disclose that a pearl or cultured pearl has been treated if:

(a) The treatment is not permanent. The seller should disclose that the pearl or cultured pearl has been treated and that the treatment is or may not be permanent;

(b) The treatment creates special care requirements for the pearl or cultured pearl.

The seller should disclose that the pearl or cultured pearl has been treated and has special care requirements. It is also recommended that the seller disclose the special care requirements to the purchaser; or

(c) The treatment has a significant effect on the product's value. The seller should disclose that the pearl or cultured pearl has been treated.

NOTE TO § 23.23: The disclosures outlined in this section are applicable to sellers at every level of trade, as defined in § 23.0(b) of these guides, and they may be made at the point of sale prior to sale, except that where a product can be purchased without personally viewing the product (*e.g.*, direct mail catalogs, online services, televised shopping programs), disclosure should be made in the solicitation for, or description of, the product.

§ 23.24 Disclosure of treatments to gemstones.

It is unfair or deceptive to fail to disclose that a gemstone has been treated if:

- (a) The treatment is not permanent. The seller should disclose that the gemstone has been treated and that the treatment is or may not be permanent;
- (b) The treatment creates special care requirements for the gemstone. The seller should disclose that the gemstone has been treated and has special care requirements. It is also recommended that the seller disclose the special care requirements to the purchaser; or
- (c) The treatment has a significant effect on the stone's value. The seller should disclose that the gemstone has been treated.

NOTE TO § 23.24: The disclosures outlined in this section are applicable to sellers at every level of trade, as defined in § 23.0(b) of these guides, and they may be made at the point of sale prior to sale, except that where a product can be purchased without personally viewing the product (*e.g.*, direct mail catalogs, online services, televised shopping programs), disclosure should be made in the solicitation for, or description of, the product.

§ 23.25 Misuse of the words “ruby,” “sapphire,” “emerald,” “topaz,” “stone,” “birthstone,” “gem,” “gemstone,” etc.

- (a) It is unfair or deceptive to use the unqualified words “ruby,” “sapphire,” “emerald,” “topaz,” or the name of any other precious or semi-precious stone to describe any product that is not in fact a mined stone of the type described.
- (b) It is unfair or deceptive to use the word “ruby,” “sapphire,” “emerald,” “topaz,” or the name of any other precious or semi-precious stone, or the word “stone,” “birthstone,” “gem,” “gemstone,” or similar term to describe a laboratory-grown, laboratory-created, [manufacturer name]-created, synthetic, imitation, or simulated stone, unless such word

or name is immediately preceded with equal conspicuousness by the word “laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” or some other word or phrase of like meaning, or by the word “imitation” or “simulated,” so as to disclose clearly the nature of the product and the fact it is not a mined gemstone.

NOTE 1 TO PARAGRAPH (b): The use of the word “faux” to describe a laboratory-created or imitation stone is not an adequate disclosure that the stone is not a mined stone.

NOTE 2 TO PARAGRAPH (b): Marketers may use the word “cultured” to describe laboratory-created gemstone products that have essentially the same optical, physical, and chemical properties as the named stone if the term (*e.g.*, “cultured ruby”) is qualified by a clear and conspicuous disclosure (for example, the words “laboratory-created,” “laboratory-grown,” “[manufacturer name]-created,” or some other word or phrase of like meaning) conveying that the product is not a mined stone. Additional guidance regarding the use of “cultured” to describe a laboratory-created diamond is set forth in § 23.12(c)(3).

(c) It is unfair or deceptive to use the word “laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” “synthetic,” or other word or phrase of like meaning with the name of any natural stone to describe any industry product unless such product has essentially the same optical, physical, and chemical properties as the stone named.

(d) It is unfair or deceptive to describe products made with gemstone material and any amount of filler or binder, such as lead glass, in the following way:

(1) With the unqualified word “ruby,” “sapphire,” “emerald,” “topaz,” or name of any other precious or semi-precious stone;

(2) As a “treated ruby,” “treated sapphire,” “treated emerald,” “treated topaz,” or “treated [gemstone name]”;

(3) As a “laboratory-grown [gemstone name],” “laboratory-created [gemstone name],” “[manufacturer name]-created [gemstone name],” “or “synthetic [gemstone name],” or

(4) As a “composite [gemstone name],” “hybrid [gemstone name],” or “manufactured [gemstone name],” unless the term is qualified to disclose clearly and conspicuously that the product: (A) does not have the same characteristics as the named stone; and (B) requires special care. It is further recommended that the seller disclose the special care requirements to the purchaser.

§ 23.26 Misrepresentation as to varietal name.

(a) It is unfair or deceptive to mark or describe an industry product with the incorrect varietal name.

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

(1) Use of the term “yellow emerald” to describe golden beryl or heliodor.

(2) Use of the term “green amethyst” to describe prasiolite.

NOTE TO § 23.26: A varietal name is given for a division of gem species or genus based on a color, type of optical phenomenon, or other distinguishing characteristic of appearance.

§ 23.27 Misuse of the words “real,” “genuine,” “natural,” “precious,” etc.

It is unfair or deceptive to use the word “real,” “genuine,” “natural,” “precious,” “semi-precious,” or similar terms to describe any industry product that is manufactured or produced artificially.

§ 23.28 Misuse of the words “flawless,” “perfect,” etc.

(a) It is unfair or deceptive to use the word “flawless” as a quality description of any gemstone that discloses blemishes, inclusions, or clarity faults of any sort when examined under

a corrected magnifier at 10-power, with adequate illumination, by a person skilled in gemstone grading.

(b) It is unfair or deceptive to use the word “perfect” or any representation of similar meaning to describe any gemstone unless the gemstone meets the definition of “flawless” and is not of inferior color or make.

(c) It is unfair or deceptive to use the word “flawless,” “perfect,” or any representation of similar meaning to describe any imitation gemstone.

APPENDIX TO PART 23—EXEMPTIONS RECOGNIZED IN THE ASSAY FOR QUALITY OF GOLD ALLOY, GOLD FILLED, GOLD OVERLAY, ROLLED GOLD PLATE, SILVER, AND PLATINUM INDUSTRY PRODUCTS

(a) Exemptions recognized in the industry and not to be considered in any assay for quality of a karat gold industry product include springs, posts, and separable backs of lapel buttons, posts and nuts for attaching interchangeable ornaments, bracelet and necklace snap tongues, metallic parts completely and permanently encased in a nonmetallic covering, field pieces and bezels for locket⁴⁷² and wire pegs or rivets used for applying mountings and other ornaments, which mountings or ornaments shall be of the quality marked.

NOTE TO PARAGRAPH (a): Exemptions recognized in the industry and not to be considered in any assay for quality of a karat gold optical product include: the hinge assembly (barrel or other special types such as are customarily used in plastic frames); washers, bushings,

⁴⁷² Field pieces of lockets are those inner portions used as frames between the inside edges of the locket and the spaces for holding pictures. Bezels are the separable inner metal rings to hold the pictures in place.

and nuts of screw assemblies; dowels; springs for spring shoe straps; metal parts permanently encased in a non-metallic covering; and for oxfords,⁴⁷³ coil and joint springs.

(b) Exemptions recognized in the industry and not to be considered in any assay for quality of a gold filled, gold overlay and rolled gold plate industry product, other than watchcases, include joints, catches, screws, pin stems, pins of scarf pins, hat pins, etc., field pieces and bezels for locket, posts and separate backs of lapel buttons, bracelet and necklace snap tongues, springs, and metallic parts completely and permanently encased in a nonmetallic covering.

NOTE TO PARAGRAPH (b): Exemptions recognized in the industry and not to be considered in any assay for quality of a gold filled, gold overlay and rolled gold plate optical product include: screws; the hinge assembly (barrel or other special types such as are customarily used in plastic frames); washers, bushings, tubes and nuts of screw assemblies; dowels; pad inserts; springs for spring shoe straps, cores and/or inner windings of comfort cable temples; metal parts permanently encased in a nonmetallic covering; and for oxfords, the handle and catch.

(c) Exemptions recognized in the industry and not to be considered in any assay for quality of a silver industry product include screws, rivets, springs, spring pins for wrist watch straps; posts and separable backs of lapel buttons; wire pegs, posts, and nuts used for applying mountings or other ornaments, which mountings or ornaments shall be of the quality marked; pin stems (*e.g.*, of badges, brooches, emblem pins, hat pins, and scarf pins, etc.); levers for belt buckles; blades and skeletons of pocket knives; field pieces and bezels for locket; bracelet and

⁴⁷³ Oxfords are a form of eyeglasses where a flat spring joins the two eye rims and the tension it exerts on the nose serves to hold the unit in place. Oxfords are also referred to as pince nez.

necklace snap tongues; any other joints, catches, or screws; and metallic parts completely and permanently encased in a nonmetallic covering.

(d) Exemptions recognized in the industry and not to be considered in any assay for quality of an industry product of silver in combination with gold include joints, catches, screws, pin stems, pins of scarf pins, hat pins, etc., posts and separable backs of lapel buttons, springs, bracelet and necklace snap tongues, and metallic parts completely and permanently encased in a nonmetallic covering.

(e) Exemptions recognized in the industry and not to be considered in any assay for quality of a platinum industry product include springs, winding bars, sleeves, crown cores, mechanical joint pins, screws, rivets, dust bands, detachable movement rims, hat pin stems, and bracelet and necklace snap tongues.

APPENDIX A: ABBREVIATIONS

Abbreviated Form	Company/Organization/Individual Name	Comment #
Corti	Christopher Corti	78
JTV	Jewelry Television	80
IGDA	International Grown Diamond Association	81
JVC	Jewelers Vigilance Committee (JVC) Coalition	82
Richline	Richline Group, Inc.	83, 85
Signet	Signet Jewelers	84
Poteat	Veronica Poteat	86
AGA	Accredited Gemologists Association	88
Jenner	Jenner & Block LLP	77
Cowing	Michael Cowing	87
Agarwal	Dwarika Agarwal	75
YEM	Yellow Emerald Mining Company	76
Meyers & Jones	Michael Meyers and Kathy Jones	70
Sujanani	Kumar Sujanani	72
Frye	Teresa Frye	73
Diamond Foundry	Diamond Foundry Inc.	74
DPA	The Diamond Producers Association	69
DMIA	The Diamond Manufacturers and Importers Association of America	68
Hough	Hough	67
Grader Jewelers	Grader Jewelers, Inc.	66
EMM	Ethical Markets Media LLC	65
Gold In Art	Gold In Art, Inc.	63

Robbins	Robbins Delaware Diamonds, LLC	59
LaBiche	LaBiche Jewelers	60
Peter & Co.	Peter & Co. Jewelers	61
Gordon	Scott Gordon	62
Berkan-Dent	Sharon Berkan-Dent	63
A. White	Allison White	58
Rock	Rock Your World	52
Loder	George Loder	53
Kazymerchyk	Rain Kazymerchyk	54
Cyr	Beth Cyr	55
Zahnle	Vincent Zahnle	56
Russillo	Linda Russillo	57
Lewis	Karen Lewis	50
M.A. White	Mary Ann White	51
Wheeler	Susan Wheeler Design	46
Elements	Elements Jewelry Design	47
McIntyre	G. McIntyre	48
Alaska Gold	Alaska Gold n Gems Fine Jewelry and Design Center	49
Hill	Andrea Hill	45
Thai	Thai Industrial Standards Institute	43
Newman	Renee Newman	44
Matlack	Mark Matlack	42
Zibman	Michael Zibman	41
Winward	Matthew Winward	40

APPENDIX A: ABBREVIATIONS

Costigan	Thomas Costigan	39
Deans	Daniel Deans	38
Parle'	Parle' Jewelry Designs	35
Argo	Argo & Lehne	34
Rapaport	Rapaport USA	33
IOGC/Parle	IOGC/Parle Jewelry Designs	32
McMinn	Van McMinn	31
Wood	Katharine Wood	30
Waite	Louis Waite	28
Costello	Lorraine S. Costello	29
Nogai	Tyler Nogai	24
Texas	Texas Retailers Association	25
Coan	Michael Coan	27
Burland	Burland Jewelry Center	23
Phillips	Eric Phillips	22
Endres	Jackie Endres	21
Hayek	Charbel Hayek	10
SGL	Stone Group Labs, LLC	7
Richards	Michael Richards	4