



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Director
Bureau of Consumer Protection

October 31, 1997

Mr. Steve Clarkson
Industry Canada
Consumer Products Directorate
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Hull, Quebec
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Dear Mr. Clarkson:

Thank you for your recent letter suggesting that the staff of the Federal Trade Commission comment on the Canadian Precious Metals Marking Regulations. We appreciate your interest in our input and in the harmonization of the rules governing industry members in our two countries. Our comments appear below.⁽¹⁾

Comment on Canadian Precious Metals Marking Regulations

The staff of the Federal Trade Commission ("FTC" or "Commission") appreciates the opportunity to comment on the Canadian Precious Metals Marking Regulations ("Marking Regulations"), and we hope that the following comments, which are based on our experience in updating FTC guides on precious metals will be helpful. The Federal Trade Commission Act prohibits "unfair or deceptive acts or practices," and the Commission from time to time issues guidance as to what, in its view, constitutes "unfair or deceptive acts or practices" for a specific industry. One of the first such "guides" issued by the Commission was a set of guides for the jewelry industry, issued in 1918. These guides were revised by the Commission from time to time, most recently in 1996, when they were renamed the Guides for the Jewelry, Precious Metals, and Pewter Industries ("the Guides" or the "Jewelry Guides"). The Guides are set out at volume 16 of the Code of Federal Regulations ("C.F.R.") Part 23. In 1997, the Commission further revised section 7 of the Guides dealing with platinum and platinum group metals. This revision was published in the Federal Register on April 7, 1997 (62 Fed. Reg. 16669) (to be codified at 16 C.F.R. § 23.7) (copy attached). (This revision does not appear in the 1997 C.F.R.; it will appear in the 1998 version.)

We suggest that you consider revising the section of the Marking Regulations that addresses articles marked as gold plate and the section that addresses articles marked as platinum. These sections of the Marking Regulations differ from the FTC Jewelry Guides and from international standards. We hope that the revisions we propose below will assist you to meet your goal of modernizing the regulations to reflect globalization of trade.

1. Gold Plate: Section 7 of the Marking Regulations

Section 7 of the Marking Regulations concerns articles marked as "gold electroplate," "gold plated," "G.E.P.," "electro-plaque d'or," or "or plaque." This section states that these quality marks can be applied to an article that has been plated with gold of at least 10 karat fineness. This corresponds to section 4(b)(4) and (c)(2) of the FTC's Jewelry Guides, 16 C.F.R. § 23.4(b)(4) and (c)(2), which provide guidance as to when items may properly be marked "gold

plate," "gold plated," or "G.P.," and to section (c)(4), which provides guidance as to when items may properly be marked "gold electroplate, "gold electroplated," or "G.E.P." 16 C.F.R. § 23.4(c)(4). Under section 23.4(b)(4) of the Guides, items should not be marked "gold plate" unless they contain "a surface-plating of gold alloy, applied by any process, which is of such thickness and extent of surface coverage that reasonable durability is assured." Section 23.4(b)(7) contains a similar provision for the term "gold electroplate."

The Guides advise industry members as to what acts or practices the Commission believes likely to be unfair or deceptive. In addition, the Guides provide examples of practices that the Commission believes to be acceptable. These acceptable practices are referred to as "safe harbors." In its revision of the Guides in 1996, the Commission created a safe harbor that allows "gold plate" to be used for gold applied by any process so long as the coating is sufficiently durable to satisfy consumer expectations that the plated product would retain its appearance for a reasonable period of time. Specifically, the term "gold plate" may be used for products with a minimum thickness of one half micron of 24 karat gold coating or the equivalent (for example, one micron of 12 karat gold coating). The term "gold electroplate" may describe items with a gold coating of less than one half micron of 24 karat gold (or the equivalent) if they have a coating of at least .175 microns of 24 karat gold (or the equivalent). Items with a gold coating of less than .175 microns of 24 karat gold may be described as "gold flashed" or "gold washed."⁽²⁾

In developing the safe harbors for the term "gold plate," the Commission considered the standard for gold plated jewelry established by the International Organization for Standardization ("ISO"): ISO International Standard 10713, titled "Jewellery - Gold alloy coatings." This standard sets a minimum thickness of half a micron of 24 karat gold (or its equivalent) for both mechanically plated and electrolytically plated gold jewelry. Because most products are plated with gold alloys rather than 24 karat gold, the thickness of the plating under this standard will usually exceed half a micron. For example, an item plated with an alloy of 10 karat gold would be required to have a gold alloy coating of 1.2 microns. The Commission believed that the ISO standard of half a micron of 24 karat gold plating (or 1.2 microns of 10 karat gold plating) for jewelry constitutes a "floor" of sufficient durability, so that consumers are unlikely to be misled about the durability of an item marked "gold plate."

The Commission's Guides also recognize, however, that different items of jewelry may be subjected to different degrees of wear. Therefore, to ensure that consumers are not deceived by the implied claims of durability arising from the term "gold plate," the "safe harbor" in the Guides (section 23.4(c)(2)) reflects the Commission's view that the term "gold plate" is acceptable so long as the following two conditions are met: (1) the product contains a coating with a minimum thickness of half a micron, or 20 millionths of an inch, of 24 karat gold or the equivalent; and (2) the coating is "of substantial thickness."⁽³⁾ The "substantial thickness" requirement indicates that products that are subject to greater wear should have a coating of greater thickness than the minimum half micron. For example, items that are subject to a great amount of wear, such as rings, need a coating of more than half a micron of fine gold or the equivalent. Moreover, the "substantial thickness" requirement indicates that products that are subject to a great amount of wear **in certain areas** should have a more substantial coating in those areas.

The safe harbor also permits karat markings on gold plated items. The thickness of the gold plating may be marked in microns on the item itself if this marking is followed in close proximity by a gold quality mark (e.g., 2 microns 12 K. G. P.).⁽⁴⁾ The ISO standard, in section 5.4, prohibits quality marks on gold plated items. However, the Commission did not believe it was appropriate to adopt this portion of the international standard in the revised Guides. The karat mark in combination with an indication of the thickness of the gold plate allows manufacturers to inform consumers of the fineness of the gold and the minimum thickness of the plating, and consumers may therefore shop for items with more or less plating depending on their needs and budget.⁽⁵⁾

In order to harmonize its regulations with international standards we suggest that Canada consider revising its Marking Regulations to provide that items marked as "gold plate" or "G.P." must have a layer of gold plating of half a micron of 24 karat gold, or the equivalent, and that products with a layer of gold plating less than half a micron of 24 karat gold but at least .175 micron of 24 karat gold (or the equivalent) can be labeled "gold electroplate." We also suggest that products with a layer of gold coating of less than .175 micron of 24 karat gold (or the equivalent) be allowed to be labeled "gold flashed" or "gold washed." In addition, to allow dealers to indicate to consumers that their

products have more gold coating than the minimum, we suggest that the Marking Regulations be changed to allow an indication of the karat fineness along with an indication of the thickness, in microns, of the gold coating.

2. Platinum: Section 6 of the Marking Regulations

Section 6 of the Marking Regulations permits articles to be marked "platinum," "plat.," or "platine" if the article contains at least 95 percent platinum or at least 95 percent of an alloy of platinum and iridium or ruthenium.

The Federal Trade Commission recently revised section 7 of its Guides, 16 C.F.R. § 23.7, which addresses articles containing platinum or platinum group metals. In the course of the review of this section, the Commission received over 800 comments. The vast majority of these comments urged the Commission to harmonize its guidance with international standards. Based on these comments and on general policy considerations, the Commission revised the platinum section of the Jewelry Guides to be consistent with the international standard established by ISO. The ISO standard (ISO 9202:1991(E), titled "Jewellery--Fineness of precious metal alloys"), specifies a "range of fineness of precious metal alloys (excluding solders) recommended for use in the field of jewellery" and provides for three markings for platinum jewelry, expressed in parts per thousand: 950, 900, and 850. Similarly, section 23.7(c)(3) of the Jewelry Guides permits the following markings: "950 Pt.," "950 Plat.," "900 Pt.," "900 Plat.," "850 Pt.," and "850 Plat."

The Jewelry Guides also permit a marking of "platinum" or "plat" with no qualification if the article contains 95 percent platinum, which the comments received in the recent FTC Guide revision indicated was an informal international standard for unqualified platinum claims. This informal international standard was adopted by the Commission as subsection (c)(2) of the platinum guides. We suggest that Canada consider adopting the same standard for articles containing 95 percent platinum, which allow such articles to bear the unqualified "platinum" marking or the qualified marking of "950 Plat." or "950 Pt."

The Marking Regulations also permit articles to be marked "platinum," "plat," or "platine" if the article contains at least 95 percent of an alloy of platinum and iridium or ruthenium, with no specification of the percent of platinum necessary for this marking. Consumers would likely expect that if an article is marked "platinum" with no qualifications, the article consists almost entirely of platinum. For example, although unlikely, an article containing 90 percent iridium and only 10 percent platinum could be marked "platinum" under the Marking Regulations. In order to avoid consumer confusion, for alloys of platinum and other platinum group metals, we suggest that Canada consider adopting the international standard for articles containing 85 and 90 percent platinum, as discussed above.

Finally, because products containing less than 85 percent platinum are marketed in the United States, the Jewelry Guides address the appropriate markings for such articles, even though the ISO standard does not allow platinum markings on these products. Subsection 23.7(c)(4) of the Guides provides:

An industry product consisting of at least 950 parts per thousand PGM [platinum group metals] and of at least 500 parts per thousand pure platinum may be marked "Platinum," provided that the mark of each PGM is preceded by a number indicating the amount in parts per thousand of each PGM as, for example, "600Pt.350Ir.," "600Plat.350Irid.," or "550Pt.350Pd.50Ir.," "550Plat.350Pall.50Irid."

All of the above examples could be marked as "platinum" or "plat" under the Marking Regulations. In order to avoid consumer confusion and to facilitate trade between Canada and the United States, we suggest that Canada consider adopting the above-described method of marking products that contain more than 50 percent but less than 85 percent platinum and that Canada prohibit the use of the "platinum" marking on items that contain less than 50 percent platinum.⁽⁶⁾

We hope this comment is helpful. Please do not hesitate to telephone Constance Vecellio of the staff of the Division of Enforcement (at 202-326-2966) if you have any questions about this comment.

Sincerely,

Jodie Z. Bernstein
Director

Endnotes:

1. These comments represent the views of the staff of the Federal Trade Commission, and are not necessarily those of the Commission or of any Commissioner.
2. The Commission believed it to be appropriate to create a safe harbor with a numerical standard for specific terms such as "gold plate," "gold electroplate," and "gold flashed," because consumers would expect certain qualities from products described by these terms and products at or above the indicated standards would have such qualities. Historically, the standard for "gold plate" has been higher than the standard for "gold electroplate," which is higher than the standard for "gold flashed."
3. According to the Guides, "[s]ubstantial thickness means that 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. Since industry products include items having surfaces and parts of surfaces that are subject to different degrees of wear, the thickness of plating for all items or for different areas of the surface of individual items does not necessarily have to be uniform."
4. A note following this section recommends that if a product has a thicker coating in some areas than others, the area of least thickness should be marked.
5. While it does not permit quality markings, the ISO standard sets up a system whereby gold plated products can be labeled "A," "B," or "C," with A indicating products that have a minimum of 5 microns of 14 karat gold (or the equivalent), B indicating a minimum of 3 microns of 14 karat gold (or the equivalent), and C indicating a half micron of 24 karat gold (or the equivalent). However, American consumers are not familiar with this system, and the Commission did not believe it is appropriate to include it in the Guides at this time.
6. The Jewelry Guides provide in subsection 23.7(b)(3) that "Platinum" or any abbreviation thereof may be misleading if used to mark or describe any product that is not composed throughout of at least 500 parts per thousand pure Platinum. This advice was based on our understanding that items with less than 500 parts per thousand platinum lose the qualities associated with platinum.