



September 26, 2012

Reenah L. Kim, Attorney
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Ms. Kim,

Enclosed is Jewelers Ethics Association's formal response to the questions asked by the FTC regarding updates to "Guides for the Jewelry, Precious Metals, and Pewter Industries". Jewelers Ethics Association (JEA) is a Non-Profit Corporation open to all members of the trade and consumers. JEA provides its members with information, education, conflict resolution and support to increase confidence in the products they buy and sell. Our purpose is to promote and support ethical business practices within the jewelry and gemstone industry, thereby strengthening consumer confidence.

The enclosed documents represent members of the Jewelers Ethics Association, industry professionals and consumers. In addition to our written response we have included a CD with supporting images and documents.

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September 25, 2012

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

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

Dear Commissioners and Staff,

As representatives of Jewelers Ethics Association (JEA), we would like to thank you for initiating this public comment period, and look forward to the upcoming revision of Guides for Jewelry, Precious Metals, and Pewter Industries. JEA was founded upon the principles of upholding high ethical standards within the jewelry and gemstone industries, and the protection of consumers worldwide. The first items within our own Code of Ethics require industry members to comply with the FTC guides for the jewelry, precious metals and pewter industries. These items do not hold such a prominent place in our COE because of convenience or expectation; rather, we regard the guides as integral to the industry for which they were written, and feel that the guides must outline the minimum requirements for conducting business within these trades.

In the span of years since the last complete review of the guides, the jewelry and gemstone industry has seen significant advancement in many areas, in and out of the lab. Key among these advancements is the development of treatments. The treatment of gemstones is not inherently detrimental to the trade. Indeed, many treatments have led to the improvement of materials previously unsalable, creating an end product which is not only beautiful, but fits into any budget.

Existing language within the guides has served the trade for decades as a model for disclosure regarding treatments, and encompasses many products within today's marketplace. There are, however, continued questions about products that fall outside of clear definition. It is apparent that the Commission is aware of such products, as reflected by the questions asked leading up to these reviews.

Recognizing the importance of the Federal Trade Commission's role across the spectrum of U.S. industries, and the limited resources available to maintain that role, it is understandable that the revisions made to the guides have, on average, been several years apart. As such, it is **essential** that the guides provide clear rules that are not injurious in their net effects on industry health between modifications. The addition of language aimed at specific treatments may lead to positive change, but only until the next treatment is developed. Therefore, it is our hope

that throughout the process of reviewing the guides, and especially when considering revision, that the Commission will seek not only to catch up, but also look forward. Through fortification of the existing, strong foundation of these guides, the Commission will continue to supply the industry with security and protection for consumers.

Scope of the guides

United States jewelry industry:

- Annual revenue exceeding \$80 billion¹
- Over 75k businesses
- 270k employees

The figures above do not take into account the many other American businesses which comprise this industry, including precious metal and gemstone miners, laboratory service companies, and insurance appraisers. The operational framework provided by the guides is woven throughout this industry, and their importance cannot be overstated.

Promulgation

The FTC has requested public comment to aid in their rulemaking since inception; this lies at the core of the Commission's principles, and allows the Commission to connect to those they are charged to protect. In the case of commentary related to the jewelry guides, the majority of comments originate with industry members. Most individuals working in the U.S. jewelry, gemstone, and precious metal industries are familiar with the guides, but the same cannot be said of consumers who purchase goods produced by these industries. Every day, consumers benefit from the structure maintained by the guides. If the same consumers walked into a local retailer armed with a comprehensive understanding of the guides, how much more effective could they be? An informed consumer base not only increases efficacy of the guides as a whole, but also creates long-term stability in the marketplace. When business owners know exactly what their customers expect of them, they will seek to fulfill those expectations. How then can the Commission maximize exposure of the current and future information available to the public?

The FTC maintains several online resources currently available to the public, published by the Bureau of Consumer Protection, and Division of Consumer & Business Education. These resources provide access to pertinent information for consumers and businesses alike. Maintenance of these websites can play an important role in

¹ <http://www.ibisworld.com/industry/default.aspx?indid=1075>
<http://www.ibisworld.com/industry/default.aspx?indid=888>
<http://www.ibisworld.com/industry/default.aspx?indid=956>

keeping consumers and sellers educated and informed regarding the ever-evolving product being created and offered to the jewelry, precious metal and pewter industries. Supplemental materials are written in everyday language, and usefully demonstrate the intended effectiveness of the guides by providing case-in-point examples of what is meant by unfair and deceptive practices, while showing business owners how to avoid violating disclosure rules with compliance.

For example, current web pages found among the Commission's website provide opinion letters² responding to a seller's specific compliance questions, and a series of Closing Letters³ issued to several jewelry and department stores. Examination of the Closing Letters indicates that in the late 1990's, the FTC looked at the historic practices of these stores and was successful using their authority of informal investigation to alter the longstanding, commonplace and unfair practice of selling synthetic gemstones as "natural," as well as reforming the inaccurate disclosure of diamond weight. Today's consumers and businesses benefit from those late 1990's investigations; consumers because they are less frequently sold underweight diamonds or synthetic gemstones as "natural," and businesses because of the transparency that the action finally made unavoidable in this segment of the gemstone supply chain.

Suggestions offered by JEA to maximize dissemination of these resources include:

- Drawing from useful information found across several web pages⁴ throughout ftc.gov to create a centralized, "one stop shop" for consumers. Though links on current pages make it possible to access all relevant information, the average busy consumer is very unlikely to spend the amount of time necessary to find answers to simple questions. In the creation of one access point for consumers and businesses, the scope of the FTC's efforts may be understood more effectively.
- FTC published letters, opinions, comments, and other significant materials have not been expanded since 1999, and pamphlet publications are in need of revisions.
- It should be clear through the hard work of many trade organizations that the will exists to educate the public. We strongly suggest that the Commission reach out to trade organizations, requesting supplemental materials and original writings regarding education and the consumers' right to full disclosure.
- A database comprising known species of gem materials, treatment information, and care requirements would serve as a valuable tool if offered by the Commission. The Jewelers Ethics Association has included supplemental information in this regard. These documents are made available to us through the work of our members.

² <http://www.ftc.gov/os/statutes/jewelry/letters.shtm>

³ <http://www.ftc.gov/os/statutes/jewelry/closing/closing.shtm>

⁴ <http://www.ftc.gov/os/statutes/jewelryjump.shtm>
<http://www.ftc.gov/bcp/menus/consumer/shop/jewelry.shtm>
<http://business.ftc.gov/selected-industries/jewelry>
<http://ftc.gov/os/statutes/jewelry/advisory.shtm>
<http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt087.shtm>
<http://www.ftc.gov/bcp/rulemaking/electmedia/workshop/pgjewelinfo.html>

“The point I would like to leave you with today is that as the consumer environment changes, government agencies, such as the FTC, should continually assess and evaluate our efforts to protect consumers. When those efforts fall short, we must adapt and change. This process, and the protection of consumers, can only be improved with the additional participation of companies and trade associations such as yourselves.”

J. Thomas Rosch, speaking to the
Association of National Advertisers
New York City, New York
March 11, 2009⁵

Request for public comment: Specific Issues

Lead glass filled corundum

First, the increased marketing of stones comprising a mixture of ruby/corundum and lead glass has raised issues concerning how such products are advertised and sold. These composite stones (which are sometimes referred to as “composite rubies,” “hybrid rubies,” or “glass-filled rubies”) may contain a considerable percentage of lead glass. Moreover, the method that produces these stones may differ significantly from the techniques traditionally used to treat or enhance natural rubies (e.g., various treatments involving the application of heat). Informal inquiries received by staff have questioned whether a lead-glass-filled composite stone can accurately be identified as a natural ruby or gem, even when disclosures are made that the stone has been treated. The Commission seeks comments on whether it should amend the Guides to address this development and, if so, how?

The FTC, along with major trade organizations such as American Gem Trade Association (AGTA), and the World Jewellery Confederation (CIBJO), and the Gemological Institute of America (GIA), have existing guidelines which are applicable to the naming and disclosure of this product. In order to make decisions regarding nomenclature, it is important to understand how this “ruby” is manufactured.

In a comprehensive paper entitled “A Discussion on Ruby-Glass Composites & Their Potential Impact on the Nomenclature in use for Fracture-Filled or Clarity-Enhanced stones in General,”⁶ Kenneth Scarratt of GIA Laboratory Bangkok details the entire process of transformation from low quality, opaque corundum, into a faceted product which is sold as ruby. In February of this year, Mr. Scarratt released an updated edition of this paper, and announced GIA’s revised position regarding this material, altering their nomenclature to reflect a “manufactured product.” From the revised paper:

“From the above observations and results of acid disintegration experiments an adjustment in GIA’s reporting policy was made along the lines taken by fellow LMHC members (ruby-glass composite) in early 2008. However, and again in consultaion[sic] with the LMHC and importantly with the US industry in 2011 GIA adjusted its reporting policies on glass filled rubies further.

⁵ <http://www.ftc.gov/speeches/rosch/090311backwardforward.pdf>

⁶ <http://www.gia.edu/research-resources/news-from-research/Ruby-Glass%20Composites-etc.pdf>

*The latest adjustments are to some extent 'landmarks' in that they acknowledge, for what maybe the first time, that a division exists between what might be deemed a 'treatment' (to an otherwise natural stone) and what might be a "'manufactured' product" and, "if an artificial material (such as a glass) used during a 'treatment' process becomes the dominant component then the end product may not be considered a 'treated stone' but rather it is a 'manufactured product'."*⁷

At the end of Mr. Scarratt's paper, the following definition appears:

*Composite materials (or composites for short) are engineered materials made from two or more constituent materials with significantly different physical or chemical properties and which remain separate and distinct on a macroscopic level within the finished structure.*⁸

The following photos reflect the marked difference in appearance between the starting material and the final manufactured product being widely sold to consumers as Ruby.



Images courtesy Chris Smith - AGL

Considering the process required in bringing this product to market, and the complete absence of disclosure by many retailers, existing language within the guides provides clear direction for the Commission.

§ 23.23 Mis use of the word "ruby"

It is unfair or deceptive to use the unqualified word "ruby" to describe any product that is not in fact a natural stone of the type described.

It is unfair or deceptive to use the word "ruby", or the word "stone," "birthstone," "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," "synthetic," or by the word "imitation" or "simulated," so as to disclose clearly the nature of the product and the fact it is not a natural gemstone.

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

§ 23.24 Mis use 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.

§ 23.25 Mis use of the word "gem."

It 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.

⁷ <http://www.gia.edu/media/videos/GD-Lead-Glass-Filled-Ruby.html>

⁸ http://en.wikipedia.org/wiki/Composite_material

Trade Efforts

Though the fused low quality corundum sold as Ruby first appeared in the mid-1980's, it has been within the last decade that this material has established a strong position in the marketplace, and across the country, consumers are, every day, purchasing "ruby" earrings, etc. at a price which makes them feel as though they found a bargain. There are those within the industry who strive to change this fact. Due to the diligent work of many such as Antoinette Matlins⁹, "composite rubies" have been exposed to consumers worldwide. How to classify these creations however is still unsettled, according to some.

JEA conducted a survey of the public via social media regarding nomenclature of this product. Results below:¹⁰

Which of the following best describes the product created by fusing low quality corundum with leaded glass?

Composite Ruby:	36%
Manufactured Ruby:	45%
Hybrid Ruby:	8%
None of the above:	11%

Conclusion

The practice of allowing such glass-filled composites to share the name of a natural gemstone is in opposition to current regulations. When understanding that these two products share no bond of optical, chemical, or physical properties, it is clear that the name ruby should not, in any way, be authorized by the Commission to identify this or any other "manufactured product."

Synthetic Diamond Products

Second, the current Guides do not specifically address use of the term "cultured" to describe industry products created in a laboratory or factory that have essentially the same optical, physical, and chemical properties of natural gemstones. In connection with petitions submitted by several jewelry industry trade groups in 1986 and 2006, the Commission considered proposals to amend the Guides to state that it is deceptive or unfair to describe such products as "cultured." After reviewing the record, the Commission determined there was insufficient evidence to conclude that using "cultured" in reference to laboratory-created diamonds or other laboratory-created gemstones would be either deceptive or unfair if marketers reasonably and effectively qualified the term as suggested in Section 23.23.9 The Commission now seeks additional evidence on this issue.

In 2006, Jewelers Vigilance Committee, along with ten industry groups, petitioned the Commission to decide whether the marketing efforts of the synthetic diamond industry were unfair and misleading.¹¹ The Commission denied their petition at that time, citing a lack of evidence to show that use of the term was detrimental, but requiring the use of an additional qualifying term.¹²

⁹ <http://accreditedgemologists.org/articles/compositRuby-consumer.php>

¹⁰ <https://www.facebook.com/Jewelers.Ethics>

¹¹ <http://www.ftc.gov/os/061211jvcpetitiondenied.pdf>

¹² <http://www.ftc.gov/opa/2008/07/jvc.shtml>

For many people, and as defined by many references, the term cultured refers to the nurtured growth and manipulation of living organisms. In truth, the debate need not go much farther than that. However, as thirty years of discussions have yet to lead to a final resolution, we would like to present the following additional points:

- The terms *cultured* and *cultivate*, when used to describe pearls, refer to their organic nature and the process by which they are grown in fresh and saltwater environments. Laboratory grown gemstones are inert minerals created in inert machines. Therefore, synthetic gemstones are *created*, not *cultured*.
- The process of synthetic gemstone creation has nothing in common with the methods used to produce cultured pearls, and the terms are not interchangeable. In addition, there is primacy in the Guides that indicates these two terms are not similar, and accordingly has disallowed the use of the word “synthetic” as a descriptor of cultured pearls for decades.

Currently, section §23.20(k) of the Guide states, **“It is unfair or deceptive to use the word “synthetic” or similar terms to describe cultured or imitation pearls.”** In 1967, the FTC Jewelry Guide §23.39(d) Misuse of the words “gem,” “reproduction,” “replica,” “synthetic,” etc., also affirmed that **“It is an unfair trade practice to use the word “synthetic” as descriptive of cultured or imitation pearls.”** If dealers may not market a cultured pearl as a synthetic pearl than precedence lends that it is unfair and deceptive to use the word “cultured” to describe synthetic diamonds or other laboratory-created gemstones.

Treated and Freshwater Pearl Products

Third, the Commission seeks comments regarding several issues relating to pearls. Specifically, the Commission seeks comments on whether it should amend the Guides to address disclosures concerning freshwater pearls. Comments submitted in the 1996 review suggested that use of the term “cultured” in reference to freshwater pearls would create confusion because consumers tended to associate the term “cultured pearls” with pearls that were round, and freshwater pearls were often irregularly shaped and smaller than other cultured pearls. Since then, developments in the culturing process have effected changes in the shape, size, quality, and color of the resulting product, such that freshwater cultured pearls may, in many respects, resemble saltwater cultured pearls in appearance. The Commission thus seeks comments on whether it should amend the Guides to recommend any specific disclosures relating to freshwater pearls. In addition, the Commission seeks comments on whether the Guides should advise the disclosure of treatments to pearl products, such as dyeing techniques that artificially color the final product.

The disclosure of freshwater (or saltwater) cultured pearls should be seen in accordance with the Guides at §23.18(b), §23.19(b), §23.20(l), §23.21. Before discussing treatments, it is important to understand the distinction between cultured and natural pearls.

Cultured pearl products dominate the pearl jewelry industry.¹³ Since the introduction of commercially produced cultured pearls nearly a century ago, their natural counterparts claim only a very small percentage of all pearl sales

¹³ <http://www.pearl-guide.com/cultured-pearls.shtml>

worldwide. The separation between natural and cultured pearls may have been somewhat simple in decades past, beginning with price as an indicator. However, the pearl industry of today is much more complicated.

Natural pearls are estimated to form in wild-mollusks perhaps one in ten thousand times, while cultured saltwater pearls form successfully in approximately forty percent of the millions of raised-mollusks implanted yearly on pearl farms internationally. While there is a monumental difference in production between natural and cultured saltwater pearls, the production of cultured freshwater pearls is immense.

Freshwater cultured pearls have become the dominant force in world markets, and the development of new implantation techniques using multiple varieties of mussels have led to advancements in freshwater pearl culturing. As a result, between 24 and 32 pearls may be harvested from each mussel, and a 2006 study estimated that 800 metric tons of jewelry grade pearls were produced by China alone.¹⁴ Freshwater cultured pearls have opened entirely new market sectors for consumers who could not otherwise afford the saltwater versions. Therefore, the necessity to identify them as freshwater cultured pearls should be required in order to protect the value of scarcer pearl varieties.

Pearl treatments

The following are the results of a poll conducted by JEA via social media regarding pearl treatment disclosure:

A question straight from the FTC: Should the Guides advise the disclosure of treatments to pearl products, such as dyeing or other artificial coloring techniques?

YES: 100%

NO: 0%

Current disclosure requirements for cultured pearls:

§ 23.21 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.

Technically speaking, Article 23.21 encompasses various treatment methods currently performed on pearls, if such requirements for disclosure can be reasonably inferred from the use of “characteristics.” Article 23.21 could be

¹⁴ <http://www.pearl-guide.com/innovation-continues-in-chinese-freshwater-pearl-culture.shtml>

expanded to include verbiage regarding treatment, but ideally, such language would be contained in a new article specific to the treatment of **all** pearls.

The following treatments are commonly applied to pearls:¹⁵

- **Bleaching** – Low level bleaching is used to create uniformity in color, and at low enough concentrations may not damage the pearls nacre. High concentrations of bleach will certainly damage nacre; regardless of bleach concentrations, disclosure must be required.
- **Irradiation** – Irradiation is used with freshwater and saltwater cultured pearls, producing different results, but leading to improved appearance for both.
- **Silver Nitrate** – Exposure of low quality cultured pearls to Silver Nitrate creates a chemical reaction, which results in a very dark or black colored product.
- **Dyes** – Organic and inorganic dyes may be used quite successfully to alter the color of cultured pearls. In fact, there are instructions available on-line for do it yourself pearl dyeing, using no more than store bought fabric dyes.¹⁶
- **Coatings** – Clear coatings are used to create high luster in otherwise low quality pearls, but this coating will wear or chip off in time, revealing the true product underneath.

Freshwater cultured pearls may possess many shades of natural color, but the reality is that the majority are treated before entering the market.¹⁷ Nearly all Japanese and Chinese Cultured Akoya pearls possess a neutral white or nearly neutral cream body color, which is bleached to even out the tones, and then tinted with dyes to achieve a pink, yellow, or green hue. Other popular, and more valuable saltwater cultured pearls, called South Sea and Tahitian are known for their extremely large size (due to insertion of a larger bead nucleus) and their natural colors of silver, yellow, and black. However, even these pearls may be dyed, irradiated, bleached and exposed to Silver Nitrate to improve or alter their color.

In her 2006 book entitled *“Pearls”*, author Elizabeth Strack states, *“insiders believe that 80 percent of the yellow and golden South Sea cultured pearls are dyed artificially.”* Additionally, the author writes that treatments were perfected by 1997, to the point that experts in the South Sea pearl manufacturing business *“had to admit that they are no longer able to distinguish treated from untreated pearls by visual inspection alone.”* (p.660)

The scope and prevalence of pearl treatments demand inclusion in the guides. Requirements for disclosure should include not only treatment, but the necessity to include special care instructions as well.

Alloys and Alloy Products:

Jewelers Ethics Association is in agreement with the guides for precious metals as they currently exist, believing they are clear and concise and do not require revision at this time.

¹⁵ <http://www.pearl-guide.com/pearl-treatments.shtml>

¹⁶ http://www.firemountaingems.com/beading_howtos/beading_projects.asp?docid=7B6B

¹⁷ <http://www.ganoksin.com/borisat/nenam/pearl-treatments.htm>

Review of Guides for Jewelry, Precious Metals, and Pewter Industries

Throughout the decades since 16 CFR 23 was first written, the FTC has forwarded a sincere and often stated desire to witness this industry's ability to self-regulate. As should be clear from submissions made by JEA and other trade organizations, the will exists within our industry to offer that assistance. Commission statements and individual staff have conveyed a message that, across various markets, industry groups should lead by example, suggesting that the trade at-large will follow that example. Many in this industry possess great strength of conviction in relation to honest and open trade, and the drive to promote those convictions to others. However, these individuals, and the trade groups of which they are members, account for only the smallest fraction of sellers within the gem and jewelry markets. Without the FTC firmly behind them, and the provision of clear and concise language, no amount of conviction will serve to stem the tide of dishonest dealings, which, whether they are practiced with or without intent, cause damage to consumer confidence and industry health every day. Shades of gray are not needed amongst language that should always be black and white. Simple, well defined guides will not only support the self-regulation requested by the FTC, but will also assist trade groups in fostering a strong base of educated consumers who know what to expect, and can shop with confidence.

In a 2007 reference to the Commission's policy on substantial injury to the consumer which is not reasonably avoidable, then Commissioner Rosch quoted a judgment by the FTC, saying *"whether a consequence is reasonably avoidable depends not just on whether people know the physical steps to take in order to prevent it, but also whether they understand the necessity of actually taking those steps."*¹⁸

Such a statement is at the heart of disclosure issues regarding gemstones and jewelry, and describes what consumers face when the history of a gemstone is, many times, unknown even to those that sell them.

Terms Not Currently Included

Before the Commission considers modification of existing language and the addition of new articles, we would like to represent our members in making these formal requests.

What is Natural?

The American Gem Trade Association (AGTA) and the World Jewellery Confederation (CIBJO) have existing language within their gemstone information guides¹⁹ which supply a definition for the term 'natural'. Such a basic term, while appearing in the current FTC guides fourteen times as a reference point, is not clearly defined by the Guides.

¹⁸ <http://www.ftc.gov/speeches/rosch/070518evolutionandconvergence.pdf>

¹⁹ <http://www.agta.org/gemstones/agta-gim.pdf>

http://download.cibjo.org/CIBJO_Gemstone_Book_2011-1.pdf

In an informal survey conducted by JEA via social media, we received the following input:²⁰

Should the revisions to the FTC guides include a definition for "natural" gems? Though many trade organizations define what constitutes "natural" within their guides, the FTC jewelry guides have no such language.

YES: 100%

NO: 0%

CIBJO defines natural:

5.36. Natural materials

materials which have been formed completely by nature without human interference and subsequently modified only by means of cutting and polishing and those processes mentioned in clause 4.1.3.

AGTA defines natural:

With the exception of the normal fashioning (cutting and polishing) of a gemstone, it is the seller's responsibility at all levels of commerce to clearly disclose to the buyer at the time of sale:

- 1) Whether the gemstone is natural or not;*
- 2) All information pertinent to any enhancement process done to a natural gemstone when:
 - a. the treatment is not permanent and its effects are lost over time; or*
 - b. the treatment creates special care requirements for the gemstone to retain the benefit of the treatment; or*
 - c. the treatment has a significant effect on the value of the gemstone.**

By including a definition of natural, the entire scope of the Guides is broadened. Our suggestion of 'natural' follows the example of other trade organizations, in that only materials occurring in nature without the interference or assistance of man, and which have been mined or extracted and cleaned, polished, and/or faceted may use the term natural without a qualifier.

All processes applied to natural materials other than those stated above, must be required as part of standard gemstone disclosure. Any process such as heating, coloring/dyeing, filling/sealing, or any other enhancement, improvement, or treatment, significantly reduces the value of a material when compared to its natural counterpart. Examples of acceptable use might include: 'heated natural sapphire', or 'irradiated natural diamond.'

Suggestions for Revision

The following articles contain proposed revisions to Guide language which, while not significant in size, may strengthen the core of the Guides. Proposed revisions appear in red text below. Sections and Articles of the Guides without proposed changes are not included here.

§ 23.0 Scope and application.

(a) These guides apply to jewelry industry products, which include, but are not limited to, the following: **natural and treated** gemstones and their laboratory-created and imitation substitutes; natural and cultured pearls, **treated pearls** and their imitations; and metallic watch bands not permanently attached to watches.¹ 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

²⁰ <https://www.facebook.com/Jewelers.Ethics>

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."

§ 23.1 Deception (general).

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

§ 23.2 Misleading illustrations.

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

§ 23.11 Definition and misuse of the word "diamond"

(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 a **natural** diamond provided above, or which, though meeting such requirements, has not been symmetrically fashioned with at least seventeen (17) polished facets.

Note 1 to paragraph (b): It is unfair or deceptive to represent, directly or by implication, that **treated** 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 a **natural** 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", "**rough diamond bead**").

Note 2 to paragraph (c): Additional guidance about **manufactured treated**, imitation, and laboratory-created diamond representations and misuse of words "gem," "real," "genuine," "natural," etc., are set forth in § 23.13, 23.23, 23.24, and 23.25.

§ 23.12 Misuse of the words "flawless," "perfect," etc.

(a) It is unfair or deceptive to use the word "flawless" to describe any **natural or treated** 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 **natural or treated** diamond unless the diamond meets the definition of "flawless" and is not of inferior color or make.

§ 23.13 Disclosure of treatments to diamonds.

A diamond is a gemstone product. Treatments to **natural** diamonds should be disclosed in the manner prescribed in § 23.22 of these guides, Disclosure of treatments to **natural** gemstones.

§ 23.15 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 **natural or** diamond that is lopsided, or is so thick or so thin in depth as to detract materially from the brilliance of the stone.

§ 23.16 Misuse of the words "brilliant" and "full cut."

Note to § 23.16: Such terms should not be applied to single or rose-cut diamonds or **rough-cut diamond beads**. They may be applied to emerald-(rectangular) cut, pear-shaped, heart-shaped, oval-shaped, marquise-(pointed oval) cut, and **bead-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 Definitions of various pearls.

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

(a) Pearl: A **natural** calcareous concretion consisting essentially of alternating concentric layers of carbonate of lime and organic material formed within the body of certain **fresh and saltwater** 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; **a natural pearl.**

(b) Cultured Pearl: The composite product created when a nucleus (usually a sphere of calcareous mollusk shell **and or piece of mollusk flesh**) 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 **natural** pearl or cultured pearl.

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

§ 23.19 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 **natural** pearl, as defined in § 23.18(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 **natural** 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 **natural or cultured** 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 **natural or cultured** pearl.

§ 23.20 Misuse of terms such as "cultured pearl," "seed pearl," "Oriental pearl," "natura," "kultured," "real," "gem," "synthetic," and all regional designations.

(g) **It is an unfair or deceptive practice to use a geographic or regional name for natural and cultured pearls that were not formed in the actual waters of the regional designation.**

(h) It is unfair or deceptive to use the term "South Sea pearl" unless it describes, identifies, or refers to a **natural** 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.

(k) It is unfair or deceptive to use the word "gem" to describe, identify, or refer to a **natural** pearl or cultured pearl that does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem.

§ 23.21 Misrepresentation as to cultured pearls.

It is unfair or deceptive to misrepresent the manner **or location** 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 **natural** pearls and imitation pearls, or any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls.

Note to §23.21: A pearl is a gemstone product. Treatments to natural and cultured pearls should be disclosed in the manner prescribed in § 23.22 of these guides, Disclosure of treatments to natural gemstones.

§ 23.22 Disclosure of treatments to **natural gemstones.**

It is unfair or deceptive to misrepresent the manner in which natural minerals and ornamental rocks used as gemstone products

are manufactured, processed, treated, enhanced, altered, or artificially produced for color, clarity, durability, etc. from their unaltered original state as a natural earth material.

It is unfair or deceptive to use the word "natural," "sapphire," "diamond," "pearl," or like word to describe, identify, or refer to any manufactured gemstone unless industry product is immediately preceded, with equal conspicuousness, by the word "treated" or "enhanced" or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a natural gemstone or unmanufactured industry product. See § 23.24.

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

(d) It is recommended that the seller disclose all treatments of natural gemstones to the purchaser.

Note 1 to § 23.22: As described in §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 2 to § 23.22: To prevent deception, any qualifications or disclosures, such as those described in the guides Note 2 § 23.1, 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 § 23.22: 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 jewelry 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.

§ 23.23 Misuse of the words "ruby," "sapphire," "emerald," "topaz," "pearl," "stone," "cultured," "birthstone," "gemstone," etc.

(a) It is unfair or deceptive to use the unqualified words "ruby," "sapphire," "emerald," "topaz," "pearl," or the name of any other gemstone to describe any product that is not in fact a natural stone of the type described in §23.11, 23.18, 23.22 and 23.24.

(b) It is unfair or deceptive to use the word "ruby," "sapphire," "emerald," "topaz," or the name of any other gemstone, or the word "stone," "birthstone," "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," "synthetic," or by the word "imitation" or "simulated," so as to disclose clearly the nature of the product and the fact it is not a natural gemstone.

Note to paragraph (b): The use of the word "faux" or "cultured" to describe a laboratory-created or imitation stone is not an adequate disclosure that the stone is not natural.

Note to § 23.23: It is unfair or deceptive to represent, directly or by implication, that industrial grade minerals or other non-jewelry quality products are of gem grade quality.

§ 23.24 Definition and Misuse of the words "real," "genuine," "natural," "precious," etc.

Natural minerals and ornamental rocks used as gemstones and related industry products (beads, carvings, cabochons, etc.) are defined as those which have undergone only the cutting and polishing process of manufacturing and otherwise maintain all their original natural earth qualities unaltered by man.

It is unfair or deceptive to use the word "real," "genuine," "natural," or similar terms to describe any gemstone that is manufactured or produced artificially to improve or produce artificial traits unless industry product is immediately preceded, with equal conspicuousness, by the word "treated" or "enhanced" or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a natural gemstone or unmanufactured industry product. See § 23.22.

§ 23.25 Definition and Misuse of the word "gem."

A gem is, with rare exception (pearl, coral, amber), an industry product made of an inorganic mineral or rock and used in adornment.

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

1. Natural means gem manufactured no further than cut and polish.
2. Treated means gem manufactured for significant effect on value by achieving desired color, clarity, and durability, and quantity.
3. Synthetic means gem manufactured replica of natural mineral or rock.
4. Imitation means a natural or treated mineral or rock substitute for another gem mineral or rock.

It is unfair or deceptive to use the word "gem" to describe, identify, or refer to a diamond, ruby, sapphire, emerald, topaz, pearl or other industry product that does not possess the definition necessary for qualification as a gem.

It is unfair or deceptive to use the word gem to describe a treated, synthetic, or imitation without qualifying the type listed.

Note to § 23.25: In general, use of the word "gem" with respect to industry products should be avoided without a qualifying definition 1 – 4 in accordance to §23.22Notes 1-3.

§ 23.26 Misuse of the words "flawless," "perfect," "properly cut," etc.

(c) It is unfair or deceptive to use the terms "properly cut," "proper cut," "modern cut," or any representation of similar meaning to describe any gemstone that is manufactured lopsided, or is so thick or so thin in depth as to detract materially from the brilliance of the stone or falsely increase stone's value by weight .

(d) It is unfair or deceptive to use the word "flawless," "perfect," or any representation of similar meaning to describe any treated, synthetic or imitation gemstone which material aspect affects. . . . §23.1, .

§ 23.27 Additional guidance for the disclosure of gemstone treatments.

Current and future manufacturing of industry treatment processes are performed on gemstones to give viable marketability to otherwise adverse natural materials. Industry processes ultimately and significantly improve the effect and affect rarity, value, and the quality of gemstones, and may also create the need for additional care requirement and permanency disclosures related to these products.

It is unfair or deceptive to use the word "natural" or like word to describe, identify, or refer to a manufactured gemstone unless industry product is immediately preceded, with equal conspicuousness, by the word "treated" or "enhanced" or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a natural gemstone or unmanufactured industry product.

In addition to the information provided above, there is also a strong need to properly define/redefine "gemstone". A supporting document is attached for your review. Another area of contention that should be addressed by the FTC within the Guides is the misuse of an origin name to falsely increase the rarity and/or value of a less valuable gemstone, i.e. "Paraiba-colored", "Paraiba-like", "Kasumigaura-like", "Chinese-Kasumigaura", etc. Finally, with the prevalence of gemstone beads flooding the market, it is critical that the FTC include language that states clearly all gemstone beads fall under the Guides for gemstone disclosure and fair practices.

Conclusion

Above all else within this document, it has been our desire, as reflected by the opinions and concerns of our members, to impress upon the Commission the constitutive need for significant revision to the guides as currently promulgated.

The inclusion of new terms is not as important as the reinforcement of existing terms. When reviewing important issues, such as those you have outlined specifically, we urge the Commission to examine the materials in question, and find answers within guides that have served millions of consumers for many decades.

“It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow.”

-James Madison, from the Federalist Papers

Much of the reason and motivation for FTC to revise and update its Jewelry Industry Marketing Guide involves an effort to have the trade use *proper nomenclature*. Language IS important, and “what you call things” has a significant role in creating human perceptions. The buying public relies upon the jewelry industry to provide accurate and relevant product labels. All of this effort to improve clarity is completely useless, however, if fundamental product definitions are incorrect or misleading.

There are two areas of terminology that desperately need revision. Both involve the most basic aspects of gemstone descriptions, are universally accepted in the trade, **and are completely wrong**. If these core problems are not corrected in the forthcoming FTC revision, the rest of the document essentially becomes irrelevant.

1. WHAT IS A GEM

THINGS ARE DEFINED WITH NOUNS, NOT ADJECTIVES.

If someone asked you to *define* the color red, you might say that red is “warm”, that red is “passionate”, that red is “violent”, or perhaps that red is “exciting”. These terms – warm, passionate, exciting, etc. are ATTRIBUTES. But they do NOT tell you what red “IS”.

In point of fact, red IS a portion of the visible light segment of the electromagnetic spectrum of wave energies, corresponding to a specific range of wavelengths. These wavelengths are perceived (by most people) as a specific COLOR. The word “color” is a NOUN”. The word “passionate” is an ADJECTIVE. The term “red” is DEFINED by the nouns pertaining to its nature as a group of light wavelengths, not by the sensations people might have when viewing this color.

In like manner, A GEMSTONE **IS A MINERAL THAT IS CUT AND POLISHED FOR ORNAMENTAL PURPOSES**. Some minerals are hard, and some are soft. Some are rare, and some abundant. Many are what most (but perhaps not all) people would call “beautiful”, and some might be considered drab, or even ugly. The terms “beautiful”, “rare” and “hard” are ADJECTIVES, and do NOT serve to DEFINE the term “gemstone”. The jewelry trade seems universally committed to defending the use of the term “gemstone” as “something that is hard, durable, beautiful and rare”. This nonsense might have been adequate in centuries past, when only a few gem materials were known, and most of them were harder and more durable than other materials seen in daily life. We now live in a time when new materials are constantly being introduced to the gemstone trade, and when even their basic attributes are given new meaning. A good example is tanzanite, which is now so popular that it has been given the status of an alternative birthstone! Yet even the name tanzanite DID NOT EXIST in 1969, when blue crystals of zoisite from Tanzania were being sold to mineral collectors. Cut stones were labeled “zoisite” and sold only to collectors of rare and unusual materials. The jewelry trade was not even aware of their existence until Tiffany & Co., in the early 1970s, created a trade-name and launched a promotion. Even as late as the 1980s, tanzanite was too rare for a global marketplace. Only the discovery of a huge mineralized zone, allowing the expansion of production from that of a single

mine, made tanzanite abundant enough to be widely marketed. Tanzanite is not especially hard, and relies upon heat treatment to create the popular blue color by which it is known. Other “collector materials” that are now seen in jewelry stores and labeled “gemstones” include apatite, sphene, andalusite and labradorite. These are minerals that (rarely) occur in a form that is transparent and suitable for cutting as faceted stones.

Some jewelers will argue that apatite and sphene are too soft to be considered “gemstones”. What about opal, which at 5-1/2 is equally soft, and even more fragile. Is opal therefore not “allowed” to be considered a gemstone because it is “too soft”, ...and it is certainly not very durable!

This conundrum can only be solved by *totally abandoning* the outdated, misleading and incorrect use of ATTRIBUTES to serve as definitions. A gem (with only a few universally acknowledged exceptions, such as coral and pearl) IS a MINERAL. Terms involving hardness, beauty, durability, rarity, etc. are DESCRIPTIVE ADJECTIVES and MAY NOT be used to DEFINE the product.

As long as jewelers are allowed, by FTC sanction, to use incorrect terminology to define as basic a term as “gem”, there seems little point in creating elaborate rules and regulations for an industry that would continue to be firmly rooted.... in shifting sand.

2. PRECIOUS AND SEMIPRECIOUS

There can hardly be a term more ludicrous than “semiprecious”, yet it is used by almost every seller of gemstones in every part of the world.

Since we are so concerned with terminology and definitions, we must rely for guidance upon the most fundamental source of language, the dictionary. In this compendium, “precious” is essentially defined as something “of great value”; semiprecious is defined as something “having less value than precious”.

If we apply these definitions to the world of gemstones we have (among many others) some of the following situations.

Diamond is “precious” and garnet is “semiprecious” EVERY jeweler in the world would agree.

However....demantoid (a garnet) can sell for as much as \$5,000 per carat, even in small sizes. Diamonds can be purchased for as little as a few hundred dollars per carat. Is demantoid (a garnet) “semiprecious” or not? And how can a diamond selling for \$200 be considered “precious”?

The finest ruby can bring more than \$200,000 per carat at auction, but you can find rubies of equal size in the marketplace being sold for under \$100 per carat. Is ruby both “precious” and “semiprecious” at the same time?

It is obvious, even without presenting more examples, that **the term “semiprecious” is utterly without meaning and should be totally abandoned.**

ANY set of documents issued by FTC that continues to ALLOW (let alone condone) the use of such vague, misguided and useless terms can have no credibility and should not be allowed into the marketplace at all, let alone have the status of a “guide”!

The proliferation of treated and synthetic gems *without proper disclosure* is a nightmare that continues to engulf the jewelry trade. **Disclosure involves the use of words.** The problem can only therefore be solved by eliminating unclear and misleading terminology, and making sure that everyone in the trade understands and uses the right descriptive words. FTC has a unique opportunity to put this effort on the right path by first abandoning some of the useless jargon that has encumbered our industry for so long. Its mandate is clearly to do so.