

# Hallmark Research Institute

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## # 432; 16 C.F.R. Part 23: Guides For the Jewelry, Precious Metals, and Pewter Industries:

Request for Public Comments;

*FTC Seeks Public Input on Jewelry Industry Marketing Guides*

FTC File No. G711001

September 14, 2012

### RE: Call to Comment: FTC Jewelry Guidelines

We at The Hallmark Research Institute (HRI) are encouraged by this opportunity to participate with others in the industry interested in seeing constructive changes made in the FTC Jewelry Guidelines. Over the past ten years, the HRI has been actively researching the precious metal marking practices of countries around the world. The first results of this research culminated in the release of "World Hallmarks Volume I, Europe, 19<sup>th</sup> - 21<sup>st</sup> Centuries," a publication that documents the hallmark and hallmarking practices of 39 European countries and the Hallmarking Convention. The purpose of stating this background information is to establish our experience and understanding of the marking of precious metals on the global market and our qualifications in making the comments offered herein.

The practice of independent testing and hallmarking precious metal objects, before legally offering them for sale, has been practiced in the majority of European, North African and Middle Eastern countries, in many cases for hundreds of years. More recently India, Sri Lanka and Singapore have mandated compulsory hallmarking for areas that represent about one-sixth of the world's population. The United States, as with all the countries in North and South America, do not have the benefit of such a hallmarking system. Consequently, in conversation with officials from numerous assay offices abroad, it has become apparent that few in their jewelry industries were willing to entertain purchasing or importing goods made in the Americas, because our weak laws and lack of enforcement, generates real doubt as to the accuracy of any maker or sponsor's fineness stamp marked items of precious metal manufactured here in the U.S.A. or in the rest of the Western Hemisphere.

With that said we understand the limitations of the FTC but would like to offer ideas that will hopefully lend more clarity and emphasis in what legal requirements we do have and how the FTC can provide for better adherence to these laws. Our comments are specifically focused toward the jewelry industries relationship regarding the marking of fineness on precious metal items; **FTC Guidelines, title 16, Sections 23.0 -23.9.**

Our concerns are listed here chronologically, with each comment respectively detailing our in depth thoughts specific to the following topics involving precious metal marking. It is our opinion that these following areas of The Federal Trade Commission Guides for the Jewelry, Precious Metal and Pewter Industries (FTCG), be considered for revision.

- Comment 1) Establishing clear understanding of the roots to the FTCTG
- Comment 2) Defining the precious metal standards of the United States of America
- Comment 3) The definitions of hallmark, trademark, fineness mark, and responsibility mark
- Comment 4) The importance of the mark
- Comment 5) The proposal of a national registration of un-trademarked maker's marks
- Comment 6) The importance of enforcement
- Comment 7) Establishing import and export criteria for better International Trade



Comment 8) Suggestions for future revisions to the National Gold and Silver Stamping Act  
Comment 9) Hallmarking in the USA

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### **Comment 1) Establishing clear understanding of the roots to the FTCG**

HRI believes that it is important at the onset of these Guidelines, to recognize that under the **§23.0 heading Scope and Application**, there is a clear and precise reference to the only law which establishes the standards and the marking of precious metal items manufactured in the United States; the National Stamping Act of 1906 (NSA)

As the foundation of U.S. precious metal marking laws, the National Stamping Act of 1906, U.S.C. 15, Chapter 8, Sections 291-300, is also the basis for these FTC guidelines on precious metals. It should be established that the subsequent FTC guidelines are offered to further elaborate on the understanding of precious metal marking and labeling practices.

### **Comment 2) Defining the precious metal standards of the United States of America**

We believe that reiteration of the NSA fineness standards for each precious metal, followed by a discussion of consequences for violations, will have more weight and understanding. For example, section **§23.4 Misrepresentation of Gold Content**, should begin with establishing the fineness standards for gold (10k, 14k, 18k), the use of the karat designation (vs millesimal), and what equates to an acceptable marking, including the types of possible misrepresentations. This will generate a better understanding of the guidelines, as they will be more complete.

We suggest the same be done with the following **sections 23.6 and 23.7** (silver, platinum, and palladium) respectively. It would be important to establish the fineness designations as millesimal (parts per 1000, i.e. 950/1000).

We suggest that in **Note to Paragraph (b) §23.4**, the final word should be changed from “meaning” to “representation.”

### **Comment 3) The definitions of hallmark, trademark, fineness mark, and responsibility mark**

It has been increasingly apparent to us that there is a significant misunderstanding of the terms trademark vs hallmark as they pertain to stamps on precious metals. We would like to suggest that in the section **§23.9 Additional Guidance for the Use of Quality Marks**, these two terms be defined. A trademark is the registered mark of the maker, manufacturer or sponsor. A hallmark is globally known as the official mark struck on an item of precious metal as a result of independent assay testing. Hallmarks can be a single inclusive mark, or a sequential series of marks, that can convey the country and city of origin, the specific precious metal, the fineness, the year of assay and even minor details as to anniversaries of historical importance. Hallmarks are normally accompanied by the maker's mark, a trademark, or a sponsor's mark.

HRI proposes the following definitions be used to identify these terms properly:

**Hallmark** - A hallmark is the subsequent mark or a sequential series of marks applied to a precious metal item by a government or otherwise authorized assay office or agency after the item has successfully passed one or more independent assay tests that certifies the purity of the metal content.



**Compulsory Hallmarking** – All makers, manufacturers, or sponsors of precious metal objects are required by law of the country of origin, to send their articles to an authorized assay office where they are tested and if found “to standard,” then hallmarked, being proof of that items being in legal conformity with the law before being allowed to be offered for sale.

**Fineness Mark** – A mark that represents the measurement of purity or fineness of a precious metal article. This designation can be expressed as a whole number, parts per thousand or by a karat specific reference.

**Trademark** – The logo, symbol, name or brand that is used as the recognized mark of the maker or sponsor of the item.

**Registered Trademark** - The officially filed and legally accepted mark or designed symbol that represents the maker or sponsor.

**Responsibility Mark** – A mark which identifies the maker, manufacturer, sponsor, retailer, or importer who is responsible for guaranteeing the metal content of an item. This mark is also referred to as a sponsor’s or maker’s mark.

#### **Comment 4) The importance of the “Marker’s Mark”**

While most of the jewelry that we have examined has a karat mark or other fineness mark, the greatest single violation that we regularly see are those same precious metal goods without a trademark, maker’s marker, a sponsor’s mark, or even a signature.

This is true of both domestic and imported items, especially in the market of new goods, but equally and often not considered as applicable are the items in the secondary market referred to as “pre-owned, vintage, estate and antique”. We highly recommend that the definitions of which items, and how an item is required to be marked, be redefined and if necessary expanded to encompass all of the above mentioned classes of precious metal items. This would mean that all items incompletely marked, would have to be additionally marked by the seller. This could be successfully implemented if it were to be required that all precious metal items be guaranteed by the seller in the form of a *special stamp*, one that indicates an after production assurance of the fineness mark, placed on by the seller. We suggest that all retailers, auction houses and dealers be reasonably and fully made aware of these laws before any penalties would be enforced.

#### **Comment 5) A proposal for a national registration of currently non-trademarked maker’s marks**

**Note 2 to § 23.9:** *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.*

In regards to this section we would recommend that there be a central national registry of all maker’s marks, sponsor’s marks, responsibility marks, and/or trademarks of any individuals or corporations, as well as the signatures of all makers recorded in a data base that is comparable to those in many other parts of the world. For example, the London Assay Office in Great Britain, that has been in business and recording maker’s and sponsor’s marks for over 500 years, charges a modest fee of GBP 72, or about \$117 to register a marker’s mark, thus generating revenues for its upkeep and referencing.



One of the reasons that we have been told why many craftsmen do not mark their goods is that the process of registering a trademark or a maker's mark is a laborious and expensive process. Following the established registration processes currently used in more than 70 countries, the U.S.A. could establish such a registry and at the worst make it cost neutral.

The offering of a new distinction in the form of an industry specific registration would help to encourage makers to mark their items, assist in identifying the responsibility mark of the various makers, and could in turn create an economic climate that would find more voluntary and eager adherence to the National Stamping Act regulations.

#### **Comment 6) The importance of enforcement**

The original Act of 1906 is now 106 years old. The trademark requirement amendments were last done in 1961. Considering that after more than 50 years, there are still continuous and flagrant violations of the 1906 Act and FTC guidelines, we believe that it is imperative to understand why this is happening and then implement strict enforcement.

We first believe that these violations occur because there is limited enforcement, and that the penalties are minor. We believe that many if not most dealers are ignorant of the law and that because the penalties are minor and seldom enforced, many dealers ignore the laws and regulations. The front line against improperly marked imported goods lies with the *Customs Services* and they need to understand that they can seize, hold, fine the importers, and or confiscate any incorrectly or falsely marked precious metal items.

The secondary line of defense against violations to the Act and FTC rules are with the state and local authorities that have the same powers to seize, hold, fine and or confiscate any incorrectly or falsely marked precious metal items, as do the FTC inspectors, and all other regulatory agencies who should be doing regular inspections at both primary trading centers, including major dealers of precious metal items.

All laws designed to protect both the consumer and U.S. domestic industry need to be actively enforced. What is the point of creating a set of fair and reasonable rules to level the playing field for all domestic manufacturers, retailers and dealers, while at the same time setting in motion laws that protect the average consumer, only to occasionally enforce those laws and rules, especially when it comes to sub-standard imports?

#### **Comment 7) Establishing import and export criteria for better international trade**

It is highly suggested by the Hallmark Research Institute that there be a request to consider that there be additional guidelines, amendments to the Nation Stamping Act of 1906, or even new laws that would strengthen the enforcement against the under-karating of precious metal items in the U.S.A., as it especially pertains to our national import laws.

In regards to the requirements as to the country of origin, as per **Customs Regulations, 19 CFR, Part 17**, we (HRI) have examined thousands of precious metal items that have been imported into the U.S.A. and are very rarely marked with the country of origin as required by law.

While we support the country of origin marking, we would like to recommend that any precious metal item that has been hallmarked by any country that offers formal assay hallmarking services, whether they be compulsory or voluntary, be fully accepted as meeting all the requirements of this regulation as pertains to the country of origin.



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### **Comment 8) Suggestions for future revisions to the 1906 National Gold and Silver Stamping Act**

We recommend that the FTC act immediately and forcefully to create a series of defined regulations that clearly and unequivocally state what the laws and regulations are for the sale of all precious metal items in the U.S.A. and its territories.

### **Comment 9) Hallmarking in the USA**

There is a persistent question as to whether hallmarking could be introduced into the U.S.A.

The answer is that if hallmarking can be enforced in a country like Russia, which has a comparable population but substantially larger land mass, then – Yes - it could happen in the U.S.A.

The only problems are: the legislative will, an industry that would have to implement the laws requiring such legislation and to then begin to fully behave ethically; and the establishment of an infrastructure to monitor and enforce the new laws. If this is possible in France, Russia, India and the United Kingdom for example, then surely it is possible that we can establish a national hallmarking system in the U.S.A.

National hallmarking would, of course, create thousands of new technical and service jobs all over the country, but it would also finally open up U.S.A. made jewelry items for exportation all over the world. Bear in mind any American made jewelry that is sold in any country that has mandatory hallmarking laws currently requires that those U.S. goods be hallmarked before they can be sold in that country. Why not then do the hallmarking at home and expand our exports rather than limit them?

In summation, the Hallmark Research Institute has witnessed the benefit of consumer protection in the form of hallmarking in many countries. Here in the United States of America, where we value our consumers, there seems to be a limited amount of enforcement done to protect the American consumer from misrepresented precious metal products. We believe that strong laws, strict enforcement, and full and clear guidelines, by which our craftsmen and manufacturers can easily follow, will turn our domestically made precious metal products into items that have a demand worldwide.

We sincerely encourage the FTC to expand and clarify their regulations so as to require federal, state and local enforcement agencies to actively enforce those laws and guidelines.

Thank you for the opportunity to comment.

Sincerely,

HALLMARK RESEARCH INSTITUTE

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