

June 2, 2013

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 my submission of invited comments regarding questions to be addressed at the Public Roundtable on Wednesday, June 19, 2013, from 9am-12pm, 601 New Jersey Avenue NW. FTC Roundtable set to examine possible modifications to The Guides for the Jewelry, Precious Metals and Pewter Industries which I have RSVP'd and will be in attendance. I am pleased to participate in the discussions for the decennial revision of The Guides. I am a geologist by training, a founding member and sitting First Vice President of the Jewelers Ethics Association, and as are we all, a lifelong consumer-first and foremost. I look forward to meeting you, The Commissioners, Staff, and other participants at the upcoming Roundtable.

Sincerely,

Veronica Poteat

June 2, 2013

Federal Trade Commission

Office of the Secretary, Donald S. Clark

Room H-113 (annex O)

600 Pennsylvania Avenue NW

Washington, DC 20580

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

Dear Commissioners and Staff,

Thank you for your open call for comments on upcoming Jewelry Guides Roundtable, Project No.G711001, and for the opportunity to attend said roundtable 6/19/13. Commission has determined that expanded comments will assist their review for possible modifications to the Guides for the Jewelry, Precious Metals, and Pewter Industries. To the extent possible the following comments are intended to aid the Commission's revisions to prevent consumer deception with respect to the marketing and sale of jewelry industry products in question. The following comments are submitted in an effort to ensure The Guides promote their intended goal of promulgating a strong and vibrant market which consumers have confidence participating in while not unduly burdening commerce and guiding manufacturers and sellers of industry products in conformity of legal requirements.

The Jewelry Guides decennial 2012 Notice consisted of 23 questions including one which asked for guidance concerning the proper disclosure along with costs or benefits for consumers and businesses of solid alloy precious metal items below US minimum standards; alloy consisting throughout of less than, 10kt gold, .925 silver, and 500Pt. The Guides as currently written, while not easy for some to comprehend, adequately address the query in the 2012 Notice. The Guides contend that industry products are not permitted to be stamped with any karat/content mark if the product's precious metal content falls below the minimum US threshold. These manufactured products are also not to be named or abbreviated as gold within their product name, i.e. "Duragold," "Diragold," "Noblegold," "Goldine,"

"Layered Gold," or any words or terms of similar meaning." At present, Commissioners and Staff have requested expanded comments concerning The Guides decennial 2012 Notice for the upcoming Public Roundtable Billing Code 6750-01S. Two topics merit further exploration at this Roundtable: A. Marketing of Alloy Containing Precious Metals in Amounts Below Minimum Thresholds, and a second metals topic, B. Surface Applications of Precious Metals. As noted in original comments submitted last Fall on behalf of the JEA, the difficulty achieving a common comprehension of The Guides is facilitated by pertinent and timely updates to the Supplemental Materials currently on the FTC website. This supplemental material translates the more complicated language of The Guides for enhanced universal access, providing an understanding of minimum market standards while promoting a fair market playing field for consumers and the many manufacturers and sellers of gems and jewelry.

Roundtable A: Marketing of Alloy Containing Precious Metals in Amounts below Minimum Thresholds

Currently, Section 23.4.9 provides that it *may* be misleading to use the word "Gold" or any abbreviation, or a quality mark implying gold content (e.g. 9kt), to describe all or part of an industry product that is composed throughout of an alloy of gold less than 10 Karat fineness. Section 23.4.9 however is first defined by 23.4 which makes clear that *to not* properly represent the amount, presence, and material fact of gold in an [i.e. *any*] alloyed industry product, or the quantity or karat fineness, thickness, weight ratio, or manner of application of any plating, coating, covering on any surface of an industry product or part thereof. This leading Statement in 23.4, not an interpretation of a following subsection, denotes that any industry product which contains gold must be disclosed accurately and to fail to do so *is an act of unfair or deceptive misrepresentation* at its most basic level.

A comprehensive reading of the Guides dictates that the same type parameters of gold content are set for industry products of silver (Section 23.6) and platinum (Section 23.7) with any alloy less than their listed US minimum standard. The Guides *do not* disallow a manufacturer to describe an alloy as containing gold, silver, or platinum of less than minimum standards in their product description and literature. In fact, as stated in previous paragraph, to be considered non-deceptive the manufacturer and further sellers of such a product would be comprehensively seen as required to disclose the actual precious metal content in their industry product to the consumer and along each level of material transfer. For best disclosure practices the sellers of gold alloys would describe the percentage of precious metal contained and also translate it into the empirical karat weight of industry product within

their sales material and spec sheets. For silver consumers look for .925 stamp and any alloy of less weight also requires proper disclosure of such. Since the submittal of invited decennial responses to the 2012 Notice last fall new “silver” products have entered the market and go by various market names like “pink, pinked, or blush silver”, along with a new gold colored silver being marketed as “champagne silver”.

Information related to the actual physical content of silver contained in these new alloys is elusive at best. However one reference is found which states the amount of silver is 19%; a level which is far below the minimum standard of silver at 92.5% pure—yet this product is being marketed as “silver” in clear violation recommendations within The Guides. For platinum consumers and sellers expect quality marks on alloys with content of at least 50% for low quality platinum up to 85-90% pure platinum (850Pt and 900Pt, respectively). Consumers understand various content weight abbreviations as a sign of better quality with the higher the number equaling the more valuable the item. They also recognize the weights of Silver and Platinum better than Gold because the first two are base on a scale of 100 while the latter is based on scale of 24. Obviously then, to only present a buyer with the precious metal percentage on a piece of gold when the US Standard is known in terms of karats seems unfair and deceptive in toto.

Perhaps the time has come for allowing these manufacturers to quality mark their industry products in accurate and true karats; this would be a much better alternative then unduly confusing the situation by mandating a different empirical standard for what is simply just another gold alloy on the market. Because even though consumers and many sellers have no idea of the connection between the karat weight of a piece and the percentage of precious metal contained the processes to manufacture these alloys with the representative color of the metal throughout is a reality; and the amount of precious metal requires is lowering with each advance. Logically then, the seller who supplies this significant information to the consumer does both the industry and the consumer suitably.

Also at issue for upcoming Roundtable Discussion is uncertainty to whether a manufacturer may or may not stamp their product with a company mark. It appears that some readers may be confused by the language in 23.9 which describes quality marks not makers marks. Section 23.4.c.1 states that an industry product composed throughout of an alloy of gold of not less than 10 karat fineness, **may** be marked and described as “Gold” with a accurate karat designation equal and conspicuous to the word or abbreviation of the word gold. Section 23.9 Note2 then instructs manufacturers and sellers that if they **choose** to place a quality mark on their product that meets the minimum US thresholds for quality

stamping, said manufacturer, dealer, designer or seller who causes to be affixed a quality mark must also affix their personal trademark alongside said quality mark as a guarantee. According to the current Guides the manufacturer of a precious metal alloy of any precious metal weight threshold is **not** prohibited from applying their makers mark to their product, **and they should**, if the manufacturer's etc. intent is to provide an industry product to the buying public in a manner that is considered quantifiably fair and non-deceptive.

For best disclosure practices the application of a manufactures mark also allows all sellers, as well as consumers, the ability to perhaps find out what exactly an industry product is made of when they do not or cannot know otherwise. In addition Fashion and Costume Jewelry manufactured from base alloys (sometimes plated with precious metals and sometimes not) have often been stamped with a makers mark. Sara Coventry and Avon are two obvious models of such stampings. As exemplified in the Costume Jewelry market other industry products alloyed from less than minimum precious metal content should logically be as easily identified. Manufacture marks benefit and protect markets, manufacturers, individual sellers, and consumer of negative costs and outcomes by hinting to the reality that the item may appear a more valuable object, but in fact it is not. To avoid unfair and deceptive practices the market evolution of solid precious metal alloys in amounts below minimum thresholds should have the same concepts applied as plated precious metal products and Costume Jewelry currently enjoy.

The application of the makers mark and one's ability to find the exact information about the mark is a valuable tool for purchasers all along the supply chain. Obtaining this product knowledge is key and perhaps is all the more important since the current Guides prohibit marking the true karat content on an item of less than minimum US standards.

Roundtable B: Surface Applications of Precious Metals

Concerning the surface applications of precious metals Commissioners and Staff have requested information about the ubiquitous and industry wide practice today of coating white gold alloys with a brighter metal from the platinum group. This ever-present practice is rarely disclosed along the supply chain but none the less, with the exception of sellers who do not know their product and many if not most consumers, is known by the industry at large. The non-disclosure of such coating, plating, or attachment by any other means, is in clear violation of the current Guides. These metals are introduced to the Guides in Section 23.7 and their use is comprehensively included within the language of Section

23.4, 23.5, 23.6. As archetype, the word vermeil while the specific language in Section 23.5 speaks to a wash of gold over silver (two precious metals used conjoined to manufacture an industry product) any one of the platinum metals could also be applied over the less valuable or undesirable looking metal and give a false perception as to the true nature and value of the item.

There are reasons that white gold today has now yellowed compared to white gold of yesterday; the reason is a matter of evolving markets. Nickel was always the alloy mix of choice for producing the whitest white gold however; nickel has been shown to induce severe allergic reactions in some wearers and has since been banned in EU. Manufactures were forced to remove nickel from the alloys and the gold yellowed as a result. The obvious market answer was to find a coating for the popular product. Why it is not openly disclosed at the consumer level is unknown but should be addressed by Commission and Staff; the Guides adequately require the disclosure of any such a process and/or metal and alloy. The posting of pertinent information gathered to the Supplemental Material at FTC website by Staff would greatly benefit all parties.

Regardless of why white gold is typically coated, inherent in the nature of plating etc., is the fact that none of these methods achieve a permanent coating with any level of casual wear. All plating, washing, etc., regardless of their applied thickness wear off over time, some take longer than others. The “assurance” of reasonable durability and substantial thickness are properly defined within the current language of Section 23.4 et.al. Section 23.4 accounts for the various empirical minimums concerning reasonable durability and currently contains adequately “simple nomenclature and explicit minimums” therefore; the Guides do not require any changes, additions or deletions, regarding nomenclature or adjustment of the current practical minimal measurements.

Critical thinking denotes that language is too fluid and manufacturing technology to rapidly paced for the FTC Guides to accept or bend to the whims of industry jargon today. Just because some manufacturers are possibly looking to save on the amount of wash used on their products does not mean that these products can afford to be cheapened past the point they currently are. Because from a consumer standpoint all plated and hollow products are, in effect, simply high end costume jewelry. It is most important that these lesser industry products not be confused or compared with the higher precious metal content items or solid alloys containing precious metals in amounts below US minimum thresholds.

The history of the gem and jewelry industry is rife with examples of how things go wrong for consumers and businesses as higher standards and commonly understood practices are blurred or deleted from the Guides. The clarity drilling of diamonds is one such instance of some in the industry misleading the intent of The Guides for a one-sided gain. The misleading information was accepted and published and it took much time and effort to correct and revise the language within The Guide. The Guides current terminology of “plate, plated, electroplate, electroplated, heavy electroplate, overlay, vermeil, rolled plate, filled, hollow center, tubing, and solid precious metals covers all aspects of precious metals and is generalized enough that if someone wants to use the words “flashed”, “washed”, “layered”, “clad”, or “bonded” for example, the meaning of something less than or other than a solid precious metal is clear along all levels of marketing and most importantly for the end user; the US buying public. The Roundtable request for comments on the inclusion of new jargon within The Guides is that it is not needed and may in fact only serve to mislead and cause more unfair and deceptive practices than it prevents if adopted.

It would also be misleading for The Guides to try and quantify “fine gold plating” from gold plating of lesser fineness because of the inherent and fleeting nature of gold plate of any karat; plate is plate, is plate, is plate. The Guides serve their purpose best when the standards are based on clarity and empirical factors; not ever evolving jargon and/or terminologies. Concerning types of plating, Commissioners and Staff may be unaware that there is another disconcerting issue with the manufacturing of gold tubing also known as electroforming. This process as the word tubing denotes is hollow and of a thin enough layer that the product is easily damaged by collapsing walls upon minor accidental impact wear. To solve the issue the manufacturers rightly filled the hollow cores and while the manufacturer discloses this fact at their point of sale the reality quickly gets twisted and the items are sold through misleading marketing as if they are solid gold, same weight, heft, etc. This product is often of a plating of higher karat gold and unsuspecting customers are buying electroform gold jewelry and believing the items as a solid gold industry product. This would appear to be a violation of the Guides Standards and similar in importance and scope to the white gold coating issue.

Conclusion and Recommendations

It is hoped that the above invited responses will provide Commissioners and Staff with thoughtful and logical arguments whose intended purpose is to promote and support a vibrant market engine with a

minimal set of requirements of which consumers can freely participate in with confidence. The responses are submitted with the implicit belief that to avoid unfair and deceptive practices which erode market stability and consumer confidence it is necessary that The Guides be viewed comprehensively. Proper interpretation of The Guides is not a literal process – it is best understood collectively and unanimously en bloc as each section is inclusive of the others in the group and in the whole. To the greatest extent possible The Guides should be based on empirical factors, the use of industry jargon and language in general is too fluid to be awarded much importance within The Guides. Frequent and timely real-life updates and rulings included as supplemental materials provided in a one-stop easy to navigate FTC Jewelry page will go a long way towards ensuring a straightforwardly graspable comprehensive understanding of The Guides among the market participants. Other items that may be valuable for inclusion as supplemental materials could be examined in previous forms of The Guides evolution. At one time the Jewelry Industry was instructed to also avoid “sharp practices” in their dealings and competitors and consumers benefited because such practices were considered as unfair and deceptive. It could be beneficial for a vibrant modern market if the Commission might revisit those retired clauses and make their opinions known if they have any relevant value today since often we find that what was once old is now new again.

Sincerely,

Veronica Poteat