



June 5, 2013

VIA ONLINE SUBMISSION and FEDERAL EXPRESS

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

Re: Jewelry Guides Roundtable, 16 C.F.R. Part 23, Project No. G711001

Dear Sir or Madam:

Platinum Guild International (“PGI”) U.S.A. respectfully submits these comments to the Federal Trade Commission (the “FTC” or the “Commission”) in response to its May 6, 2013 *Federal Register* announcement of a public roundtable to examine possible modifications to the FTC’s Guides for the Jewelry, Precious Metals, and Pewter Industries (“Jewelry Guides” or “Guides”), and request for comments on questions to be addressed.¹ PGI is the United States arm of the worldwide marketing and educational resource center for the platinum industry. PGI is an industry leader in providing the American jewelry industry with educational, marketing, advertising, promotional, sales, and technical manufacturing support. Our organization has also provided American consumers with literature describing the benefits of platinum jewelry, and we have worked with consumers in educating them about their purchasing decisions.

As you know, the Jewelry Guides have long been used by the jewelry industry to provide accurate and truthful information to consumers about their products. PGI has worked with the FTC over the years to help ensure that the platinum section of the Jewelry Guides (“Platinum Guides”) provides adequate guidance on the appropriate and non-deceptive use of the word “platinum” and its related abbreviations. Specifically, on October 12, 2005, PGI submitted extensive comments in response to an FTC *Federal Register* notice² soliciting public comments on whether the FTC should amend the Platinum Guides to explicitly address products composed of at least 500 parts per thousand (“ppt”) pure platinum but less than 850 ppt pure platinum and no other

¹ 78 Fed. Reg. 26289 (May 6, 2013).

² 70 Fed. Reg. 38834 (July 6, 2005).

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platinum group metals (“PGMs”) (“PGI’s 2005 Comment”).³ Subsequently, on August 21, 2008, PGI submitted extensive comments in response to FTC’s *Federal Register* notice⁴ soliciting comments on proposed amendments to the Platinum Guides to address the marketing of these platinum/base metal alloys (“PGI’s 2008 Comment”).⁵ Both of these PGI comments, which we incorporate by reference, contained extensive empirical evidence and consumer perception data regarding, among other things, consumer expectations for platinum, the differences in the properties of low purity platinum/base metal alloys as compared to traditional platinum products, the importance of disclosing product attributes to consumers, and the difficulty in providing appropriate and prominent disclosures at the retail level.

PGI now appreciates the opportunity to respond to FTC’s questions on the “marketing of alloy products containing precious metals in amounts below the Guides’ minimum thresholds” (with respect to platinum, the Guides currently suggest a minimum of at least 500 ppt pure platinum).⁶ As a general matter, PGI supports the Jewelers Vigilance Committee’s (“JVC”) September 27, 2012 comments to the FTC on this issue as it relates to platinum.⁷ Specifically, for the reasons outlined below in PGI’s responses to the individual FTC questions, PGI agrees with the JVC that: (1) the existing minimum standards for platinum found in 16 C.F.R. § 23.7 should be maintained⁸; (2) the Guides should be amended to provide guidance on how to non-deceptively describe the content of precious metal alloys and alloy products that contain less than the minimum standard amounts (“below standard products”); (3) below standard platinum-containing products should not be marked or quality stamped with the term “platinum” or any

³ PGI Comment to the FTC, *Re: Jewelry Guides, Matter No. G71101* (October 12, 2005), available at <http://www.ftc.gov/os/comments/jewelryplatinum/517683-00069.pdf> (last accessed May 15, 2013). We incorporate this Comment and its Attachments by reference.

⁴ 73 Fed. Reg. 10190 (February 26, 2008).

⁵ PGI Comment to the FTC, *Re: Jewelry Guides, Matter No. G711001* (August 21, 2008), available at <http://ftc.gov/os/comments/jewelryplatinum2/534660-00053.pdf> (last accessed May 15, 2013). We incorporate this Comment and its Attachments by reference.

⁶ 78 Fed. Reg. at 26290.

⁷ JVC Comment to the FTC, *Re: Jewelry Guides, 16 CFR Part 23, Project No. G711001*, at 4, 20, and 39-40 (September 27, 2012), available at <http://www.ftc.gov/os/comments/jewelryguidesreview/560895-00027-84602.pdf> (last accessed May 15, 2013).

⁸ In its September 27, 2012 comments on the FTC’s review of the Jewelry Guides, JVC notes that it “is in the best interests of consumers that the minimum standards for precious metals that are identified in the Guides be maintained,” and that it “does not recommend any changes to these standards.” JVC Comment to the FTC, at 4 and 39.

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abbreviation thereof; and (4) sellers of below standard platinum-containing products that are not marketed as “platinum” (and are instead appropriately marketed under a different name that does not connote consumer expectations of pure platinum) should be permitted to inform consumers in descriptive materials (other than quality marks or stamps on the product itself) that the product contains platinum so long as the representation is accurate and they disclose, at a minimum, the amount of platinum by percentage in the product. The JVC’s recommendations would permit industry to accurately describe the composition of below standard platinum-containing products while protecting against consumer deception.

Provided below are PGI’s responses to specific FTC questions in the order in which they were presented in the Commission’s May 6, 2013 *Federal Register* notice.

- I. Question One: JVC recommended a revision to the Guides that would allow sellers to indicate in descriptive marketing materials (e.g., advertisements, labels, tags) that a product contains a precious metal in an amount below the standard as long as they accurately disclose the quantity of the metal by percentage. It also stated that sellers should not be allowed to stamp the name of the below-standard precious metal on the product itself with a quality mark. Does JVC’s proposal provide adequate guidance for marketers to avoid consumer deception?**
- (a) If so, why? If not, why not?**
 - (b) Provide any evidence supporting your position.**

As an initial matter and for purposes of clarification, PGI interprets the relevant JVC proposal/recommendations as follows with respect to platinum:

- The FTC should maintain the existing minimum standards and requirements for platinum found in 16 C.F.R. § 23.7.
- Below standard platinum-containing products should not be quality stamped/marked with the term “platinum” or any abbreviation thereof.
- Below standard platinum-containing products that are not identified or marketed as “platinum,” and that are instead appropriately identified and marketed under a different name that does not connote consumer expectations of pure platinum, should be allowed to be described in descriptive materials (such as advertisements, labels, or tags, but not marks/quality stamps on the product itself) as containing platinum, provided that the description is accurate and the description is preceded by the percentage of platinum in the product.

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PGI supports the above JVC proposal for non-deceptively describing the content of alloy products that contain platinum in amounts below the Guide's minimum threshold, and believes it will help marketers avoid consumer deception. As discussed extensively in PGI's 2005 and 2008 Comments, platinum's high level of purity is its most distinctive and appealing quality. The consumer perception studies and empirical evidence submitted with PGI's 2005 and 2008 comments revealed that a majority of consumers expect an engagement ring referred to or marked as "platinum" to contain a substantial percentage of pure platinum, and that they value a broad range of important properties associated with pure platinum such as its tarnish resistance and durability. The data contained in these studies show that any attempt to promote a product as "platinum" that does not contain a substantially high percentage of pure platinum is likely to deceive consumers - particularly if the product does not contain all the properties of pure platinum.

These studies also revealed that many consumers do not fully understand numeric jewelry markings and chemical symbols, do not comprehend the complex differences associated with various platinum alloys, and are not experts in precious metal content. Thus, even if the content of such alloys is disclosed (for example, ".585 plat, 415 CO/CU"), and even if consumers were to actually understand what this disclosure meant, the vast majority of consumers still would not understand how the content and properties of such alloys differ from traditional platinum. The studies also noted that consumers expect to be informed about eight different attributes of diluted platinum alloys prior to purchase, and seriously questioned whether the level and depth of information consumers consider important prior to purchase can be provided in any meaningful way for a product promoted as "platinum" but containing significantly less platinum than the pure platinum jewelry being sold in the U.S. market.

Specifically, the consumer perception study submitted with PGI's 2005 comments, entitled "*Platinum Awareness Study: An Empirical Analysis of Consumers' Perceptions of Platinum as an Option in Engagement Ring Settings*" ("Platinum Awareness Study"),⁹ revealed, among other things, that: (1) consumers expect platinum to be pure, and value properties associated with pure platinum such as tarnish resistance, durability, stone security, hypoallergenicity, and the look of the setting over time; (2) consumers expect to be informed about the specific properties of an engagement ring containing significant amounts of base metals prior to purchase; (3) consumers have identified three primary sources of information regarding content and properties of engagement rings – the sales representative, tags on the setting, and information stamped on the inside of the ring, with a

⁹ Maronick, Thomas J., *Platinum Awareness Study: An Empirical Analysis of Consumers' Perceptions of Platinum as an Option in Engagement Ring Settings* (July 2005). Dr. Thomas J. Maronick was the Director of the Office of Impact Evaluation at the FTC's Bureau of Consumer Protection from 1980 to 1994, where he was responsible for coordinating FTC consumer research. The Platinum Awareness Study was provided as Attachment A to PGI's 2005 Comment.

substantial percentage looking to multiple sources for information; (4) mere content disclosures (such as “.585 plat, 0 pgm” or “.585 plat, 415 CO/CU”) are insufficient to avoid consumer confusion and deception; and (5) it is highly doubtful that the level and depth of information consumers consider important when purchasing a platinum engagement ring containing significant amounts of base metals can be provided in any meaningful way.¹⁰

Similarly, the consumer perception study submitted with PGI’s 2008 Comments, entitled “*Platinum Attitude Study: Four Empirical Studies of Consumers’ Attitudes Toward Platinum and Substitutes as Options in Engagement Ring Settings*” (“Platinum Attitude Study”)¹¹ found, among other things, that consumers: (1) expect a platinum product to contain a substantial percentage of pure platinum; (2) have a high level of confusion regarding the attributes of an engagement ring that contains 50-60% platinum and the remainder base metals; (3) do not understand mere content disclosures even when they are spelled out for them (and even if understood, content disclosures do not alert consumers to the differences between diluted platinum alloy products and traditional platinum products); and (4) want information about eight specific attributes of a ring that contains 50-60% platinum and the remainder base metals to be physically attached to the ring (the eight attributes include durability, luster, density, scratch resistance, tarnish resistance, hypoallergenicity, ability to be resized/repared, and retention of precious metal content over time).¹² The Platinum Attitude Study also revealed that qualifying monikers using the word “platinum” or the root “plat” (specifically, “Karat Platinum,” “Platinum Alloy,” “Platinum V/Five,” and “Platifina”) also fail to sufficiently alert consumers to potential differences between diluted platinum alloys and traditional platinum products.¹³

Given that consumers have strong underlying expectations about platinum, and given that content disclosures do not typically alert consumers to differences in product attributes, the Platinum Attitude Study concluded that “serious questions” are raised “about whether any disclosure of content or disclaimer about differences between [a diluted platinum alloy] product and a ‘platinum’ product is likely to ‘cure’ consumers’ underlying belief that a ‘platinum’ bridal product is 75-80% ‘pure platinum.’”¹⁴ The study also noted that consumers’ perceptions of

¹⁰ Platinum Awareness Study, at 28-29.

¹¹ Maronick, Thomas J., *Platinum Attitude Study: Four Empirical Studies of Consumers’ Attitudes Toward Platinum and Substitutes as Options in Engagement Ring Settings* (August 2008). The Platinum Attitude Study was provided as Attachment A to PGI’s 2008 Comments.

¹² Platinum Attitude Study, at 18-22.

¹³ *Id.*

¹⁴ *Id.* at 21.

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platinum with respect to its purity appear to be different from other precious metals such as gold where gradations in quality and purity are common.¹⁵

These findings confirm that platinum's high level of purity is both its most distinctive and appealing quality, and suggest that below standard platinum-containing products cannot be marked/quality stamped or marketed as "platinum" or any abbreviation thereof without the potential for significant consumer deception at the point of purchase. It is thus imperative that: (1) a product promoted or marked as "platinum" or any abbreviation thereof meet the standards currently set forth in the platinum section of the jewelry guides (16 C.F.R. § 23.7); (2) below standard platinum-containing products not be marked/quality stamped with the term platinum or any abbreviation thereof; and (3) any descriptive materials (such as advertisements, labels, or tags, but not marks/quality stamps) for below standard platinum-containing products that indicate that the product contains platinum reveal (at a minimum) the amount of platinum, by percentage, in the product.

II. Question Two: Would stamping a quality mark on an alloy jewelry product to convey information about its precious metal content be more likely to lead to consumer deception than if such information were included in descriptive marketing materials such as advertisements, labels, and tags?

- (a) If so, why? If not, why not?**
- (b) Provide any evidence supporting your position.**

For the same reasons outlined above in Section I, PGI believes that stamping a quality mark on a below standard platinum alloy jewelry product to convey information about its platinum content would lead to significant consumer deception. In the quality mark/stamp context, it is particularly important to reiterate that the Platinum Attitude Study submitted with PGI's 2008 Comments found that consumer confusion related to diluted platinum alloys cannot be cured by using abbreviated expressions of specific content since, among other things, most consumers simply do not know what "585 Pt; 415 CoCu" or "58.5% Pt; 41.5% CoCu" means, and almost half of all consumers do not understand what the expressions of specific content mean even when they are spelled out for them.¹⁶ The study also found that even if consumers understood such content disclosures, they do not alert consumers to what the product's attributes are, and/or any differences between the diluted platinum alloy product and traditional platinum products. Accordingly, quality stamping/marking a below standard platinum alloy jewelry product with this type of content disclosure would be insufficient to prevent consumer confusion and deception.

¹⁵ *Id.*

¹⁶ *Id.* at 20.

III. Question Three: Is it sufficient to disclose the precious metal content of an alloy by percentage, or are other disclosures or qualifications necessary to avoid consumer deception?

(a) Why or why not?

(b) Provide any evidence supporting your position.

PGI supports JVC's recommendation that below standard platinum-containing products that are not identified or marketed as "platinum" (and that are instead identified and marketed under a different name that does not connote consumer expectations of pure platinum) be allowed to be described in descriptive marketing materials (such as advertisements, labels, or tags, but not marks/quality stamps on the product itself) as containing platinum - provided that the description is accurate and is preceded by the percentage of platinum in the product.

Consumer perception data and other evidence provided in PGI's 2005 and 2008 Comments, however, suggest that other additional disclosures or disclaimers may be needed to avoid consumer deception. For example, the Platinum Attitude Study concluded that there is the potential for a high level of confusion about the characteristics of a bridal product that contains 50-60% platinum and the remainder base metals,¹⁷ and revealed that over two-thirds of consumers would want information about the specific attributes of an engagement ring that contains 50-60% platinum and the remainder base metals to be physically attached to the ring (and by implication, the specific characteristics of any other combination of platinum and base metals physically attached to the ring).¹⁸ The information consumers want attached to the ring are specific characteristics related to durability, luster, density, scratch resistance, tarnish resistance, hypoallergenicity, ability to be resized/repared, and retention of precious metal content over time.¹⁹

¹⁷ *Id.* at 18.

¹⁸ *Id.* at 6, 19.

¹⁹ *Id.* at 19.

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IV. Question Thirteen: To the extent not addressed in your previous answers, please explain whether and how the Commission should revise the Guides to prevent consumer deception with respect to the marketing and sale of jewelry industry products that have a surface-layer application of precious metal.

When evaluating the potential for consumer deception with respect to the marketing and sale of jewelry products that have a surface-layer application of platinum, PGI respectfully requests that the Commission consider the data in PGI's 2005 and 2008 Comments regarding consumer expectations for platinum. It is particularly important to note that consumers' perceptions of platinum with respect to its purity appear to be different from other precious metals such as gold where gradations in quality and purity are common.

V. Conclusion

PGI agrees with the JVC that the Guides should be revised to provide guidance on how to non-deceptively describe the content of precious metal alloys and alloy products that contain less than the minimum standard amounts. Based on the information provided above, PGI supports JVC's recommendations for the marketing of below standard platinum-containing products, and believes they would help avoid consumer deception.

Thank you for your consideration of these comments.

Sincerely,

Huw Daniel
President, Platinum Guild International U.S.A.