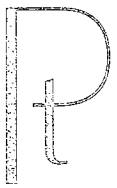


PLATINUM

August 21, 2008

VIA E-MAIL and FEDERAL EXPRESS
Federal Trade Commission
Office of the Secretary
Room 135-H (Annex E)
600 Pennsylvania Avenue, NW
Washington DC 20580

Re: Jewelry Guides, Matter No. G711001

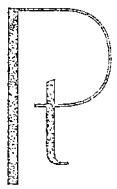
Dear Sir or Madam:

Platinum Guild International ("PGI") USA respectfully submits these comments to the Federal Trade Commission (the "FTC" or the "Commission") in response to its February 26, 2008 *Federal Register* notice requesting public input on the FTC's proposed amendment ("proposal") to the platinum section of the FTC Guides for the Jewelry, Precious Metals, and Pewter Industries ("Guides" or "Jewelry Guides").[1] PGI is the United States arm of the worldwide marketing and educational resource center for the platinum industry. For more than 13 years, PGI has been the 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.

I. Executive Summary

As an initial matter, PGI agrees with the FTC's acknowledgment that the record supports the following conclusions: (1) a substantial number of consumers believe products marked or described as "platinum" are pure and possess certain desirable qualities; (2) a substantial number of consumers generally would not expect platinum/base metal alloy jewelry to be marked or described as "platinum"; (3) many consumers do not fully understand numeric jewelry markings and chemical symbols and may find them confusing; (4) testing data in the record suggests that some platinum/base metal alloys do not possess all of the qualities of higher purity platinum jewelry that consumers expect; and (5) the consumer perception and product testing data support

[1] 73 Fed. Reg. 10190 (February 26, 2008).



revising the platinum section of the Jewelry Guides ("Platinum Guides") to address the marketing of platinum/base metal alloys.[2]

PGI stands in firm opposition, however, to the solution proposed by the FTC. The FTC's fundamentally flawed proposal would alter the current platinum marketplace and for the first time permit jewelry products containing between 500 and 850 ppt pure platinum, and that do not contain at least 950 ppt platinum group metals ("diluted platinum alloys" or "diluted platinum products"), to be called or marketed as "platinum." As discussed below, the FTC's proposal contains an unworkable, ambiguous, and impossible to enforce standard that ignores the realities of the retail jewelry marketplace and would result in widespread consumer deception.

PGI would like to make clear that we encourage innovation in the jewelry marketplace and fully support the development of new alloys. New alloys combining lower purity platinum with an amalgamation of diverse base metals should be encouraged and should obviously be permitted to enter the market. The only question at issue is whether low purity alloys should be allowed to be called "platinum" – or whether they should be required to use a different name that does not mislead consumers into thinking the products are pure platinum.

Consistent with the FTC's findings, extensive empirical evidence and consumer data contained in this comment reveal that current consumer expectations of platinum jewelry, based upon years of promotion and sale in the United States of high-grade, pure platinum, will not be satisfied if sub-grade alloys containing significant amounts of base metals can be represented as "platinum."

Empirical evidence also reveals that a substantial number of consumers would not expect diluted platinum products to be described as platinum, and that even qualifying monikers such as "Karat Platinum," "Platinum Alloy," "Platinum V/Five," and "Platifina" do not adequately signal to consumers that such products differ from traditional platinum products.[3] In fact, the opposite is true, the word platinum and the root "plat" signal to consumers that the product is a high purity platinum product. Using these words in association with diluted platinum alloys is deceptive

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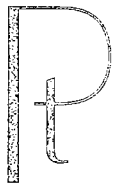
[2] 73 Fed. Reg. at 10194.

[3] "Traditional platinum products" refers to products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt platinum group metals.



because it is likely to materially mislead consumers acting reasonably under the circumstances.[4]

Under the FTC's proposal, and presumably in an effort to avoid or cure the potential for consumer deception, diluted platinum products may be marketed as "platinum" if the marketer discloses: (1) the full composition of the product by name and percentage of each metal; (2) that the product contains platinum and "other non-platinum group metals"; and (3) that the product may not have the same attributes or properties of traditional platinum products. Further, under the FTC's proposal, marketers would be exempt from making this last disclosure if they have "competent and reliable scientific evidence" that their new product has all of the attributes or properties of traditional platinum products that are "material" to consumers (the FTC did not, however, specify the "material" attributes).

We believe that it is inherently misleading to refer to a diluted platinum alloy as "platinum," and that such claim is not capable of being cured by qualifying language. It is axiomatic under FTC law that all claims are not capable of being qualified via disclosures - particularly claims that directly contradict the overall message relayed in a promotional statement. For example, the FTC would assuredly not permit a product with no cancer-fighting properties to be touted in an advertisement as a "Cancer Cure" if a footnote indicated that it does not cure cancer. Similarly, the FTC should not countenance a product being touted as platinum when it is in fact a diluted alloy – even if extensive disclosures are made that directly contradict the central message. There is precedent for this position in the Platinum Guides themselves, as the FTC has concluded that it is misleading and deceptive for jewelry containing less than 500 ppt pure platinum to be marked or described as platinum (regardless of content disclosures or qualifying language).

Even if the FTC disagrees with this long-standing principle, empirical evidence reveals that: (1) the FTC's proposed disclosures would not prevent or cure widespread consumer deception; and (2) the breadth of disclosures that would theoretically be necessary to avoid consumer deception are unreasonable and can not be provided at the retail level. Specifically, empirical evidence reveals that disclosing a product's full composition and the fact that it contains both platinum and "other non-platinum group metals" does not alleviate consumer deception since consumers

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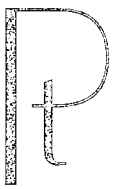
[4] Some diluted platinum alloys are already being marketed in ways that are likely to materially mislead consumers acting reasonably under the circumstances. For example, Karat Platinum currently markets diluted platinum alloy products on Amazon.com and makes the following claim: "Extraordinarily rare, platinum is one of the world's most precious metals. Since Karat Platinum *is* platinum it looks, feels, and has the same radiant sheen as 950/50 platinum." *See* Karat Platinum Learning Guide, *available at* http://www.amazon.com/gp/feature.html/?&docId=1000152531 (last accessed, August 8, 2008) (emphasis added). Karat Platinum is not platinum, but rather is a diluted platinum/base metal alloy. The above claim, therefore, is just one example of the type of promotional practices that may be perpetuated if the FTC does not establish the clear, unambiguous, standard supported by PGI.



do not understand what these disclosures mean. Even when the specific content of the product is spelled out with percentages (e.g., 58.5% Platinum; 41.5% Cobalt/Copper), almost half the consumers do not understand what this disclosure means, and even if they do, it does not alert them of the differences between diluted platinum alloys and traditional platinum products.

In addition, empirical evidence shows that consumers expect to be informed about eight specific attributes (durability, luster, density, scratch resistance, tarnish resistance, ability to be resized/repaired, hypoallergenicity, and retention of precious metal content over time) of a product containing significant amounts of base metals prior to purchase, and they expect to have this information physically attached to the jewelry product. The FTC's proposed disclosure that a diluted platinum alloy "may not have the same attributes or properties" of traditional platinum products would thus be insufficient to prevent consumer deception – particularly given that the FTC proposal inappropriately permits marketers to self-determine that they are exempt from making this disclosure in certain instances.

Although complex and comprehensive disclosures are needed to avoid consumer deception, studies confirm that it is unrealistic to assume that they can or will be meaningfully relayed to consumers at the retail level. Hang tags are far too small to contain a large number of complex disclosures, and it would be difficult if not impossible to ensure that correct information comparing all the differences between a multitude of new alloys will be relayed to consumers by sales associates at the point of sale.

Moreover, the FTC proposal is extremely unclear since it does not contain a definitive listing of the attributes or properties of traditional platinum products that are "material" to consumers, nor does it specify the type of scientific substantiation required to avoid making the last disclosure. Marketers are thus inappropriately left to their own devices to cherry pick which attributes are material to consumers, and which tests should be conducted to self-determine that they are exempt from making an essential disclosure. Given this ambiguity, there is sure to be a profound lack of consistency in how a potentially infinite number of new diluted platinum alloy products will be marketed.

The enforcement of the FTC proposal is thus likely to be at best extremely burdensome, and at worst impossible. The FTC would need a dramatic increase in staff and Congressional funding to have the resources at hand to effectively monitor the adequacy of: (1) qualifying language used by companies promoting their specific alloys; (2) in-store signage; (3) statements made by sales associates at the point of sale; and (4) marketer self-determinations that their new diluted platinum alloys have all the properties associated with traditional platinum products. In fact, the FTC would need to hire a number of additional scientific reviewers, metallurgists, and analytical labs to test the properties of a multitude of new alloys to confirm that they are being

appropriately marketed in compliance with its proposal. This would be necessary since empirical evidence reveals that diluted platinum alloys are likely to have properties that are very different from traditional platinum.

Finally, it should be emphasized that the FTC's proposal is inconsistent with international standards. Under both the CIBJO[5] and International Standards Organization ("ISO") standard for platinum markings, diluted platinum alloys would not be permitted to be marketed as "platinum." In light of increasing globalization and international travel and movement, consumers will be negatively affected by varying definitions of platinum – particularly if they are concerned about their product's resale value.[6]

In light of the above, we respectfully request that the FTC prohibit the use of the word "platinum" (or the root "plat" or similar terms that connote consumer expectations of pure platinum) in association with products not composed throughout of at least 500 ppt pure platinum and at least 950 ppt platinum group metals ("PGM"). Unlike the FTC's unworkable proposal, this proposed standard is clear, unambiguous, and transparent for manufacturers, retailers, wholesalers, and consumers. In addition, it is easy to enforce, consistent with international standards, consistent with well-established consumer understanding and industry marketing of platinum jewelry, and would prevent massive consumer deception.

II. Background on the FTC Federal Register Notice and Proposed Amendment

As you know, the Platinum Guides currently permit a product to be marketed as "platinum" if it contains at least 850 ppt pure platinum, or if it contains at least 500 ppt pure platinum with the remainder up to 950 ppt being other PGM.[7] PGMs include platinum and five other platinum-like metals, including Iridium, Ruthenium, Osmium, Palladium and Rhodium that are found in the same ore as platinum and have similar characteristics.[8] This ensures that consumers purchasing

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[5] CIBJO, which is the acronym for the French phrase, Confédération International de la Bijouterie, Joaillerie, Orfèvrerie des Diamantes, Perles et Pierres, and which translates to International Confederation of Jewelry, Silverware, Diamonds and Stones, is the international jewelry confederation of national trade organizations.

[6] Although beyond the scope of this proceeding, PGI would like to make clear that it would ideally endorse modifying the Guides to be entirely consistent with those ISO standards that preclude the marketing or describing of products as platinum unless they contain at least 850 ppt pure platinum. Nonetheless, since this issue was not raised by the FTC, at a minimum PGI believes ISO standards should be adopted with regard to the prohibition on products containing between 500 and 850 ppt pure platinum and no other platinum group metals.

[7] 16 C.F.R. § 23.7.

[8] 16 C.F.R. § 23.7(a).

"platinum" jewelry products receive actual platinum and not a sub-grade platinum alloy containing substantial amounts of base metals such as copper or lead.

On October 12, 2005, PGI submitted extensive comments in response to an FTC *Federal Register* notice[9] soliciting public comments on whether the FTC should amend the Platinum Guides to explicitly address products composed of at least 500 ppt pure platinum but less than 850 ppt pure platinum and no other PGM ("PGI's 2005 Comment").[10] PGI's 2005 Comment contained extensive empirical evidence and consumer data and included a wide range of arguments addressing, among other things: (1) consumer expectations regarding "platinum"; (2) statutory interpretation of the Platinum Guides as currently written; (3) the differences in the properties of low purity platinum/base metal alloys as compared to traditional platinum products; (4) the importance of disclosing product attributes to consumers; (5) the infeasibility of providing appropriate and prominent disclosures at the retail level; and (6) the importance of international and state harmonization.[11] Based upon this extensive evidence, PGI's 2005 Comment proposed the issuance of a clear, unambiguous, and transparent standard by the FTC that would prohibit the use of the term "platinum" in association with products not composed throughout of at least 500 ppt pure platinum and at least 950 ppt PGM.[12]

Despite the FTC's acceptance of the vast majority of PGI's arguments,[13] on February 26, 2008, the FTC proposed to radically amend the Platinum Guides to permit platinum/base metal alloy products that contain between 500 and 850 ppt pure platinum and do <u>not</u> contain at least 950 PGM to be marketed as "platinum" if the marketer discloses: (a) that the product contains both platinum and other non-platinum group metals; (b) the full composition of the product (by name

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[9] 70 Fed Reg. 38834 (July 6, 2005).

[10] PGI Comment to the FTC, *Re: Jewelry Guides, Matter No. G71101* (October 12, 2005). We incorporate this Comment by reference.

[11] *Id.*

[12] *Id.* at 26-28.

[13] 73 Fed. Reg. at 10194. As noted, the FTC found that the record supports the following conclusions: (1) a substantial number of consumers believe products marked or described as "platinum" are pure and possess certain desirable qualities; (2) a substantial number of consumers generally would not expect platinum/base metal alloy jewelry to be marked or described as "platinum"; (3) many consumers do not fully understand numeric jewelry markings and chemical symbols and may find them confusing; (4) testing data in the record suggests that some platinum/base metal alloys do not possess all of the qualities of higher purity platinum jewelry that consumers expect; and (5) the consumer perception and product testing data support revising the Platinum Guides to address the marketing of platinum/base metal alloys.

and not abbreviation) and percentage of each metal; and (c) that the product may not have the same attributes or properties as products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM.[14] Marketers do not have to make this last disclosure if they have "competent and reliable scientific evidence that, with respect to all attributes or properties material to consumers (e.g., the product's durability, hypoallergenicity, resistance to tarnishing and scratching, and the ability to resize or repair the product), such product is equivalent to products containing" at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM.[15]

In addition to soliciting comments on this proposed amendment, the FTC requested data and information addressing 19 questions related to technical, metallurgical, and consumer perception issues.[16] The FTC requested data and information, for example, addressing whether additional disclosures are required to avoid consumer deception, whether disclosures should be physically attached to jewelry, whether certain disclosures may add to consumer confusion, and how consumers perceive and understand certain terminology.

Section III of this comment responds to the first of the FTC's questions and comprehensively discusses why the FTC should not amend the Platinum Guides with its proposed solution – but instead should adopt PGI's clearer, unambiguous approach that is consistent with the FTC's own findings. Section IV discusses the impact of the FTC's recent cultured gemstone decision on the platinum rulemaking, while Section V responds to the remaining FTC questions – referencing empirical evidence and consumer data presented in Section III as necessary. Finally, Section VI recommends and proposes an alternative standard (identical to the standard proposed by PGI in 2005) that is unambiguous and easy to enforce.

III. The FTC's Proposal is Inconsistent with its Own Findings

A. Empirical Evidence Reveals That the FTC Proposal Would Result in Consumer Confusion and Deception

As described below, the empirical evidence and consumer data provided in PGI's 2005 Comment, as well as a newly conducted consumer perception study, reveal that the FTC's proposed disclosures do not alleviate (or cure) the threat of consumer deception since the

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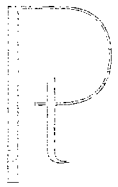
[14] *Id.* at 10197.

[15] *Id.*

[16] *Id.* at 10197-10198.



disclosures do not adequately alert consumers to differences between traditional platinum products and new diluted platinum alloys. Empirical evidence also reveals that consumers value a broad range of properties associated with pure platinum, and expect to be informed about eight different attributes of new diluted platinum alloys prior to purchase. Such numerous and complex disclosures, however, are unreasonable and cannot be provided in any meaningful way at the retail level – particularly given that consumers need such disclosures attached to the jewelry product.

1. Empirical Evidence Provided in PGI's 2005 Comment: Platinum Awareness Study and Hall and Partners Study

In order to respond to questions posed by the FTC in its original July 6, 2005 *Federal Register* notice, PGI conducted two studies that provide a plethora of empirical evidence supporting the conclusion that consumers generally expect a "pure" product when purchasing a product described as "platinum," and that consumers would be confused and misled by alloyed products containing base metals sold as platinum.

The first study was a consumer perception study conducted by Dr. Thomas J. Maronick entitled "*Platinum Awareness Study: An Empirical Analysis of Consumers' Perceptions of Platinum as an Option in Engagement Ring Settings*" ("Platinum Awareness Study").[17] The Platinum Awareness Study, which was designed to assess consumer expectations associated with platinum jewelry, revealed 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 substantial percentage looking to multiple sources for information; (4) mere content disclosures 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.[18] These findings suggest that products composed of between 500 and 850 ppt

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[17] 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.

[18] Platinum Awareness Study at 28-29.

pure platinum and that do not contain at least 950 ppt PGM present a significant risk of consumer deception.

The second study was a consumer study conducted by Hall and Partners entitled "*Platinum Brand and Advertising Tracking Pre Wave*" ("Hall and Partners Study").[19] The Hall and Partners study revealed that: (1) both men and women view platinum as a leading precious metal known for its pure and enduring properties; and (2) that only 22% of consumers felt sales associates helped them understand the differences between various metals.[20] This, like the Platinum Awareness Study, suggests that it would be difficult, if not impossible, to provide consumers with sufficient disclosures at the point of sale to cure the inherent deception in marketing diluted platinum alloys as "platinum."

It should be emphasized that the FTC has already concurred with the primary conclusions of these studies – particularly that a substantial number of consumers believe a product marked or described as platinum is pure and possesses certain desirable qualities. Both of these studies were extensively discussed in (and attached to) PGI's 2005 Comment and we incorporate them – and those comments - by reference.

2. New Empirical Evidence Reveals That the FTC's Proposal Would Result in Consumer Confusion and Deception

A new study conducted by Dr. Thomas J. Maronick entitled "*Platinum Attitude Study: Four Empirical Studies of Consumers' Attitudes Toward Platinum and Substitutes as Options in Engagement Ring Settings*" ("Platinum Attitude Study") confirms the findings of the Platinum Awareness Study and the Hall and Partners Study.[21] Specifically, the Platinum Attitude Study confirms that consumers expect platinum to be pure, have a high level of confusion regarding the attributes of an engagement ring that contains 50-60% platinum and the remainder base metals, do not understand mere content disclosures, and want information about the specific attributes of a ring that contains 50-60% platinum and the remainder base metals to be physically attached to the ring.[22]

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[19] Hall and Partners USA Inc., "*Platinum Brand and Advertising Tracking Prewave*" (September 2003). The Hall and Partners Study was provided as Attachment B to PGI's 2005 Comment.

[20] *Id.* at 16, 33.

[21] 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 is provided as Attachment A to these comments.

[22] Platinum Attitude Study at 18-22.

The Platinum Attitude Study also reveals that: (1) consumers do not understand the meaning of the phrase "other non-platinum group metals"; (2) a significant number of consumers do not understand the proposed content disclosures even when they are spelled out for them (e.g., 58.5% Platinum and 41.5% Copper/Cobalt); (3) even if understood, content disclosures do not alert consumers to the differences between diluted platinum alloy products and traditional platinum products; and (4) 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.[23]

The Platinum Attitude Study (which consists of four separate studies) through a series of questions presented to consumer respondents, sought to:

- Assess the attitudes of consumers in the target market for platinum jewelry regarding the amount of platinum they expect in jewelry called platinum and their expectations regarding the characteristics and attributes of jewelry called platinum.

- Supplement the information reported in the Platinum Awareness Study.

- Provide an empirical basis for answers to specific questions raised by the FTC in its *Federal Register* notice.[24]

The study reached eight major conclusions, each of which suggests diluted platinum alloys cannot be marked or described as "platinum" without the potential for significant consumer deception.

First, the study reveals that consistent with the Platinum Awareness Study, consumers expect a platinum product to contain a substantial percentage of pure platinum (confirming the FTC's finding that "a substantial number of consumers believe products marked or described as 'platinum' are pure and possess certain desirable qualities"[25]). The data show that the majority of consumers (59%) expect a "platinum" engagement ring to contain at least 80% pure platinum and the vast majority of consumers (69%) expect a "platinum" engagement ring to contain at

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[23] *Id.*

[24] *Id.* at 2.

[25] 73 Fed. Reg. at 10194.

least 75% pure platinum.[26] The study concludes that this suggests "a high level of consumer confusion is likely if a bridal product is marketed as 'platinum' with less than 75-80% pure platinum and that any attempt to promote a product as 'platinum' that does not contain 75-80% 'pure' platinum is likely to deceive a significant proportion of the target market for bridal products."[27]

Second, although less than ten percent of consumers expect that an engagement ring that contains 50-60% platinum and the remainder base metals would "Definitely" have the same attributes as a platinum engagement ring, the vast majority of consumers (84%) have at least some question as to whether the attributes of an engagement ring that contains 50-60% platinum and the remainder base metals would be the same as a platinum engagement ring, in that they responded that it "Probably" has the same attributes, "May have" the same attributes, "Probably" does not have the same attributes, or are "Not sure."[28] The study concludes that "[t]his suggests 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."[29] Content disclosures are thus clearly insufficient to ensure consumer understanding and awareness of what they are purchasing, particularly given that consumers understand platinum products to be pure. The study further notes that since only one combination of platinum and base metals was examined (50-60% platinum and the remainder base metals), and "[g]iven that there are an infinite number of possible 'combinations' of platinum and base metals, the potential for confusion as to the attributes of so called 'platinum' bridal products is magnified exponentially."[30]

Third, over two-thirds of consumers (68%) 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."[31] The information consumers want attached to the ring are specific characteristics related to durability, luster,

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[26] Platinum Attitude Study at 5.

[27] *Id.* at 18. Please note that the terms "engagement ring" and "bridal product" are used interchangeably in the Platinum Attitude Study.

[28] *Id.*

[29] *Id.*

[30] *Id.* at 19.

[31] *Id.* at 6, 19.

density, scratch resistance, tarnish resistance, hypoallergenicity, ability to be resized/repaired, and retention of precious metal content over time.[32] The study concludes that "it is virtually impossible to physically attach a sufficient amount of information about each of these characteristics for the particular 'combination' of platinum and base metals . . . As a result, the consumer is likely to be left to his or her own devices to acquire the desired information, with a likely consequence of high levels of ignorance and/or confusion on the part of the consumer . . ."[33]

Fourth, 81% percent of consumers expect an engagement ring called "Karat Platinum" to have the same attributes as a platinum engagement ring, and almost half of consumers (48%) expect an engagement ring called "Platinum Alloy" to have the same attributes as a platinum ring.[34] In addition, other alternative terms that use the word platinum such as "Platinum V" and "Platinum Five" similarly present the potential for consumer deception since roughly two-thirds of consumers expect that such a product would or might have the same attributes as a platinum engagement ring.[35] Even using the term "Platifina," which has the root "plat" in the word, results in roughly one third of all consumers believing the product has or may have the same attributes as a platinum engagement ring.[36] The study concludes that "[t]he obvious conclusion one can draw from these data is that consumers have an underlying belief as to what a 'platinum' bridal product is, namely one with 75-80% 'pure platinum' and, therefore, the use of any term with a 'plat'-root or any of the 'platinum sounding' terms examined here, namely 'Karat Platinum,' 'Platinum Alloy,' 'Platinum Five/V,' or 'Platifina,' is likely to lead to confusion for a significant percent of consumers in the target market that such a product has the same attributes as a 'platinum' engagement ring."[37]

Fifth, consumer confusion related to diluted platinum alloys cannot be cured by using abbreviated expressions of specific content since 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

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[32] *Id.* at 19.

[33] *Id.*

[34] *Id.* at 6, 19-20.

[35] *Id.* at 12, 20.

[36] *Id.* at 20.

[37] *Id.*

them, i.e., "58.5% Platinum and 41.5% Copper/Cobalt."[38] Moreover, the majority of consumers (50-65%) expect a product that is 58.5% Platinum and 41.5% Cobalt/Copper either to be the same as a "platinum" engagement ring across most of the attributes listed (durability, luster, density, scratch and tarnish resistance, hypoallergenicity, ability to be resized/repaired, and retention of precious metal content over time) or they are "not sure."[39] The study accordingly concludes that using percentages and spelling out the specific content of the ring does not alert consumers "to what the product's attributes are and/or any differences between a 'platinum' engagement ring and products with different alloy combinations."[40]

Sixth, given that consumers have strong underlying expectations about platinum, and given that content disclosures do not typically alert consumers to differences in product attributes, "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.'"[41] The study also notes 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.

Seventh, 80% of consumers do not know what "other non-platinum group metals" means.[42] Although 20% of consumers claimed to know what the phrase means, their responses to an open-ended question revealed a distinct lack of understanding.[43] The study thus concludes that the phrase "other non-platinum group metals" "will not, in any way, eliminate or reduce consumers' confusion as to the differences in characteristics of a 'pure' platinum product and one with high percentages of 'other non-platinum group metals.'"[44]

Eighth, given the data, the study ultimately concludes that it is "highly unlikely that any method exists to communicate the specific content and specific characteristics of an engagement ring that

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[38] *Id.*

[39] *Id.* at 7.

[40] *Id.* at 21.

[41] *Id.*

[42] *Id.*

[43] *Id.* at 16-17.

[44] *Id.* at 21.

contains less than 75-80% pure platinum in a way that is useful and meaningful to consumers and eliminates confusion or deception."[45] The study also concludes that it is "highly unlikely" that consumer expectations of pure platinum "can be 'undone' or changed by disclaimers when the product being marketed has a 'plat'-root in its name," and that "the failure to provide the specific information consumers want about the characteristics of other 'platinum sounding' products and in the form they want it, i.e., physically attached to the ring, will result in consumers making purchase decisions without complete information, creating the potential for them to be deceived . . ."[46]

This study confirms that platinum's high level of purity is both its most distinctive and most appealing quality, and that use of the word "platinum" to describe diluted platinum alloy products would result in consumer confusion and deception at the point of purchase. The FTC's proposed rule attempts to alleviate or cure the potential for consumer deception by requiring marketers of diluted platinum alloys that are described as "platinum" to make three disclosures. The empirical evidence and consumer data presented above, however, clearly indicate that the FTC's proposed disclosures are not understood by consumers, and that the complex and comprehensive disclosures theoretically needed to avoid consumer deception would not be effective, are unreasonable, and cannot practically be provided at the retail level.

B. The Complex Disclosures Necessary to Prevent Consumer Deception Under the FTC's Proposed Rule Are Inconsistent with FTC Precedent and Not Capable of Being Meaningfully Relayed at the Retail Level

In light of ingrained consumer expectations of platinum purity, it is inherently misleading to refer to a diluted platinum alloy as "platinum," and this claim cannot be cured by qualifying language. It is axiomatic under FTC law that not all claims are capable of being qualified via disclosures - particularly claims that directly contradict the overall message relayed in a promotional statement.[47]

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[45] *Id.* at 21-22.

[46] *Id.* at 22.

[47] For example, the FTC has noted that "[a]dvertisers cannot use fine print to contradict other statements in an ad or to clear up misimpressions the ad would otherwise leave. FTC Deception Policy Statement, appended to *Cliffdale Associates, Inc.*,103 F.T.C. 110, 180-81 (1984). Similarly, accurate information in a footnote or dense block of text will likely not remedy a deceptive representation conveyed by a headline or other prominent selling message because reasonable consumers may not read the footnote. *Id.* at 180; *Gateway Corp.*, File No. 992-3276 (proposed consent agreement issued for public comment May 16, 2001) (challenging ads for "free" or flat-fee internet services that disclosed in a fine-print footnote that many consumers would incur significant additional telephone charges)." FTC,

The FTC, for example, has emphasized:

> A disclosure only qualifies or limits a claim, to avoid a misleading impression. It cannot cure a false claim. If a disclosure provides information that contradicts a claim, the disclosure will not be sufficient to prevent the ad from being deceptive. In that situation, the claim itself must be modified.[48]

The FTC has also recently indicated that "[d]epending on the specific circumstances, qualifying disclosures may or may not cure otherwise deceptive messages or practices."[49] The FTC, for example, would assuredly not permit a product with no cancer-fighting properties to be touted in an advertisement as a "Cancer Cure" if a footnote or other disclosures indicated that it does not cure cancer. Similarly, the FTC should not countenance a product being touted as platinum when it is in fact a diluted alloy – even if extensive disclosures are made that directly contradict the central message. There is precedent for this position in the Platinum Guides themselves, as the FTC has concluded that it is misleading and deceptive for jewelry containing less than 500 ppt pure platinum to be marked or described as platinum (regardless of content disclosures or qualifying language).

Even if the FTC disagrees with this longstanding principle, the disclosures that would be theoretically necessary to prevent consumer deception are complex, unreasonable, and unlikely to be relayed at the retail level, rendering the FTC's proposal completely unworkable and unrealistic. As previously noted in PGI's 2005 Comment, it is generally acknowledged that there is insufficient space on the inside of a jewelry ring, or other jewelry, to incorporate the kinds of complex disclosures consumers find important prior to purchasing platinum jewelry. In addition, due to limited retail space and appearance concerns, there is a general aversion to attaching lengthy disclosure tags to jewelry sold at the retail level.

Although sales associates are another potential source of product information, the Hall and Partners study revealed that only 22-24% of consumers felt that sales associates helped them

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FTC Advertising Enforcement: Disclosures in Advertising, available at http://www.ftc.gov/bcp/workshops/disclosures/cases/index.html (last accessed, August 8, 2008).

[48] See e.g., *FTC Facts for Business, Dot Com Disclosures* (May, 2000), *available at* http://www.ftc.gov/bcp/conline/pubs/buspubs/dotcom/index.shtml#III (last accessed August 19, 2008).

[49] FTC, *Letter Responding to the Jewelers Vigilance Committee and Ten Other Jewelry Trade Associations' Petition on Cultured Gemstones* (July 21, 2008), at pg 3 (footnote 7), *available at* http://www.ftc.gov/opa/2008/07/jvc.shtm (last accessed August 6, 2008).

understand the difference between the different metals.[50] Moreover, educating sales staff in order to protect consumers from confusion and deception may not only be difficult to execute, but could be prohibitively expensive with no guarantee of success.

Due to these practical realities, we do not believe consumers would be capable of receiving appropriate and prominent disclosures associated with a diluted platinum alloy if sold in a retail environment. This conclusion is supported by the Platinum Awareness Study and the Platinum Attitude Study,[51] and is also supported by a recent Jewelers of America ("JA") email survey of its members on the FTC's proposed changes to the Platinum Guides.[52] The JA is the national association for professional retail jewelers and represents more than 11,000 jewelry stores nationwide. When JA members were asked to rank the "workability" of explaining to a customer the name and exact percentage of each base metal, and explaining that the attributes of the base metals used are different from those of traditional platinum group metal alloys, over half the responding retail jewelers (52.5%) said that it would be difficult or very difficult to explain this to the customer.[53] If customers then asked for a specific explanation of the differences (ex – differs in durability, hypoallergenicity, etc.), over half the responding retail jewelers (57.4%) thought it would be difficult or very difficult to specifically identify and explain those differences to the customer.[54]

Moreover, when asked whether disclosures concerning platinum and base metal jewelry are capable of being attached to the jewelry in the form of a tag or other physical means, almost half the respondents (49.5%) in the JA survey responded "No" while only 32.1% responded "Yes."[55] Finally, when asked for comments on the FTC proposal, many respondents stated, for example, that the proposal would result in "a lot of confusion and miscommunication to the consumer," that the proposal would "create an unreasonable burden to the retailer," and that diluted platinum alloys should be given a "different name to avoid confusion and deception."[56]

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[50] Hall and Partners Study at 33.

[51] Platinum Awareness Study at 29; Platinum Attitude Study at 21-22.

[52] JA Survey, *How Do You Disclose Platinum* (August 2008). The JA survey is attached to the Jewelers Vigilance Committee ("JVC") comment on the FTC proposal.

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.*

C. The FTC Proposal Leaves an Inappropriate Amount of Discretion to Marketers and Would be Nearly Impossible to Enforce

Not only does the FTC's proposal incorrectly assume that complex disclosures can be provided in a meaningful way at the retail level, but it is also vague and inappropriately permits marketers to exempt themselves from a key disclosure. The FTC's proposal would permit diluted platinum alloys to be marketed as "platinum" if, among other things, it is disclosed that the product "may not have the same attributes or properties as products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGMs."[57] This disclosure is so uncertain that it tells the consumer almost nothing about the product they are purchasing – they may as well be told that the product may or may not be platinum.

The proposal also allows marketers to entirely avoid making this vague disclosure if the marketer has "competent and reliable scientific evidence" that its product has all of the attributes of traditional platinum products that are "material" to consumers.[58] Although the FTC lists examples of attributes that may be material to consumers (e.g., the product's durability, hypoallergenicity, resistance to tarnishing and scratching, and the ability to resize or repair the product), the proposal does not contain a definitive listing of the attributes or properties material to consumers, nor does it specify the type of scientific substantiation necessary to avoid making the disclosure.[59] Marketers are thus inappropriately left to their own devices to: (1) cherry pick which attributes or properties are material to consumers; (2) decide which studies or tests should be conducted to determine that their new diluted platinum alloy products are equivalent to traditional platinum products; and (3) conclude that they are exempt from disclosing that their product may not have the same attributes as traditional platinum.

This is made even more problematic by the fact that PGI has been unable to identify any standard scientific tests that are universally used in the jewelry industry to determine or substantiate representations regarding a product's durability, hypoallergenicity, resistance to tarnishing and scratching, and ability to be resized or repaired, as compared to traditional platinum products. Without an accepted industry standard, the area is rife for fraud and abuse.

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[57] 73 Fed. Reg. at 10197.

[58] *Id.*

[59] *Id.*

Given the ambiguity and imprecision inherent in this proposal, there is sure to be a profound lack of consistency in how a potentially infinite number of new platinum/base metal alloy products will be marketed – resulting in significant consumer confusion and deception. This is very troubling since data contained in PGI's 2005 Comment (Hoover & Strong and Daniel Ballard of Precious Metals West/Fine Gold) unequivocally confirm that lower purity platinum alloys containing significant amounts of base metals may have vastly different properties than traditional platinum products sold in the marketplace.[60]

Moreover, enforcement of this proposal is likely to be impossible. In order to ensure that consumers are not being deceived by diluted platinum alloy products, the FTC would have to: (1) test the potentially infinite number of new alloys to ensure that manufacturer self-determinations of platinum equivalence are valid and supported by competent and reliable scientific evidence; and (2) evaluate in-store signage, jewelry tags, and statements made by sales associates at the point of sale to ensure that such products are being properly marketed. In order to effectively enforce the proposal, PGI believes the FTC would need a dramatic increase in staff and Congressional funding. The agency would need to retain additional scientific reviewers, metallurgists, and analytical labs to ensure that a multitude of new diluted platinum alloy products are marketed in compliance with the proposal.

D. The FTC Proposal is Inconsistent with International Standards

The FTC's proposal is also flawed because it is inconsistent with international standards. As previously noted in PGI's 2005 Comment, the ISO standard for platinum markings does not permit products containing between 500 and 850 ppt pure platinum to be marketed as "platinum."[61] Since many countries have adopted this standard, these products generally would not be marketed as "platinum" if sold outside the U.S. In addition, the World Jewelry Confederation (CIBJO) recently published a blue book on precious metals, including platinum.

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[60] PGI 2005 Comment at 18-19. As discussed in PGI's 2005 Comment, Hoover & Strong testing revealed that a sample alloy containing 59.2% platinum, 36.59% copper, and 3.90% cobalt (along with trace amounts of gold, silver, and nickel): (1) had inferior wear resistance as compared with traditional platinum alloys; (2) was not comparable to traditional alloys with regard to oxidation testing; and (3) was unable to survive standard welding/soldering process. Meanwhile, Daniel Ballard's testing of three different platinum/base metal alloys revealed that the lower purity base metal alloys did not come close to meeting the current performance criteria of traditional platinum products and that the new alloys demonstrated significant vulnerability to oxidation and tarnishing, were difficult to blend or cast, may or may not be hypoallergenic, and that they behave similar to white gold rather than platinum.

[61] PGI 2005 Comment at 20-22. The ISO standard for platinum markings, ISO 9202:1991(E) "*Jewelry – Fineness of Precious Metal Alloys*," specifies a range of fineness of precious metal alloys recommended for use in the field of jewelry. It provides for three values in ppt for platinum jewelry: 950, 900, and 850.

The CIBJO Blue Book standard for platinum similarly restricts the use of the word "platinum" to alloys containing no fewer than 850 parts per thousand pure platinum.

Under the Trade Agreements Act of 1979, the FTC has an obligation to establish Platinum Guides consistent with international trade statutes.[62] International harmonization provides a vital context within which U.S. manufacturers can compete fairly in export markets in Europe and Asia, which are important sources of revenue and employment for a significant group of U.S. manufacturers. The FTC itself has repeatedly expressed its desire to maintain consistency with international standards.[63]

Consistency with international standards is essential because the international platinum standards (contrary to FTC assertions) were based upon deception and unfairness considerations. CIBJO's mission statement, for example, explicitly provides that CIBJO's "purpose is to encourage harmonization, promote international cooperation in the jewellery industry, and to consider issues which concern the trade worldwide. Foremost among these is to protect consumer confidence in the industry."[64] We also understand that promoting consumer confidence and fairness in the trade is the driving force that motivates the publication of CIBJO Blue Book standards, and that preventing consumer deception is of paramount concern. The FTC's view that these standards are not based upon deception or fairness considerations is, therefore, not supported by the facts.

Maintaining consistency with international standards is essential to both consumers and the jewelry industry. When consumers were asked in the Platinum Awareness Study whether they would expect the platinum standard for a ring to be the same in the United States as in other countries around the world, almost two-thirds of all respondents (64.7%) indicated that they would expect the standards to be the same with an additional 20.6% saying that they did not know or were not sure.[65] The widespread adoption of an international standard would allow American consumer expectations to align with the universal standard adopted by most of the world. It also means that suppliers can base the development of their products and services on

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[62] 19 U.S.C. § 2532(2)(A).

[63] PGI 2005 Comment at 21-22.

[64] CIBJO, Mission Statement, *available at* http://www.cibjo.org/index.php?option=com_content&task=view&id=95&Itemid=198 (last accessed, August 8, 2008) (emphasis added).

[65] Platinum Awareness Study at 26.

specifications that have wide acceptance in the jewelry industry, and can compete in markets around the world. Conforming products to international standards also provides consumers with assurances about product quality, safety, and reliability. In light of increasing globalization and increasing travel and movement, consumers will be affected by varying definitions of platinum – particularly if they are concerned about their product's resale value.

IV. The Platinum Proceeding is Entirely Distinguishable from Cultured Gemstones

Although the FTC recently denied a Petition to amend the Jewelry Guides to state that it would be unfair or deceptive to use the term "cultured" to describe laboratory-created gemstones, the cultured gemstone situation is entirely distinguishable from the platinum situation in a number of respects. In addition, the standard enunciated by the FTC in its July 21, 2008 letter to the Petitioners actually supports the amendment of the Platinum Guides to prohibit the use of the word "platinum" in association with products containing between 500 and 850 ppt pure platinum and that do not contain at least 950 ppt PGM.[66]

By way of background, the JVC and other jewelry associations recently petitioned the FTC to amend the Jewelry Guides to state that it is deceptive or unfair to use the term "cultured" to describe laboratory created gemstones. After reviewing the Petition and its three consumer surveys testing consumer perception of the term "cultured diamonds," the FTC declined to amend the Jewelry Guides, and concluded that there is insufficient evidence to establish that the qualified use of the term "cultured diamonds" is deceptive or unfair.

In its analysis, the FTC noted "under the current legal standard, a representation or omission is deceptive if it is likely to materially mislead consumers acting reasonably under the circumstances."[67] In addition, in order to grant the Petition's request to amend the Jewelry Guides to state that it is unfair or deceptive to use the term "cultured" to describe laboratory-created diamonds under any circumstances, the FTC determined that it would have to conclude that "no *reasonable* qualification is sufficient to render the term 'cultured diamond' non-deceptive to consumers."[68]

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[66] FTC, *Letter Responding to the Jewelers Vigilance Committee and Ten Other Jewelry Trade Associations' Petition on Cultured Gemstones* (July 21, 2008), *available at* http://www.ftc.gov/opa/2008/07/jvc.shtm (last accessed August 6, 2008).

[67] *Id.* at 2-3.

[68] *Id.* at 3 (emphasis added).

The FTC explained that even if the Petition's three consumer perception surveys demonstrate that the unqualified use of the term "cultured" to describe laboratory-created gemstones is misleading, the surveys did not evaluate consumer perception of the qualifying language set forth in the Jewelry Guides in conjunction with the term "cultured." Based upon the record, the FTC felt it could not conclude that a clear and conspicuous disclosure that the stones are laboratory-created or laboratory-grown, as the Jewelry Guides currently suggest, is insufficient to qualify a "cultured diamonds" representation and thereby avoid deception.[69]

The cultured gemstone situation is entirely distinguishable from the platinum situation for a variety of reasons. First, there are unlimited variations on potential platinum/base metal combinations. This is in sharp contrast to cultured gemstones, for example, where the ultimate product is consistent and not a company-specific alloy with different percentages of varying base metals and platinum. From a compliance perspective, therefore, the number of disclosures that would be required in an attempt to make a platinum claim non-deceptive would be varied, complex, and almost impossible to enforce due to the realities of the retail marketplace and the infinite number of alloys that could enter the market.

Second, consumers have deeply ingrained expectations associated with platinum, based in part upon on a long history of marketing platinum jewelry as "pure." This also contrasts the platinum situation from the cultured gemstone situation. In light of these deeply ingrained consumer expectations regarding platinum purity, it is inherently misleading to refer to diluted platinum alloys as "platinum," and such a claim is not capable of being cured by qualifying language. In fact, the Platinum Attitude Study concludes that it is "highly unlikely" consumer expectations of pure platinum can be "'undone' or changed by disclaimers when the product being marketed has a 'plat'-root in its name."[70]

Third, in the cultured gemstone context, the Jewelry Guides expressly provide for, and require, certain qualifications. Specifically, the Jewelry Guides provide that it is unfair or deceptive to use the term gemstone to describe a man-made stone that possesses essentially the same physical, optical, and chemical properties as natural, mined stones, unless it is qualified by the word "laboratory-created," "laboratory-grown," "[manufacturer-name]-created," or "synthetic."[71] Any advertisement using the term cultured to describe a laboratory-created gemstone would not be consistent with the Guides if it failed to also include one of these four qualifying terms. The

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[69] *Id.* at 4.

[70] Platinum Attitude Study at 22.

[71] 16 C.F.R. § 23.23.

Platinum Guides do not provide for, or require, qualifications for diluted platinum alloys - there is therefore no pre-existing or historical understanding by consumers that a platinum product may not be pure.

Fourth, unlike the cultured gemstone situation where the FTC contended there was insufficient evidence to establish that the qualified use of the term cultured diamond was deceptive or unfair,[72] the extensive empirical evidence and consumer data related to consumer perceptions of platinum clearly show that: (1) the use of the word "platinum" to describe diluted platinum alloys is "likely to materially mislead consumers acting reasonably under the circumstances"; and (2) there is no "reasonable qualification" that would be "sufficient to render it non-deceptive to consumers."[73] The breadth of disclosures that would theoretically be necessary to avoid consumer deception are unreasonable and cannot be provided at the retail level.

Given the above, the platinum proceeding is entirely distinguishable from the cultured gemstone decision, and the acknowledgment by the FTC in that decision that there must be a reasonable qualification further supports the amendment of the Platinum Guides to prohibit the use of the word platinum in association with diluted platinum alloys.

V. Responses to Individual FTC Questions

Provided below are responses to many of the FTC's questions in the order in which they were presented in the *Federal Register* notice.

Question One: Should the Commission amend the platinum section of the Jewelry Guides by adopting the proposed amendment?

No. As discussed comprehensively above, the FTC's proposal would result in widespread consumer deception. We respectfully submit that the FTC should adopt the standard identified herein in Section VI.

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[72] The consumer surveys presented in the cultured gemstone Petition reportedly only addressed the unqualified use of the term "cultured" to market laboratory-created diamonds, and did not evaluate consumer perception of the terms "laboratory-created," "laboratory-grown," "synthetic," or "[manufacturer-name] created" in conjunction with the term "cultured."

[73] Platinum Attitude Study at 21-22. It should be noted that it is impossible for a consumer survey to test all potential disclosures that could theoretically cure an inherently misleading claim. The FTC has appropriately acknowledged (without conducting consumer tests) that some claims are so misleading that extensive experience dictates that they are impossible to qualify via reasonable disclaimers.

Question Two: Should the Commission revise the language in the proposed amendment to provide for additional disclosures to ensure that consumers are not misled, for example, by including additional, more detailed disclosures regarding how products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM, differ from traditional platinum products in terms of purity and rarity?

We believe that it is inherently misleading to refer to a diluted platinum alloy as "platinum," and that such claim is not capable of being cured by qualifying language. It is axiomatic under FTC law that not all claims are capable of being qualified via disclosures - particularly claims that directly contradict the overall message relayed in a promotional statement. There is precedent for this position in the Platinum Guides themselves, as the FTC has concluded that it is misleading and deceptive for jewelry containing less than 500 ppt pure platinum to be marked or described as platinum (regardless of content disclosures or qualifying language).

Even if the FTC disagrees with this long-standing principle, the Platinum Attitude Study demonstrates that the level and breadth of disclosures that would be required to prevent such deception are unreasonable and cannot practically be provided to consumers at the retail level. As noted above, the Platinum Attitude Study reveals that consumers expect to be informed about eight specific attributes (durability, luster, density, scratch resistance, tarnish resistance, ability to be resized/repaired, hypoallergenicity, and retention of precious metal content over time) of a product containing significant amounts of base metals prior to purchase, and they expect to have this information attached to the jewelry product.[74]

The Platinum Attitude Study emphasizes, however, that "it is virtually impossible to physically attach a sufficient amount of information about each of these characteristics for the particular 'combination' of platinum and base metals . . ."[75] The Platinum Attitude Study then concludes that it is "highly unlikely that any method exists to communicate the specific content and specific characteristics of an engagement ring that contains less than 75-80% pure platinum in a way that is useful and meaningful to consumers and eliminates confusion or deception."[76] The Platinum Attitude Study further concludes that it is "highly unlikely" that consumer expectations of pure platinum "can be 'undone' or changed by disclaimers when the product being marketed has a 'plat'-root in its name," and that "the failure to provide the specific information consumers want

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[74] Platinum Attitude Study at 19.

[75] *Id.*

[76] *Id.* at 21-22.

about the characteristics of other 'platinum sounding' products and in the form they want it, i.e., physically attached to the ring, will result in consumers making purchase decisions without complete information, creating the potential for them to be deceived . . ."[77]

The Platinum Awareness Study similarly concludes that it is "highly doubtful that 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 currently being sold in the U. S. market."[78]

Since additional disclosures are unlikely to prevent consumer confusion and deception given the realities of the retail jewelry marketplace, we respectfully submit that the FTC adopt the standard identified herein in Section VI.

Question Three: Should the Commission revise the language in the proposed amendment to state that the disclosures should be physically attached to the jewelry product?

Please see response to Question Two. We disagree with the entire foundation for this question and do not believe that the complex disclosures that would theoretically be required to avoid consumer deception can be provided in any meaningful way at the retail level. In the event the FTC does not adopt the standard identified herein in Section VI, however, the Platinum Attitude Study clearly indicates that disclosures must be physically attached to the jewelry in order to avoid consumer deception.

Question Four, including subpart c:

Should the Commission revise the language in the proposed amendment to provide that marketers need only make the third disclosure that the platinum/base metal alloy may not have the same attributes or properties of traditional platinum products, if they represent expressly or by implication that such product has one or more of the same attributes or properties as traditional platinum products (i.e., a triggered disclosure)?

Is there any evidence indicating that the disclosure of the product's full composition will sufficiently alert consumers to the differences between platinum/base metal alloys and traditional platinum products containing a higher percentage of platinum or other PGM?

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[77] *Id.* at 22.

[78] Platinum Awareness Study at 29.

A triggered disclosure would not be effective since the Platinum Awareness Study and the Platinum Attitude Study reveal that consumers are misled and deceived by diluted platinum alloy products irrespective of whether attribute claims are made for the products. These studies also show that consumers do not understand mere content disclosures, and that content disclosures do not alert consumers to differences in product attributes.

The Platinum Attitude Study reveals that although less than ten percent of consumers expect that an engagement ring that contains 50-60% platinum and the remainder base metals would "Definitely" have the same attributes as a platinum engagement ring, the vast majority of consumers (84%) have at least some question as to whether the attributes of an engagement ring that contains 50-60% platinum and the remainder base metals would be the same as a platinum engagement ring, in that they responded that it "Probably" has the same attributes, "May have" the same attributes, "Probably" does not have the same attributes, or are "Not sure."[79] This suggests a high level of confusion regarding the properties of an engagement ring that contains 50-60% platinum and the remainder base metals irrespective of any attribute claims. The Platinum Attitude study cautions that given the infinite number of "possible 'combinations' of platinum and base metals, the potential for confusion as to the attributes of so called 'platinum' bridal products is magnified exponentially."[80]

In addition, the Platinum Awareness Study reveals that the vast majority of consumers (96%) do not understand what ".585 plat, 0 pgm" or what ".585 plat, 415 CO/CU" means.[81] The Platinum Attitude Study similarly reveals that roughly 80% of consumers do not understand abbreviated expressions of specific content of engagement rings such as "585 Pt; 415 CoCu" or "58.5% PT; 41.5% CoCu." Even when the specific content of the ring is spelled out using percentages (e.g., 58.5% Platinum and 41.5% Copper/Cobalt"), the Platinum Attitude study shows that almost half of all consumers still do not know what it means.[82] Moreover, the majority of consumers (50-65%) expect a product that is 58.5% Platinum and 41.5% Cobalt/Copper either to be the same as a "platinum" engagement ring across most of the attributes listed (durability, luster, density, scratch and tarnish resistance, hypoallergenicity, ability to be resized/repaired, and retention of

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[79] Platinum Attitude Study at 18.

[80] *Id.* at 18-19.

[81] Platinum Awareness Study at 29.

[82] Platinum Attitude Study at 20.

precious metal content over time) or they are "not sure."[83] The Platinum Attitude Study accordingly concludes that even if consumers understand what "58.5% Platinum, 41.5% Copper/Cobalt" means, this disclosure still does not alert consumers "to what the product's attributes are and/or any differences between a 'platinum' engagement ring and products with different alloy combinations."[84]

Since content disclosures are clearly insufficient to ensure consumer understanding and awareness of what they are purchasing, many consumers would be deceived even in the absence of express or implied representations that a product has one or more of the same attributes or properties of traditional platinum products. In addition, triggered disclosures are simply impractical in the retail context since sales associates often have significant interactions with consumers at the point of sale and there is no way of enforcing triggered disclosures upon a sales associate.

Question Five, including subparts b and c:

Is there a specific word or phrase that could be used to describe products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM, that would adequately convey that such products differ from traditional platinum products?

Would the term "platinum alloy," if used to describe products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM, adequately convey that such products differ from traditional platinum products?

Should the Commission revise the language in the proposed amendment to address the use of such a specific word or phrase to describe products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM?

Any word or phrase that does not use the term "platinum" or the root "plat" should be used to describe products that contain between 500 and 850 ppt pure platinum and that do not contain at least 950 ppt PGM. The Platinum Awareness Study reveals that a significant number of consumers expect a product labeled "platinum" to contain a substantial percentage of pure

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[83] *Id.* at 7.

[84] *Id.* at 21.

platinum, and do not expect a product to be called platinum if it contains 40% base metals. Specifically, over 75% of consumers indicated that the purity of the precious metal in the setting was "very important" or "important" in their decision,[85] and over 50% of consumers expect an engagement ring labeled "platinum" to contain 80% or more pure platinum.[86] A substantial percentage of consumers do not expect a product to be called "platinum" if it contains 40% base metals, even if it is assumed to have all the properties of pure platinum.[87] Only 28% of respondents indicated that they would "definitely" or "probably" expect an engagement ring to be called "platinum" if it has 40% or more base metals, even if they were informed of the base metal content prior to the purchase of the ring.[88] These findings lead to the Platinum Awareness Study's conclusion "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."[89] This conclusion is consistent with the Hall and Partners Study, where the large majority of consumers agreed with the statement "platinum is pure."[90]

In addition, the Platinum Attitude Study reveals that when the term platinum is used to describe a product that contains a high percentage of base metals, many consumers expect it to have the attributes of traditional platinum. For example, the Platinum Attitude Study revealed that 81% percent of consumers expect an engagement ring called "Karat Platinum" to have the same attributes as a platinum engagement ring.[91] Even the term "Platinum Alloy" does not adequately convey that such products differ from traditional platinum products – almost half of consumers (48%) in the Platinum Attitude Study expect an engagement ring called "Platinum Alloy" to have the same attributes as a platinum ring, and 7% are unsure.[92]

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[85] Platinum Awareness Study at 10.

[86] *Id.* at 28.

[87] *Id.* at 17.

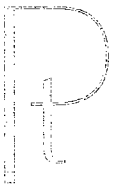
[88] *Id.* at 16.

[89] *Id.* at 28.

[90] Hall and Partners Study at 16.

[91] Platinum Attitude Study at 6, 19.

[92] *Id.* at 6, 19-20.



Moreover, when consumers are presented with other platinum terms without qualifying language (such as Platinum V and Platinum Five), roughly two thirds of consumers expect that such a product would or might have the same attributes as a platinum engagement ring.[93] Even using the word "Platifina," which has the root "plat" in the word, results in roughly one third of all consumers believing the product has or may have the same attributes as a platinum engagement ring.[94] The Platinum Attitude Study concludes that "[t]he obvious conclusion one can draw from these data is that consumers have an underlying belief as to what a 'platinum' bridal product is, namely one with 75-80% 'pure platinum' and, therefore, the use of any term with a 'plat'-root or any of the 'platinum sounding' terms examined here, namely 'Karat Platinum,' 'Platinum Alloy,' 'Platinum Five/V,' or 'Platifina,' is likely to lead to confusion for a significant percent of consumers in the target market that such a product has the same attributes as a 'platinum' engagement ring."[95] The Platinum Attitude Study also concludes that it is "highly unlikely" consumer expectations of pure platinum can be "'undone' or changed by disclaimers when the product being marketed has a 'plat'-root in its name."[96]

In light of these findings, it is clear that the word "platinum" or the root "plat" should not be used to promote products that have significant amounts of base metals and that may not have the same attributes as traditional platinum products. More fanciful names are less likely to lead to consumer confusion and deception. Accordingly, the FTC should revise the Platinum Guides to prohibit the use of the word "platinum" (or the root "plat" or similar terms that connote consumer expectations of pure platinum) in association with products not composed throughout of at least 500 ppt pure platinum and at least 950 ppt PGM.

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[93] *Id.* at 12, 20.

[94] *Id.* at 20.

[95] *Id.*

[96] *Id.* at 22.

Question Six, including subparts a and c –

What, if any, additional disclosures are necessary to explain that a product that contains at least 500 ppt, but less than 850 ppt, pure platinum, and that does not contain at least 950 parts per thousand PGM, may not have the same attributes as platinum products?

Should the Commission revise the language in the proposed amendment to require any such additional disclosures?

If such disclosures are necessary, please explain the manner and form in which marketers should make them to ensure that they are clear and conspicuous to consumers.

Please see response to Question Two.

Question Seven - The proposed amendment provides that marketers disclose the full composition of the platinum/base metal alloy using full, unabbreviated names and the percentage of each metal. Other provisions in the platinum section of the Jewelry Guides provide for compositional disclosures using parts per thousand. Will the use of percentages for this disclosure confuse consumers?

Empirical data demonstrate that consumers will be deceived regardless of whether marketers disclose the full composition of the platinum/base metal alloy with percentages or with compositional disclosures using parts per thousand. As discussed above, the Platinum Attitude Study reveals that when the specific content of the ring is spelled out using percentages (e.g., 58.5% Platinum and 41.5% Copper/Cobalt"), almost half of all consumers still do not know what it means.[97] Moreover, the majority of consumers (50-65%) expect a product that is 58.5% Platinum and 41.5% Cobalt/Copper either to be the same as a "platinum" engagement ring across most of the attributes listed (durability, luster, density, scratch and tarnish resistance, hypoallergenicity, ability to be resized/repaired, and retention of precious metal content over time) or they are "not sure."[98] The Platinum Attitude Study accordingly concludes that even if consumers understand what "58.5% Platinum and 41.5% Copper/Cobalt" means, this disclosure still does not alert consumers "to what the product's attributes are and/or any differences between a 'platinum' engagement ring and products with different alloy combinations."[99]

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[97] *Id.* at 20.

[98] *Id.* at 7.

[99] *Id.* at 21.

Question Eight - What evidence, not submitted in response to the Commission's earlier request for comment, indicates what specific properties are important to consumers when purchasing a product marked or described as "platinum"?

The Platinum Attitude Study reveals that consumers find a product's durability, luster, density, scratch resistance, tarnish resistance, ability to be resized/repaired, hypoallergenicity, and retention of precious metal content over time to be important attributes.[100] In addition, the Platinum Attitude Study reveals that two-thirds of all consumers would want information about the specific attributes of an engagement ring that contained 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).[101] As noted above, the Platinum Awareness Study and Platinum Attitude Study conclude that it is highly unlikely this information can be provided in any meaningful way at the retail level.

Question Nine - Is there evidence indicating the meaning consumers take from qualified platinum markings using abbreviations and chemical symbols (e.g., 585 Pt., 415 Co.Cu)?

As noted above in response to Question Four, the Platinum Awareness Study and the Platinum Attitude Study both reveal that the vast majority of consumers do not know what "585 Pt., 415 CoCu" means. Specifically, the Platinum Awareness Study reveals that 96% of consumers do not know what ".585 plat, 415 CO/CU" means,[102] while the Platinum Attitude study reveals that 80% of consumers do not know what "585 pt; 415 CoCu" means.[103] Moreover, among the 32 consumers in the Platinum Attitude Study who said they "knew" or were "not sure" what "585 Pt; 415 CoCu" means, only one consumer correctly responded that it means "585 parts platinum, 415 parts cobalt/copper." Some of the other responses reflected "diamond-related" attributes, e.g., "585 points," "some kind of diamond code," "size of the diamond," or "the diamond has 585 points."[104]

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[100] *Id.* at 19.

[101] *Id.*

[102] Platinum Awareness Study at 29.

[103] Platinum Attitude Study at 14.

[104] *Id.* at 15.

Question Ten - Is there evidence indicating the meaning consumers take from qualified platinum markings using full-name compositional disclosures (e.g., 58.5% Platinum, 41.5% Copper/Cobalt)?

Please see responses to Questions Four and Seven. As discussed above, the Platinum Attitude Study reveals that almost half of all consumers do not understand what the expressions of specific content mean even when they are spelled out for them, i.e., 58.5% Platinum and 41.5% Copper/Cobalt.[105] Even if understood, such content disclosures do not alert consumers to differences between diluted platinum alloys and traditional platinum products.

Question Eleven - Is there evidence indicating whether consumers think that products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM, share the qualities, such as durability, luster, density, scratch and tarnish resistance, ability to resize or repair, and hypoallergenicity, that are associated with traditional platinum products?

The Platinum Attitude Study reveals that although less than ten percent of consumers expect that an engagement ring that contains 50-60% platinum and the remainder base metals would "Definitely" have the same attributes as a platinum engagement ring, the vast majority of consumers (84%) have at least some question as to whether the attributes of an engagement ring that contains 50-60% platinum and the remainder base metals would be the same as a platinum engagement ring, in that they responded that it "Probably" has the same attributes, "May have" the same attributes, "Probably" does not have the same attributes, or are "Not sure."[106] This suggests a high level of confusion, and ultimate deception, regarding the attributes of an engagement ring that contains 50-60% platinum and the remainder base metals. Content disclosures are thus clearly insufficient to ensure consumer understanding and awareness of what they are purchasing, particularly given that consumers understand platinum products to be pure. Additional information related to individual attributes can be found in Table 4 of the Platinum Attitude Study.[107]

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[105] *Id.* at 20.

[106] *Id.* at 18.

[107] *Id.* at 9, Table 4.

Question Thirteen - What constitutes "competent and reliable scientific evidence" to substantiate representations regarding the qualities material to consumers, such as durability, luster, density, scratch and tarnish resistance, ability to resize or repair, and hypoallergenicity of traditional platinum products and products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM?

The "competent and reliable scientific evidence" standard should be defined as traditionally defined by the FTC to mean "tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results." Anecdotal data and reported consumer experiences are insufficient to establish that diluted platinum alloys have the same properties as pure platinum.

Question Fourteen - Describe in detail the scientific tests used to determine or substantiate representations regarding the qualities material to consumers, such as the durability, luster, density, scratch and tarnish resistance, ability to resize or repair, and hypoallergenicity of traditional platinum products and products that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM.

PGI has not identified standard, validated, scientific tests, or testing protocols, that are universally used in the jewelry industry to substantiate such representations or evaluate the above properties.

Accordingly, under the FTC's proposed rule, marketers could each use a wide range of self-identified tests to: (1) support their self-determination that their new alloys possess all of the attributes of platinum that are material to consumers; and (2) exempt themselves from the requirement to disclose that their product may not have the same attributes or properties of traditional platinum products. This would result in wide variation in how base metal/platinum alloys are marketed.

Depending on which tests are used, some marketers could determine that their alloys do not require the disclosure while other marketers with a virtually identical alloy could determine that their alloys do require the disclosure. Under this system, in order to prevent massive consumer deception and confusion, the FTC and the jewelry industry would have to spend an immense amount of time monitoring marketer self-determinations of platinum equivalence, and test innumerable new alloy products to ensure that they are being appropriately marketed.

Question Fifteen - Describe in detail any difference between alloys that contain at least 500 ppt, but less than 850 ppt, pure platinum, and that do not contain at least 950 parts per thousand PGM, and traditional platinum products in terms of the qualities material to consumers, such as durability, luster, density, scratch and tarnish resistance, ability to resize or repair, and hypoallergenicity.

Consumers think of platinum as pure, rare, expensive, naturally white, high quality, and durable. The introduction of a variety of different base metals into platinum alloys could result in significant changes in the properties and behaviors of platinum as compared to current platinum alloys. As explained in PGI's 2005 Comment, due to the multitude of base metals that could be alloyed with platinum in varying percentages, we believe it is self-evident that such alloys would in fact have vastly different properties from traditional platinum.[108]

Moreover, the Hoover & Strong and Daniel Ballard of Precious Metals West/Fine Gold test results contained in PGI's 2005 Comment unequivocally confirm that lower purity platinum alloys containing significant amounts of base metals may have vastly different properties than traditional platinum products sold in the marketplace. Specifically, the Hoover & Strong testing revealed that a sample alloy containing 59.2% platinum, 36.59% copper, and 3.90% cobalt (along with trace amounts of gold, silver, and nickel): (1) had inferior wear resistance as compared with traditional platinum alloys; (2) was not comparable to traditional alloys with regard to oxidation testing; and (3) the sample alloy was unable to survive standard welding/soldering process. Meanwhile, Daniel Ballard's testing of three different platinum/base metal alloys revealed that the lower purity base metal alloys did not come close to meeting the current performance criteria of traditional platinum products, demonstrated significant vulnerability to oxidation and tarnishing, were difficult to blend or cast, may or may not be hypoallergenic, and behaved more similar to white gold than platinum.[109] The Hoover & Strong and Daniel Ballard's test results were attached to PGI's 2005 comments, and we incorporate these test results by reference.

Importantly, even if a hypothetical lower purity platinum/base metal alloy could be developed that shares many of the same properties as pure platinum, we believe the FTC would still not be justified in opening the marketplace to an entire category of new products that may have vastly different properties from traditional platinum. In our view, the FTC policy should be based upon protecting the vast majority of consumers, not protecting a hypothetical product (which would likely be patented) that would not reflect the range of base metal alloys that would inundate the market if left unfettered by the FTC. As previously noted, we believe such a

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[108] PGI 2005 Comment at 17-20.

[109] PGI 2005 Comment at 18-19.

product should be permitted to enter the market, but it should not be marked or described as platinum.

Question Sixteen - Is there evidence indicating what the terms "Karat Platinum," "Platifina," "Platinum V," and "Platinum 5" mean to consumer?

The Platinum Attitude Study reveals that 81% percent of consumers expect an engagement ring called "Karat Platinum" to have the same attributes as a platinum engagement ring, and almost half of consumers (48%) expect an engagement ring called "Platinum Alloy" to have the same attributes as a platinum ring.[110] In addition, other alternative terms that use the word "platinum" such as "Platinum V" and "Platinum Five" similarly present the potential for consumer deception since roughly two-thirds of consumers expect that such a product would or might have the same attributes as a platinum engagement ring.[111] Even using the term "Platifina," which has the root "plat" in the word, results in roughly one third of all consumers believing the product has or may have the same attributes as a platinum engagement ring.[112]

To further explore consumer expectations, consumers in the Platinum Attitude Study who said that the term "Karat Platinum" or "Platinum Alloy" definitely, probably, or maybe did not have the same attributes as a platinum engagement ring were asked for their expectations about specific attributes related to durability, luster, density, scratch or tarnish resistance, ability to be resized, hypoallergenicity, and retention of precious metal content over time. The study reveals that if consumers saw the term Karat Platinum on an engagement ring that contained 50-60% platinum and the remainder base metals, roughly 50% do not expect the ring to be different (or do not know whether it would be different) from traditional platinum products with respect to durability, luster, density, scratch resistance, tarnish resistance, ability to be resized, hypoallergenicity, and retention of precious metal content over time.[113] Similarly, if consumers saw the term Platinum Alloy on an engagement ring that contained 50-60% platinum and the remainder base metals, roughly 40-60% do not expect the ring to be different (or do not know whether it would be different), from traditional platinum products with respect to the attributes listed above.[114]

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[110] Platinum Attitude Study at 6, 19-20.

[111] *Id.* at 12.

[112] *Id.* at 20.

[113] *Id.* at 13-14

[114] *Id.*

The study concludes that "[t]he obvious conclusion one can draw from these data is that consumers have an underlying belief as to what a 'platinum' bridal product is, namely one with 75-80% 'pure platinum' and, therefore, the use of any term with a 'plat'-root or any of the 'platinum sounding' terms examined here, namely 'Karat Platinum,' 'Platinum Alloy,' 'Platinum Five/V,' or 'Platifina,' is likely to lead to confusion for a significant percent of consumers in the target market that such a product has the same attributes as a 'platinum' engagement ring."[115]

Question Seventeen - Do consumers associate the terms "Karat Platinum," "Platifina," "Platinum V," and "Platinum 5" with the qualities such as durability, luster, density, scratch and tarnish resistance, ability to resize or repair, and hypoallergenicity, that are associated with traditional platinum products?

Please see response to Question 16.

Question Eighteen - Is there evidence indicating what the phrase "other non-platinum group metals" means to consumers?

The Platinum Attitude Study reveals that 80% of consumers do not understand the meaning of the phrase "other non-platinum group metals."[116] While 20% of consumers claim they know what the phrase means, their responses to an open-ended question indicated a lack of understanding.[117] For example, a number of consumers indicated that "other non-platinum group metals" meant "gold," or "gold, silver, and titanium." One consumer said that it meant "non-gold." Other answers clearly indicated guessing, such as "metals not platinum," or "just different types of metals."[118]

Consumers in the Platinum Attitude Study who indicated they "Know" what "other non-platinum group metals" means, or that they were "Not Sure," were asked whether particular metals were "other non-platinum group metals." Most respondents (over 60% for Cobalt, Palladium, and Rhodium and almost half for Copper and Silver) did not know whether the metals

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[115] *Id.* at 20.

[116] *Id.* at 21.

[117] *Id.* at 16-17.

[118] *Id.* at 17.

listed were "other non-platinum group metals."[119] The study thus concludes that the phrase "other non-platinum group metals" "will not, in any way, eliminate or reduce consumers' confusion as to the differences in characteristics of a 'pure' platinum product and one with high percentages of 'other non-platinum group metals.'"[120]

VI. The FTC Should Adopt PGI's Proposed Unambiguous and Transparent Standard

In light of the empirical evidence and data presented above, we believe it is inherently misleading to refer to a piece of jewelry as "platinum" when it contains lower purity platinum combined with high levels of base metals – and we believe such a claim is not capable of being cured by qualifying language.

Accordingly, PGI respectfully requests that the FTC amend the Platinum Guides with the proposed standard set forth in PGI's 2005 Comment. This proposed standard, which is set forth again immediately below, would: (1) preclude the marketing of products containing between 500 and 850 ppt pure platinum and that do not contain 950 ppt PGM as "platinum"; and (2) make clear that inappropriate use of the term "platinum" in marking, describing, or promoting a product is an unfair or deceptive practice, rather than an action that "may be misleading."

Proposed Standard:

§23.7.1 Misuse of the words "Platinum," "Iridium," "Palladium," "Ruthenium," "Rhodium," and "Osmium."

(a) It is unfair or deceptive to use the words "Platinum," "Iridium," "Palladium," "Ruthenium," "Rhodium," and "Osmium" (or their abbreviation) to describe, mark or market all or part of any industry product that is not composed of the precious metal of the type described. The Platinum Group Metals (PGM) are Platinum, Iridium, Palladium, Ruthenium, Rhodium, and Osmium. The following abbreviations for each of the PGM may be used: "Plat." or "Pt." for Platinum; "Irid." or "Ir." for Iridium; "Pall." or "Pd." for Palladium; "Ruth." or "Ru." for Ruthenium; "Rhod." or "Rh." for Rhodium; and "Osmi." or "Os." for Osmium.

(b) It is unfair or deceptive to misrepresent the quantity of parts per thousand pure Platinum or PGM in an industry product.

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[119] *Id.*

[120] *Id.* at 21.

(c) It is unfair or deceptive to mark, describe, or otherwise use the word "Platinum" (or its abbreviation) by itself or in combination with other words or numerical designations for all or part of an industry product, except as follows:

(1) If an article consists of at least 950 parts per thousand pure Platinum, the article may be marked "Platinum" (or its abbreviation) without any qualification or addition.

(2) If an article consists of at least 950 parts per thousand PGM, of which at least 850 parts per thousand are pure Platinum, the article may be marked with the word "Platinum" (or its abbreviation) immediately preceded by the numerical designation of the parts per thousand pure Platinum. Thus, the following markings may be used: "950Pt.," "950Plat.," "900Pt.," "900Plat.," "850Pt.," "850Plat."

(3) If an article consists of at least 950 parts per thousand PGM, of which at least 500 parts per thousand are pure Platinum, the article may be marked with the word "Platinum" (or its abbreviation) immediately preceded by the numerical designation of the parts per thousand pure Platinum and the name of each PGM constituent immediately preceded by the numerical designation of the parts per thousand of each PGM, as for example, "600Pt.350Ir.," "600Plat.350Irid.," "550Pt.350Pd.50Ir.," "550Plat.350Pall.50Irid."

(d) It is unfair or deceptive to mark, describe, or otherwise use the word "Platinum" (or its abbreviation) by itself or in combination with other words or numerical designations for all or part of an industry product that does not consist of at least 950 parts per thousand PGM, of which at least 500 parts per thousand are pure Platinum.

In the alternative, in the event the FTC does not adopt the above standard, at a minimum we believe the following <u>modifications</u> to current Section 23.7(b)(3) of the Guides would be essential (modifications to the current Guides are underlined):

(b) The following are examples of markings or descriptions <u>that are unfair or deceptive</u>:

(3) Use of the word "Platinum" or any abbreviation thereof, to mark or describe any product that is not composed throughout of at least 500 parts per thousand pure Platinum <u>and at least 950 parts per thousand PGM</u>.

PGI's proposed standard is unambiguous, transparent, consistent with industry custom and international standards, and helps consumers distinguish the diluted platinum alloy class of products from those traditionally marketed as platinum. Not only do consumers deserve a clear

standard to help guide them in their platinum purchases, but the multitude of products that could fall within this class, all with different properties and content, make a clear standard a necessity. Moreover, a clear standard would be easier to enforce by the FTC and would help retailers and manufacturers avoid violating the law.

Prohibiting lower purity platinum products from being described as platinum will not stifle competition; diluted platinum alloys may still compete in the marketplace (as they have in the past, and do today) with platinum and products composed of other precious metals – as long as they are not promoted as platinum.

VII. Conclusion

In order to avoid widespread consumer fraud and the inevitable chaos that would result from the platinum marketplace being inundated with multiple low-purity products containing different and unforeseen properties and inadequate disclosures, the FTC should amend the Guides with an unambiguous, transparent, and easy to enforce standard that would explicitly prohibit the use of the word "platinum" or any abbreviation thereof to mark or describe products not composed throughout of at least 500 ppt pure platinum and at least 950 ppt PGM.

Thank you for your consideration of these comments.

Sincerely,

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

ATTACHMENT A

PLATINUM ATTITUDE STUDY

Four Empirical Studies of Consumers' Attitudes Toward Platinum and Substitutes as Options in Engagement Ring Settings

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August, 2008

PLATINUM ATTITUDE STUDY

INTRODUCTION

There are three purposes in this research:

1. To assess the attitudes of consumers in the target market for platinum jewelry regarding the amount of platinum they expect in jewelry called "platinum" and their expectations regarding the characteristics and attributes of jewelry called "platinum."

2. To supplement the information reported in "An Empirical Analysis of Consumers' Perceptions of Platinum as an Option in Engagement Ring Settings" (Maronick 2005).

3. Provide an empirical basis for answers to specific questions raised by the Federal Trade Commission (FTC) in their Request for Comment on a proposed amendment to the platinum section (16 CFR Part 23) of the Jewelry, Precious Metals, and Pewter Industries Guides (Federal Register Vol. 73, No. 38, February 26, 2008).

Methodology

The research reported here are the results of four (4) separate studies undertaken using four separate MarketTools, Inc.'s Zoomerang.com internet panels. Four separate panels of respondents were used to assure no cross-contamination of responses[1]. Each of the four studies had a quota of 150 responses[2]. A total of 165 completed responses were achieved for each study (Copies of questionnaires and tabulated results in Appendix A).

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[1] No panel member-respondent participated in more than one of the four studies.

[2] A total of 5,098 email solicitations for each study were sent out to potential respondents pre-qualified as to age, income, and education. Of those, approximately 23% were "screened out" by the "engaged/likely to be engaged" criteria. Thus, a response rate of 4.2% was achieved when the quota of 150 completed responses was exceeded.

In order to qualify for each of the four studies, potential respondents had to be[3]:

a. Age 21-35,

b. Have a personal annual income of over $25,000,

c. Have had at least some college,

d. Not be married at the time of the survey but engaged or expect to be engaged in the next twelve months, and

e. Had or expected to have at least some role in the selection of the engagement ring.

The respondents in each of the four samples were equally divided by gender.

Target Market

The target market for this study are individuals who are engaged or who expect to get engaged in the next twelve months and had or expect to have some role in the selection of the engagement ring. While acknowledging that engagement rings are not the only type of platinum jewelry, it is estimated that the vast majority of platinum jewelry that individuals purchase for themselves or for a fiancée (as opposed to receiving as a gift) is likely to be "bridal jewelry." Moreover, because engagement rings are so integral to the life-long commitment being made, the selection of an engagement ring is seen as a high-involvement decision. For these reasons, the study was limited to engagement rings.

As noted in Table 1, the resulting data show that the respondents are clearly in the target market for engagement rings, with approximately 50% of each sample being engaged (but not yet married) while the others expect to be engaged in the next twelve

[3] The screening criteria for the four studies reported here are slightly wider than those used in the earlier platinum awareness study (Maronick 2005) since the respondents to each of the four studies reported here include those who were engaged but not yet married as well as those likely to be engaged in the next year.

months. Moreover, in all samples 95-97% of respondents expect to have or had either sole responsibility for selection of the engagement ring, or shared or expect to share the responsibility with their fiancée.

Table 1
Profile of Respondents by Study

	Study 1	Study 2	Study 3	Study 4
Question 1				
Engaged	48%	48%	48%	50%
Not engaged but expect to be engaged within 12 months	52%	52%	52%	50%
Question 2				
Had/will have sole responsibility for selection of engagement ring	35%	25%	24%	22%
Had/will have shared responsibility for selection of engagement ring	61%	70%	72%	75%
Other	4%	4%	4%	4%

Additionally, as noted in Table 2, there are no significant differences in key demographic characteristics across the four studies.

Table 2
Demographic Profile of Respondents by Study

	Study 1	**Study 2**	**Study 3**	**Study 4**
Age:				
21-25	25%	22%	28%	31%
26-30	48%	47%	41%	41%
31-35	25%	28%	32%	28%
Over 35	2%	2%	--	--

Education:				
Some College or less	30%	36%	27%	30%
2-Yr College degree	8%	9%	12%	13%
4-Yr College degree	44%	39%	39%	33%
Graduate degree	18%	15%	21%	24%
Income:				
Under $30,000/yr	18%	16%	18%	21%
$30,000 – 39,999/yr	18%	18%	15%	14%
$40,000 – 59,999/yr	18%	21%	25%	24%
$60,000 – 79,999/yr	24%	23%	15%	17%
$80,000 + per year	20%	21%	27%	24%

*Percentages may not equal 100% since "Other Specify" responses (1-2%) are excluded

SUMMARY OF FINDINGS

Six major findings flow from the four studies of consumers in the target market for platinum engagement rings[4].

1. **Consistent with the prior consumer attitude study results (Maronick 2005), consumers expect a "platinum" product to contain a substantial percentage of "pure platinum."**
   - The data show that a majority of consumers (59%) expect a "platinum" engagement ring will contain at least 80% pure platinum and the vast majority of consumers (69%) expect a "platinum" engagement ring will contain at least 75% pure platinum.
2. **Although less than ten percent of consumers expect that an engagement ring that contains 50-60% platinum and the remainder base metals would "Definitely" have the same attributes as a "platinum" engagement ring, the vast majority of consumers (84%) indicated at least some question as to whether an engagement ring that contained 50-60% platinum and the**

[4] Eight conclusions from the findings of these studies are discussed on Pg. 18.

remainder base metals would have the same attributes as a "platinum" product.

- Among those respondents who expect such a product that contains 50-60%[5] platinum and the remainder base metals to be different, over half (53-55%) expect the product would be different in terms of durability, luster, and density, with slightly lower percentages (47%) expecting such a product to be different in terms of scratch and tarnish resistance.

3. **Two-thirds or more of all consumers (68%) would want information about the specific attributes of a product that contains 50-60% platinum and the remainder base metals to be physically attached to the ring.**

   - In addition to having information about the specific attributes of the product physically attached to the ring, 73% would also expect to be told about the differences by the salesperson in the store.

4. **Eighty one percent (81%) of respondents expect that an engagement ring called "Karat Platinum" is likely to have the same attributes as a "platinum" engagement ring, while almost half of respondents (48%) expect that an engagement ring called "Platinum Alloy" is likely to have the same attributes as a "platinum" product.**

   - Among respondents who expect a "Karat Platinum" engagement to be different, almost half (44-56%) expect it would be different across most of the attributes examined, including: durability, luster, density, scratch and tarnish

[5] Throughout the studies, "60% platinum and the remainder base metals" is used. This percentage is used as a proxy for lower purity "platinum" products. However, it is recognized that an almost infinite number of "combinations" of platinum and base metal percentages could be developed and marketed, adding significantly to the level of consumer confusion found here.

resistance, hypoallergenicity, and retention of precious metal content over time. A slightly lower percentage (42%) expect that a "Karat Platinum" engagement ring would be different in terms of ability to be resized/repaired.

5. **Respondents do not understand abbreviated expressions of specific content of engagement rings such as "585 Pt; 415 CoCu" or "58.5% Pt; 41.5% CoCu.**

   - When the specific content of the engagement ring is "spelled out" (e.g., 58.5% Platinum and 41.5% Copper/Cobalt") it is understood by slightly more than half of all respondents (55%).
   - The majority of consumers (50-65%) expect a product that is 58.5% platinum and 41.5% copper/cobalt either to be the same as a "platinum" engagement ring across most of the attributes listed: durability, luster, density, scratch and tarnish resistance, hypoallergenicity, ability to be resized/repaired, and retention of precious metal content over time, or they're "not sure." On the other hand, only thirty to forty percent of respondents expect that a product that is 58.5% platinum and 41.5% copper/cobalt would be different from a "platinum" engagement ring.

6. **Respondents do not understand the meaning of the phrase "other non-platinum group metals."**

   - While 20% of respondents claimed they knew what the phrase meant, their responses to an open-ended question indicate a distinct lack of an understanding.

MAJOR FINDINGS

Attitude Study 1

Respondents to Attitude Study 1 were first asked (Q3) *How much platinum would you expect in a "platinum" engagement ring?*. The results (Table 3) show that 59% expect that a "platinum" engagement ring would contain 80% or more pure platinum and almost 70% of respondents expect that a "platinum" engagement ring would contain 75% or more pure platinum.

Table 3
Expectation of Platinum Content in a "Platinum" Engagement Ring

	Number	Cumulative %
All/almost all pure platinum	48 (29%)	29%
90% or more pure platinum	25 (15%)	44%
80% or more pure platinum	24 (15%)	59%
75% or more pure platinum	17 (10%)	69%
66.6% or more pure platinum	3 (2%)	71%
50% or more pure platinum	9 (5%)	76%
Less than 50% pure platinum	6 (4%)	80%
Don't know/not sure	33 (20%)	100%

Additionally, respondents were asked (Q4), *If an engagement ring contained 50-60% platinum and the remainder base metals, is it likely to have the same attributes as a "platinum" engagement ring?* The results show that only nine percent (9%) of respondents believe such a product "Definitely" would have the same attributes as a "platinum" engagement ring and approximately a quarter of all respondents (23%) believe that an engagement ring that contained 50-60% platinum and the remainder base metals "Probably" would have the same attributes as a "platinum" engagement ring. On the other hand, while seven percent (7%) believe such a bridal product "Definitely" would not have the same attributes as a "platinum" engagement ring, one quarter (25%)

believe it "Probably" would not have the same attributes. Importantly, one in five respondents (22%) believe it "May" have the same attributes" while 14% were "Not sure." Thus, 84% of all respondents indicated at least some question about whether the attributes of an engagement ring that contains 50-60% platinum and the remainder base metals is the same as a "platinum" engagement ring. This suggests a very high level of confusion regarding the attributes of an engagement ring that isn't "pure" platinum.

To explore consumers perceptions of the attributes of an engagement ring that contained 50-60% platinum, those respondents who said, in response to Q4, that the product "May have" the same attributes or "Probably Not" or "Definitely Not" have the same attributes (n = 89), were asked (Q5) whether an engagement ring that contained 50-60% platinum and the remainder base metals *"...is likely to be different from a 'platinum' engagement ring on any of the attributes listed below."* As noted in Table 4, about half of those respondents indicated that the attributes of a product with 50-60% platinum and the remainder base metals "may be" or "would be" different from a "platinum" engagement ring believed it was likely to be different on each of the eight attributes

Table 4
Likelihood 50-60% Platinum – Remainder Base Metals Engagement Ring is Different from a "Platinum" Engagement Ring

Attribute	Likely to be Different	Not Likely to be Different	Don't Know
Durability	49 (55%)	8 (9%)	32 (36%)
Luster	48 (54%)	12 (13%)	29 (33%)
Density	47 (53%)	14 (16%)	28 (31%)
Scratch Resistance	42 (47%)	17 (19%)	30 (34%)
Tarnish Resistance	42 (47%)	18 (20%)	29 (33%)
Ability to be Resized	37 (42%)	16 (18%)	36 (40%)
Hypoallergenicity	35 (39%)	13 (15%)	41 (46%)
Retention of precious metal content over time	36 (40%)	12 (13%)	41 (46%)

listed. On the other hand, about half of all respondents believe that a product that contains 50-60% platinum and remainder base metals would not be different from a "platinum" engagement ring as to the attributes listed, or they "don't know." Moreover, when asked (Q 6) whether they would want *"...any information about the attributes of a product that contained 50-60% platinum and the remainder base metals to be physically attached to the ring?"*, two-thirds of the respondents (68%) indicated that they would want the information physically attached to the ring. These respondents (n = 113) were then asked (Q7) *"What information about the attributes (they) would want physically attached to the ring?"* The results (Table 5) show that eight out of ten respondents (80%) would want information about durability and two-thirds or more of them would want information about luster, scratch and tarnish resistance, and ability to be resized and repaired to be physically attached to the ring. Additionally, at least half of the respondents would also want information about the product's hypoallergenicity and retention of precious metal content over time physically attached to the ring.

Table 5
Information Respondents Want Physically Attached to Ring

Durability	90 (80%)
Luster	75 (66%)
Density	45 (40%)
Scratch Resistance	83 (73%)
Tarnish Resistance	74 (65%)
Ability to be Resized	70 (62%)
Hypoallergenicity	60 (53%)
Retention of precious metal content over time	57 (50%)
Other	2 (2%)

Finally, respondents were asked (Q8 – Q15), "*Where or where else would you expect to find information or learn about the (attribute, e.g., durability, luster, etc) of a product that contained 50-60% platinum and the remainder base metals?*" The results show that over 70% of respondents indicated that, in addition to the information being physically attached to the ring, they would expect to be "told by a salesperson in the store" about each of the attributes, with an additional third, on average, expecting to learn about the different attributes of a product that contained 50-60% platinum and the remainder base metals either from "advertisements," "signs in the store," or "signs on the counter." Finally, 12-16% of respondents wanted the information about the different attributes "stamped inside the ring."

Attitude Study 2

The purpose of Attitude Study 2 was to assess consumers' expectations of the attributes or properties of products with alternate descriptions, other than simply "platinum." Tested were the terms: "Karat Platinum," "Platinum Alloy," "Platinum Five" and "Platinum V," "Platifina," and "Palarium." Respondents were asked (Q3, Q5, Q7-9), "*If the term Karat Platinum (other terms substituted) was used to describe an engagement ring, would you expect it to have the same attributes as a 'platinum' engagement ring?*" As noted in Table 6, when respondents see the term "Karat Platinum," six in ten (60%) expect the product to "Definitely" or "Probably" have the same attributes as a "platinum" engagement ring. Additionally, if the "Maybe" responses (21%) are included, 81% of respondents expect the product to have the same attributes as a "platinum" engagement ring. Similarly, when respondents are presented with other "platinum" terms without qualifying language, e.g., "Platinum Five" and

Table 6
Expectation An Engagement Ring Would Have Same Attributes With Alternative Terms

	Karat Platinum	Platinum Alloy	Platinum Five	Platinum V	Platifina	Palarium
Definitely Yes	18%	6%	8%	8%	3%	4%
Probably Yes	42%	18%	23%	25%	8%	8%
Maybe	21%	24%	36%	33%	22%	19%
Probably No	7%	33%	10%	13%	25%	25%
Definitely No	2%	12%	6%	4%	25%	30%
Don't Know/ Not Sure	10%	7%	17%	18%	16%	14%
N	165	165	165	165	165	165

"Platinum V," over 30% expected the product to have the same attributes as a "platinum" engagement ring. If the "Maybe" responses are included, then two-thirds of respondents expect that the product would or might have the same attributes as a "platinum" engagement ring. Similarly, as noted in Table 6,when the "platinum" term is qualified with "alloy," the percentage of respondents who believe it "Definitely" or "Probably" would have the same attributes as a "platinum" engagement ring is about one-fourth (24%). However, if the "Maybe" responses are added, then almost half of the respondents (48%) believe that it would have the same attributes as a "platinum" engagement ring. Finally, when a term is used that doesn't include "platinum" but has the "platinum root" in the term (e.g., "Platifina"), one third of respondents (33%) believe it "Definitely," "Probably," or "Maybe" would have the same attributes as a "platinum" engagement ring. On the other hand, when a term is used that does not include the "platinum root" (e.g. "Palarium"), the level of consumer confusion is slightly lower but

still substantial, with 31% of respondents saying it "Definitely," "Probably," or "Maybe" would have the same attributes as a "platinum" engagement ring.

To explore further respondents' expectations, respondents who said that the term "Karat Platinum" or "Platinum Alloy" "Definitely," "Probably" or "Maybe" didn't have the same attributes as a "platinum" engagement ring were asked for their expectations about specific attributes relative to durability, luster, density, scratch or tarnish resistance, ability to be resized, hypoallergenicity, and retention of precious metal content over time. Specifically, respondents ["Karat Platinum" (n = 50) and "Platinum Alloy" (n = 113)] were asked (Q4, Q6), *"If you saw the term 'Karat Platinum' ("Platinum Alloy") on an engagement ring that contained 50-60% platinum and the remainder base metals, would you expect it to be different from a 'platinum' engagement ring on any of the attributes listed below?"* As noted in Table 7, about half of all respondents (42%- 56%) would expect that a "Karat Platinum" engagement ring would be different from a "platinum" engagement ring on each of the attributes listed. On the other hand, as noted in Table 7, from about four out of ten (39%) to over six out of ten (62%) of all respondents who had said an engagement ring that contained 50-60% platinum and the remainder base metals and called "Platinum Alloy," either "Maybe," "Probably" or "Definitely" would be different than a "platinum" engagement ring believe that the product would be different across the eight attributes listed.

Table 7
Expectation That An Engagement Ring Would Be Different on Specific Attributes With Two Alternative Terms

	Karat Platinum	Karat Platinum	Karat Platinum	Platinum Alloy	Platinum Alloy	Platinum Alloy
	Yes	No	DK	Yes	No	DK
Durability	56%	16%	28%	57%	21%	22%
Luster	44%	32%	24%	62%	21%	17%
Density	48%	24%	28%	60%	21%	19%
Scratch Resistance	48%	28%	24%	58%	19%	23%
Tarnish Resistance	46%	28%	26%	52%	24%	24%
Ability be Resized	42%	34%	24%	39%	35%	27%
Hypoallergenicity	46%	20%	34%	48%	20%	32%
Retention of precious metal content over time	46%	26%	28%	49%	22%	29%

Attitude Study 3

While the purpose of Attitude Study 2 was to assess consumers' expectations of alternative terms to describe a product that contained 50-60% platinum and the remainder base metals, the purpose of Attitude Study 3 was to assess consumers' understanding of alternative expressions of the specific content of the bridal product. Specifically, consumer understanding of the terms: "585 Pt; 415 CoCu" (Q3); "58.5% Pt; 41.5% CoCu" (Q5); and "58.5% Platinum and 41.5% Copper/Cobalt" (Q7) was assessed. As noted in Table 8, eight out of ten respondents (80%) said they did not know what "585 Pt; 415 CoCu" or "58.5% Pt; 41.5% CoCu" meant. However, over half of the respondents (55%) indicated they knew what the term meant when the term was "spelled out for them," i.e., "58.5% Platinum and 41.5% Copper/Cobalt."

Table 8
Understanding of Engagement Ring Content Terminology

	585 Pt; 415 CoCu	58.5% Pt; 41.5% CoCu	58.5% Platinum and 41.5% Copper/Cobalt
Yes	21 (13%)	20 (12%)	90 (55%)
No	133 (81%)	132 (80%)	55 (33%)
Not Sure	11 (7%)	13 (8%)	20 (12%)
N	165	165	165

Respondents who said "Yes" or "Not Sure" to questions regarding knowledge of each of the terms were asked an open-ended question (Q4, Q6, Q8) regarding what the term meant. It is noteworthy that, among the 32 respondents who said they "knew" or were "not sure" what "585 Pt; 415 CoCu" meant, only one respondent "correctly" responded that it meant "585 parts platinum, 415 parts cobalt/copper." Some of the other responses reflected "diamond-related" attributes, e.g., "585 points," "some kind of diamond code," "size of the diamond," or "the diamond has 585 points." On the other hand, when the second series was asked, i.e., "58.5% Pt; 41.5% CoCu," among the 32 respondents who said they "knew" or were "not sure" what it meant, ten respondents "correctly" indicated percentages of platinum and copper or cobalt, while two other respondents "correctly" identified the platinum content but said nothing about the copper/cobalt content. Finally, when asked the third series of questions, i.e., "58.5% Platinum and 41.5% Copper/Cobalt," the vast majority of those who indicated they "knew" or were "not sure" what it meant "correctly" identified the platinum and copper/cobalt composition or merely indicated that the term reflected that the engagement ring had a "combination" of the two metals.

All respondents were then asked (Q9), *"If an engagement ring contained 58.5% Platinum and 41.5% Copper/Cobalt, is it likely to be different from a 'platinum' engagement ring on any of the attributes listed below."* As noted in Table 9, between thirty and forty percent of respondents indicated that such a product is likely to be different from a "platinum" engagement ring, while about half of all respondents (47% - 55% across the listed attributes) were not sure whether there would be a difference or not

Table 9

Likelihood An Engagement Ring That Contained 58.5% Platinum and 41.5% Copper/Cobalt Would Be Different on Specific Attributes

	Yes	No	DK/Not Sure
Durability	71 (43%)	16 (10%)	78 (47%)
Luster	63 (38%)	21 (13%)	81 (49%)
Density	70 (42%)	15 (9%)	80 (48%)
Scratch Resistance	59 (36%)	23 (14%)	83 (50%)
Tarnish Resistance	61 (37%)	22 (13%)	82 (50%)
Ability to be Resized	49 (30%)	31 (19%)	85 (52%)
Hypoallergenicity	47 (28%)	27 (16%)	91 (55%)
Retention of precious metal content over time	49 (30%)	26 (16%)	90 (55%)

between a "platinum" engagement ring and an engagement ring that was 55.5% platinum and 41.5% Copper/Cobalt.

Attitude Study 4

The purpose of Attitude Study 4 was to determine if consumers in the target market for platinum engagement rings know what the phrase "other non-platinum group metals" means. Of the 165 respondents asked this question, 33 (20%) indicated they knew what the phrase meant. When asked (Q4), what it means, in an open-ended question, nine of the respondents indicated that "other non-platinum group metals" meant "gold" or "gold, silver, titanium." One respondent said it meant "non-gold." Other

answers clearly indicated "guessing," such as "metals not platinum," or "just different types of metals."

Finally, respondents who indicated they "Know" what "other non-platinum group metals" means or they were "Not Sure" (total n = 76) were asked whether particular metals are "other non-platinum group metals." As indicated in Table 10, most

Table 10
Knowledge of Meaning of "Other Non-Platinum Group Metals"

	Yes	No	DK/Not Sure
Cobalt	18 (24%)	11 (14%)	47 (62%)
Copper	30 (39%)	10 (13%)	36 (47%)
Palladium	22 (29%)	8 (11%)	46 (61%)
Rhodium	21 (28%)	7 (9%)	48 (63%)
Silver	31 (41%)	9 (12%)	36 (47%)

respondents (over 60% for Cobalt, Palladium, and Rhodium and almost half for Copper and Silver) don't know whether the metals listed are "other non-platinum group metals" or not. This lack of knowledge clearly indicates that significant consumer education is or will be needed in order to justify adding a disclosure that a "platinum-type" bridal product such as an engagement ring contains "other non-platinum group metals," since such a disclosure would not add to the knowledge base of most consumers since they won't know what it means anyway.

CONCLUSIONS

Eight conclusions can be drawn from the findings of these four studies. Each has significant implications for the marketing of engagement ring settings promoted as "platinum" if they contain less than expected amounts of "pure" platinum.

First, consistent with the prior study (Maronick 2005), the vast majority of consumers in the target market clearly expect an engagement ring called "platinum" to contain at least seventy-five to eighty percent pure platinum. This suggests a high level of consumer confusion is likely if a bridal product is marketed as "platinum" with less than 75-80% pure platinum and that any attempt to promote a product as "platinum" that does not contain 75-80% "pure" platinum is likely to deceive a significant proportion of the target market for bridal products.

Second, less than ten percent of consumers expect that an engagement ring that contains 50-60% platinum and the remainder base metals "Definitely" would have the same attributes as a "platinum" engagement ring and only a third believe that it "Definitely" or "Probably" has the same attributes. On the other hand, the vast majority of consumers (84%) have at least some question as to whether the attributes of a bridal product that contains 50-60% platinum and the remainder base metals would be the same as a "platinum" engagement ring, in that they responded that it "Probably" has the same attributes, "May have" the same attributes, "Probably" does not have the same attributes, or are "Not sure." This suggests 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. Moreover, as noted in the report, only one "combination" of platinum and base metals was examined, namely "50-60% platinum and the remainder

base metals." Given that there are an infinite number of possible "combinations" of platinum and base metals, the potential for confusion as to the attributes of so called "platinum" bridal products is magnified exponentially.

Third, over two-thirds of all consumers in the target market would want information about the specific attributes of an engagement ring that contained 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. The information consumers want attached to the ring are specific characteristics related to: durability, luster, density, scratch and tarnish resistance, hypoallergenicity, ability to be resized/repaired, and retention of precious metal content over time. The obvious conclusion is that it is virtually impossible to physically attach a sufficient amount of information about each of these characteristics for the particular "combination" of platinum and base metals of the particular bridal product. As a result, the consumer is likely to be left to his or her own devices to acquire the desired information, with a likely consequence of high levels of ignorance and/or confusion on the part of the consumer. The fact that consumers want information about the bridal products they're considering purchasing is also likely to create an environment where consumers can be misled by retailers burdened with the need to provide consumers with information about the particular characteristics of each "combination" of properties of engagement rings called or implied as being "platinum" but which contain less than 75-80% pure platinum and with different characteristics than "pure" platinum rings.

Fourth, eight out of ten consumers in the target market expect an engagement ring called "Karat Platinum" to have the same attributes as a "platinum" engagement ring and

almost half of consumers studied expect an engagement ring called "Platinum Alloy" to have the same attributes as a "platinum" ring. Thus, to the extent these products have different attributes than pure "platinum" bridal products, the potential for consumer confusion is significant. Importantly, other alternatives that have a "platinum" root, e.g., "Platinum Five" and "Platinum V," have even higher levels of expectations as to the attributes of the product being the same as a "platinum" ring than does "Platinum Alloy," although lower than "Karat Platinum." In fact, even using the term "Platifina," apparently because of the "platinum" root in the word, results in one third of all consumers believing the product has or may have the same attributes as a "platinum" engagement ring. The obvious conclusion one can draw from these data is that consumers have an underlying belief as to what a "platinum" bridal product is, namely one with 75-80% "pure platinum" and, therefore, the use of any term with a "plat-" root or any of the "platinum-sounding" terms examined here, namely "Karat Platinum," "Platinum Alloy," "Platinum Five/V" or "Platifina," is likely to lead to confusion for a significant percent of consumers in the target market that such a product has the same attributes as a "platinum" engagement ring.

Fifth, whatever confusion exists relative to the "combination" of platinum and base metals (here "50-60% platinum and the remainder base metals") cannot be "cured" by using abbreviated expressions of specific content since consumers simply don't know what "585 Pt; 415 CoCu" or "58.5% Pt; 41.5% CoCu" means and almost half of all consumers in the target market do not understand what the expressions of specific content mean even when they are "spelled out" for them, i.e., "58.5% Platinum; 41.5% Copper/Cobalt." Additionally, the studies also show that even if consumers understand

what "58.5% Platinum, 41.5% Copper/Cobalt" means, these disclosures still do not alert them to what the product's attributes are and/or any differences between a "platinum" engagement ring and products with different alloy combinations.

Sixth, the fact that consumers have such a strong underlying expectation as to what a "platinum" bridal product is and don't understand expressions about the relationship between specific content disclosures such as "41.5% Copper/Cobalt" and the product's attributes, raises serious questions as to whether any disclosure of content or disclaimer about differences between the product and a "platinum" product is likely to "cure" consumers' underlying belief that a "platinum" bridal product is 75-80% "pure platinum." Moreover, consumers' perception of platinum bridal products with respect to purity appears to be significantly different from their perceptions of other precious metals and stones, where gradations in quality and purity, e.g., 14 Kt, 18Kt for gold, and grades of diamonds, pearls, etc., are common. Therefore, it is very doubtful that disclosures that are effective in distinguishing other jewelry and bridal products would be effective with platinum products.

Seventh, the data show that consumers have no idea what "other non-platinum group metals" mean, leading to the obvious conclusion that use of the phrase will not, in any way, eliminate or reduce consumers' confusion as to the differences in characteristics of a "pure" platinum product and one with high percentages of "other non-platinum group metals."

Eighth, given all these data, the ultimate conclusion is that it is, in my opinion, highly unlikely that any method exists to communicate the specific content and specific characteristics of an engagement ring that contains less than 75-80% pure platinum in a

way that is useful and meaningful to consumers and eliminates confusion or deception. The data from this study, consistent with my earlier study (Maronick, 2005), show that consumers have strong beliefs and assumptions that a "platinum" engagement ring is "pure" platinum and, in my opinion, it is highly unlikely that such beliefs can be "undone" or changed by disclaimers when the product being marketed has a "plat-" root in its name. Moreover, the failure to provide the specific information consumers want about the characteristics of other "platinum sounding" products and in the form they want it, i.e., physically attached to the ring, will result in consumers making purchase decisions without complete information, creating the potential for them to be deceived, clearly to their detriment.

Submitted:

Thomas J. Maronick, DBA, JD

August 19, 2008
Date

Attitude-1
Results Overview

zoomerang

Date: 5/4/2008 10:12 AM PST
Responses: Completes
Filter: No filter applied

1. Please indicate if you are...

Engaged to be married	80	48%
Not engaged to be married but plan to be in the next 12 months	85	52%
No plans to get engaged to be married	0	0%
Total	165	100%

2. What role did you play or do you expect to play in the selection of the engagement ring?

I had or will have sole responsibility for the selection of the engagement ring	58	35%
I shared or will share responsibility for the selection of the engagement ring with my fiance/fiancee	100	61%
My fiance/fiancee had or will have sole responsibility for the selection of the engagement ring	0	0%
Other, please specify	7	4%
Total	165	100%

3. Assume you were considering a platinum engagement ring. How much platinum would you expect in a "platinum" engagement ring? [SELECT ONE]

All or almost all pure platinum	48	29%
90% or more pure platinum	25	15%
80% or more pure platinum	24	15%
75% (three-fourths) or more pure	17	10%

platinum			
66.6% (two-thirds) or more pure platinum		3	2%
50% (half) or more pure platinum		9	5%
Less than 50% pure platinum		6	4%
Don't know/Not sure		33	20%
	Total	165	100%

4. If an engagement ring contained 50-60% platinum and the remainder base metals, is it likely to have the same attributes as a "platinum" engagement ring?

Definitely yes		15	9%
Probably yes		38	23%
Maybe		37	22%
Probably not		41	25%
Definitely not		11	7%
Don't know?Not sure		23	14%
	Total	165	100%

5. If an engagement ring contained 50-60% platinum and the remainder base metals, is it likely to be different from a "platinum" engagement ring on any of the attributes listed below?

Top number is the count of respondents selecting the option. Bottom % is percent of the total respondents selecting the option.	Yes	No	Don't know/Not sure
Durability	49 55%	8 9%	32 36%
Luster	48 54%	12 13%	29 33%
Density	47 53%	14 16%	28 31%
Scratch resistance	42 47%	17 19%	30 34%
Tarnish resistance	42 47%	18 20%	29 33%
Ability to be resized/repaired	37 42%	16 18%	36 40%
Hypoallergenicity	35 39%	13 15%	41 46%
Retention of precious metal content over time	36 40%	12 13%	41 46%

6. Would you want any information about the attributes of a product that contained 50-60% platinum and the

remainder base metals to be physically attached to the engagement ring (e.g. on a tag attached to the ring)?

Yes	113	68%
No	23	14%
Don't know/Not sure	29	18%
Total	165	100%

7. What information about the attributes of a product that contained 50-60% platinum and the remainder base metals would you want physically attached to the ring? Information about... [CHECK ALL THAT APPLY]

Durability	90	80%
Luster	75	66%
Density	45	40%
Scratch resistance	83	73%
Tarnish resistance	74	65%
Ability to be resized/repaired	70	62%
Hypoallergenicity	60	53%
Retention of precious metal content over time	57	50%
Other, please specify	2	2%

8. Where or where else would you expect to find information or learn about the durability of a product that contains 50-60% platinum and the remainder base metals?

Advertisements	51	31%
Signs in the store	60	37%
Signs on the counter	54	33%
Told by a salesperson in the store	120	73%
Stamped inside the ring	27	16%
Other, please specify	10	6%

9. Where or where else would you expect to find information or learn about the luster of a product that contained 50-60% platinum and the remainder base metals? [CHECK ALL THAT APPLY]

Advertisements	49	30%
Signs in the store	66	40%
Signs on the counter	53	32%
Told by a	110	67%

salesperson in the store	[redacted]		
Stamped inside the ring	[redacted]	23	14%
Other, please specify	[redacted]	9	5%

10. Where or where else would you expect to find information or learn about the density of a product that contained 50-60% platinum and the remainder base metals? [CHECK ALL THAT APPLY]

Advertisements	[redacted]	40	24%
Signs in the store	[redacted]	53	32%
Signs on the counter	[redacted]	55	33%
Told by a salesperson in the store	[redacted]	123	75%
Stamped inside the ring	[redacted]	21	13%
Other, please specify	[redacted]	13	8%

11. Where or where else would you expect to find information or learn about the scratch resistance of a product that contained 50-60% platinum and the remainder base metals? [CHECK ALL THAT APPLY]

Advertisements	[redacted]	44	27%
Signs in the store	[redacted]	58	35%
Signs on the counter	[redacted]	57	35%
Told by a salesperson in the store	[redacted]	119	72%
Stamped inside the ring	[redacted]	20	12%
Other, please specify	[redacted]	10	6%

12. Where or where else would you expect to find information or learn about the tarnish resistance of a product that contained 50-60% platinum and the remainder base metals? [CHECK ALL THAT APPLY]

Advertisements	[redacted]	42	25%
Signs in the store	[redacted]	61	37%
Signs on the counter	[redacted]	65	39%
Told by a salesperson in the store	[redacted]	118	72%
Stamped inside the ring	[redacted]	20	12%
Other, please		10	6%

specify	[redacted]		

13. Where or where else would you expect to find information or learn about the ability to have the product resized/repaired that contained 50-60% platinum and the remainder base metals? [CHECK ALL THAT APPLY]

Advertisements	[redacted]	34	21%
Signs in the store	[redacted]	59	36%
Signs on the counter	[redacted]	54	33%
Told by a salesperson in the store	[redacted]	122	74%
Stamped inside the ring	[redacted]	18	11%
Other, please specify	[redacted]	10	6%

14. Where or where else would you expect to find information or learn about the hypoallergenicity of a product that contained 50-60% platinum and the remainder base metals? [CHECK ALL THAT APPLY]

Advertisements	[redacted]	45	27%
Signs in the store	[redacted]	60	36%
Signs on the counter	[redacted]	61	37%
Told by a salesperson in the store	[redacted]	116	70%
Stamped inside the ring	[redacted]	20	12%
Other, please specify	[redacted]	11	7%

15. Where or where else would you expect to find information or learn about the retention of metal content over time of a product that contained 50-60% platinum and the remainder base metals? [CHECK ALL THAT APPLY]

Advertisements	[redacted]	41	25%
Signs in the store	[redacted]	54	33%
Signs on the counter	[redacted]	58	35%
Told by a salesperson in the store	[redacted]	114	69%
Stamped inside the ring	[redacted]	21	13%
Other, please specify	[redacted]	13	8%

16. Gender?

Male		49	30%
Female		116	70%
	Total	165	100%

17. Age?

18-20		0	0%
21-25		42	25%
26-30		79	48%
31-35		42	25%
36-40		1	1%
41-45		0	0%
Over 45		1	1%
	Total	165	100%

18. Highest Level of Education Achieved?

Some High School		0	0%
High School Graduate		3	2%
Some College/Technical School		47	28%
2-Year College Graduate		14	8%
4-Year College Graduate		72	44%
Graduate School/Degree		29	18%
Other, please specify		0	0%
	Total	165	100%

19. Total anual household income before taxes?

Under $30,000 per year		29	18%
$30,000 - $39,999 per year		29	18%
$40,000 - $59,999 per year		30	18%
$60,000 - $79,999 per year		40	24%
$80,000 - $99,999			

per year	[redacted]	16	10%
$100,000 per year or more	[redacted]	17	10%
Other, please specify	[redacted]	4	2%
	Total	165	100%

Attitude-2
Results Overview

zoomerang

Date: 5/4/2008 10:17 AM PST
Responses: Completes
Filter: No filter applied

1. Please indicate if you are...

Engaged to be married	80	48%
Not engaged to be married but plan to be in the next 12 months	85	52%
No plans to get engaged to be married	0	0%
Total	165	100%

2. What role did you play or do you expect to play in the selection of the engagement ring?

I had or will have sole responsibility for the selection of the engagement ring	42	25%
I shared or will share responsibility for the selection of the engagement ring with my fiance/fiancee	116	70%
My fiance/fiancee had or will have sole responsibility for the selection of the engagement ring	0	0%
Other, please specify	7	4%
Total	165	100%

3. If the term "Karat Platinum" was used to describe an engagement ring, would you expect it to have the same attributes as a "platinum" engagement ring?

Definitely yes	29	18%
Probably yes	70	42%
Maybe	35	21%
Probably not	12	7%
Definitely not	3	2%
Don't know?Not sure	16	10%

Total	165	100%

4. If you saw the term "Karat Platinum" on an engagement ring that contained 50-60% platinum and the remainder base metals, would you expect it to be different from a "platinum" engagement ring on any of the attributes listed below?

Top number is the count of respondents selecting the option. Bottom % is percent of the total respondents selecting the option.	Yes	No	Don't know/Not sure
Durability	28 56%	8 16%	14 28%
Luster	22 44%	16 32%	12 24%
Density	24 48%	12 24%	14 28%
Scratch resistance	24 48%	14 28%	12 24%
Tarnish resistance	23 46%	14 28%	13 26%
Ability to be resized/repaired	21 42%	17 34%	12 24%
Hypoallergenicity	23 46%	10 20%	17 34%
Retention of precious metal content over time	23 46%	13 26%	14 28%

5. If the term "Platinum Alloy" was used to describe an engagement ring, would you expect it to have the same attributes as a "platinum" engagement ring?

Definitely yes	[redacted]	10	6%
Probably yes	[redacted]	30	18%
Maybe	[redacted]	39	24%
Probably not	[redacted]	54	33%
Definitely not	[redacted]	20	12%
Don't know?Not sure	[redacted]	12	7%
	Total	165	100%

6. If you saw the term "Platinum Alloy" on an engagement ring that contained 50-60% platinum and the remainder base metals, would you expect it to be different from a "platinum" engagement ring on any of the attributes listed below?

Top number is the count of respondents selecting the option. Bottom % is percent of the total respondents selecting the option.	Yes	No	Don't know/Not sure
Durability	64 57%	24 21%	25 22%
Luster	70 62%	24 21%	19 17%

Density	67 60%	24 21%	21 19%
Scratch resistance	65 58%	22 19%	26 23%
Tarnish resistance	58 52%	27 24%	27 24%
Ability to be resized/repaired	44 39%	39 35%	30 27%
Hypoallergenicity	54 48%	23 20%	36 32%
Retention of precious metal content over time	55 49%	25 22%	33 29%

7. If the term "Platinum Five" was used to describe an engagement ring, would you expect it to have the same attributes as a "platinum" engagement ring?

Definitely yes		13	8%
Probably yes		38	23%
Maybe		59	36%
Probably not		17	10%
Definitely not		10	6%
Don't know?Not sure		28	17%
	Total	165	100%

8. If the term "Platinum V" was used to describe an engagement ring, would you expect it to have the same attributes as a "platinum" engagement ring?

Definitely yes		14	8%
Probably yes		41	25%
Maybe		54	33%
Probably not		21	13%
Definitely not		6	4%
Don't know?Not sure		29	18%
	Total	165	100%

9. If the term "Platifina" was used to describe an engagement ring, would you expect it to have the same attributes as a "platinum" engagement ring?

Definitely yes		5	3%
Probably yes		14	8%
Maybe		37	22%
Probably not		41	25%
Definitely not		42	25%

Don't know?Not sure		26	16%
	Total	165	100%

10. If the term "Palarium" was used to describe an engagement ring, would you expect it to have the same attributes as a "platinum" engagement ring?

Definitely yes		6	4%
Probably yes		14	8%
Maybe		31	19%
Probably not		41	25%
Definitely not		50	30%
Don't know?Not sure		23	14%
	Total	165	100%

11. Gender?

Male		45	27%
Female		120	73%
	Total	165	100%

12. Age?

18-20		2	1%
21-25		36	22%
26-30		78	47%
31-35		47	28%
36-40		0	0%
41-45		1	1%
Over 45		1	1%
	Total	165	100%

13. Highest Level of Education Achieved?

Some High School		0	0%
High School Graduate		1	1%
Some College/Technical School		57	35%
2-Year College Graduate		15	9%

4-Year College Graduate	[redacted]	64	39%
Graduate School/Degree	[redacted]	25	15%
Other, please specify	[redacted]	3	2%
	Total	165	100%

14. Total anual household income before taxes?

Under $30,000 per year	[redacted]	26	16%
$30,000 - $39,999 per year	[redacted]	30	18%
$40,000 - $59,999 per year	[redacted]	35	21%
$60,000 - $79,999 per year	[redacted]	37	23%
$80,000 - $99,999 per year	[redacted]	14	9%
$100,000 per year or more	[redacted]	19	12%
Other, please specify	[redacted]	2	1%
	Total	163	100%

Attitude-3
Results Overview

zoomerang

Date: 5/4/2008 10:25 AM PST
Responses: Completes
Filter: No filter applied

1. Please indicate if you are...

Engaged to be married	79	48%
Not engaged to be married but plan to be in the next 12 months	86	52%
No plans to get engaged to be married	0	0%
Total	165	100%

2. What role did you play or do you expect to play in the selection of the engagement ring?

I had or will have sole responsibility for the selection of the engagement ring	40	24%
I shared or will share responsibility for the selection of the engagement ring with my fiance/fiancee	118	72%
My fiance/fiancee had or will have sole responsibility for the selection of the engagement ring	0	0%
Other, please specify	7	4%
Total	165	100%

3. Do you know what 585 Pt; 415 CoCu means?

Yes	21	13%
No	133	81%
Not sure	11	7%
Total	165	100%

Do you know what 58.5% Pt; 41.5% CoCu means?

5.

Yes		20	12%
No		132	80%
Not sure		13	8%
	Total	165	100%

7. Do you know what 58.5% Platinum and 41.5% Copper/Cobalt means?

Yes		90	55%
No		55	33%
Not sure		20	12%
	Total	165	100%

9. If an engagement ring contained 58.5% Platinum and 41.5% Copper/Cobalt, is it likely to be different from a "platinum" engagement ring on any of the attributes listed below?

Top number is the count of respondents selecting the option. Bottom % is percent of the total respondents selecting the option.	Yes	No	Don't know/Not sure
Durability	71 43%	16 10%	78 47%
Luster	63 38%	21 13%	81 49%
Density	70 42%	15 9%	80 48%
Scratch resistance	59 36%	23 14%	83 50%
Tarnish resistance	61 37%	22 13%	82 50%
Ability to be resized/repaired	49 30%	31 19%	85 52%
Hypoallergenicity	47 28%	27 16%	91 55%
Retention of precious metal content over time	49 30%	26 16%	90 55%

10. Gender?

Male		35	21%
Female		130	79%
	Total	165	100%

11. Age?

18-20		0	0%
21-25		46	28%
26-30		67	41%
31-35		52	32%
36-40		0	0%
41-45		0	0%
Over 45		0	0%
	Total	165	100%

12. Highest Level of Education Achieved?

Some High School		0	0%
High School Graduate		1	1%
Some College/Technical School		43	26%
2-Year College Graduate		19	12%
4-Year College Graduate		65	39%
Graduate School/Degree		35	21%
Other, please specify		2	1%
	Total	165	100%

13. Total anual household income before taxes?

Under $30,000 per year		30	18%
$30,000 - $39,999 per year		24	15%
$40,000 - $59,999 per year		40	25%
$60,000 - $79,999 per year		24	15%
$80,000 - $99,999 per year		25	15%
$100,000 per year or more		19	12%
Other, please specify		1	1%
	Total	163	100%

Attitude-4
Results Overview

zoomerang

Date: 5/4/2008 10:27 AM PST
Responses: Completes
Filter: No filter applied

1. Please indicate if you are...

Engaged to be married	83	50%
Not engaged to be married but plan to be in the next 12 months	82	50%
No plans to get engaged to be married	0	0%
Total	165	100%

2. What role did you play or do you expect to play in the selection of the engagement ring?

I had or will have sole responsibility for the selection of the engagement ring	36	22%
I shared or will share responsibility for the selection of the engagement ring with my fiance/fiancee	123	75%
My fiance/fiancee had or will have sole responsibility for the selection of the engagement ring	0	0%
Other, please specify	6	4%
Total	165	100%

3. Do you know what "other non-platinum group metals" means?

Yes	33	20%
No	89	54%
Not sure	43	26%
Total	165	100%

Are any of the following "other non-platinum group metals"?

5.

Top number is the count of respondents selecting the option. Bottom % is percent of the total respondents selecting the option.	Yes	No	Don't know/Not sure
Cobalt	18 24%	11 14%	47 62%
Copper	30 39%	10 13%	36 47%
Palladium	22 29%	8 11%	46 61%
Rhodium	21 28%	7 9%	48 63%
Silver	31 41%	9 12%	36 47%

6. Gender?

Male	[redacted]	34	21%
Female	[redacted]	130	79%
	Total	164	100%

7. Age?

18-20		0	0%
21-25	[redacted]	51	31%
26-30	[redacted]	68	41%
31-35	[redacted]	46	28%
36-40		0	0%
41-45		0	0%
Over 45		0	0%
	Total	165	100%

8. Highest Level of Education Achieved?

Some High School		0	0%
High School Graduate		0	0%
Some College/Technical School	[redacted]	49	30%
2-Year College Graduate	[redacted]	22	13%
4-Year College Graduate	[redacted]	55	33%

Graduate School/Degree	[redacted]	39	24%
Other, please specify		0	0%
	Total	165	100%

9. Total anual household income before taxes?

Under $30,000 per year	[redacted]	34	21%
$30,000 - $39,999 per year	[redacted]	23	14%
$40,000 - $59,999 per year	[redacted]	40	24%
$60,000 - $79,999 per year	[redacted]	28	17%
$80,000 - $99,999 per year	[redacted]	21	13%
$100,000 per year or more	[redacted]	18	11%
Other, please specify	[redacted]	1	1%
	Total	165	100%