



United States of America
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

Division of Enforcement
Bureau of Consumer Protection

March 26, 2019

VIA EXPRESS MAIL



Dear Sir or Madam:

After reviewing your website, Instagram, and Twitter advertising, we have concerns that some of your advertising of jewelry made with laboratory-created diamonds likely falsely implies that the jewelry has mined diamonds. The FTC enforces the Federal Trade Commission Act, 15 U.S.C. § 45, which prohibits deceptive advertising. In July 2018, the FTC issued updated Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 C.F.R. Part 23 (“Jewelry Guides”).¹ These Guides provide marketers with detailed information about how to make non-deceptive representations about jewelry and related products, including mined, laboratory-created, and simulated diamonds.

The FTC staff is concerned that some of your advertising fails to conform to the Jewelry Guides and therefore may deceive consumers, in violation of Section 5 of the FTC Act. [REDACTED]

[REDACTED] Similarly, several Instagram and Twitter advertisements depict or reference diamond jewelry without clearly and conspicuously disclosing that the diamonds are laboratory-created. Neither the company name [REDACTED] the hashtag #labgrowndiamonds, nor the statement [REDACTED] appearing in some of this advertising clearly and conspicuously discloses that the diamonds are laboratory-created. Although you disclose on several of your webpages that [REDACTED] markets laboratory-created diamonds, consumers could easily overlook these webpages and other references to laboratory-created diamonds when reviewing individual advertising or product descriptions because the disclosures are not proximate to the individual advertising or product descriptions.

¹ You can find the FTC’s Statement of Basis and Purpose summarizing and explaining the rationale for the amendments to the Jewelry Guides at https://www.ftc.gov/system/files/documents/public_statements/1393857/g71001_jewelry_guides_statement_of_basis_and_purpose_final_8-8-18.pdf.

We recommend that you review your marketing materials, both on Instagram and in any other medium, with the following in mind:

The Jewelry Guides caution marketers not to use the name of any precious stone, including diamonds, to describe a laboratory-created stone, unless such name is immediately preceded by a clear and conspicuous disclosure that the product is not a mined stone. *See* section 23.25 of the Guides. Specifically, section 23.25(b) states:

It is unfair or deceptive to use the word “ruby,” “sapphire,” “emerald,” “topaz,” or the name of any other precious or semi-precious stone, or the word “stone,” “birthstone,” “gem,” “gemstone,” or similar term to describe a laboratory-grown, laboratory-created, [manufacturer name]-created, synthetic, imitation, or simulated stone, unless such word or name is immediately preceded with equal conspicuousness by the word “laboratory-grown,” “laboratory-created,” “[manufacturer name]-created,” or some other word or phrase of like meaning, or by the word “imitation” or “simulated,” so as to disclose clearly the nature of the product and the fact it is not a mined gemstone.

For general guidance on making adequate qualifying disclosures online, please see the FTC’s guidance “.com Disclosures: How to Make Effective Disclosures in Digital Advertising” at <https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>.

Furthermore, in a series of litigated decisions during the 1960s, the Commission determined, among other things, that it is an unfair or deceptive act or practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, to misrepresent simulated diamonds, emeralds, rubies, precious stones, and pearls as natural ones. The Commission determined the following specific marketing practices to be unfair and deceptive, and hence unlawful under the FTC Act, and issued orders addressing the practices:

- (1) Marketing simulated diamonds using the word “gem” without “clearly disclosing, at the same time, that [their] stones are not natural stones or natural gems, thereby implying that their stones are a counterpart of natural, precious or semi-precious gems or stones,” *Harry E. Straus et al. trading as Capra Gem Co.*, 63 F.T.C. 1912, 1939-41 (Dec. 18, 1963);
- (2) Marketing simulated emeralds as emeralds or cultured emeralds, *Carroll F Chatham trading as Chatham Research Laboratories et al.*, 64 F.T.C. 1065 (Feb. 28, 1964);
- (3) Marketing synthetic jewels in watches as rubies, *Art Nat’l Manufacturers Distributing Co.*, 58 F.T.C. 719 (May 10, 1961), *aff’d*, 298 F.2d 476 (2nd Cir.), *cert. denied*, 370 U.S. 939 (1962); and *Helbros Watch Co.*, 59 F.T.C. 1377 (Dec. 26, 1961), *aff’d*, 310 F.2d 868 (D.C. Cir. 1962), *cert. denied*, 372 U.S. 976 (1963), *rehearing denied*, 374 U.S. 85 (1963);
- (4) Marketing jewelry insets made of glass or materials other than precious stones as “jewel stones,” *Michael Z. Berger et al. d/b/a M. Z. Berger & Co.*, 56 F.T.C. 1000 (Mar. 7, 1960); and

- (5) Marketing simulated pearls as cultured or genuine pearls, respectively, *Panat Jewelry Co.* 71 F.T.C. 99 (Feb. 8, 1967), and *Sidney J. Greenblat et al. trading as G & G Mfg. & Souvenir Co.*, 62 F.T.C. 663 (Feb. 19, 1963).

Marketers who knowingly engage in acts or practices determined by the Commission to be unfair or deceptive and unlawful, such as those described above, have potential liability for civil penalties under Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. § 45(m)(1)(B). The current maximum penalty for each violation under Section 5(m)(1)(B) is \$42,530. See 16 C.F.R. §1.98. Copies of the FTC determinations cited above are on the FTC's website under "Related Documents" at <https://www.ftc.gov/news-events/media-resources/tools-consumers/jewelry-guides>.

Finally, your advertising also touts the environmental benefits of your jewelry compared to mined diamonds. We note that marketers must have a reasonable basis for any environmental benefit claims they make for their products, and qualify any such claims adequately to avoid deception. The FTC has issued "Green Guides" providing guidance on making such claims non-deceptively. You can find information about the Green Guides at <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/green-guides>.

Please advise us by April 8, 2019 of the steps you plan to take to revise your marketing so that it follows the Jewelry Guides and therefore complies with Section 5 of the FTC Act.

Please note that we limited our review of your online advertising to the marketing of jewelry containing or purporting to contain diamonds or simulated diamonds. We did not attempt to determine whether the advertising might deceive consumers in other respects. The opinions expressed in this letter are those of the staff and not necessarily those of the Commission or of any Commissioner.

Thank you for your attention to this matter. If you have any questions, please contact Robert Frisby at 202-326-2098 or rfrisby@ftc.gov.

Sincerely,

James A. Kohm
Associate Director