

Comment to the FTC's Jewelry Guides Review

by Diamond Foundry Inc.

We thank the FTC for the opportunity to submit a comment as part of the Commission's update to the Jewelry Guides.

Diamond Foundry Inc. was launched in 2015 with funding from the entrepreneurs behind many of America's most admired technology companies as well as celebrities committed to a better world including Leonardo DiCaprio. We produce diamonds in our foundry in California. Our goal is to offer diamonds of impeccable provenance to the American consumer.

We have developed new technology for creating gem quality diamonds by adding atoms to the crystal lattice of an earth extracted diamond. In California, we operate a fully integrated diamond creation operation that starts with electricity and ends with diamond gem polishing and a laser signature to label each diamond produced. We sell our diamonds with jewelry design partners at www.diamondfoundry.com and through retail partners. Our value proposition and marketing is specifically and clearly geared towards offering a conscious alternative to mined diamonds.

We support the Commission taking a comprehensive and fresh look at the Jewelry Guides to consider their impact on the emerging businesses within this industry. We respectfully suggest that the Commission carefully examine the technological advances that are the future of the jewelry industry when crafting changes to the existing Guides.

I. The Accepted Modifiers For Man-Made Diamonds Are Not Accurate

The Commission proposes to add a new example to Section 23.11 (renumbered to 23.12 in the proposed revisions) of the Jewelry Guides that would allow the modifier "cultured" to accompany "lab-created," "laboratory grown" or similar descriptors for non-mined diamonds. While we appreciate the Commission's efforts to consider alternative terminology for non-mined diamonds, Diamond Foundry does not support this proposed change because it is not commercially practical, it is overly restrictive, and none of these terms accurately describe our product and using them could create consumer confusion. A more accurate option, as discussed below, is "foundry diamond", "created diamond", and "cultured diamond", which we encourage the Commission to incorporate into the final rule in addition to "cultured diamond" (without further modifier). Finally, the Commission should no longer rely on the Harris study because it is outdated and no longer reflective of consumer behavior or values.

a. The Commission Should Allow "Foundry Diamond" As An Acceptable Safe-Harbor Descriptor for Man-Made Diamonds

Descriptors allowed per 16 C.F.R. 23.23 including "laboratory created," "laboratory grown," "synthetic" and similar terms do not accurately describe our product and are likely to create consumer confusion. Moreover, they fail to recognize that our

diamonds are identical in all material respects to mined diamonds. The term “cultured” is more accurate than “laboratory created,” however, combining the two descriptors is impractical commercially (creating a descriptor of a length that is a competitive penalty in any marketing including on mobile devices with limited screen size) and also could create consumer confusion.

As noted above, our company has developed technology that can create diamonds through a hybrid process, starting with a foundation of earth-extracted diamond, and then adding atom by atom to the natural crystal lattice. Given this process, surveys we conducted showed that it is misleading to use the term “synthetic” for this as consumers can have a legitimate expectation that a synthetic process is free of a basis or lineage to natural material. Some consumers may truly want an entirely synthetic material, similar to the way an individual following a strict vegan diet may need to completely avoid any animal products or derivatives in their diet. We strive to be extremely careful not to mislead consumers, and thus cannot in good conscience use the word “synthetic” with our product.

The FTC has even acknowledged that the term “synthetic” is confusing to consumers. As part of the 1996 regulatory flexibility review, one commenter argued that most consumers “understand synthetic to mean fake, artificial, and otherwise of low quality.” The commenter also stated that it is “essential that consumers be able to honestly and accurately educate consumers that the only difference between its gemstones and natural is the environment in which the crystals grow.” The Commission stated in response that it “is persuaded that the term ‘synthetic,’ as applied to gemstones, is misunderstood by some consumers to mean something fake or artificial.”¹

Terms such as “laboratory created” also fail to accurately characterize our process because laboratories are defined by experimentation, not production. Our diamonds are made in a foundry, not a laboratory. We own no laboratory in our company yet we grow quantities of diamond every day.

In addition, similar to the concerns relating to “synthetic,” terms like “laboratory created” or “laboratory grown” do not indicate that our product begins with an earth-extracted diamond. As such, consumers easily could confuse our product, which is the same in every material respect to a mined diamond, with a non-gem quality stone such as cubic zirconia, an unquestionably artificial product that is far less valuable.

Finally, much of the work of marketing that leads to commercial success is about the creativity to define clear, accurate, and succinct descriptors. The term “laboratory created” is a non-starter from any commercial communications perspective solely based on its awkward length. There is now active ongoing work in marketing agencies around the world to discover suitable marketing language around this new category of diamonds. The Commission should not short-cut this creative process by government edict.

¹ 61 Fed. Reg. 27209 (May 30, 1996).

We acknowledge that the existing descriptors may be appropriate and acceptable for other companies or products. However, given the potential confusion that these terms create regarding our products, we encourage the Commission to consider adding “foundry diamond” to the current list of acceptable descriptors in addition to the term “cultured diamond” (without further modifier) as well as “grown diamond”. The term “foundry” is accepted in common language as a place of production. In addition, it accurately qualifies and modifies diamond in a way that clearly and unmistakably communicates the man-made origin of our products.

In any case, clarifying adjectives such as “cultured” and “foundry” should at all times be considered safe-harbor descriptors only but under no circumstance be required uses, for instance, if the context of a communication is already sufficiently clear. Anything else would favor mined over non-mined producers and form an anti-competitive obstacle.

b. The Commission Should Not Rely on the Harris Study

The basis for the Commission’s understanding of how consumers perceive non-mined diamonds is a 2006 study, the Harris study, commissioned by the Jewelers Vigilance Committee (“JVC”), an association that represents the interests of the international mining cartel. We are concerned that the Commission would consider relying on consumer perception evidence that is approximately ten years old for any matter, but particularly for this one where technological advances have created an entirely new direct-to-consumer industry. Consumer understanding, tastes, and preferences change over time and we are seeing such changes in the jewelry industry, including through measures such as the Conflict Free Sourcing Initiative, founded in 2008, which works to promote transparent and ethical supply chains.² Consumers are increasingly aware of the socio-political turmoil that characterizes the diamond industry and are seeking alternatives.

As published in *Jewelers’ Circular Keystone Magazine*, millennials – now the segment of the U.S. population that spends the most on diamonds – want “transparency, [and] demand authenticity and ethical business practices” from jewelry brands in a way that their parents and parents’ parents didn’t. If they spend money on a luxury item like a pair of earrings or cufflinks, “they carefully consider brand reputation” before purchase. When the Harris study was commissioned, the millennials would have been in high school. This fact alone demonstrates the flaw in relying on decade-old consumer perception evidence.

A July 10, 2014, article published in *National Jeweler*, also discusses millennial and generation X’s interest in ethically-sourced products and overall favorable response to non-mined diamonds.³ In an informal poll, the author found that consumers responded positively when presented with information about manmade diamonds but found that the term “lab grown” lacked consumer appeal.

² <http://www.conflictreesourcing.org/about/>

³ <http://www.nationaljeweler.com/blog/706-76lab-grown-diamonds-a-consumer-s-perspective>

With this revision, the Commission has an opportunity to modify the Jewelry Guides to give consumers the information that they want and deserve to help them make informed purchasing decisions. Allowing the term “foundry diamond” as an acceptable safe-habor descriptor for manmade diamonds would benefit consumers and industry.

II. The Commission is Correct in Not Incorporating International Standards

We agree with the Commission’s decision not to incorporate international CIBJO and ISO standards into the Jewelry Guides. There is no need to harmonize industry and legal standards in this instance, particularly where doing so could further strengthen legacy positions that stifle innovation and consumer understanding.

III. Descriptor Definitions and Origin Labeling

a. The Commission Should Utilize a Science Based Approach and Delete “Natural” from Diamond Definition

The Commission declines to provide a definition for the term “natural,” which is used to define “diamond,” due to insufficient consumer perception evidence addressing how consumers understand “natural.” We propose that the Commission remove the adjective “natural” from the FTC’s definition of diamond (“A diamond is a natural mineral consisting essentially of pure carbon crystallized in the isometric system.”). The fact that diamonds exist in the soil of Earth is not a necessary attribute at all for the unique and special structure of diamond. Diamond exists in many places of the universe which are not Earth. If diamond is brought to Earth from a different Earth like planet, is this ‘natural’ diamond or not?

The word “natural” has been used in history to justify everything from the proper place of women in the home to the proper form of a union between couples. The word “nature” is often used as ill-defined concept from the 19th century, pre-dating science. Fortunately, diamond is not a sociological issue but one that modern science understands very clearly.

We encourage the FTC to formally recognize a science based approach. The methods of creation vary greatly in the way diamond crystals are created in the universe, and few are ‘natural’. There is nothing natural about the way diamond is created deep underground in the Earth.

There is only one true common denominator that holds up under modern science: is it a material of the crystal structure known as diamond or not.

b. Origin Labeling for Mined Diamonds

Given the aforementioned shift in consumer tastes relative to transparency and the provenance of diamonds, we request that the Commission require “industrially mined” diamonds to be labeled as such, to the same extent as non-mined producers are required to label theirs. For example, diamonds mined by the Kimberley mine should be solely described as “Kimberley industrially-mined diamonds”, with “Kimberley industrially-mined” preceding the use of the word “diamond.” It would

be unfair on a competition basis to require one source of diamond to be labeled yet not the other.

c. Regulating “Ethical” and “Conflict Free” – A 100x Larger Consumer Protection Issue

Given consumers’ increasing preferences for socially and ecologically conscious brands, we have found that industry participants are presently using the words “ethical” and “conflict free” in a way that confuses and misleads consumers.

“Ethical” diamonds can rightfully be expected to do no harm to nature and humanity; and be in compliance with U.S. laws.

We respectfully suggest that the Commission require that a diamond may not be called “ethical” or “conflict free” if it originates from a place that violates American legal standards of human rights, corruption (as defined by the Foreign Corrupt Practice Act), labor laws, and fair trade. The word “ethical” should not be allowed for any diamonds that have a non-zero carbon footprint. Existing industry self-regulation per the “Kimberley process” should not be considered ethical if processes involved would not comply with U.S. law.

We ask the Commission to address the use of “ethical” and “conflict free” when used in conjunction with jewelry and diamonds. It would not be fair to impose restrictions on the marketing of non-mined diamonds but impose none on the marketing of “ethical” and “conflict free” diamonds – because any such restrictions would then clearly solely motivated by partisan support of legacy producers – in an anti-competitive way – more than consumer protection.

We further suggest that the misleading marketing of diamonds as “ethical” is a much larger problem than the marketing of “cultured” diamonds. While more than half of all diamonds imported and sold to U.S. consumers today are believed to be in violation of the above American legal standards, fewer than 0.1% of all diamonds on the market today are even candidate for consumer confusion regarding their man-made origin (because little such production exists) – and among that 0.1%, much effort is made by the leading contenders to not be confusing. The Commission should prioritize protecting consumers from the >100x larger problem of continued existing misleading marketing as it pertains to abundant claims in the industry of mined diamonds from Africa and Russia being “ethical” and “conflict free” – rather than restricting new California based technology companies that operate in full compliance with U.S. law.

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We again thank the Commission for the opportunity to comment and for consideration of these remarks. We look forward to continuing to participate in the update process.

Sincerely,

Khristina Horn
VP Jewelry