May 31, 2016

Secretary Donald S. Clark
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex-O)
Washington, DC 20580

RE: Jewelry Guides, 16 CFR, Part 23, Project No. G7110001

Dear Secretary Clark:

This following recommendations are being submitted by the Accredited Gemologists
Association (AGA) in response to the request for additional public comments regarding the
proposed revisions to the Guides for Jewelry, Precious Metals and Pewter.

First, we applaud the commission's work on preparing this much-needed revision to address
the many changes in the gem and jewelry field since the last updates were made. We also
appreciate your giving us another opportunity to review your draft for the revisions and
provide additional comments to this draft before they are finalized.

Specifically, these comments will focus on Note 23.25: Misuse of the words “ruby,” “sapphire,”
“emerald,” “topaz,” “stone,” “birthstone,” “gem,” “gemstone,” etc.; and Note 23.12: “Definition and
misuse of the word “cultured diamond.”

Note 23:25: Misuse of the words “ruby,” “sapphire,” “emerald,” “topaz,”
“stone,” “birthstone,” “gem,” “gemstone,” etc:

As the FTC has already acknowledged in its proposed revisions, the practice of mixing lead­
glass with non-gem grade corundum to create products that look like transparent and semi­
transparent “rubies,” “blue sapphires” and “fancy color sapphires” and selling them as treated
gems, at highly inflated prices, is misleading. On this we are in total agreement.

For the AGA, the issues we now have with the current recommendations of the FTC is two­
fold:

1) What should they be called, to make it clear to buyers that they are not “genuine” or
“treated” stones, but an imitation that has been fabricated from two different materials;
2) The need to eliminate any quantification of the amount of lead-glass needed for these
products to qualify as a “lead glass imitation.” The differences between lead-glass
material and natural or treated stones is not related to quantity in any way; even a very
tiny amount of lead-glass has an impact on the physical properties of the resulting
product affecting their appearance, durability, and value, and the impact is not
permanent.

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The AGA would like to underscore one of the points made originally: an important distinction
between "treated" corundum and lead-glass products is that the lead-glass material is
fabricated not only from two very different products, but that these products are united by a
process that bonds them permanently; it is not possible to separate one from the other
without damaging or destroying the material. Again, the impact of the lead-glass, even a very
tiny amount, is present permanently, or until it chips or breaks apart.

What to Call Them

With regard to what to call them, the AGA urges the FTC to prevent the continuing use of terms
such as "lead treated ruby," "lead-glass-filled ruby" and "treated ruby" for these products. Terms
such as these have been used to market them to the public for several years, and are
misunderstood by consumers and sales people to indicate a "treated ruby." Since the FTC's
proposal already states that calling these products by the term "treated ruby" is misleading, it
would seem that by allowing them to be called by another name that is thought to mean the
same thing would be counter-productive and not reflect the intent of the FTC to protect
consumers from being misled.

The AGA has conducted research that showed very clearly that the majority of people—
including consumers, jewelry sales people, and others working in the jewelry field—misconstrue
these terms to mean "treated ruby" or other gem. A copy of the survey instrument is attached.
We suspect that if you were to circulate it among your own employees, the results would be
clear.

Should the Quantity of Lead Glass Be A Factor Disclosing What They Are?

The AGA strongly supports the Commission's intent to address the issue of disclosure presented
by this product. However, in Note 23.25, the proposed new revisions states that if "a
"substantial" quantity of lead-glass is present. This implies that some quantity – but not exactly
what that quantity would be – would have to be present in the material to "qualify it" as a lead-
glass product needing to be disclosed." The AGA and other gemological organizations in the USA
have undertaken research which clearly shows that any amount of lead-glass in these products,
even a tiny bit, is sufficient to have a dramatic impact on 1) price; 2) on quality; 3) on the
stone's durability; and 4) on sellers misleading consumers, knowingly or unknowingly, as to the
quality and permanence of the stone's appearance. In short, to lead consumers to believe they
are buying something very different from what they are really buying.

At the heart of the AGA's concern with the "quantity" issue is the fact that neither the retail
jeweler nor their customers will have a reasonable ability to quantify the amount of lead-glass
that has been used to create such a product. Unlike other types of glass that have been used to
improve the appearance of some gemstones—which can be easily removed from any gemstone
to more carefully evaluate its quality and value, and then re-fill the stone—it is not possible to
remove the lead-glass from these products without severely damaging or destroying them.

Furthermore, it is already widely known in the gem trade that in an increasing number of
instances—which are now becoming the norm—simply by mixing a relatively small amount
of tinted lead-glass into some stones, dealers can dramatically improve the transparency and the color of the material, transforming a stone that is not the color of ruby, for example, into a stone that looks like the finest color ruby. This adds substantially to its perceived value. It can also be done with uncut stones and even crystals.

It is also widely known in the gem field today that when even a relatively small amount of lead glass is present, durability is a significant concern due to the extreme softness of lead-glass; they will chip and scratch much more easily than ruby or other gems that are much harder. Bench jewelers, most of whom are not gemologists and lack the skill to detect lead-glass filled products, may innocently work on jewelry containing lead-glass filled stones and be held unjustly responsible for damage, especially since many of these stones are set in 14- or 18-karat gold to add to the deception that they are “rubies.”

And last but not least, even a small amount of lead can affect the perceived carat weight since “lead” weighs approximately twice as much as ruby and sapphire. So if a “ruby or sapphire” is only 75% corundum, and 25% lead glass, the ruby weight will be greatly distorted, thus altering another important factor used in “valuing” a ruby or sapphire.

In short, having these products in the marketplace without clearly representing them as an imitation product hurts everyone. The AGA encourages the commission to consider that these corundum and lead-glass products are not a genuine “gemstone” of any type; they lack the physical properties and other characteristics associated with any ruby or sapphire, or “treated” ruby or “treated” sapphire. None of these “stones” possesses the properties for which rubies and sapphires have been sought, and worse, they do have negative characteristics never before associated with ruby and sapphire: softness and fragility.

As we stated in our September 22, 2013 correspondence with your office, mixing lead-glass with corundum to produce a rarer color and improve transparency, and to create a cut and polished stone that looks like, and is being sold for, something it is not, constitutes a fundamental departure from currently accepted trade practices regarding ruby and sapphire treatments.

Rubies and sapphires are only second to diamonds in terms of their importance to the gem and jewelry industry; they are also among the most loved and cherished of all gemstones by consumers. For this reason, the AGA thinks it is of paramount importance for the new Guides to take a clear stand on what these products should be called. Only by distinguishing lead-glass blends from natural and treated rubies, sapphires {and other gemstones} can consumers be protected from unscrupulous people selling such products as genuine “ruby/sapphire” or “treated ruby/sapphire” despite the fact that their physical characteristics are seriously altered by the addition of lead glass.

Insisting on clear language to identify these products is also the only way to prevent unscrupulous sellers from gaining an unfair sales advantage through misrepresentation and omission of key facts pertaining to these stones in terms value, the need for extreme care, and
actual carat weight by which price is determined. Thus the AGA strongly encourages the
Commission to revise its proposed recommendations to the Guides in the following ways:

1. **Remove the qualifying words** *"a substantial amount of"* lead glass and state simply that
   it is misleading and deceptive to identify *any* gemstone infused with *any* amount of lead-
   glass as a “ruby [or name of any other gemstone]” or “treated ruby” [or name of other
   gemstone].

   During preparation of this response, this matter was also discussed with industry
   colleagues at the *Jewelers Vigilance Committee*. As a result, the JVC now also recognizes the
   potential for confusion if the presence of a “substantial amount of lead glass” is to remain a
   qualifier pertaining to how to describe “lead-glass filled stones.”

2. **The AGA recommends using simple, accurate, and clear language** to
describe these products. We recommend terms such as “lead-glass imitation ruby” (or
other gemstone). Other acceptable terms now used by respected gem testing laboratories
include: “lead-glass-filled composite corundum” and “lead-glass-filled manufactured
product.” None of these terms would constitute an unfair and deceptive trade practice.

**In conclusion:** lead-glass filled corundum contains the element lead, an element never found
in natural or treated ruby or sapphire, the presence of which negatively affects the physical
characteristics associated with any ruby or sapphire, treated and non-treated alike. As
mentioned above, the weight, color, and durability are significantly altered by the addition of
lead glass, even minimal quantities. Following the recommendations of the AGA would
eliminate the confusion currently facing the public. It would also unify the gemstone trade in
the United States with major gemological laboratories in the US and abroad with regard to the
terminology used to identify these “stones.” Today, major US laboratories also identify these
“stones” as a “manufactured” or “composite” product—two terms that are understood within
the gem and jewelry trade to indicate that these products are not “natural” nor are they
“treated” but rather, that they are imitations. This has been supported by consumer interviews
and public surveys conducted by AGA during the period from February 2016 through April
2016.

**Regarding Note 23:12, C (3) related to use of the term “cultured” to describe
a synthetic diamond**

The AGA would like to address the current proposed revision to the Guide as it pertains to use
of the word “cultured” to describe a synthetic diamond. Regardless of the process used to
create diamonds artificially (that is, by any process other than that whereby they are naturally
formed in the earth), there is no “natural” component to the process, which is implied by the
term “cultured” as it is understood today in the gem and jewelry industry.

The AGA, for this and other reasons stated below, recommends that the FTC deny use of the
word “cultured” to describe synthetic diamonds.
The FTC already requires use of terminology that is clear, descriptive, and well understood—by consumers and those in the gem and jewelry trade alike—to distinguish synthetic diamonds from natural. In the proposed revisions, it also seems clear that the FTC agrees that use of the word “cultured” alone to describe synthetic diamonds would mislead consumers as to what the product is. The AGA believes that by allowing use of the word “cultured” to appear at all alongside use of one of the currently required descriptions—lab-created/laboratory created, lab-grown/laboratory grown, or synthetic—opens the door for misrepresentation to consumers.

Since the FTC already requires use of one of the qualifiers mentioned above, all of which are already in the trade vernacular, we think the term “cultured” is not needed. More importantly, the AGA thinks that by adding the term “cultured,” the Commission will inadvertently create confusion as to how the product is actually made, many inferring that these particular synthetic diamonds are made by a process that has a natural aspect, which it does not have, in the growth phase—as opposed to “cultured” pearls, the only place in which this word is accurately used in the gem and jewelry field.

Use of the term cultured, in the gem and jewelry industry, has been clearly defined and is exclusively associated with the growth of cultured pearls; the term describes a symbiotic relationship between man and nature, without which the product would not exist; the mollusk needs the bead catalyst inserted by human technicians, and the technicians need a healthy, living mollusk to accept it in order to create a pearl within it. There is universal understanding that the relationship between humans and mollusk is essential to the formation of cultured pearls.

The process, however, for culturing pearls is entirely different from that of creating a synthetic diamond. In the case of synthetic diamond production, the “nature-based” step is nonexistent. The synthetic diamond is not returned to earth to “form;” the process begins and ends in a factory.

It seems that the Commission recognizes this to be the case since the FTC has already stipulated that the term “cultured” can be used only when immediately qualified by terms such as “laboratory created,” “Laboratory grown,” “synthetic,” etc. In light of this, the AGA strongly recommends that that the Commission deny use of the word "cultured" in describing any synthetic diamond or other gemstone in order to avoid confusion or misunderstanding.

The AGA would like to point out that the current proposal pertaining to allowing the term “cultured” to be used, regardless of requirement for qualifiers, to describe synthetic diamonds adds no additional security to consumers. The terms currently in use are sufficient and commonly understood. The AGA believes that adding a “new” and unnecessary descriptor will confuse consumers as to what the product really is, in light of how the term is currently used in the cultured pearl industry.
The AGA strongly recommends denying use of the word “cultured,” at all, with regard to synthetic diamonds. History has already seen numerous instances of contradictory terminology leading to sellers simply dropping a qualifier, ignoring it, or misrepresenting what the Guides say or require. We don’t need another example – or opportunity – created by which consumers can be defrauded.

Respectfully,


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The Accredited Gemologists Association
By: Stuart Robertson, President of the AGA
   Antoinette Matlins, Chair of the AGA FTC Revisions Committee

About the AGA

Established in 1974 by Antonio "Tony" Bonanno, the AGA was envisioned as a network for sharing gemological information and skills and creating professional standards. Today, the AGA is a prominent, independent, nonprofit organization dedicated to Gemological Education & Research, Identification & Evaluation of Gem Materials and Development of Professional Standards of Analysis, Practice & Ethics. The AGA is wholly independent of any trade group or organization, and focuses its efforts on establishing and maintaining high professional standards for the trade with regards to diamonds, colored stones and pearls. The Accredited Gemologists Association proudly counts among our members some of the world’s leading independent gemologists and researchers.

Encl: March/April Survey
Consumer Perception Survey

This survey is being conducted by the Accredited Gemologists Association to better clarify for the Federal Trade Commission and the U.S. gemstone industry how the public may interpret the language used to describe various products, along with other limitations that exist among consumer understanding that may affect specific nomenclature recommended for use by the trade to more clearly and accurately describe various materials.

Must be submitted no later than 5/01/2016.

How familiar are you with characteristics of gemstones? *
- Extremely
- Very
- Moderately
- Not very
- Not at all

When shopping for jewelry set with gemstones, you usually look for gemstones that are: *
- Natural
- Treated
- Imitation
- Man-made
- I don't know the difference

If lead-glass was blended with a naturally occurring mineral so that it could be cut and polished for use in jewelry, I would consider that product: *
- A natural gemstone
- A treated gemstone
- An imitation gemstone
- A man-made gemstone
- Not a gemstone of any type

Would you buy a gemstone if you knew that its color and/or clarity and/or general appearance could be permanently damaged if it were to come into contact with commonly used products such as lemon juice, bleach or ammonia? *
- Yes
- No
- I don't know

Would you buy a gemstone if you knew that its color and/or clarity and/or general appearance could be permanently damaged if it were to come into contact with commonly used products such as lemon juice, bleach or ammonia if you were given advice prior to purchase about ways to avoid damage? *
Yes
No
I don't know

Name and address are collected in the event the FTC requests confirmation of the survey population. The AGA will not sell or use this information for marketing purposes.

First Name *
Last Name *
Street Address *
City: *
State: *
Zip: *
Country: *
US Citizen? *
Yes
No
Submit