



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

September 9, 2014

Cecilia L. Gardner  
President, CEO, and General Counsel  
Jewelers Vigilance Committee  
25 West 45th Street Suite 1406  
New York, New York 10036

Dear Ms. Gardner:

Thank you for your June 17, 2014 letter to the Federal Trade Commission (“FTC”). In that letter, you requested a staff advisory opinion stating that “Made in the USA” claims for jewelry made from minerals and metals recycled in the United States (the “Request”) do not deceive consumers. Members of the Commission staff in the Enforcement Division of our Bureau of Consumer Protection have reviewed the Request in conjunction with consumer perception evidence submitted in December 2013 by Request co-signatory Mark Hanna, of Richline Group, Inc.

The Commission staff may, in accordance with Section 1.3(c) of the Commission Rules of Practice and Procedure, 16 C.F.R. § 1.3(c), provide Staff Opinions under certain circumstances. In this case, however, the Commission staff cannot provide an opinion stating that “Made in the USA” claims for recycled jewelry do not deceive consumers. We outline our concerns below.

As you know, the Commission enforces Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. An act or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material; that is, likely to affect a consumer’s decision to purchase or use the advertised product or service.<sup>1</sup> A claim need not mislead all – or even most – consumers to be deceptive under the FTC Act. Rather, the claim need only deceive some consumers acting reasonably.<sup>2</sup>

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<sup>1</sup> *In the Matter of Novartis Corp.*, 127 F.T.C. 580, 679 (1999), *aff’d and enforced*, 223 F.3d 783 (D.C. Cir. 2000); *In the Matter of Stouffer Foods Corp.*, 118 F.T.C. 746, 798 (1994); *In the Matter of Kraft, Inc.*, 114 F.T.C. 40, 120 (1991), *aff’d and enforced*, 970 F.2d 311 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 1254 (1993).

<sup>2</sup> *See FTC Policy Statement on Deception*, 103 F.T.C. 174 (1984) (*appended to In the Matter of Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 177 n.20 (1984) (“A material practice that misleads a significant minority of reasonable consumers is deceptive.”)); *see also FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 572 (7th Cir. 1989) (“[T]he FTC need not prove that every consumer was injured.”).

While not a regulation, the Commission *Enforcement Policy Statement on U.S. Origin Claims* provides guidance on how the Commission applies Section 5 of the FTC Act to the use of “Made in USA” and other U.S.-origin claims in advertising and labeling.<sup>3</sup> In particular, the *Policy Statement* provides that when a marketer makes an unqualified “Made in USA” claim, the marketer should – at the time of the representation – possess and rely upon a reasonable basis establishing that the product is in fact “all or virtually all” made in the United States. A representation may be made by either express claims – such as “Made in USA” or “our products are American-made” – or implied claims. The Commission based this advice on thousands of comments it received in 1997, as well as a survey conducted in 1995. The 1995 survey found that roughly 30 percent of consumers would be deceived by a non-qualified Made in the USA claim for a product with 70 percent domestic origin.

Your Request seeks a staff opinion stating that marketers may advertise recycled gold and minerals as “Made in the USA,” without further qualification. You state that because “significant time and resources . . . go into collecting recyclable material, delivering it to refiners in the United States, and then processing to a purity level of almost 100%[, i]t makes sense to equate the recycling process to a ‘new life cycle’ and to assign a new origin to recycled material.” Request at 3.

As you know, in December 2013, Request co-signatory Richline Group, Inc. submitted consumer perception testing on U.S.-origin claims. Although that survey did not specifically test consumer understanding of “recycled” claims for jewelry, it found that 57 percent of Americans – almost 3 in 5 – agree that “Made in America” means that all parts of a product, including any natural resources it contains, originated in the United States. Additionally, the survey found that 33 percent of consumers think 100 percent of a product must originate in a country for that product to be called “Made” in that country.

Your Request explains that jewelry returned for recycling is often of unknown origin. Request at 3. Accordingly, because gold and precious minerals may be – and often are – mined internationally, it is highly likely that any piece of recycled jewelry might contain components or natural resources that originated outside the United States. The Richline study shows that more than half of consumers may be deceived by a U.S.-origin claim for a product containing components or natural resources that originate outside the United States. Thus, unless a marketer can substantiate that all components of a recycled piece – including natural resources –

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<sup>3</sup> *Federal Trade Commission, Issuance of Enforcement Policy Statement on “Made in USA” and Other U.S. Origin Claims*, 62 Fed. Reg. 63756, 63766 (Dec. 2, 1997), available at <http://www.ftc.gov/os/fedreg/1997/december/971202madeinusa.pdf>.

originated in the United States, based on the record before us, it appears that an unqualified U.S.-origin claim may deceive a significant number of consumers.<sup>4</sup> However, if additional testing were to show that recycling gold and precious minerals changes consumer perception of U.S.-origin claims for those items, we would reevaluate.

Although the Commission staff cannot provide an opinion stating that “Made in the USA” claims for recycled jewelry do not deceive consumers, the Commission understands the importance of advertising domestic content and processes. Therefore, FTC staff is available to work with you and your members to craft qualified claims that serve the dual purposes of conveying non-deceptive information to consumers and highlighting work done to recycle gold and other jewelry in the United States.

We appreciate the opportunity to review your submission, and hope the above information will be useful to you.

Sincerely,

Donald S. Clark  
Secretary

cc: David Cochran  
President and CEO, Manufacturing Jewelers and Suppliers of America

Mark Hanna  
Chief Marketing Officer, Richline Group, Inc.

David Bonaparte  
President and CEO, Jewelers of America

Doug Hucker  
CEO, American Gem Trade Association, Inc.

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<sup>4</sup> The Commission has found that claims in a variety of different contexts that are misleading to a significant minority of consumers are deceptive. *See In the Matter of Telebrands Corp.*, 140 F.T.C. 278, 325 (2005); *Firestone Tire & Rubber Co. v. FTC*, 481 F.2d 246, 249 (6th Cir. 1973); *FTC v. John Beck Amazing Profits, LLC*, 865 F. Supp. 2d 1052, 1070 n.88 (C.D. Cal. 2012); *see also FTC Green Guides Statement of Basis and Purpose*, at 51 (Oct. 1, 2012), available at <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf>.