STATEMENT OF BASIS AND PURPOSE: PROPOSED REVISIONS TO THE JEWELRY GUIDES

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I. BACKGROUND

A. The Jewelry Guides

The Guides for the Jewelry, Precious Metals, and Pewter Industries ("Jewelry Guides" or "Guides") (16 CFR Part 23) address claims for precious metal, pewter, diamond, gemstone, pearl products, and other industry products. [1] The Guides explain how to avoid making deceptive claims and, for certain products, when disclosures should be made to avoid unfair or deceptive trade practices.[2]

The Commission completed its last comprehensive review of the Jewelry Guides in 1996, and has modified the Guides four times since.[3] As a result of the 1996 review, the Commission: consolidated certain provisions of the former Watch Band Guides with the Jewelry Guides; added new provisions, such as those regarding use of the terms vermeil and pewter, and the disclosure of certain treatments to diamond and gemstone jewelry products; and eliminated or substantively revised several existing provisions.[4] After completing the review, the Commission revised Section 7 regarding platinum products to simplify and align its guidance more closely

[1] After a 1918 trade practice conference, the Commission promulgated trade practice rules on jewelry issues. The Commission re-issued these rules as guides in 1979.

[2] The Commission issues industry guides to help the industry act in conformity with legal requirements. 16 CFR Part 17. Industry guides are administrative interpretations of the law; they do not have the force of law and are not independently enforceable. Failure to follow industry guides may result, however, in enforcement action under the FTC Act, 15 U.S.C. §45. In any such action, the Commission must prove that the act or practice at issue is unfair or deceptive in violation of Section 5 of the FTC Act.

[3] The Commission reviews its regulations and guides ten years after implementation and ten years after the completion of each review. With each review, the Commission publishes a notice in the Federal Register seeking public comments on the continuing need for the rule or guide, as well as associated costs and benefits to consumers and businesses. Based on this feedback, the Commission may modify or repeal the rule or guide to address public concerns or changed conditions, or to reduce undue regulatory burden.

[4] 61 FR 27178 (May 30, 1996). As part of these changes, the industry guides formerly known as "Guides for the Jewelry Industry" were renamed "Guides for the Jewelry, Precious Metals, and Pewter Industries."

with international standards.[5] In 1999, the Commission amended the Guides to remove a footnote reference to the Watch Guides, which it had rescinded earlier.[6] In response to petitions from jewelry trade associations, the Commission again revised the Guides in 2000 to provide for disclosure of permanent gemstone treatments that significantly affect the value of the gemstone, such as the laser-drilling of diamonds.[7] In 2010, the Commission again amended Section 7 to provide guidance on how to mark and non-deceptively describe certain platinum alloys.[8]

B. The Jewelry Guides Review

As part of its Guides review process, the Commission published a Federal Register Notice in July 2012 ("2012 Notice") initiating a regulatory review for the Jewelry Guides and requesting public comments on their overall costs, benefits, necessity, and economic impact.[9] In response, the Commission received 22 non-duplicative comments.[10] Based on those responses, the FTC conducted a public roundtable to explore two issues relating to precious metals jewelry in greater depth.[11] During the review, the Commission received information regarding technological developments and related changes in industry standards and practices and consumer perceptions that affected certain provisions of the Guides. The Commission now proposes the amendments discussed below.

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[5] 62 FR 16669 (Apr. 8, 1997).

[6] 64 FR 33193 (June 22, 1999).

[7] 65 FR 78738 (Dec. 15, 2000).

[8] 75 FR 81443 (Dec. 28, 2010).

[9] 77 FR 39201 (July 2, 2012).

[10] *See* http://www ftc.gov/os/comments/jewelryguidesreview/index.shtm. The Commission abbreviates commenters' names in this Statement. *See* Appendix (listing abbreviations and the commenters' full names).

[11] 78 FR 26289 (May 6, 2013) (announcement for June 19, 2013 roundtable). The Commission received 13 non-duplicative comments in response to the May 2013 Federal Register Notice ("2013 Notice").

The proposed guidance was developed in accordance with Section 5 of the FTC Act, which prohibits deceptive or unfair acts or practices.[12] Under Section 5, an act or practice is deceptive if it involves a material statement or omission that would mislead a consumer acting reasonably under the circumstances.[13] An act or practice is "unfair" if it causes or is likely to cause substantial injury; that consumers could not reasonably avoid; and the injury is not outweighed by countervailing benefits to consumers or competition.[14] The Guides, however, focus on advising marketers how to make non-deceptive claims about jewelry products rather than preventing unfair practices.[15] Therefore, to prevent deceptive acts and practices pursuant to Section 5, the Commission's guidance here should be based on how consumers reasonably interpret claims. The Commission has tried to use available consumer perception evidence whenever possible to develop its guidance. Because marketers have relied on these Guides for decades and have made significant expenditures based on this guidance, the Commission proposes revising existing provisions only when there is a firm record supporting revision. Additionally, the Commission proposes new guidance only when supported by solid evidence of deception to avoid chilling the use of truthful terms that may be useful to consumers.

C. Outline of this Statement

Part II of this Statement addresses general issues, including the Guides' benefits and burdens, harmonization of the Guides with international law or standards, industry compliance, and consumer and business education. Part III discusses issues relating to specific areas

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[12] 15 U.S.C. §45.

[13] FTC Policy Statement on Deception, appended to *Cliffdale Assoc., Inc.*, 103 FTC 110 (1984); *see also FTC v. Verity Int'l*, 443 F.3d 48, 63 (2d Cir. 2006); *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994).

[14] 15 U.S.C. §45(n).

[15] Although the Guides exclusively focus on deception, the FTC can address unfair practices should the need arise to do so.

addressed in the Guides. Part IV requests public comment on the issues raised in this Statement. Finally, Part V sets out the proposed, revised Guides.

II. GENERAL ISSUES

In response to the 2012 Notice, commenters addressed four broad issues related to the Guides: (1) their benefits and burdens; (2) their implications for international laws and standards; (3) industry compliance; and (4) consumer education. This section discusses the comments received on these topics and the Commission's analysis.

A. Benefits and Burdens of the Guides

1) Comments

Commenters identified several substantial benefits provided by the Guides for both the jewelry industry and consumers, with minimal cost to industry.[16] As the Accredited Gemologists Association (AGA) explained, the Guides provide "a road map for fair dealing" throughout the chain of commerce.[17] The Jewelers Vigilance Committee (JVC) stated that the Guides foster consistent marketing, which creates a level playing field, promotes fair competition, and protects consumers.[18] JVC also listed various ways industry members rely on the Guides, given the dearth of applicable laws or regulations.[19] For example, jewelry trade associations and trade shows condition membership and participation on compliance with the Guides. In addition, the Better Business Bureau directs consumers to the FTC's jewelry education materials; and the Gemological Institute of America emphasizes the Guides in its training classes for jewelry

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[16] *See, e.g.*, AGA comment 12 at 1; Jewelry Television (JTV) comment 14 at 2; Susan Eisen comment 10; and Wayne Schenk comment 8.

[17] AGA comment 12 at 1; JTV comment 14 at 2.

[18] JVC comment 27 at 8.

[19] *Id.* at 1.

professionals.[20] The Guides also aid reputable industry members in providing consumers with uniform information about jewelry products.

The commenters also agreed that the Guides impose little burden on industry members.[21] JVC explained that the Guides alleviate burdens and lower costs by providing clear guidance for the trade, thereby reducing legal risk.[22] Another commenter noted that the Guides have posed minimal costs to both jewelers and consumers.[23] No commenters asserted that the Guides imposed unreasonable burdens.

2) Analysis

The Commission proposes retaining the Guides, given the commenters' overwhelming support for them.

B. International Standards

1) Comments

Several commenters urged the Commission to harmonize the Guides with international standards.[24] JVC explained that some countries set binding regulatory standards for jewelry while others operate under voluntary standards set by international organizations. It argued that conflicts between the Guides and these international standards present challenges in the U.S. marketplace and may contravene the Trade Agreements Act of 1979.[25] In its view, such

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

[21] JVC comment 27 at 10.

[22] *Id.* at 9.

[23] Schenk comment at 8.

[24] The commenters generally did not identify any significant conflicts between the Jewelry Guides and existing state laws. With regard to potential conflicts between federal, state, and local laws, JVC stated that, while some overlaps have occurred, none presented conflicts or harmed consumers. JVC explained that, because the Guides are well known and highly respected in the industry, they provide a "central point" of consistency. JVC comment 27 at 19-20. JTV explained that the Guides provide valuable information to the responsible retailer and to state regulatory agencies in their enforcement of state consumer protection laws. JTV comment 14 at 2.

[25] JVC comment 27 at 22-25.

inconsistencies facilitate deceptive trade practices, decrease confidence in products originating in the U.S., and attract low-quality products introduced in the U.S. market that cannot be sold abroad.

Specifically, JVC noted that, in many countries, industry follows standards set by CIBJO (The World Jewellery Confederation), an international confederation comprised of numerous jewelry associations from all sectors of the jewelry industry. According to JVC, the FTC Guides conflict with the CIBJO standards on several issues, including "cultured" product claims,[26] rhodium plating disclosures for white gold, dyed pearl disclosures, and standards for palladium in jewelry. In addition, the International Standards Organization (ISO) sets voluntary standards to help facilitate international trade and safeguard consumers. JVC urged the Commission to consider both the ISO standards and CIBJO standards (Blue Books) in its review of the Guides. JVC also detailed the European Union's current work to standardize nomenclature for diamonds.

The Hallmark Research Institute (HRI) also advocated international harmonization. It described the benefits of independent testing and certification systems in the majority of European, North African, and Middle Eastern countries.[27] According to HRI, the absence of such systems in North and South America has discouraged global jewelry industry members from purchasing or importing goods made in the Americas because of doubts about the accuracy of stamped items. However, HRI recognized the limitations of the FTC's authority to implement such certification requirements.

2) Analysis

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[26] JVC noted that the FTC's decision to allow the word "cultured" for products other than pearls conflicts with CIBJO standards and court decisions worldwide. In JVC's view, the FTC position on "cultured" diamonds facilitates deceptive trade practices and undermines the integrity of the U.S. jewelry marketplace. JVC comment 27 at 22-25.

[27] HRI comment 26 at 2.

The Commission tries to harmonize its guidance with international laws and standards whenever possible. However, the FTC must base its Guides on the deception or unfairness standard in Section 5 of the FTC Act. In contrast, many international standards are developed through an industry consensus-building process driven by considerations such as facilitating trade and promoting international cooperation. They are not solely or necessarily based on preventing deceptive claims to consumers.[28] While the Commission cannot resolve every inconsistency, it has addressed specific issues in the context of international harmonization in sections III.A.3(c) (disclosure of surface layer application of rhodium), III.F. (product marking) and III.J. (cultured diamonds) *infra*.

C. Industry Compliance

1) Comments

Commenters also raised concerns about current compliance with the Guides. They noted that, although ethical jewelers comply with the Guides, deceptive representations are too common, particularly for gemstones.[29]

According to JVC, many complaints arise every year involving deceptive advertising about gemstones, particularly diamonds.[30] For example, sellers sometimes submit synthetic diamond products to grading labs for certification as natural, mined stones. Though professional labs can detect such fraud, average jewelers cannot. In addition, JVC has seen "laboratory created" or "laboratory grown" claims for imitation diamond products (*i.e.*, items made from

[28] *See* http://www.iso.org/iso/home/standards_development/resources-for-technical-work/support-for-developing-standards htm.

[29] Eisen comment 10; JVC comment 27 at 10-11; HRI comment 26 at 4.

[30] JVC comment 27 at 10-11.

cubic zirconia, glass, or similar material).[31] Similarly, JVC asserted that some sellers fail to identify cultured and imitation pearls properly, and that they have had mixed success in urging sellers to correct these practices. In JVC's view, FTC enforcement provides the best means to combat such misrepresentations and stop the most prominent violators.[32]

HRI stated that limited enforcement, inadequate penalties, and dealer ignorance continue to foster practices inconsistent with the Jewelry Guides, as well as the National Stamping Act of 1906, which establishes standards and marking requirements for precious metals.[33] HRI noted that the U.S. Customs Service constitutes the "front line" to stop improperly marked items because that agency has the authority to fine importers and confiscate falsely-marked precious metal items.[34] HRI also identified state and local authorities as the "secondary line of defense" against such violations because they also have the power to impose fines and seize improperly marked goods.[35] HRI also urged all relevant agencies, including the FTC, to conduct regular inspections at primary trading centers, including major dealers of precious metal items. Another commenter suggested the Commission police the internet for accuracy in product descriptions and noted that, absent such monitoring, more deception will occur as internet sales continue to grow.[36]

2) Analysis

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[31] Such claims contradict Section 23.23(c), which reserves these terms for products that have "essentially the same optical, physical, and chemical properties as the stone named."

[32] One commenter suggested guidance regarding "wholesale to the public" claims. The Commission notes that existing guidance on "Deceptive Pricing" for all products (16 C.F.R. Part 233) already addresses such issues. Anthony Carter comment 4.

[33] HRI comment 26 at 4.

[34] *Id.*

[35] *Id.*

[36] Eisen comment 10.

Under Section 5 of the FTC Act, the Commission has authority to prevent unfair or deceptive practices where the immediate injured party is either a consumer or a business.[37] The Commission agrees that enforcement is a key component of greater compliance. Among other measures, the FTC collects complaints about business practices and compiles them in Consumer Sentinel, a secure online database available to more than 2,000 law enforcement agencies.[38] Agencies use the data to research cases, identify victims, and track possible targets. The Commission will continue to monitor developments in the jewelry industry, coordinate with other law enforcement agencies, and take enforcement action as appropriate to protect consumers.

D. Consumer and Business Education

1) Comments

Several commenters urged the Commission to increase its efforts to educate industry members and consumers about the Guides.[39] For example, one commenter recommended alerting consumers to watch for fake merchandise and providing contacts for consumers to report deceptive practices.[40] Commenters also urged more business education about issues such as precious metal plating, and recommended the Commission seek industry member cooperation in disseminating consumer education materials.[41] The Jewelers Ethics Association (JEA) cited to

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[37] *See, e.g.*, FTC Policy Statement on Unfairness at n.8 (1980) (specifying businesses as consumers protected under Section 5); S. Comm. on Commerce, Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, S. Rep. No. 93-151, at 27 (1973); *In re Verrazzano Trading Corp.*, 91 FTC 888 (1978) (stating that Section 5 does not tolerate deceptive practices by businesses merely because they are targeted to other businesses rather than directly to consumers); *FTC v. Assoc. Record Distrib.*, No. 02-21754-cv-GRAHAM/GARBER (S.D. Fla., Stip. Final J. and Order for Perm. Inj. entered May 21, 2003).

[38] Consumers and businesses may file complaints with the FTC at https://www.ftccomplaintassistant.gov.

[39] *See, e.g.*, Barnett comment 2; Eisen comment 10; and JEA comment 13 at 3.

[40] Barnett comment 2.

[41] Eisen comment 10; Barnett comment 2; and JEA comment 13 at 3.

consumer education as the primary challenge because it stated most industry members already are aware of the Guides.[42] JEA explained that an "informed consumer base not only increases efficacy of the guides as a whole, but also creates long-term stability in the marketplace." While recognizing ongoing FTC efforts in this area, JEA recommended that the FTC create a comprehensive database of jewelry products, for consumers and industry members, to provide information about all known gem species, treatment information, and care requirements.

2) Analysis

The Commission plans to revise its existing consumer and business education materials to conform to any revisions stemming from this proceeding. Industry members and other groups can order and distribute free copies of these materials.[43] However, the Commission does not propose to develop a comprehensive jewelry database as suggested in the comments. It is not clear whether such a database is necessary to combat deceptive practices. In addition, entities such as trade associations are better positioned to provide this information to their members and to consumers.

III. SPECIFIC GUIDE ISSUES

The Commission requested comment on what changes, if any, it should make to its existing guidance on specific Guide issues. This part of the Statement summarizes the comments and relevant roundtable discussions and provides the Commission's analysis, and in some cases proposed revised guidance, related to the following issues: (A) surface application of precious metals; (B) products containing more than one precious metal; (C) alloys with precious metals in amounts below minimum thresholds; (D) describing gold quality; (E) palladium; (F) product

[42] JEA comment 13 at 3.

[43] *See* bulkorder.ftc.gov.

marking; (G) lead-glass-filled stones; (H) gemstone treatments and the term "natural"; (I) varietals; (J) "cultured" diamonds; (K) use of the term "gem"; (L) use of the term "flawless"; (M) geographic and regional identification of pearls; (N) freshwater pearls; (O) disclosure of treatments to pearls; and (P-R) certain other miscellaneous issues, including the use of the terms "handmade" and "enamel" and guidance on appraisals.

A. Surface Application of Precious Metals

1) Current Guides

The Guides address precious metal surface applications in Sections 23.4 (gold), 23.5 (vermeil), and 23.6 (silver), as outlined below.

(a) Gold

The gold section includes the Guides' most detailed discussion of surface plating, distinguishing marking and descriptive terms by whether manufacturers used an electrolytic or mechanical process to apply the surface layer,[44] and providing examples that specify minimum coating thicknesses or weight ratios (precious metal coating as a fraction of the entire article's weight). Among other things, Section 23.4(a) states it is unfair or deceptive to misrepresent the karat fineness, thickness, weight ratio, or manner of application of a product's gold or gold alloy plating, covering, or coating.[45]

To augment this general advice, Section 23.4(b) provides examples of potentially misleading markings or descriptions:

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[44] An electrolytic application involves immersing an object in a solution and using electric current to create a surface deposition of metal, whereas a mechanical application uses heat and high pressure to fuse the metal surfaces together.

[45] 16 CFR 23.4(a).

- use of the word “gold” or any abbreviation to describe all or part of a product that is not composed throughout of gold or gold alloy, unless “gold” or its abbreviation is adequately qualified to indicate the surface-plating;[46]

- use of the term “gold plate,” “gold plated,” or any abbreviation to describe all or part of a product unless the gold alloy surface-plating, applied by any process, assures reasonable durability;[47]

- use of the terms “gold filled,” “rolled gold plate,” “rolled gold plated,” “gold overlay,” or any abbreviation to describe all or part of a product unless manufacturers used a mechanical process to apply the “gold alloy” surface-plating to such thickness and coverage to assure reasonable durability; and the marketer equally conspicuously discloses the correct designation of the alloy’s karat fineness immediately preceding the term or abbreviation;[48]

- use of the terms “gold plate,” “gold plated,” “gold filled,” “rolled gold plate,” “rolled gold plated,” “gold overlay,” or any abbreviation to describe a product where a base metal (such as nickel) coated with a thin wash of gold covers the primary gold layer, unless the gold-washed base-metal covering is disclosed;[49] and

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[46] 16 CFR 23.4(b)(3).

[47] 16 CFR 23.4(b)(4).

[48] 16 CFR 23.4(b)(5).

[49] 16 CFR 23.4(b)(6).

- use of the terms "gold electroplate," "gold electroplated," or any abbreviation to describe all or part of a product unless the "gold or gold alloy" electroplating is of such karat fineness, thickness, and coverage to assure reasonable durability.[50]

In addition, Section 23.4(c) provides three examples of markings and descriptions consistent with the principles in Sections 23.4(a) and (b). In the first, a product or part may be marked or described as "gold plate," "gold plated," or so abbreviated (*e.g.*, "G.P.") if any process affixes a gold or gold alloy (at least 10 karats) coating, electroplating, or deposition of "substantial thickness" on all significant surfaces. Specifically, coatings should have a minimum thickness throughout equivalent to one-half (1/2) micron (or approximately 20 millionths of an inch) of fine gold.[51] "Substantial thickness" means all plating areas are sufficiently thick to assure durable coverage, and the thickness does not necessarily have to be uniform for all items or different surface areas of individual items, since items may comprise surfaces and parts subject to different degrees of wear.[52]

In the second example, a product or part may be marked or described as "gold filled," "gold overlay," "rolled gold plate," or so abbreviated if a mechanical process affixes a gold alloy (at least 10 karats) plating of "substantial thickness" on all significant surfaces. Specifically, the coating constitutes at least one twentieth ($1/20^{th}$) of the metal's weight in the entire article. In addition, an equally conspicuous designation of the plating's karat fineness should immediately precede the term (*e.g.*, "14 Karat Gold Filled," "14 Kt. Gold Filled," "14 Kt. G.F.," "14 Kt. Gold

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[50] 16 CFR 23.4(b)(7). A note to Section 23.4(b) states these provisions apply to "Duragold," "Diragold," "Noblegold," "Goldine," "Layered Gold," and similar terms. 16 CFR 23.4(b) Note.

[51] 16 CFR 23.4(c)(2). A product containing 1 micron (1μ) of 12 karat gold is equivalent to one-half micron of 24 karat gold. 16 CFR 23.4(c)(2) n.4.

[52] This example also states that marketers may mark the exact thickness of an item if an equally conspicuous designation of the plating's karat fitness immediately follows (*e.g.*, "2 microns 12 K. gold plate" for an item plated with 2 microns of 12 karat gold). 16 CFR 23.4(c)(2).

Overlay," or "14K. R.G.P.").[53] For items that do not meet the minimum thickness (1/20th weight ratio), marketers may use "gold overlay" and "rolled gold plate" if an equally conspicuous fraction accurately disclosing the portion of the weight of the metal in the entire article accounted for by the plating immediately precedes the karat fineness designation (*e.g.*, "1/40th 12 Kt. Rolled Gold Plate" or "1/40th 12 Kt. R.G.P.").[54]

In the third example, a product or part may be marked or described as "gold electroplate," "gold electroplated," or so abbreviated (*e.g.*, "G.E.P.") if an electrolytic process affixes a gold or gold alloy (at least 10 karats) electroplating with a minimum thickness throughout equivalent to 0.175 microns (approximately 7/1,000,000ths of an inch) of fine gold on all significant surfaces.[55] Furthermore, "gold flashed" or "gold washed" markings or descriptions may be used when the electroplating meets the minimum fineness, but not the minimum thickness (*i.e.*, gold alloy electroplating of at least 10 karats, but without a thickness throughout equivalent to at least 0.175 microns of fine gold).[56] Finally, "heavy gold electroplate" or "heavy gold electroplated" markings or descriptions may be used when the electroplating meets the 10 karat minimum fineness and has a minimum thickness throughout equivalent to two-and-one-half (2½) microns (or approximately 100/1,000,000ths of an inch) of fine gold.[57]

(b) Vermeil

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[53] 16 CFR 23.4(c)(3).

[54] *Id.*

[55] 16 CFR 23.4(c)(4).

[56] 16 CFR 23.4(c)(4).

[57] When electroplatings qualify for the terms "gold electroplate," "gold electroplated," "heavy gold electroplate," or "heavy gold electroplated," and have been applied using a particular electrolytic process, the marking may be accompanied by identification of this process (*e.g.*, "gold electroplated (X process)" or "heavy gold electroplated (Y process)"). 16 CFR 23.4(c)(4).

Vermeil describes a particular type of gold surface application on sterling silver. Section 23.5 states a product may be described or marked as "vermeil" if it consists of a sterling silver base coated or plated on all significant surfaces with gold or gold alloy (at least 10 karats) that is of "substantial thickness," with a minimum thickness throughout equivalent to two-and-one-half (2½) microns (or approximately 100/1,000,000ths of an inch) of fine gold.[58]

(c) Silver

The silver section includes general guidance regarding surface applications, but does not discuss coating terms in detail. Among other things, Section 23.6(a) states it is unfair or deceptive to misrepresent that a product has a silver plating, electroplating, or coating.[59] Section 23.6(d) states it is unfair or deceptive to mark, describe, or otherwise represent all or part of a product as plated or coated with silver, unless all significant surfaces contain a silver plating or coating of "substantial thickness."[60]

2) Comments

In response to the 2012 Notice, four commenters raised issues concerning precious metal surface applications.[61] After reviewing these comments, the FTC published a Federal Register Notice on May 6, 2013, announcing a June 19, 2013 roundtable and soliciting additional comments.[62]

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[58] 16 CFR 23.5(b).

[59] 16 CFR 23.6(a).

[60] *Id*.

[61] Rolly Jewellery Private Ltd. (Rolly) comment 11; JVC comment 27; Sterling/Richline comments 21 & 22; TSI comment 16.

[62] 78 Fed. Reg. 26289 (May 6, 2013). A transcript of the June 19, 2013 public roundtable ("Roundtable") is available at http://www ftc.gov/sites/default/files/documents/public_events/jewelry-guides-roundtable/transcript.pdf.

As discussed below, commenters generally concurred that discrepancies among the various terms for coated products have confused industry members and consumers alike. However, commenters disagreed whether amendments would help sellers avoid unfair or deceptive practices and, if so, what form the guidance should take. For instance, JVC and Sterling Jewelers Inc. and Richline Group Inc. (Sterling/Richline) jointly proposed a "unified" framework that would address surface applications of silver and the platinum group metals (PGMs),[63] as well as gold, with updated terminology and standards. JVC called for additional guidance stating that prices have spurred a proliferation of products coated with precious metal.[64] According to JVC, this market change has increased the potential for deception, particularly when coated products sell at high prices not "justified" by the insubstantial amounts of precious metal they contain.[65] Some commenters liked JVC's proposal, but recommended different terms or minimum thicknesses. Others contended no changes are needed, advocated alternate disclosures, or urged the Commission to prohibit marketers from using "gold" to describe coated products.

(a) Unified Approach for Precious Metal Surface Applications

JVC and Sterling/Richline's "unified approach" reorganized existing guidance and incorporated new guidance into a single set of principles. Specifically, they proposed a new section encompassing the existing gold guidance (including vermeil) and new guidance regarding silver and all six PGMs (platinum, palladium, rhodium, ruthenium, iridium, osmium).[66]

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[63] Platinum, iridium, palladium, ruthenium, rhodium, and osmium.

[64] JVC comment 27 at 4, 12-13.

[65] *Id.* at 13.

[66] JVC comment 27at 13-14; Sterling/Richline comment 21 at 2.

With the exception of TSI Holding Group (TSI), other commenters did not specifically propose guidance for silver or PGM applications.

JVC's Recommended Disclosures. JVC suggested the Guides advise marketers to disclose the identity, purity, and amount of precious metal in a product's outer layer by: (1) specifying the application's thickness (for electrolytic or any other non-mechanical application);[67] (2) specifying the application's weight (for mechanical applications);[68] or (3) using one of 11 terms or abbreviations (plate; plated; electroplate; electroplated; heavy electroplate; heavy electroplated; vermeil; rolled plate; clad; filled; bonded), each having a standard meaning specified in the Guides.[69] In addition, marketers should disclose a rhodium application on products marked or described as a precious metal to alert consumers to potential durability issues.[70]

Under JVC's proposal, if a precious metal application does not satisfy JVC's recommended standards for any of the 11 specified terms, the Guides should advise sellers not to describe the product by referring to the application unless they also warn that durability is not assured.[71] Even if marketers provide this warning, they should not mark the product with a quality stamp.

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[67] As JVC explained, an electrolytic application involves immersing an object in a solution and using electric current to create a surface deposition of metal. With a mechanical application, heat and high pressure fuse the metal surfaces together. JVC comment 27 at 13 n.9, exh. 7 at 2, exh. 8 at 2.

[68] According to JVC, it is longstanding industry practice to disclose the amount of an electrolytically-applied layer by thickness, and the amount of a mechanically-applied layer by weight. JVC comment 27 at 14.

[69] JVC's proposed examples of quality stamps or descriptions for such terms include: "Gold E.P."; "925 Plate"; "Pt. HEP"; "925/14K Bonded"; "14K Gold/Rh E.P."; "Sterling + Gold Bond"; "Vermeil"; ".925/RPG"; ".925RPPt." JVC comment 27, exh. 1 at 11.

[70] JVC's proposed guidance also states that, in marking or describing products with a surface-layer application, it is unfair or deceptive to misrepresent: the identity, purity, thickness, weight ratio, or manner of application of the precious metal used in the outer application; the identity of the underlying metal; or whether reasonable durability is assured.

[71] JVC comment 27 at 15, exh. 1 at 11.

Comprehensive Standards for Terms Indicating Precious Metal Surface Applications. To address durability concerns and industry practice, JVC urged the Commission to set comprehensive standards for the 11 terms. In its view, these changes are necessary because the nomenclature has evolved since the Commission's last comprehensive review in 1996.[72] JVC contended its proposal reflects the current terminology manufacturers use to help insure product durability.[73] According to JVC, its proposed standards will provide an "even playing field" for manufacturers and "encourage the production of a wider variety of products with different types of precious metal applications that perform well, at lower costs to consumers."[74] Moreover, JVC argued its proposed guidance will improve how consumers understand representations regarding coated products.

JVC's proposed terminology distinguished between electrolytic and mechanical applications.[75] Three categories of terms refer to electrolytically-applied coatings ("plate(d)" and "electroplate(d)," "vermeil," and "heavy electroplate(d)"); three others refer to mechanical applications ("rolled plate," "clad" and "filled," and "bonded"). In addition, JVC contended the Guides should specify the minimum thickness necessary to ensure reasonable durability for different precious metal applications, and submitted testing data to support its proposed specifications.

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[72] JVC comment 27 at 13. For example, the Guides do not address use of the word "clad," but JVC stated that the industry now uses this term interchangeably with "filled." In addition, the industry uses the term "bonded," though the Guides do not mention it. JVC comment 27, exh. 8 at 3. JVC also stated the industry now uses "plated" and "electroplated" interchangeably (though "heavy electroplate(d)" and "vermeil" retain their separate meanings). JVC comment 27, exh. 7 at 3.

[73] JVC comment 27 at 13, 25-26.

[74] *Id.* at 19-20.

[75] TSI agreed with JVC's distinction between mechanical and electrolytic applications. Roundtable Tr. 119:14-120:14.

Within this framework, commenters diverged on several issues. JVC and Sterling/Richline contended that the standards for gold electrolytic applications should specify a higher fineness designation than the current Guides (at least 22 karats, rather than 10 karats); other commenters disagreed. In addition, JVC and Sterling/Richline disagreed whether the minimum thickness standard for rhodium electrolytic plating should differ depending on the color of the underlying metal. TSI concurred with JVC's general approach, but did not clearly state whether it endorsed all of the terms and standards.

i. "Plate," "Plated," "Electroplate," and "Electroplated"

In JVC's view, marketers should not use "plate(d)," "electroplate(d)," or any abbreviation to describe a coated product unless an electrolytic or other non-mechanical process affixed an identified precious metal on all significant surfaces, and the coating is of such thickness and coverage to assure reasonable durability.

In support of this view, JVC provided reports of tests conducted by Leach Garner, Taber Industries (Taber), and Tanury Industries (Tanury) designed to assess the relative wear rates of different thicknesses. Taber conducted abrasion wear tests to determine if there is any difference in wearability/abrasion resistance depending on the thickness of electrolytic applications involving six different precious metals: 23 karat gold; platinum; silver; palladium; rhodium; and ruthenium. Tanury conducted vibration wear tests on samples identical to Taber's. In a written statement accompanying the Tanury test report, Michael Akkaoui (President and CEO of Tanury) stated these tests indicated that electrolytic application durability is reasonably assured only if the applications have a minimum thickness and that the thickness depends on the type of metal used.

Based on these test results, JVC asserted that reasonable durability is assured when a product has the following minimum plating thicknesses:

- **Gold or gold alloy of at least 22 karat fineness**: 7 millionths of an inch (approximately 0.175 μ)
- **Platinum**: 5 millionths of an inch (approximately 0.127 μ)
- **Silver**: 100 millionths of an inch (approximately 2.54 μ)[76]
- **Palladium**: 5 millionths of an inch (approximately 0.127 μ)
- **Rhodium**: 3 millionths of an inch (approximately 0.076 μ)
- **Ruthenium**: 5 millionths of an inch (approximately 0.127 μ).

According to Akkaoui, at these minimums, jewelry products performed well and met consumer expectations because they provided acceptable wear characteristics when subjected to normal wear conditions. Below those minimums, reasonable durability is not assured.[77]

Specifying a Higher Fineness Designation for Gold. JVC further stated the provisions in Section 23.4 concerning fine gold "equivalents," which "allow standards" by plating weight rather than fineness, create confusion and lead to products that do not meet consumer expectation for durability. For example, Section 23.4(c)(2) suggests a minimum thickness "equivalent to one-half micron (or approximately 20 millionths of an inch) of fine gold" for "gold plate(d)" markings and descriptions. Therefore, for this purpose, a product containing one micron of 12 karat gold is "equivalent" to one-half micron of 24 karat gold.[78] Similarly, Sections 23.4(c)(4) and 23.5 (regarding "gold electroplate(d)," "heavy gold electroplate(d)," and "vermeil") provide

[76] TSI did not state whether it supported JVC's recommended thickness ratios for silver electrolytic applications. It had initially proposed that "silver plated" and "sterling silver plated" should mean that a silver equivalent to a minimum thickness of one-half (1/2) micron (or approximately 20 millionths of an inch) throughout has been applied by any process on all significant surfaces. TSI comment 16 at 3. At the roundtable, TSI indicated that its practice is to apply 40 μin. (approximately 1 μ) of silver coating on top of sterling silver. Roundtable Tr. 119:14-120:14.

[77] JVC comment 27, exh. 7 at 2-3.

[78] *Id.* at n.4.

minimum thickness standards stated as an "equivalent" to a specified thickness of "fine gold."[79] JVC contended this language is confusing for both consumers and manufacturers because of the calculations it entails. Moreover, it could encourage manufacturers to coat products with gold alloy as low as 10 karats and simply layer greater amounts to satisfy the Guides' equivalency provisions. JVC argued that even though such a product would have more gold by weight, the lower-quality plating would likely tarnish and not meet consumer expectations.[80] JVC and Sterling/Richline therefore recommended amendments that would impose a higher standard for gold electrolytic applications because testing indicated lower-karat plating does not perform as well.[81] Specifically, they suggested that standards for all electrolytic applications specify "fine gold" defined by a 22 karat minimum, rather than "alloy" plating as low as 10 karats.[82]

Similarly, Sterling/Richline stated that any thickness of 10 karat electrolytic plating has only a fraction of the "intrinsic value" of a 22 karat plating of the same thickness.[83] According to Sterling/Richline, the combination of gold karatage and plating thickness create a "value proposition" the Guides should reflect.[84] In support of its recommendation, Sterling/Richline

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[79] 16 CFR 23.4(c)(2).

[80] JVC comment 44 at 11. In conjunction with JVC's comment, Akkaoui submitted a statement indicating, based on his years of experience in the field of metallurgy and metal-application processes, that the 10-karat minimum for electrolytic plating is too low to produce consistent products. According to Akkaoui, low-karat plating baths cause significant quality issues, and it is difficult to maintain these bath chemistries at a consistent karat purity. Moreover, some low-karat finishes will tarnish due to the deposit's high silver alloy content, even when thickness is increased to the equivalent of 0.175 microns of fine gold as Section 23.4(c)(4) suggests. Akkaoui concluded that a 22-karat minimum is necessary to prevent tarnish and produce a durable electrolytic application. JVC comment 44, exh. 6 at 2.

[81] JVC comment 44 at 11; Sterling/Richline comment 22 at 1; Roundtable Tr. 111:19-112:3.

[82] Sections 23.4 and 23.5 indicate that these terms may be used to describe and mark products with surface applications involving gold of at least 10 karats.

[83] Sterling/Richline comment 21 at 1. Sterling/Richline initially proposed a 23.5 karat minimum, but subsequently revised its recommendation to align with JVC's recommended 22 karat minimum, primarily due to the ease of applying, measuring, and maintaining a purity of 22 karats, rather than 23.5. Roundtable Tr. 108:8-14, 109:2-15.

[84] Roundtable Tr. 108:15-20; 109:20-110:10.

referenced a comment by Rolly, who listed several reasons to avoid low-karat gold plating.[85] Rolly stated that low-karat electroplating typically involves alloying gold with copper or silver, which yields a pink or green hue. For a more appropriately colored finish, it is necessary to apply a "flash" coat of high-karat gold over the low-karat electroplate. However, if this high-karat flash wears off, it exposes the pink or green electroplate underneath, which will quickly tarnish.[86] Contending that low-karat electroplating thus "defeats the purpose of gold-plated jewelry," Rolly recommended that manufacturers only use gold plating that is greater than 23 karats on silver to ensure consistent composition and color, with tarnish resistance "as good as pure gold."[87] Rolly stated that an article plated with up to 5 µ will last at least one year with rough use (years with more cautious use).[88]

In contrast, Veronica Poteat stated it would be misleading for the Guides to distinguish "fine gold plating" from alloy plating because of the inherently "fleeting nature of gold plate of any karat."[89] New Annex Plating, Inc. (New Annex) contended that consumers likely misunderstand the term "fine gold," and stated "all confusion can be avoided by merely requiring a disclosure of the weight of the gold used and its purity – *e.g.*, 1/25 oz. .900 pure gold."[90]

Rhodium. As noted above, JVC proposed guidance requiring marketers to disclose rhodium plating applications. As JVC explained, coating rhodium over another precious metal

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[85] Sterling/Richline comment 22.

[86] In addition, Rolly stated it is not practicable to achieve precise karat fineness with low-karat electroplating (*e.g.*, 10, 14, or 18 karats), because the only method to determine the exact thickness of low-karat plating is expensive, time-consuming, and destructive. Rolly comment 11 at 1. Similarly, Akkaoui remarked on the difficulties of using other methods to differentiate between 10 karat and 23 karat gold plating. Roundtable Tr. 112:20-113:6. According to Akkaoui, 7 µin. of 10 karat gold is less valuable than the same thickness of 22-plus karat gold, but it may be difficult to measure this difference. Roundtable Tr. 112:14-22.

[87] Rolly comment 11 at 2.

[88] *Id.*

[89] Poteat comment 5 at 6.

[90] New Annex comment 41 at 7.

to enhance the product's white color is now common, especially for white gold (which typically exhibits a pale yellow color)[91] and, more recently, sterling silver. However, rhodium plating often wears away with use, and a product must be re-plated to retain its original white color. Moreover, when a rhodium layer on sterling silver wears away, the underlying silver tarnishes. Yet, consumers are usually unaware of this practice and do not know that when the rhodium wears away, the product can be re-plated.[92] To protect and educate consumers, JVC urged the Commission to require a separate rhodium plating disclosure.[93] Other commenters observed that disclosing the fact of the rhodium plating for white gold products would be similar to disclosing a special care requirement (*i.e.*, to maintain the product's white color, re-plating is necessary).[94]

Although Sterling/Richline supported JVC's rhodium proposal, it disagreed with JVC's recommended minimum thicknesses. It contended that instead of advising 3 µin. for all

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[91] Similarly, Poteat explained that white gold jewelry today has now "yellowed" to a greater degree than it used to, possibly because nickel is no longer used in the alloy due to concerns about its propensity to induce allergic reactions. Therefore, manufacturers increasingly turn to PGM coatings to counter this "yellowing" effect. She agreed with JVC that marketers should disclose these coatings but contended the Guides already require such disclosures and suggested the FTC address this issue on its website. Poteat comment 5 at 5.

[92] JVC comment 44 at 5-6. With other precious metal applications, JVC's proposal does not advise marketers to abide by JVC's recommended minimums for using defined terms or to make the associated disclosures, unless the marketer chooses to reference the precious metal when describing the product. By contrast, in JVC's view, the Guides should include an affirmative disclosure of rhodium plating for white gold products because a failure to disclose could harm consumers. Roundtable Tr. 149:2-19.

According to JVC, results of consumer perception research conducted by Harris Interactive ("Harris study") and MVI Marketing Ltd. ("MVI") indicated most consumers think it would be important to know that a manufacturer had plated their white gold jewelry with rhodium. For example, the Harris study told respondents it is a very common practice for jewelry manufacturers to "plate" or cover white gold with a thin layer of rhodium to enhance the white color, then asked, if buying an item made of white gold plated with rhodium, how important it would be for the consumer to know this procedure had been done. Seventy-six percent of respondents indicated they would want to know. JVC comment 27, exh. 2, at 32. Similarly, respondents in the MVI focus group indicated they would want to know if a piece of white gold jewelry had been rhodium plated, due to concerns the plating would wear off and perceptions that plating diminishes the article's value. JVC comment 27, exh. 3 at 13. Only 20 percent of respondents in the Harris study were familiar with the term "rhodium plating." Fifty-five percent of respondents had never heard of "rhodium plating;" an additional 25 percent heard of this term, but were not familiar with it. JVC comment 27, exh. 3 at 27. Although 64 percent of respondents indicated they found the term helpful, 36 percent indicated they found it "not at all helpful." JVC comment 27, exh. 3 at 28.

[93] JVC noted that, unlike the Jewelry Guides, the World Jewellery Confederation (CIBJO) set standards that require sellers to disclose rhodium plating over white gold. JVC comment 27 at 22.

[94] Roundtable Tr. 150:17-152:3.

electrolytic applications, the standard should vary depending on whether the rhodium covers a white or non-white metal. Specifically, Sterling/Richline agreed with JVC's recommended 3 µin. thickness only for rhodium covering a non-white metal (*e.g.*, yellow gold), but recommended lowering the minimum to 2 µin. for white metal (*e.g.*, white gold, silver, palladium).[95] It explained that because marketers would be required separately to disclose all rhodium surface applications (pursuant to JVC's proposal), they would either have to ensure the rhodium coating on all white gold products is at least 3 µin. (consistent with JVC's recommended minimum), or specify the actual plating thickness and give a durability warning. In Sterling/Richline's view, such requirements would constitute an "unwarranted, economic penalty to the consumer . . . a cure far worse than the illness." Sterling/Richline contended that lowering the minimum to 2 µin. for rhodium over white metal offers "a fair and justifiable compromise."[96]

Other commenters addressing the issue of rhodium plating agreed that the rhodium eventually wears away, even if applied at 2 or 3 µin., and that marketers should therefore disclose the plating.[97] Commenters further noted that a minimum threshold for rhodium plating would help enhance durability, even though it would not be permanent.[98]

ii. "Heavy Electroplate" and "Heavy Electroplated"

Under JVC's proposal, marketers should not use "heavy electroplate," "heavy electroplated," or any abbreviation to describe all or part of a product unless an electrolytic or

[95] Otherwise, Sterling/Richline concurred with JVC's proposed minimums.

[96] Sterling/Richline comment 22 at 3.

[97] Roundtable Tr. 146:3-148:20.

[98] Roundtable Tr. 146:3-148:20.

other non-mechanical process has affixed an identified precious metal on all significant surfaces to a minimum thickness as follows:

- **Gold or gold alloy of at least 22 karat fineness**:[99] 100 millionths of an inch (approximately 2.54 µ)
- **Rhodium**: 8 millionths of an inch (approximately 0.2 µ)
- **Platinum**: 20 millionths of an inch (approximately 0.5 µ).

JVC did not state whether these recommended thicknesses were based on durability testing, consumer perception surveys, or other evidence. It explained only that it developed its recommended minimums for rhodium and platinum by determining levels that were "durability equivalents" to the 100 millionths of an inch minimum it recommended for heavy electroplate applications of gold.[100]

iii. "Vermeil"

JVC stated marketers should not use "vermeil" or any abbreviation to describe all or part of a product unless an electrolytic process has affixed gold or gold alloy of at least 22 karat fineness[101] on an underlying base of sterling silver on all significant surfaces, with a minimum thickness of 100 millionths of an inch (approximately 2.5 µ).[102] Consistent with the current guidance in Section 23.5, JVC further noted it is unfair or deceptive for marketers to use

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[99] As discussed above, JVC and Sterling/Richline contended that the standards for gold electrolytic applications should specify a higher fineness designation than the current Guides (at least 22 karats, rather than 10 karats), but other commenters disagreed.

[100] JVC comment 27, exh. 7 at 4. JVC's proposal did not specify thickness standards for silver, and TSI did not discuss whether specific guidance is needed regarding "heavy electroplate(d)." TSI comment 16 at 3.

[101] As discussed above, JVC and Sterling/Richline contended that the standards for gold electrolytic applications should specify a higher fineness designation than the current Guides (at least 22 karats, rather than 10 karats), but other commenters disagreed.

[102] Akkaoui stated that the industry widely understands and accepts "vermeil" as a specialized term describing silver covered by 100 millionths of an inch of gold. JVC comment 27, exh. 7 at 4.

"vermeil" to describe a product where the sterling silver base has been covered with a base metal (*e.g.*, nickel), then plated with gold or gold alloy, unless the marketer discloses this fact.

iv. "Rolled Plate"

In JVC's view, marketers should not use "rolled plate" or any abbreviation to describe a coated product unless a mechanical process affixed an identified precious metal on all significant surfaces to such thickness and coverage to assure reasonable durability, and the surface application is at least 1/40th of the metal's weight in the entire article.[103]

JVC stated the Guides should specify that reasonable durability is assured when the application's minimum thickness on all parts of the product's surface is:

- **Gold or gold alloy**: 170 millionths of an inch (approximately 4.3 μ)
- **Platinum or platinum alloy**: 170 millionths of an inch (approximately 4.3 μ)
- **Palladium or palladium alloy**: 170 millionths of an inch (approximately 4.3 μ)
- **Silver**: 250 millionths of an inch (approximately 6.4 μ).

In support of these minimums, JVC provided a report of wear tests conducted by Leach Garner, which assessed comparative wear by exposing samples to abrasive materials and measured the loss of top-layer thickness over time.[104] Grigory Raykhtsaum (Director of Metallurgy at Leach Garner) stated these tests indicated that the durability of a gold alloy

[103] Although TSI initially stated the terms "rolled silver plate" and "rolled sterling silver plate" should mean that a silver equivalent to a minimum thickness of one-half (1/2) micron (or approximately 20 millionths of an inch) throughout has been applied by any process on all significant surfaces, it subsequently revised its position to align with JVC's recommended delineation between mechanical and electrolytic applications, and concurred with JVC's recommended weight ratios for mechanical applications. TSI comment 16 at 3; Roundtable Tr. 119:14-120:14.

[104] According to Leach Garner, 8.5 hours of this type of wear testing replicates prolonged actual wear by a consumer with excessive handling.

mechanical application is not assured if the thickness falls below 170 µin (4.32µ),[105] and that the durability of a sterling silver mechanical application cannot be assured if it is less than 250 µin (6.35µ).[106] Raykhtsaum reported that Leach Garner did not test samples with mechanical applications of platinum or palladium because manufacturers currently cannot easily use mechanical processes to create surface applications of PGMs.[107] However, he stated that if the industry develops suitable technology, there likely would be a strong market for such products. Raykhtsaum further stated that, in his experience, platinum and palladium exhibit a wear resistance similar to gold alloy and, on that basis, recommended that minimums for platinum and palladium mechanical applications match those for 14 karat gold: 170 µin (4.3µ).[108]

JVC acknowledged that the majority of consumers are not familiar with the term "rolled gold plate" (much less "rolled plate" when used to describe less common precious metal coatings such as silver or platinum), and thus would not understand the term better if qualified with a designation of "1/40th." However, JVC noted that while weight ratio disclosures are "meaningless" to consumers, they are "relevant to manufacturers, who are bound to apply sufficient weights of precious metals at, or above, the accepted minimum standards."[109] According to JVC, the industry currently uses "rolled gold plate" without qualification for

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[105] Raykhtsaum noted that, unlike mechanical applications, electrolytic applications of gold or gold alloy increase the hardness of the surface layer, making it very resistant to wear. Thus, according to Raykhtsaum, recommended minimum thicknesses for gold electrolytic applications are significantly thinner than for mechanical applications. JVC comment 44, exh. 4 at 3 n.6.

[106] JVC comment 44, exh. 4 at 2-3, exh. 5.

[107] Moreover, according to Raykhtsaum, rhodium and ruthenium are particularly difficult to work with in this context. JVC comment 44, exh. 4 at 3-4.

[108] JVC comment 44, exh. 4 at 3-4.

[109] JVC comment 44 at 7 n.19.

products with both 1/20th and 1/40th weight ratios.[110] Therefore, JVC contended that allowing unqualified use of "rolled gold plate" for products with weight ratios as low as 1/40th would simplify and align the Guides with industry practice.[111] JVC further explained this revision would not harm consumers because when a surface application does not satisfy the recommended minimum thickness, sellers would disclose that durability is not assured.[112]

v. "Clad" and "Filled"

JVC recommended that the Commission define "clad" to avoid deception. Specifically, JVC stated marketers should not use the terms "clad," "filled," or any abbreviation to describe all, or part, of a product that has a surface-layer application of precious metal, unless a mechanical process has affixed an identified precious metal on all significant surfaces in such thickness and coverage that reasonable durability is assured, and the precious metal application constitutes at least 1/20th of the weight of the metal in the entire article.[113]

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[110] Section 23.4(c)(3) advises marketers to disclose the actual weight ratio of a "rolled gold plate" item when the application is not at least 1/20th of the weight of the metal in the entire article.

[111] Before submitting its proposed thickness standards, JVC had proposed a weight ratio standard of 1/40th for "rolled gold plate." JVC's initial proposal was based on a previous statement by Raykhtsaum indicating that reasonable durability for mechanical applications can only be assured if the application is of a minimum thickness, and that reasonable durability is achieved when the amount of precious metal in the product, regardless of the type of precious metal, constitutes at least 1/40th of the weight of the metal in the entire article. According to Raykhtsaum, at this minimum, products subjected to normal wear do not abrade or otherwise wear away to reveal the underlying metal, and thus perform well and meet consumer expectations. JVC comment 27, exh. 8 at 2. Upon further testing and study, JVC revised its recommendation to propose the thickness standards described above. JVC comment 44 at 6-8.

[112] JVC comment 44 at 7. TSI concurred with JVC's recommended weight ratios for mechanical applications of silver. Roundtable Tr. 119:14-120:14.

[113] Although TSI initially stated the terms "silver filled" and "sterling silver filled" should mean that a silver equivalent to a minimum thickness of one-half (1/2) micron (or approximately 20 millionths of an inch) throughout has been applied by any process on all significant surfaces, it subsequently revised its position to align with JVC's recommended delineation between mechanical and electrolytic applications, and concurred with JVC's recommended weight ratios for mechanical applications. TSI comment 16 at 3; Roundtable Tr. 119:14-120:14.

TSI did not discuss whether specific guidance is needed regarding "clad" as a term used to describe silver surface applications. TSI comment 16 at 3.

For these products, JVC stated the Guides should specify that reasonable durability is assured when the application's minimum thickness on any part of the product's surface is:

- **Gold or gold alloy**: 170 millionths of an inch (approximately 4.3 μ)
- **Platinum or platinum alloy**: 170 millionths of an inch (approximately 4.3 μ)
- **Palladium or palladium alloy**: 170 millionths of an inch (approximately 4.3 μ)
- **Silver**: 250 millionths of an inch (approximately 6.4 μ).

JVC cited to durability tests to support this proposal. As described above, the Leach Garner tests indicated that reasonable durability is assured at a thickness of 170 μin (4.32 μ) for mechanical applications of gold, platinum, palladium, and their alloys, and 250 μin (6.35 μ) for silver.[114] However, JVC explained that its recommendation for limiting use of "clad" and "filled" to describe an application that is at least 1/20th the weight of the entire article is based not on durability, but traditional industry standard.[115]

New Annex opposed this recommendation. Citing the American Heritage Dictionary definition, it stated that consumers commonly understand "clad" to mean a surface layer of precious metal applied over a less expensive metal base through a mechanical or electrolytic process. New Annex contended that clearly disclosing the precious metal's weight and purity should be sufficient to avoid consumer confusion or deception, rather than defining "clad" and similar terms in the Guides to mean specific percentages or thicknesses.[116] New Annex did not

[114] JVC cited the same test results to support its specified minimum thickness amounts for all four terms listed in its proposed guidance regarding mechanical applications ("rolled plate," "clad," "filled," and "bonded").

[115] JVC comment 44 at 10.

[116] New Annex comment 41 at 6.

provide evidence showing how consumers understand its proposed disclosure (*e.g.*, "clad with 50 mg of .999 pure gold").

vi. "Bonded"

JVC recommended that the Commission define "bonded." Specifically, it proposed that the Guides state marketers should not use "bonded" or any abbreviation to describe all or part of a product that has a surface-layer application of precious metal, unless it consists of an underlying sterling silver base, and a mechanical process has affixed an identified precious metal on all significant surfaces in such thickness and coverage that reasonable durability is assured. Further, precious metal application should constitute at least 1/40th of the weight of the metal in the entire article.[117]

JVC stated the Guides should specify that reasonable durability is assured when the application's minimum thickness on any part of the product's surface is:[118]

- **Gold or gold alloy**: 170 millionths of an inch (approximately 4.3 μ)
- **Platinum or platinum alloy**: 170 millionths of an inch (approximately 4.3 μ)
- **Palladium or palladium alloy**: 170 millionths of an inch (approximately 4.3 μ)
- **Silver**: 250 millionths of an inch (approximately 6.4 μ).

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[117] Although TSI initially stated the terms "silver bonded" and "sterling silver bonded" should mean that a silver equivalent to a minimum thickness of one-half (1/2) micron (or approximately 20 millionths of an inch) throughout has been applied by any process on all significant surfaces, it subsequently revised its position to align with JVC's recommended delineation between mechanical and electrolytic applications, and concurred with JVC's recommended weight ratios for mechanical applications. TSI comment 16 at 3; Roundtable Tr. 119:14-120:14.

[118] As noted above, JVC cited the same test results from Leach Garner to support its specified minimum thickness amounts for all four terms listed in its proposed guidance regarding mechanical applications ("rolled plate," "clad," "filled," and "bonded"). As with "rolled plate," "clad," and "filled" applications, JVC noted the technological difficulties involved in mechanical applications of platinum or palladium but stated that efforts are underway to overcome those difficulties. JVC comment 44 at 9.

JVC explained that, although the current Guides do not mention "bonded," the industry uses this term to describe a precious metal mechanically bonded to sterling silver, where the silver application is at least 1/40th the weight of the article.[119] JVC noted that the British Hallmarking Council determined in 2012 that use of the term "bonded gold" would be permitted, given its similarity to other terms ("gold plated" and "rolled gold") already allowed under the British statute.[120] JVC acknowledged that consumers generally are not familiar with the term but stated they will become increasingly familiar as sellers actively market bonded products and engage in consumer education.[121]

vii. "Over"

Sterling/Richline separately recommended that the Commission add guidance regarding the term "over" (*e.g.*, "gold over silver"), in addition to "plate(d)" and "electroplate(d)." It explained this term has become common in the market and, "without clear delineation of its meaning, it will continue to be the single most misleading term to the consumer."[122]

JVC also explained that the phrase "gold over" is typically used to describe products with a very thin application of gold in amounts not sufficient to qualify for a term like "electroplated." Noting that its consumer study did not specifically test "gold over," JVC stated consumers likely think this phrase describes a product that is equivalent to, if not better than, a gold electroplated item.[123] In JVC's view, terms such as "gold over silver" and "platinum over silver" raise concerns because consumers expect the first precious metal they hear in a description to be the

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[119] JVC comment 27 at 15; JVC comment 44 at 9.

[120] JVC comment 27, exh. 12 at 1.

[121] JVC comment 44 at 9.

[122] Sterling/Richline comment 21 at 4.

[123] Roundtable Tr. 143:3-17.

predominant metal. JVC argued that describing something in this manner is therefore inappropriate.[124] It thus recommended that the Guides advise marketers to list the predominant metal first when describing products containing more than one precious metal.[125]

viii. Other Terms

JVC recommended deleting guidance on the terms "flashed," "washed," and "overlay." It stated the industry no longer uses these "archaic" terms with any frequency, and most consumers do not understand them because the words do not convey specific information about precious metal content and lack a plain English meaning.[126] In JVC's view, to the extent marketers reference these terms, they should disclose the amount and purity of the precious metal, as well as that durability is not assured.[127]

JVC also recommended deleting the note to Section 23.4(b), which states that the provisions regarding use of the word "gold" or any abbreviation are applicable to "Duragold," "Diragold," "Noblegold," "Goldine," "Layered Gold," or "any words or terms of similar meaning." JVC contended the Note is unnecessary because the industry no longer uses these terms.[128]

In contrast, TSI included "overlay" among the list of terms for which it requested guidance (*e.g.*, "silver overlay" and "sterling silver overlay"). TSI stated that these and other terms are prevalent in the industry and customarily used as accepted descriptions for plated silver/sterling silver jewelry.[129]

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[124] Roundtable Tr. 141:9-22.

[125] Roundtable Tr. 11:17-22.

[126] JVC comment 44 at 10.

[127] Roundtable Tr. 124:16-125:12.

[128] JVC comment 27 at 11.

[129] TSI comment 16 at 3.

(b) Commenters Disagreeing with JVC's Proposal.

Two commenters (Poteat and New Annex) agreed with many of the principles underlying the JVC recommendations. However, Poteat argued against changing the Guides. New Annex rejected JVC's proposed standards and terminology in favor of guidance that would require marketers to disclose the weight and purity of precious metal coatings. In contrast, Gold Brand Holding argued that the Commission should prohibit marketers from using "gold" to describe any coated product, irrespective of application method, thickness, or weight.

No Changes Needed. Poteat shared many of the concerns motivating the JVC proposal. She stated no plating method can achieve a permanent coating with any level of casual wear, and all surface applications eventually wear off irrespective of their initial thickness. In addition, she emphasized that plated products should not be confused or compared with items that have higher precious metal content, nor should hollow products be confused or compared with solid alloys because plated and hollow items are "simply high end costume jewelry."[130]

However, Poteat argued the Guides already contain "adequately simple nomenclature and explicit minimums." She noted that "language is too fluid and manufacturing technology too rapidly paced" for the Guides "to accept or bend to the whims of industry jargon today."[131] In Poteat's view, amending the Guides to include "new jargon . . . may in fact only serve to mislead and cause more unfair and deceptive practices than it prevents . . . ."[132]

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[130] Poteat comment 5 at 5. Separately, Poteat reported that a certain type of gold tubing manufactured through an electroforming process has resulted in a filled product that often has higher-karat plating. Poteat stated that although manufacturers disclose this fact at the point of sale, misleading marketing leads consumers to purchase these items mistakenly believing them to be solid gold. Poteat contended this violates the Guides, but did not indicate that any amendments would be necessary to address the issue. *Id.* at 6.

[131] *Id.* at 5.

[132] *Id.* at 6.

Alternate Approach: Disclose Weight and Purity. New Annex agreed with JVC that the Guides should take a unified approach to surface applications, but advocated against "rigid minimums" set by weight ratio or coating thickness. Citing JVC's Harris study, New Annex stated that application methods are not meaningful to consumers and contended that marketers "should not be limited to the use of terms that have little or no relevance to consumers." Furthermore, "technological innovations continue to generate new methods of applying increasingly expensive precious metals," and, in New Annex's view, "consumer understanding is not furthered by the use of an ever expanding array of rigidly defined nomenclature."[133]

In addition, New Annex stated that many factors affect the durability of a precious metal application, not just the plating thickness. According to New Annex, durability can be greatly influenced by the type of surface metal, the substrate metal, and protective coatings applied over the surface metal. Indeed, New Annex contended that a thinner layer of surface metal, treated with a protective coating, can prove far more durable than a thicker, untreated surface application. Moreover, an item's durability is necessarily predicated on its intended use, and technological advances will likely provide greater durability even at lower thicknesses or weights.[134] New Annex argued that "discussions regarding durability are likely to result in consumer confusion," and that "artificial" minimums by thickness or weight are not appropriate. Instead, such issues should be addressed through "the terms and conditions of any product guarantees" between the marketer and consumer.[135]

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[133] New Annex comment 41 at 2.

[134] *Id.* at 5, 7.

[135] New Annex comment 41 at 7-8. JVC acknowledged that these other factors (type of plating metal, substrate metal, presence of protective coating over the precious metal coating) influence durability, but stated that, based on its research, plating thickness was the primary factor affecting durability. Roundtable Tr. 99:20-100:14.

Specifically, New Annex contended that a precious metal's weight and purity are the most important attributes to consumers because they determine a product's value. Therefore, New Annex argued that the Guides should not allow the use of "rolled gold plate" and other terms consumers do not understand to describe plated or coated items, and the Guides should not define any such terms (*e.g.*, "flashed," "washed," "overlay"). Instead, the Commission should advise marketers to disclose the weight and purity of the precious metal in a simple manner that consumers can readily understand.[136] In New Annex's view, upon disclosing those key elements, marketers should be permitted to utilize any term that fairly describes the method used to affix the precious metal.[137] New Annex did not provide any evidence showing how consumers understand its proposed disclosures.

Prohibit Use of "Gold" for Any Coated Product. Gold Brand Holding argued that marketers should not be allowed to use the word "gold" to describe any product that has only a surface layer of gold because it misleads consumers into believing they are purchasing a gold item, when in fact it is mostly brass, silver, or another metal. Gold Brand Holding stated consumers cannot tell the difference between various coating methods, and "it has never been proven which method will last longer given the same thickness." In its view, "gold is a powerful word" that "should be used only when the majority of the metal is gold," and marketers should therefore be prohibited from using "rolled gold plate," "bonded gold," "plated gold," and similar terms to describe products with surface applications.[138]

3) Analysis and Proposed Guidance

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[136] New Annex comment 41 at 3-4.

[137] *Id.* at 6.

[138] Gold Brand Holding comments 14, 15.

Based on the record summarized above, the Commission proposes three revisions. First, to address the deceptive use of precious metal terms for products that are not composed throughout of the advertised metal, the Commission proposes to keep the guidance concerning unqualified gold claims, and extend the same principles to silver and platinum. Second, despite concerns that consumers may not understand terms describing surface applications of gold consistent with the Guides, the Commission proposes to retain its longstanding guidance for gold and vermeil surface applications with updates based on new durability testing. Finally, the Commission proposes a new rhodium plating disclosure. As discussed below, the Commission declines to propose new guidance regarding terms used to describe surface applications of silver and all six PGMs (platinum, palladium, rhodium, ruthenium, iridium, osmium). It also declines to propose guidance for new terms such as "clad" and "bonded."

(a) Unqualified Precious Metal Claims Regarding Coated Products

To prevent deception, the Guides advise marketers not to use unqualified gold terms or abbreviations to describe coated products.[139] An unqualified claim implies the coated item is composed throughout of that precious metal. Therefore, it would be deceptive for a marketer to use "14K gold" to describe a plated bracelet without adequately qualifying this term to indicate the gold is only on the surface. Accordingly, the Commission retains the existing guidance in Section 23.4(b)(3).

The same principles apply to unqualified claims about products coated with silver or platinum. Therefore, the Commission proposes extending its existing guidance on gold to silver and platinum. Specifically, the proposed new guidance in Sections 23.6(b)(3) and 23.7(b)(1)

[139] 16 CFR 23.4(b)(3).

(now renumbered as Sections 23.5(b)(3) and 23.6(b)(1)) advises marketers against using silver or platinum terms to describe all, or part of, a coated product unless they adequately qualify the term to indicate the product has only a surface layer of the advertised precious metal.[140]

(b) Qualifying Claims for Coated Products

Under Section 5 of the FTC Act,[141] a claim is deceptive if it materially misleads reasonable consumers. Therefore, to prevent deceptive acts and practices pursuant to Section 5, the Commission's guidance must be based on how consumers reasonably interpret claims. Given this legal framework, the Guides provide important information that helps prevent deception. Specifically, the Guides set forth numerous qualifying terms, such as "gold filled" and "gold plate," that convey that products are not comprised throughout of precious metals.

However, the Commission is concerned that its guidance regarding specific surface applications is not based on consumer understanding of these applications or consumer expectation of durability. In fact, consumer perception evidence indicates that a large number of consumers are unfamiliar with these terms. For instance, JVC's Harris study revealed over 60 percent of respondents had never heard of "rolled gold plate" and "vermeil"; over 50 percent had never heard of "gold washed"; 43 percent were not familiar with "gold plate"; 53 percent were not familiar with "gold filled"; and 66 percent were not familiar with "gold electroplate." Given this lack of familiarity, consumers are unlikely to distinguish between terms or to understand that they represent different application methods and amounts of precious metals. Moreover, the

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[140] This guidance would appear in the separate sections for silver and platinum, which specifically address misrepresentations regarding those precious metals. The proposed guidance does not apply to claims about products coated with PGMs other than platinum (iridium, palladium, ruthenium, rhodium, osmium) because the record indicates consumers do not have set expectations regarding these other PGMs. *See* JVC comment 27 at 17. Moreover, the record indicates several PGMs are not currently used in mechanical surface applications. *See* JVC comment 44, exh. 4 at 2-4, exh. 5. However, the Commission proposes separate guidance to address rhodium surface applications on products marked or described as precious metal. *See* III.A.3(c).

[141] 15 U.S.C. §45.

record is devoid of evidence about consumers' expectations regarding the durability of these products.

Despite this incomplete record, the Guides advise marketers that they can describe products with these and other terms as long as the surface coating of gold alloy "is of such thickness and extent of surface coverage that reasonable durability is assured."[142] Similarly, three "safe harbors" provide specific thresholds for minimum thicknesses, which meet the industry's standard for reasonable durability.[143] The Commission also has concerns about this guidance because, while the safe harbors are based on thickness and extent of coverage, additional factors may affect durability of a precious metal application, such as protective coatings applied over the surface metal.

Nevertheless, there is no evidence that the Commission's guidance has been ineffective at preventing consumer deception, *i.e.*, that consumers are not getting what they expect when they purchase products with a surface application of precious metal. Therefore, the Commission is reluctant to modify the longstanding guidance upon which marketers have relied. Accordingly, the Commission proposes to retain the guidance in 23.4 (now renumbered as Section 23.3) relating to surface applications of gold, with the updates to the safe harbors in 23.4(c) (now 23.3(c)) discussed below. The Commission bases these proposed updates on tests provided by JVC designed to assess the relative wear rates of different thicknesses of precious metals. At the

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[142] In various places, the current Guides refer both to "reasonable durability," which is not defined, and "substantial thickness," which is defined as "all areas of the plating are of such thickness as to assure a durable coverage of the base metal to which it has been affixed." *See, e.g.*, Section 23.4(c)(2), fn 3 (mechanical plating) and 23.6(d) (silver). To clarify that reasonable durability is tied to consumer expectation, the Commission proposes defining "reasonable durability" as "all areas of the plating are of such thickness as to assure coverage that reasonable consumers would expect from the surface application." *See, e.g.*, Proposed Section 23.3(b)(4), fn 2. This proposed definition incorporates, and therefore replaces, the guidance regarding "substantial thickness" where it appears in the gold and silver sections.

[143] Section 23.4(c)(2)-(4).

end of this document, the Commission seeks comment on these proposed revisions, as well as consumers' understanding of the array of terms used to describe these products and consumer expectations regarding durability of coated products.

For the reasons discussed above, however, the Commission lacks a basis to propose guidance for new terms, such as "clad" and "bonded" for gold, or to propose thickness and weight thresholds for applications of silver and the six PGMs (platinum, palladium, rhodium, ruthenium, iridium, osmium). Given the potential for confusion, this area is ripe for further consumer perception research and one that the Commission will continue to monitor. The Commission reminds marketers that their claims remain subject to Section 5 of the FTC Act. Thus, they must qualify claims appropriately to avoid consumer deception and must ensure they can substantiate any reasonable interpretations of their claims.

i. "Gold Plate(d)"– Any Application Process

Section 23.4(c)(2) advises marketers that they may use the term "gold plate" without qualification (other than fineness) to describe products on which at least 10K gold has been applied by any process (electrolytic or mechanically plated) when coatings have a minimum thickness throughout equivalent to one-half (1/2) micron of fine gold.[144] However, new durability testing discussed below suggests that the minimum thicknesses for coatings that assure durability depend on the application method. Specifically, mechanically-applied layers require more precious metal to ensure industry standard durability.[145] Moreover, as discussed in detail below, products coated with electrolytic applications may require plating in higher karat gold

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[144] When creating this safe harbor for any process, the Commission reasoned that "consumers are unlikely to distinguish between products on the basis of method of plating used and are more concerned with durability." 61 FR 27178, 27187 (1996).

[145] JVC comment 27 at 14; JVC comment 44, exh. 4. For example, JVC's testing data indicates that, while 15 µin. of gold is enough to ensure the durability of an electrolytic application, 170 µin. is needed for a mechanical application. JVC comment 44, exh. 4. The durability of a 30 µin. layer thus depends on the application method.

than mechanical applications to avoid tarnishing. Therefore, the minimum coating thresholds in Section 23.4(c)(2) may not be appropriate for either mechanical or electrolytic applications.[146]

Accordingly, the Commission proposes eliminating Section 23.4(c)(2). It does not, however, propose advising marketers to use the term "gold plate(d)" only for electrolytic products as recommended by JVC. The Commission lacks evidence that consumers interpret "gold plate(d)" to refer only to electroplating. Instead, it proposes adding the word "plating" to the sections providing safe harbors for mechanical and electrolytic applications. Thus, a marketer should refer to the appropriate section (mechanical or electrolytic) for guidance on using "plated" to describe a product.[147]

ii. "Gold Electroplate(d)," "Gold Plate(d)" – Electrolytic Application Process

The Commission proposes modifying the safe harbor for "gold electroplate(d)" claims.[148] Section 23.4(c)(4) advises marketers that they may use these terms to describe products when an electrolytic process affixes gold, or gold alloy of not less than 10 karat fineness, which has a minimum thickness throughout equivalent to 0.175 microns (approximately 7/1,000,000ths of an inch) of fine gold on all significant surfaces.[149]

Based on test data, the Commission proposes revising this safe harbor to advise marketers that they may non-deceptively use these terms to describe products with an electrolytic

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[146] At the end of this document, the Commission requests comment on whether retaining the thresholds set forth in Section 23.4(c)(2) is necessary to prevent deception.

[147] This section currently advises marketers that they may mark the exact thickness of an item if an equally conspicuous designation of the plating's karat fitness immediately follows (*e.g.*, "2 microns 12 K. gold plate" for an item plated with 2 microns of 12 karat gold). 16 CFR 23.4(c)(2). The Commission proposes to include this guidance in both the mechanical (proposed 23.4(c)(2)) and electrolytic (proposed 23.4(c)(3)) safe harbors but with updated numbers to reflect JVC's testing.

[148] As discussed above, the Commission proposes to add the terms "plate" and "plated" to this section to provide guidance for marketers using this term to describe an electrolytic application.

[149] 16 CFR 23.4(c)(4).

application of gold, or gold alloy of at least 22 karat fineness, which has a minimum coating thickness of 15 millionths of an inch (approximately 0.381 microns).[150] Citing Tanury's data, JVC suggested a minimum coating thickness of 7 millionths of an inch (approximately 0.175 microns) of gold, or gold alloy of at least 22 karats.[151] However, JVC also submitted data from Leach Garner, which recommended a minimum of 15 millionths of an inch, without specifying whether it allowed for gold alloy plating as low as 10 karats.[152] Because this is a safe harbor, the Commission proposes the higher number. At the end of this document, it asks whether an electrolytic plating with the lower number (7 millionths of an inch) would be adequate to ensure reasonable durability.

This proposed guidance eliminates the language in the current safe harbor that gold or gold alloy coatings of at least 10 karats should have a minimum thickness "equivalent" to a certain amount of fine gold.[153] The record indicates that using lower-karat gold (*e.g.*, 10 karats) for electrolytic applications affects the coating's appearance and tarnish resistance.[154] Applying greater amounts of 10 karat gold would not ensure the surface layer retains its original appearance.[155] The Guides' "equivalent" language may encourage marketers to layer more low-karat gold alloy on a product to meet the minimum. As a result, marketers may use the same terms to describe products with material differences in quality and durability, even though they contain the same amount of gold. Therefore, the Commission proposes to eliminate this

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[150] Proposed Section 23.3(c)(3).

[151] JVC comment 44, exh. 6 at 2-3. Tanury's testing samples apparently used 23 karat gold.

[152] *Id.*, exh. 5 at 6. For the mechanical applications, Leach Garner used 10 karat and 14 karat gold.

[153] 16 CFR 23.4(c)(4) (emphasis added).

[154] JVC comment 44, exh. 6 at 2; Rolly comment 11.

[155] In contrast, the record shows that products composed throughout of gold or gold alloy of 10 karats or more meet consumer expectations regarding the properties associated with higher content jewelry (*e.g.*, corrosion and tarnish resistance).

language and set the safe harbor at 15 millionths of an inch using 22 karats. The Commission seeks additional information to determine whether an electrolytic application of 7 millionths of an inch of 22 karat gold would be adequate to assure reasonable durability.

iii. "Heavy Electroplate(d), Heavy Plate(d)" – Electrolytic Application Process

The Commission proposes revising safe harbor 23.4(c)(4), which addresses products described as "heavy electroplate(d)." This section currently advises that marketers may use this term to describe products when the electroplating meets the 10 karat minimum fineness and has a minimum thickness throughout equivalent to two-and-one-half (2½) microns (or approximately 100 millionths of an inch) of fine gold.

Based on the testing described above, the Commission proposes to revise the safe harbor to state that marketers may non-deceptively describe a product as "heavy electroplated," etc., when a product is coated with gold or gold alloy of at least 22 karats of 100 millionths of an inch (approximately 2.54 microns).[156] For the reasons discussed above, this proposed guidance eliminates the "equivalent" provision.

iv. "Vermeil"

The Commission proposes to retain the guidance for "vermeil" with some modifications. Section 23.5(b) provides a safe harbor for products marked or described as "vermeil" when a sterling silver base has been coated with gold, or gold alloy of at least 10 karats, with a minimum thickness throughout "equivalent" to 100 millionths of an inch (approximately 2.54 microns) of 24 karat gold.[157]

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[156] *See* Proposed 23.3(c)(3). As discussed above, the Commission proposes to add the term "plated" to this section to provide guidance for marketers using this term to describe a heavy electrolytic application.

[157] 16 CFR 23.5(b).

Based on JVC's testing, the Commission proposes to modify this safe harbor by specifying that the gold or gold alloy consist of at least 22 karat fineness.[158] For the reasons described above, this proposed guidance eliminates the "equivalent" provision.

v. "Gold Filled," "Gold Overlay," "Gold Plate(d)," and "Rolled Gold Plate" – Mechanical Application Process

The current safe harbor for "gold filled," "gold overlay," and "rolled gold plate" advises marketers only to use these terms to describe products when they have mechanically affixed a gold alloy (of at least 10 karats) plating of "substantial thickness" on all significant surfaces.[159] Rather than quantifying "substantial thickness," the Guides state all plating areas should be sufficiently thick to assure durable coverage.[160] Additionally, the Guides specify that to use these terms without qualification (other than fineness), the coating should constitute at least one twentieth ($1/20^{th}$) of the metal's weight in the entire article. For items that do not meet this weight ratio (*e.g.*, products with a $1/40^{th}$ ratio), marketers can still use the terms "gold overlay" and "rolled gold plate" (but not "gold filled"), but they should accurately disclose the portion of the weight of the metal in the entire article accounted for by the plating with an equally conspicuous fraction (*e.g.*, "$1/40^{th}$ 12 Kt. Rolled Gold Plate").[161]

Based on new durability testing, JVC asserted the Guides should specify a minimum coating thickness of 170 millionths of an inch (approximately 4.3 microns). At this thickness, products provided acceptable wear characteristics when subjected to normal wear conditions.

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[158] *See* Proposed Section 23.4(b). Although the current guidance does not specify an application method, Section 23.5's safe harbor example sets a minimum thickness indicating an electrolytic application. According to JVC, the industry appears to use this term only for electrolytic applications. JVC comment 44, exh. 4 at 2 n.1.

[159] 16 CFR 23.4(c)(3).

[160] It also states that the thickness does not necessarily have to be uniform for all items or different surface areas of individual items, since items may comprise surfaces and parts subject to different degrees of wear. 16 CFR 23.4(c)(2) n.3.

[161] This disclosure must immediately precede the karat fineness designation. 16 CFR 23.4(c)(3).

Further, JVC stated that the Guides should advise marketers that they may use the unqualified term "rolled gold plate" even for products with weight ratios as low as 1/40th. According to JVC, this change would align the Guides with industry practice. It also noted that consumers do not understand the term "rolled gold plate," and therefore are unlikely to understand it any better when qualified with "1/40."

Based on JVC's testing, the Commission proposes to modify the safe harbor to advise marketers that they may non-deceptively use the terms "gold overlay,"[162] "rolled gold plate," "gold plate,"[163] "gold plated," and "gold filled" to describe a product with a minimum coating thickness of 170 millionths of an inch (4.3 microns).[164] Despite JVC's comment, however, the Commission proposes to retain the advice that marketers using these terms (other than gold filled)[165] should disclose the actual weight ratio of the item when the plating does not constitute at least 1/20th of the weight of the metal in the entire article (*e.g.*, "1/40th 12 Kt. R.G.P."). JVC's arguments for eliminating this guidance are not based on consumer expectations of reasonable durability. Moreover, the record lacks any evidence that this longstanding guidance has resulted in consumer deception. At the end of this document, the Commission seeks comment on whether this proposal is necessary to prevent deception.

vi. Other Terms Used to Describe Surface Applications of

[162] JVC's comment only addressed the term "rolled gold plate" (and not "gold overlay") because it suggested the Commission delete the guidance for "overlay." It argued this term is no longer used. Other commenters, however, recommended keeping it. Marketers appear to use this term to describe jewelry coated with gold, silver, or platinum. Moreover, JVC's consumer perception survey indicates that the numbers of respondents that considered "overlay" to be helpful (84 percent) or were familiar with this term (44 percent) are similar to those for a term the same commenters recommended for inclusion in the amended Guides – "filled" (88 percent found it helpful; 46 percent were familiar). JVC comment 27, exh. 2 at 27-28.

[163] As discussed above, the Commission proposes to add the terms "plate" and "plated" to this part of the safe harbor.

[164] Proposed Section 23.3(c)(2).

[165] The Commission proposes to retain the current guidance that marketers should use the term "gold filled" only for products meeting the 1/20th weight ratio.

Gold

As discussed below, the Commission proposes to retain the guidance for "flashed" and "washed," and to delete the guidance for "Duragold," "Diragold," "Noblegold," "Goldline," and "Layered Gold." It declines to propose guidance for new terms, such as "clad," "bonded," and "over," absent evidence demonstrating how consumers perceive these terms.

Flashed and Washed. Despite some commenters' suggestions that the Commission eliminate the terms "flashed" and "washed" from the Guides, the Commission proposes to retain them.[166] Marketers still appear to use these terms to describe coated jewelry.[167] Moreover, with regard to the term "washed," JVC's consumer perception survey indicates that the percentages of respondents that were familiar with this term or considered it to be "helpful" are comparable to those for other terms JVC recommended for inclusion.[168] Importantly, the record does not demonstrate they are causing confusion.

"Duragold," Diragold," "Noblegold," "Goldine," and "Layered Gold." The Commission proposes to delete the Note to Section 23.4(b), which discusses use of the words "Duragold," "Diragold," "Noblegold," "Goldine," "Layered Gold," and "any words or terms of similar meaning," because the record indicates these terms are no longer used to describe jewelry. However, it appears some marketers describe coated products as "gold layered," which sounds similar to "layered gold." The Commission therefore poses several questions to obtain additional information regarding this term.

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[166] Proposed Section 23.3(c)(3).

[167] *See, e.g.*, www.macys.com; www.ursojewelry.com.

[168] JVC comment 27, exh. 2 at 27-28.

"Clad," "Bonded," and "Over." Some commenters requested that the Commission propose guidance for the terms "clad," "bonded," and "over," which the Guides currently do not address. Commenters explained that these terms have become commonplace and that the lack of guidance results in consumer confusion. The Commission, however, lacks evidence regarding how consumers perceive these terms, and therefore lacks a basis to provide guidance. Accordingly, the Commission asks several questions to determine whether additional guidance is needed to help marketers avoid deception.

(c) Rhodium Plating Disclosure

Finally, the Commission proposes a new section advising marketers to disclose rhodium surface applications on products marked or described as precious metal, such as rhodium-plated items marketed as "white gold" or silver.[169] The record indicates that it is now common to plate rhodium over another precious metal to enhance a product's white color, especially for white gold (which typically has a pale, yellow color) and sterling silver. This plating, however, wears away, resulting in a yellow product (in the case of white gold) or a tarnished product (in the case of sterling silver). Thus, consumers may learn too late that their white metal jewelry is, in fact, yellow or off-white. Although JVC's survey indicates that the vast majority of respondents want to know if this procedure had been done, most consumers are unaware it occurs.[170]

Because consumers are likely to be deceived if they unknowingly buy rhodium-plated jewelry that will lose its white color, the Commission proposes advising marketers to make a rhodium-plating disclosure. Much like the guidance advising marketers to disclose gemstone treatments that are not permanent or create special care requirements, the proposed disclosure

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[169] Proposed Section 23.7. This proposed change would more closely align the Guides with CIBJO standards, which require the disclosure of rhodium plating over white gold.

[170] JVC comment 27, exh. 2 at 32, exh. 3 at 13.

should help prevent deception by notifying consumers that the surface of the product, and therefore the color, may not be permanent.[171]

B. Products Containing More than One Precious Metal

1) Current Guides

The current Guides' general deception section states "[i]t is unfair or deceptive to misrepresent the . . . metallic content . . . or any other material aspect of an industry product."[172] However, the Guides do not specifically address the marking or description of items containing two or more precious metals.

2) Comments

One commenter addressed this issue. According to JVC, products containing two or more precious metals are common.[173] Some have a thin surface layer of one precious metal entirely covering another, while others consist primarily of one precious metal with accents made of a different one. Marketing descriptions for such products often feature the name of the more valuable precious metal, irrespective of whether it actually predominates. For example, earrings described as "18k yellow gold and sterling silver" or "gold over silver" may contain far more silver than gold. JVC submitted data showing that 74 percent of consumers surveyed agreed with a statement indicating that the order in which marketers list metal signifies their relative quantities.[174] Accordingly, JVC recommended adding guidance advising that it may be

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[171] The Commission does not propose advising a minimum thickness for rhodium surface applications because the record indicates that, even when applied in the amounts commenters suggested (2 or 3 µin.), the plating eventually wears away.

[172] 16 CFR 23.1.

[173] JVC comment 27 at 5, 17-18.

[174] JVC comment 27, exh. 2 at 7, 30.

misleading for a quality stamp or product description to list the precious metals in any order other than in the order of their relative weight in the product.

3) Analysis and Proposed Guidance

Because consumer perception evidence suggests that when marketers describe an item as having two or more precious metals, consumers assume the metal listed first is the more dominant metal by weight, the Commission proposes a new section, which states it is unfair or deceptive to misrepresent the relative quantity of each precious metal in a product that contains more than one precious metal.[175] This proposed section advises marketers generally to list precious metals in the order of their relative weight in the product from greatest to least (*i.e.*, leading with the predominant metal). It also provides examples of marking or descriptions that may be misleading, *e.g.*, use of the term "Platinum + Silver" to describe a product that contains more silver than platinum by weight. In some contexts, however, consumers likely understand that a product contains a greater amount of one metal, even though another metal is listed first. For example, "900 platinum over silver" likely conveys that the product has a mere surface layer application of platinum. Similarly, "14k gold-accented silver" likely signals that a product contains more silver than gold, even though the term gold appears first. Therefore, the proposed Guides advise that listing metals in order of relative weight is unnecessary when the context makes it clear that the metal listed first is not predominant. The Guides include examples illustrating this point.

C. Alloys with Precious Metals in Amounts Below Minimum Thresholds

1) Current Guides

[175] *See* Proposed Section 23.8.

As described below, the Guides advise marketers to avoid using the words "gold," "silver," "platinum," or their abbreviations to describe or mark all or part of a product unless it contains the precious metal in an amount that meets or exceeds the levels specified in Sections 23.4 (gold), 23.6 (silver), and 23.7 (platinum group metals).

(a) Gold

Section 23.4 provides that it is unfair or deceptive to misrepresent the presence, quantity, or karat fineness of gold or gold alloy in an industry product.[176] Among other things, this section states it may be misleading to use the word "gold" or any abbreviation "to describe all or part of an industry product composed throughout" of a gold alloy unless it is immediately preceded by an equally conspicuous designation of the alloy's karat fineness.[177] This section also states it may be misleading to use the word "gold" or any abbreviation, or a quality mark implying gold content (*e.g.*, 9 karat), "to describe all or part of an industry product that is composed throughout" of gold alloy of less than 10 karat fineness.[178]

As an example of markings and descriptions consistent with these principles, Section 23.4 provides that "an industry product or part thereof" that is composed throughout of a gold alloy of at least 10 karat fineness may be marked and described as "gold" when the word "gold," wherever it appears, is immediately preceded by an equally conspicuous designation of the alloy's karat fineness (*e.g.*, "14 Karat Gold," "14 K. Gold," or "14 Kt. Gold"). The product may

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[176] 16 CFR 23.4(a).

[177] 16 CFR 23.4(b)(2). Unqualified use of the word "gold" or any abbreviation may be misleading if used to describe all or part of an industry product that is not composed throughout of "fine (24 karat) gold." 16 CFR 23.4(b)(1).

[178] 16 CFR 23.4(b)(9).

also be marked and described by a designation of the alloy's karat fineness unaccompanied by the word "gold" (*e.g.*, "14 Karat," "14 Kt.," or "14 K.").[179]

(b) Silver

Section 23.6 provides that it is unfair or deceptive to misrepresent that an industry product contains silver.[180] It also states it is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as "silver," "solid silver," "Sterling Silver," "Sterling," or with the abbreviation "Ster.," unless it is at least 925/1,000ths pure silver.[181]

(c) Platinum Group Metals

Section 23.7 provides that it is unfair or deceptive to use the words "platinum," "iridium," "palladium," "ruthenium," "rhodium," and "osmium" (referred to as the "Platinum Group Metals" (PGM)), or any abbreviation, to mark or describe all or part of an industry product if doing so misrepresents the product's true composition.[182] This section advises using different disclosures depending on the percentage of pure platinum the product contains and the extent to which it is alloyed with other PGMs. For example, it may be misleading to use the word "platinum" or any abbreviation to mark or describe any product that is not composed throughout of at least 500 parts per thousand pure platinum.[183] The section also states that, when describing a product that is not composed throughout of at least 850 parts per thousand platinum, it may be misleading to use the word "platinum" or any abbreviation with a number indicating the parts per thousand of pure platinum without disclosing the number of parts per thousand of

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[179] 16 CFR 23.4(c)(1).

[180] 16 CFR 23.6(a).

[181] 16 CFR 23.6(b). Section 23.6 also states it is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as "coin" or "coin silver" unless it is at least 900/1,000ths pure silver. 16 CFR 23.6(c).

[182] 16 CFR 23.7(a).

[183] 16 CFR 23.7(b)(3).

other PGMs contained in the product (*e.g.*, "600Plat.").[184] In addition, this section states it may be misleading to use the word "platinum" or any abbreviation accompanied by a number or percentage indicating the parts per thousand of pure platinum to describe all or part of an industry product that contains between 500 and 850 parts per thousand pure platinum, but not at least 950 parts per thousand PGM (*e.g.*, "585 Plat."), without a clear and conspicuous disclosure, immediately following the name or description of such product: (i) of the full composition of the product (by name and not abbreviation) and percentage of each metal; and (ii) that the product may not have the same attributes or properties as traditional platinum products.[185] The marketer need not make the second disclosure, however, if it has competent and reliable scientific evidence that the product does not materially differ regarding attributes or properties material to consumers from any product containing at least 850 parts per thousand pure platinum. These properties include durability, luster, density, scratch resistance, tarnish resistance, hypoallergenicity, ability to be resized or repaired, and retention of precious metal over time.[186]

Section 23.7 provides examples of markings and descriptions consistent with these principles. One example states that an industry product with 850, 900, or 950 parts per thousand pure platinum may be marked "platinum," provided that the platinum marking is preceded by a number indicating the amount of pure platinum in parts per thousand.[187] Another states that a product with at least 950 parts per thousand PGM (including at least 500 parts per thousand pure

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[184] 16 CFR 23.7(b)(2). Unqualified use of the word "platinum" or any abbreviation may be misleading if used to describe all or part of an industry product that is not composed throughout of 950 parts per thousand pure platinum 16 CFR 23.7(b)(1).

[185] 16 CFR 23.7(b)(4). This provision specifies that, when using percentages to qualify platinum representations, marketers should convert the amount in parts per thousand to a percentage accurate to the first decimal place (*e.g.*, "58.5% platinum, 41.5% cobalt"). 16 CFR 23.7(b)(4) Note.

[186] 16 CFR 23.7(b)(4).

[187] 16 CFR 23.7(c)(3). A product with at least 950 parts per thousand pure platinum may also be marked or described simply as "platinum." 16 CFR 23.7(c)(2).

platinum) may be marked "platinum," provided that the mark of each PGM constituent is preceded by a number indicating the amount of each PGM in parts per thousand (*e.g.*, "600Pt.350Ir." or "550Plat.350Pall.50Irid.").[188] A third example states a product with 500 to 850 parts per thousand pure platinum, but not at least 950 parts per thousand PGM, may be marked or stamped accurately with a quality marking using parts per thousand and standard chemical abbreviations (*e.g.*, "585 Pt., 415 Co.").[189]

2) Comments

The 2012 FRN asked whether the Commission should amend the Guides to provide advice on how to describe alloy products that contain precious metals in amounts below the Guides' minimum thresholds (*e.g.*, items made of 6 karat gold). After reviewing responses, the FTC conducted a June 19, 2013 roundtable and sought additional comments.[190]

As discussed below, most commenters stated that the Commission should provide additional guidance,[191] but disagreed on what that guidance should be. Several commenters stated marketers should be permitted to describe and stamp products accurately using the precious metal name or abbreviation, even when they contain amounts below the Guides' thresholds. They argued that doing so will allow consumers to make informed purchases and avoid confusion. Others acknowledged that some below-threshold alloys may perform comparably to products that satisfy the Guides' minimums, but stated the Commission should keep the current thresholds, to preserve a distinction between these alloys and traditional "fine

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[188] 16 CFR 23.7(c)(4).

[189] 16 CFR 23.7(c)(5).

[190] 78 Fed. Reg. 26289 (May 6, 2013). A transcript of the June 19, 2013 public roundtable ("Roundtable") is available at http://www ftc.gov/sites/default/files/documents/public_events/jewelry-guides-roundtable/transcript.pdf.

[191] *E.g.*, MJJ Brilliant Jewelers (MJJ) comment 9 at 4. In contrast, JEA stated that the current Guides provisions concerning precious metals are clear and concise, and do not require revision. JEA comment 13 at 10.

jewelry." JVC submitted a joint comment with several jewelry trade associations urging the Commission to maintain the thresholds, and presenting specific recommendations for the marketing of below-threshold products. Commenters had mixed views on whether JVC's proposal would confuse consumers.

(a) Need for Guidance

As several commenters observed, below-threshold alloys have proliferated in recent years due to escalating precious metal prices. Yet, the Guides do not advise sellers how to non-deceptively market these products, other than stating that certain terms and marks are likely misleading. For example, the Guides advise against using the words "gold," "silver," and "platinum," or their abbreviations to describe below threshold products. However, commenters stated that these prohibitions conflict with other guidance advising marketers to provide truthful and accurate product descriptions.[192] One such commenter stated that inhibiting a seller from accurately identifying and describing an alloy's precious metal content might lead consumers mistakenly to assume, based on appearance, feel, and price, that an item contains more precious metal than it actually does.[193] Moreover, consumers might erroneously expect the below-threshold product to deliver the same quality and performance as traditional gold, silver, or platinum jewelry. Some commenters therefore recommended revising the Guides to advise marketers to convey accurate information regarding the composition of below-threshold alloys, provided the marketers do not misstate the product's precious metal content or misuse gold karat designations and other recognized quality marks.[194]

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[192] MJJ comment 9 at 1; Poteat comment 5 at 2.

[193] MJJ comment 9 at 3.

[194] *Id.* at 4; JVC comment 27 at 39-40; Platinum Guild International USA (PGI) comment 25 at 2. At the Roundtable, Tiffany discussed the challenges of conveying the value of a mixed metal alloy containing amounts of gold and silver that were "fairly material," but below the Guides' thresholds. Roundtable Tr. 21:25-22:19.

(b) Maintaining the Minimum Thresholds

Commenters disagreed whether the Commission should keep the current minimum thresholds for gold, silver, and platinum. For instance, Jewelry Television (JTV) stated that the Guides should specifically authorize marketers to use the word "gold" when describing an alloy containing less than 10 karats. JTV further argued that even if the Guides continue to prohibit marketers from using the word "gold" when marketing a below-threshold alloy, sellers should be allowed to stamp the item with an accurate karat disclosure.[195] Similarly, New Annex contended that using a precious metal's name, weight, and purity (fineness) would ensure consumers receive the information necessary to make an informed purchase.[196]

Other commenters opposed altering the thresholds.[197] JVC stated that the Commission should maintain the current levels based on "longstanding tradition" and consumer perceptions of "fine jewelry."[198] JVC also contended that quality stamps on below-threshold products could mislead consumers into assuming the jewelry contains more precious metal than it actually does, and create misperceptions regarding durability.[199] Similarly, QVC advocated keeping the existing thresholds, so that a quality stamp might preserve "the distinction of what is considered the heritage and the legacy of the jewelry industry."[200] Yet, JVC acknowledged changes in the industry since the Commission last considered whether to retain the thresholds, and noted that

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[195] JTV comment 17 at 4; JTV comment 42 at 1. *See also* Poteat comment 5 at 3 (suggesting that marketers be allowed to stamp gold alloy products with accurate karat designations).

[196] New Annex comment 41 at 3.

[197] *See* Schenk comment 8 at 3; JVC comment 27 at 4; PGI comment 25 at 3; Gold Brand Holding comment 15.

[198] JVC comment 27 at 3. Sixty-three percent of consumers surveyed reported being very (42 percent) or extremely (21 percent) familiar with the term "fine gold." JVC comment 27, exh. 2 at 27. However, the survey did not ask consumers what they thought this term meant.

[199] JVC comment 27 at 3.

[200] Roundtable Tr. 63:11-25.

issues concerning product degradation may no longer apply in all cases, given advances in below-threshold alloy performance.[201]

Focusing on platinum, PGI stated that below-threshold alloys should not be stamped or described as "platinum" because any attempt to promote a product that does not contain a substantially high percentage of pure platinum is likely to deceive consumers, particularly if the product does not have all the properties of pure platinum.[202] In support of this position, PGI referred to evidence it submitted to in 2005[203] and 2008.[204] Among other things, PGI noted that its consumer perception data showed a majority of consumers expect an engagement ring described or marked as "platinum" to contain a substantial percentage (at least 75 to 80 percent) of pure platinum.[205] PGI also stated that consumers' perceptions of platinum's purity appear to differ from other precious metals, where gradations in quality and purity are common.[206] Contending that platinum's "high level of purity is both its most distinctive and appealing

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[201] Roundtable Tr. 64:2-14.

[202] PGI comment 25 at 4-5.

[203] 70 Fed. Reg. 38834 (July 6, 2005) (seeking comments regarding whether the Guides should be amended to address the marketing of certain platinum/base metal alloys). PGI submitted a comment in response to this 2005 notice on October 12, 2005, which attached a consumer perception study conducted by Thomas J. Maronick ("2005 platinum awareness study"), *available* at http://www.ftc.gov/os/comments/jewelryplatinum/517683-00069.pdf.

[204] 73 Fed. Reg. 10190 (Feb. 26, 2008) (seeking comments regarding proposed amendments to the platinum section providing guidance on how to market non-deceptively certain platinum/base metal alloys). PGI submitted a comment in response to this 2008 notice on August 21, 2008, which attached another consumer perception study conducted by Thomas J. Maronick ("2008 platinum attitude study"), available at http://www.ftc.gov/os/comments/jewelryplatinum/560895-00027.pdf.

[205] In the 2005 study, 65 percent of consumers surveyed expected a "platinum" engagement ring to contain at least 75 percent or more of platinum. 2005 platinum awareness study at 12. In the 2008 study, 69 percent expected a "platinum" engagement ring to contain at least 75 percent or more of pure platinum. 2008 platinum attitude study at 8.

The JVC submission included more recent survey data in which 59 percent of consumers indicated it would be "not at all accurate" to refer to an engagement ring as "platinum" if it contains less than 50 percent pure platinum. Moreover, 71 percent of respondents thought an engagement ring described as "platinum" would contain at least 60 percent or more pure platinum. JVC comment 27, exh. 2 at 35.

[206] PGI comment 25 at 5-6 (citing 2008 platinum attitude study at 21).

quality," PGI stated that below-threshold alloys cannot be marked or described as "platinum" without a significant potential for consumer deception.[207]

(c) JVC proposal

Although JVC recommended the Commission maintain the existing thresholds, it also suggested marketers "be allowed to inform consumers that a product contains a precious metal if that is the case."[208] JVC proposed that, when disclosing the presence of precious metal in a below-threshold alloy, sellers specify the amount of each precious metal by name, preceded by its percentage in the product (*e.g.*, "8% Gold + 4% Palladium," "40% Platinum," "70% Silver + 30% Copper").[209] Under this proposal, the Guides would advise sellers to disclose the precious metal amount in descriptive marketing materials such as advertisements, labels, tags, but not to mark the product itself with precious metal content (*e.g.*, "8K").[210]

As discussed below, commenters generally agreed marketers should not use unqualified precious metal terms to describe below-threshold products. With one exception, they also agreed that quality stamping helps distinguish products above and below the Guides' thresholds. However, many commenters raised concerns that the proposed percentage disclosures would confuse consumers. In addition, two commenters indicated JVC's recommended disclosures would not be adequate to avoid deception.

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[207] PGI comment 25 at 6.

[208] JVC comment 27 at 39.

[209] JVC comment 27 at 20, 39-40. For products that meet the minimum thresholds, marketers would continue to use traditional disclosure methods (*e.g.*, "14K" (for gold), "925" (for silver), "850Pt" (for platinum) – though, for gold that is at least 10 karats, JVC separately recommended amending the Guides to provide examples of descriptions and markings that disclose gold content as parts per thousand, in addition to the examples that use karats. JVC comment 44 at 5 n.13; Roundtable Tr. 16:7-10.

[210] JVC urged the Commission to reserve stamping for products that meet the Guides' thresholds. JVC comment 27 at 20, 39-40. JVC recommended a new note to Sections 23.4 (gold), 23.6 (silver), and 23.7 (platinum group metals) setting forth these aspects of its proposal.

i. Disclosing Precious Metal Content

Several commenters stated that referencing the presence of precious metals in a below-threshold product (*e.g.*, simply claiming it comprises "a mixture of platinum, gold, silver, and other metals"), while failing to specify the amounts, would mislead consumers.[211] JVC's survey showed that a large majority of respondents (80 percent) think it would be important to know the amount of each precious metal contained in an item comprising a mixture of precious metals.[212] The data also indicated the large majority of respondents (82 percent) think it would be important to know the precious and non-precious metal content in an item made of precious metal mixed with non-precious metal(s).[213] Similarly, in PGI's 2005 survey, a substantial majority of consumers (63.9 percent) indicated it was important to know the percentage of the precious metal in an engagement ring before buying it.[214]

ii. Stamping With a Quality Mark

Under JVC's proposed guidance, sellers would be permitted to stamp a brand name on a below-threshold product (*e.g.*, "Celebration"), but would be advised not to mark the item with a

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[211] At the roundtable, Tiffany, Sterling, QVC, and JVC noted the dangers of allowing marketers to tout a product's precious metal content without accurately describing the alloy's composition. Roundtable Tr. 25:9-21; 32:5-33:10; 54:20-55:2; 56:8-12. Similarly, PGI stated that any description indicating the presence of platinum in a below-threshold alloy should provide the actual amount of platinum, by percentage, in the product. PGI comment 25 at 6.

[212] The Harris study asked consumers, if they were buying an item that was a mixture of precious metals, how important it would be to know how much of each precious metal was in the item. In response, 80 percent said it was either extremely (44 percent) or very (35 percent) important. JVC comment 27, exh. 2 at 31. As noted above, JVC's proposed guidance would not require marketers to disclose individually the amount of each precious metal contained in products that meet the Guides' minimum thresholds.

[213] The Harris study asked consumers, if they were buying an item made of a precious metal mixed with non-precious metal(s), how important it would be to know how much precious metal and non-precious metal was in the item. In response, 82 percent of consumers indicated it was either extremely (50 percent) or very (33 percent) important. JVC comment 27, exh. 2 at 31.

[214] 2005 platinum attitude study at 13-14.

quality stamp (*e.g.*, "8K").[215] Most commenters agreed that quality stamps convey meaningful information about value and, with one exception, recommended that the Commission maintain the distinction between products above and below the Guides' thresholds by reserving quality stamps for products above those thresholds.

Contending that consumers widely believe stamped jewelry products are more valuable than unstamped products, JVC contended quality stamps are a way to distinguish "fine jewelry" from below-threshold items.[216] Moreover, JVC argued that allowing stamps on below-threshold products could lead consumers to assume the jewelry contains more precious metal than it actually does, and create misperceptions regarding the product's durability.[217] Seventy-nine percent of respondents in the Harris study agreed a stamp (*e.g.*, "14K" or ".925") on a jewelry product "indicates that it must be made of a precious metal."[218]

Similarly, PGI stated that stamping a quality mark on a below-threshold platinum alloy would lead to significant deception. According to PGI, it would be impossible to provide all the material information consumers need to evaluate such a product in a meaningful and non-deceptive manner simply by stamping percentage disclosures on the item itself. Specifically, in PGI's 2005 consumer perception survey, over two-thirds of respondents thought it would be important to know the properties of an engagement ring comprised of 40 percent base metals, which did not have all the properties of a "pure" platinum engagement ring, before purchase.[219]

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[215] JVC comment 27 at 20, 39-40; Roundtable Tr. 13:6-14. Though Tiffany did not submit a written comment, it concurred at the Roundtable that sellers should not be permitted to stamp precious metal content on below-threshold products. Roundtable Tr. 22:13-19.

[216] Roundtable Tr. 14:4-18.

[217] JVC comment 44 at 3.

[218] Forty percent of respondents strongly agreed, and 39 percent somewhat agreed. JVC comment 27, exh. 2 at 30.

[219] The 2005 platinum awareness study showed that consumers value a range of properties when selecting an engagement ring setting, including: durability, scratch resistance, tarnish resistance, stone security, ability to have

Moreover, in the 2008 survey, over two-thirds of consumers wanted information about product attributes to be physically attached to a ring containing 50-60 percent platinum and the remainder base metals. Specifically, the survey indicated consumers would want information about the ring's durability, luster, density, scratch resistance, tarnish resistance, hypoallergenicity, ability to be resized, and retention of the precious metal content over time.[220] Additionally, PGI questioned whether it would be possible to provide all this information with a hangtag. It emphasized that almost half of consumers in its 2008 study did not understand what expressions of specific content meant even when they were explicit. Therefore, in its view, additional disclosures or disclaimers are needed to avoid deception.[221]

Other commenters agreed that quality stamps communicate product value.[222] For example, recognizing that consumers do not fully understand precious metal content expressed either as karats or parts per thousand, one commenter stated that the mere presence of a quality stamp is significant for delineating products above and below the thresholds.[223]

In contrast, JTV recommended permitting gold karat disclosures for below-threshold alloys in product stamps as well as descriptive marketing materials, so that marketers may provide accurate information to consumers.[224]

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the setting adjusted, the look of the setting over time, and the type and purity of the precious metal. The survey presented respondents with a list of 15 factors that may or may not be important in their decision when selecting an engagement ring, and asked them to rate each of the factors in terms of importance. 2005 platinum awareness study at 9-10, 21-22. According to PGI, many of the factors consumers consider important to their purchasing decision are properties associated with pure platinum, such as tarnish resistance, durability, stone security, hypoallergenicity, and the look of the setting over time. PGI comment 25 at 4.

[220] 2008 platinum attitude study at 10.

[221] PGI comment 25 at 6.

[222] Roundtable Tr. 29:12-21. *See also* Poteat comment 5 at 3 (noting that consumers "understand various content weight abbreviations as a sign of better quality[,] with the higher the number equaling the more valuable the item").

[223] Roundtable Tr. 75:19-23.

[224] JTV comment 42 at 1-2. JTV only discussed gold alloys, and did not address other precious metals.

iii. Expressing Precious Metal Content as a Percentage

Many commenters contended that disclosing precious metal content as a percentage would be helpful, given consumers' limited understanding of existing karat and parts-per-thousand disclosures. However, others expressed concern that using percentages only for below-threshold alloys would confuse consumers.

JVC advocated using percentages to describe alloys with below-standard amounts of precious metals. It cited its Harris study as evidence that consumers prefer to see percentage disclosures.[225] Specifically, approximately two-thirds of respondents in this study indicated that, if purchasing an item that was either a mixture of precious metals or a precious metal mixed with non-precious metal(s), they would prefer to know the amount of each metal by percentage, rather than weight. In contrast, in another study focused specifically on gold content, consumers expressed a preference for karat disclosures.[226] Yet, JVC's survey data revealed many consumers do not fully understand what the term "karat" means, and indicated karat disclosures may confuse a substantial majority of consumers.[227] Indeed, one of the nation's largest jewelry

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[225] The study, however, did not focus specifically on disclosures for below-threshold alloys. JVC comment 27, exh. 2 at 31.

[226] The Google Insight Research survey asked consumers, for jewelry containing gold, if it is more important to have the gold content listed by weight (such as 14K), by percentage (such as 66% gold), or parts per thousand (such as 950PPT). In response, 43.4 percent selected weight, 13.7 percent selected percentage, and 2.5 percent selected parts per thousand (approximately 32.6 percent had no preference, and 7.8 percent selected, "the amount of gold does not matter to me"). JVC comment 44, exh. 1. The survey also asked consumers how they would prefer to see the gold content of a metal jewelry product containing gold to be described. Nearly 60 percent chose karat, 16.4 percent chose percentage, and 4.2 percent chose parts per thousand (the remaining 25.5 percent of respondents had no preference). JVC comment 44, exh. 1.

[227] Approximately 71 percent of consumers surveyed could not correctly answer the question of how much gold is in 14K gold; 28.1 percent thought that 14K referred to 14% gold, while 16 percent thought 14K represented 100% gold. JVC comment 44, exh. 1. Moreover, only 37.5 percent of respondents could correctly identify "purity of the gold" as the correct definition of a karat; 25.3 percent thought a karat indicates "percentage of gold," while 22.7 percent thought it meant "weight of the gold." JVC comment 44, exh. 1.

retailers (Sterling) observed that because most consumers do not purchase fine jewelry often, an explanation is usually needed in each instance for someone to comprehend a karat disclosure.[228]

While acknowledging consumers' general familiarity with karats, JVC stated that consumers' specific lack of understanding about the term suggests percentages would more clearly communicate gold content information in a format consistent with other precious metals.[229] Despite this, JVC stated that percentage disclosures would offer a distinct way to identify and distinguish below-threshold alloys from "fine jewelry."[230] Gold Brand Holding agreed that disclosing gold content as a percentage would be "more transparent and less deceiving."[231]

PGI supported JVC's proposal.[232] While not addressing above-threshold products, PGI noted that most consumers do not fully understand numeric jewelry markings and chemical symbols (*e.g.*, ".585 plat, .415 CO/CU" or "58.5%Pt; 41.5% Co/Cu"), much less how the properties of low-content alloys differ from traditional platinum.[233] PGI's 2008 survey showed that even when the specific content of an engagement ring is explicit (*e.g.*, "58.5% Platinum and

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[228] Roundtable Tr. 31:16-25.

[229] JVC comment 44 at 4-5 (noting, for example, that most consumers consider 18 karat gold to be more valuable than 10 karat gold).

[230] Roundtable Tr. 11:21-12:7, 16:10-19.

[231] Gold Brand Holding comment 14.

[232] PGI comment 25 at 6. PGI's comment focused on platinum, and did not specifically address disclosure methods for other precious metals.

[233] When asked about the phrase ".585 plat, .415 CO/CU," 85 percent of respondents in the 2005 survey did not know what it meant, and 7.4 percent were not sure; only 6.9 percent could correctly identify that the phrase gives an alloy's proportions of platinum and copper/cobalt (58.5 percent and 41.5 percent respectively). 2005 platinum awareness study at 26. Similarly, 80 percent of respondents in the 2008 survey indicated they did not know what "585 Pt; 415 CoCu" or "58.5%Pt.; 41.5% CoCu" meant. 2008 platinum attitude study at 14-15.

41.5% Copper/Cobalt"), slightly under half of respondents did not understand what the disclosure meant.[234]

However, many commenters expressed concern that using percentages to describe below threshold jewelry risks confusion. One stated that presenting consumers with only a percentage would be "unfair and deceptive," given the U.S. gold karat standard, and recommended that sellers translate percentage disclosures into empirical karat weights in sales materials and specification sheets.[235] JTV argued that percentage descriptions would require significant consumer education, and recommended continued use of karat weights because karat disclosures help consumers compare the gold content of different products.[236] Likewise, several other commenters noted that consumers are accustomed to seeing traditional karat designations on items containing at least 10 karats of gold, and thus are familiar with karat disclosures.[237]

Two commenters (PGI and New Annex) contended JVC's recommended disclosures would not avoid deception. PGI emphasized that its 2008 platinum study showed even when marketers disclosed product content using percentages and the full names of component metals, these disclosures did not adequately apprise consumers of the item's attributes or alert them to any differences from a traditional product containing a greater percentage of platinum.[238] New Annex stated the JVC proposal "does not go far enough to avoid consumer deception," because

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[234] The majority correctly identified the platinum and copper/cobalt composition or indicated that the term reflected the ring had a combination of the two metals. 2008 platinum attitude study at 14-15.

[235] Poteat comment 5 at 2-3.

[236] JTV comment 42 at 2.

[237] Roundtable Tr. 24:1-15; 29:4-10; 36:2-18; 69:18-20. Separately, as part of its recommendation that the United States eliminate the tolerances currently provided under the National Stamping Act, Rio Grande Inc. suggested that the Guides adopt the parts-per-thousand quality mark used outside the United States for gold and other precious metals. Rio Grande comment 3 at 1 (34 commenters submitted form comments in support of Rio Grande's submission). Rio Grande did not state whether its recommended parts-per-thousand markings should differentiate between alloys above and below the Guides' thresholds.

[238] 2008 platinum attitude study at 20-21.

"it is also necessary to state the amount of precious metal by weight as well as the purity." Specifically, New Annex recommended using a weight measurement combined with a percentage, fraction, decimal or other readily understandable term indicating the metal's purity (*e.g.*, "1 ozt of .585 pure gold," "5 ozt of .999 pure silver," or "25 mg of 90% pure gold"). According to New Annex, this would enable consumers to calculate how much precious metal an item contains.[239]

3) Analysis and Proposed Guidance

Based on the record, the Commission proposes that: (1) Marketers selling products meeting or exceeding the current thresholds for gold, silver, and platinum may non-deceptively use the words "gold," "silver," "platinum," or their abbreviations to describe or mark all or part of a product without disclosures (other than those currently provided, *e.g.*, fineness); (2) Marketers who have competent and reliable scientific evidence that below-threshold gold or silver products have materially similar properties to above-threshold products also may non-deceptively reference these precious metals without additional disclosures (other than those currently provided, *e.g.*, fineness); and (3) Marketers selling below-threshold alloys that materially differ from above-threshold products (*e.g.*, 8 karat gold items that tarnish) may non-deceptively reference these precious metals only if they make additional disclosures. Specifically, they should disclose that the product may not have the same attributes or properties as above-threshold jewelry made with the same precious metal. In addition, the proposed guidance advises marketers to accurately disclose the purity of the identified precious metal.

(a) Products Meeting and Exceeding the Thresholds

[239] New Annex comment 41 at 2-3. New Annex did not provide any evidence showing whether consumers would understand such disclosures or find the information useful.

The existing thresholds for gold (10 karats), silver (925/1,000ths), and platinum (500 parts per thousand) still serve to delineate products that always have certain performance attributes material to consumers, such as tarnish and corrosion resistance, and those that may not. Thus, for the reasons explained below, the proposed Guides continue to reference these thresholds and provide that products meeting these levels may non-deceptively be called "gold," "silver," and "platinum" without disclosures other than those already advised (*e.g.*, fineness).

First, in past proceedings, evidence, such as test reports, showed that gold jewelry tended to tarnish and corrode at a significantly increased rate when the gold content fell below 10 karats.[240] The Commission determined many consumers might be deceived or confused if they knew a product contained gold (albeit a small amount), but did not also realize the product would fail to maintain the same qualities as traditional gold jewelry. The Commission therefore advised against using the term "gold," or a quality mark indicating gold content, to describe all or part of a product not composed throughout of gold that is at least 10 karats.[241] Nothing in the record suggests this advice is no longer necessary to prevent deception.

Second, the Commission previously maintained the 925/1,000ths threshold for silver because it determined consumers could be deceived or confused when purchasing low-silver-content articles.[242] When retaining this threshold, however, the Commission did not cite to test reports or other evidence. Because nothing in the record indicates the Commission should revise

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[240] 43 Fed. Reg. 30538 (July 17, 1978).

[241] The 10 karat gold minimum has been used since at least 1933, when it first appeared in Commercial Standard CS 67-38, promulgated by the former Bureau of Standards of the U.S. Department of Commerce. In 1957, the Commission incorporated the minimum into the Trade Practice Rules for the Jewelry Industry. 61 Fed. Reg. 27178, 27185 n.99. The Commission subsequently rescinded those trade rules and reissued most of them as industry guides in 1979. 44 Fed. Reg. 11185 (Feb. 27, 1979).

[242] 43 Fed. Reg. 30538 (July 17, 1978).

this threshold, the Commission proposes retaining it. However, we now seek information about whether products at or above the threshold retain properties that consumers find material.

Finally, the Guides advise marketers to use various disclosures intended to address consumer expectations regarding platinum. Survey data showed that a substantial number of consumers believed products marked or described as "platinum" consist mostly of pure platinum and exhibit desirable qualities typically associated with platinum, such as durability, scratch and tarnish resistance, hypoallergenicity, and ability to be resized. Furthermore, product testing indicated certain platinum/base metal alloys did not possess all the platinum qualities consumers expected.[243] Accordingly, the Guides advise that products marked or described as platinum contain at least 500 parts per thousand pure platinum.[244]

Recent technological advances, however, have made it possible for some below-threshold alloys to meet consumer expectations regarding the properties formerly associated only with higher-content jewelry. For example, assay testing on one 6 karat gold alloy suggested it performed comparably to 10 karat and 14 karat gold for characteristics such as tarnish and corrosion resistance, durability, and appearance after exposure to water.[245]

However, the record contains no evidence to support lowering any threshold by a specific amount (*e.g.*, resetting gold to 8 or 6 karats). There is no assurance that the performance of various articles with precious metals at any certain point below the threshold will match that of above-threshold products. Indeed, purity of the precious metal is not the sole determinant of whether a product will satisfy consumer expectations for below-threshold products. The types

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[243] 73 Fed. Reg. 10193-94 (Feb. 26, 2008).

[244] This prohibition is consistent with the historical standard and applies even when platinum is the predominant metal (*e.g.*, in an item comprising 480 platinum, 250 palladium, 220 iridium). 62 Fed. Reg. 16673 (Apr. 8, 1997).

[245] Roundtable Tr. 61:6-62:10.

and amounts of an alloy's remaining elements, as well as sealants, may be equally relevant.[246] Thus, a product's attributes vary depending on the combination of metals used.

Because there is no basis for changing any threshold to a particular level, and those levels convey important attributes to consumers, the Commission proposes to retain the current gold, silver, and platinum thresholds. As discussed below, however, the Commission proposes guidance advising marketers that they can use the terms "gold" and "silver" for certain below-threshold articles that exhibit the same qualities and attributes as above-threshold products. For below-threshold products that materially differ from above-threshold alloys, the proposed guidance advises sellers that they may reference the precious metal, but should provide certain disclosures.

(b) Descriptions and Markings For Certain Below Threshold Products That Meet Consumer Expectations

Though the Commission proposes retaining the existing thresholds, it also recognizes some below-threshold articles now exhibit the same qualities and attributes as above-threshold jewelry. In essence, there appears to be no material difference between these products beyond their precious metal content. Accordingly, the Commission proposes advising that if a below-threshold product possesses the same qualities as jewelry made with that precious metal, the seller may non-deceptively disclose precious metal content without further disclosure.

Specifically, for gold products, the Commission proposes a note to Section 23.4 (now renumbered as Section 23.3) for products not composed throughout of a gold alloy of at least 10 karats.[247] The note advises that it would not be deceptive to use the word "gold" or any gold abbreviation to describe and mark that product if the marketer possesses competent and reliable

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[246] Roundtable Tr. 62:17-63:4.

[247] *See* Proposed Note to 23.3 (b)(9).

scientific evidence showing the product does not differ materially from an item containing at least 10 karats of gold with respect to corrosion resistance, tarnish resistance, and any other property or attribute material to consumers (other than purity). In doing so, the marketer should provide an equally conspicuous, correct disclosure of the alloy's purity (karat fineness) immediately preceding the word "gold" or its abbreviation and adhere to the other guidance in Section 23.4 (now 23.3) prohibiting misrepresentations.

For silver, the Commission proposes a note to Section 23.6 (now renumbered as Section 23.5) stating that, for products that do not contain at least 925/1,000ths pure silver, the marketer may use the word "silver" or any silver abbreviation to describe and mark that product, if the marketer possesses competent and reliable scientific evidence showing the product does not differ materially from a sterling silver item with respect to corrosion resistance, tarnish resistance, and any property or attribute material to consumers (other than purity).[248] In doing so, the marketer should provide an equally conspicuous, correct disclosure of the alloy's purity immediately preceding the word "silver" or its abbreviation. The marketer also should adhere to the other guidance in Section 23.6 (now 23.5) prohibiting misrepresentations.

The Commission proposes to keep the guidance distinguishing between the terms "solid silver," "sterling silver," "sterling," and the abbreviation "Ster." (for products that are at least 925/1,000ths pure silver) and the terms "coin" and "coin silver" (for products that are 900/1,000ths pure silver). The record lacks consumer perception evidence on these terms. Based on their longstanding use, however, they likely denote specific purity levels (*e.g.*, that "coin silver" contains less silver than "sterling silver") rather than merely signaling the presence

[248] *See* Proposed Note to 23.5(1) and (2).

of silver. At the end of this document, the Commission poses several questions to obtain additional information regarding consumer perceptions of these terms.

In contrast to gold and silver, the Commission does not propose a corresponding note for platinum alloys containing less than 500 parts per thousand pure platinum. The record indicates that, unlike gold, which has traditionally been mixed with base metals to create jewelry, consumers expect platinum products to be substantially composed of pure platinum.[249] Moreover, in the Harris study, 60 percent of respondents indicated it would be inaccurate to refer to a jewelry item as "platinum" if it contained less than 50 percent platinum.[250]

(c) Descriptions and Markings For Below-Threshold Alloy Products That Materially Differ From Above-Threshold Alloys

The Commission additionally proposes guidance for sellers who lack competent and reliable scientific evidence showing that a below-threshold product is materially similar to above-threshold jewelry. Specifically, the proposed guidance advises that marketers may accurately reference the precious metal, but should disclose: (i) the purity of the identified precious metal; and (ii) the product may not have the same attributes or properties as above-threshold jewelry made with the same precious metal.[251]

The reasons underlying the Commission's past decisions on this issue no longer apply with the same force. For instance, in 1977, the Commission proposed amendments to advise marketers to use "gold" and "silver" when marketing below-threshold products, to broaden the range of economic alternatives in the marketplace. Ultimately, however, the Commission concluded such amendments would not serve the public interest. At the time, it believed sellers

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[249] PGI comment 25 at 5-6 (citing 2008 platinum attitude study at 21).

[250] JVC comment 27, exh. 2 at 35.

[251] *See* Proposed Notes to 23.3 (b)(9) and 23.5 (1) and (2).

could not satisfactorily disclose the relative disadvantages of these low-content precious metal articles, noting for instance that jewelry was too small for labeling disclosures.[252]

The market now has changed in several respects. First, jewelry sellers provide product disclosures in various ways, such as through expanded television shopping programming, Internet marketing, and mobile advertising. Second, the Commission issued new guidance in 2010 advising sellers to use platinum terms when marketing certain platinum/base metal alloys, provided they make disclosures similar to those now proposed for below-threshold alloys.[253] Pursuant to the instant proceedings, the Commission sought comments regarding this platinum guidance, and received no evidence that the disclosures cannot effectively qualify the claims. Finally, because gold is a valuable commodity, consumers may want to know that an item contains even a small percentage of gold. Absent evidence that precious metal claims regarding below-threshold alloys are necessarily deceptive and cannot be adequately qualified, there is no basis to advise marketers not to provide truthful information about an alloy. The Commission therefore proposes the following guidance.

Content disclosures. If a marketer chooses to disclose that a below-threshold product contains precious metal, it should accurately disclose the purity of the precious metal, rather than simply claim the product "contains," "has," or "is made with" gold or silver. Otherwise, it may imply that the product contains more precious metal that it actually does. In making these

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[252] 43 Fed. Reg. 30538 (July 17, 1978). In 1996, the Commission again declined to amend the Guides to address below-threshold alloys, stating it had addressed the issue comprehensively during the 1977-78 proceedings. 61 Fed. Reg. 27178, 27185 (May 30, 1996).

[253] 75 FR 81443 (Dec. 28, 2010).

disclosures, the marketer should employ the same terminology used to describe above-threshold alloys (*e.g.*, karats for gold, ppt for silver).[254]

The Commission does not adopt JVC's proposal for percentage disclosures for below-threshold alloys. While percentage disclosures might make it easier for consumers to assess different precious metals in a single product, they raise concerns.[255] For instance, using percentages could impede meaningful comparisons between items above and below threshold.[256] For example, one product description might use percentage (*e.g.*, "18% gold," which is equivalent to 4.3 karats) while another uses karats (*e.g.*, "18K gold," which is equivalent to 75 percent gold).

Performance disclosure. The record does not establish that simply disclosing the amount of precious metal is enough to alert consumers to the differences in qualities and attributes, such as corrosion and tarnish resistance. Accordingly, the proposed guidance advises marketers referencing a precious metal to disclose that the below-threshold product may not have the same attributes or properties as above-threshold jewelry made with the same precious metal.[257]

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[254] *See* Proposed Notes to 23.3(b)(9) and 23.5(b)(1) and (2). As discussed in Section III.B, for products both above and below the thresholds, the Commission proposes guidance advising marketers to list a product's precious metal components in descending order of weight in the item. This proposed guidance does not advise marketers of below threshold products to list all precious metal elements in a below-threshold product, as this would impose an unnecessary burden that does not apply for above-threshold products. Nor does it advise marketers to list the amounts of each base metal, given proprietary issues.

[255] As JVC noted, U.S. marketers have no uniform methodology to describe precious metal content for the different metals typically used in jewelry. PGI's 2008 platinum surveys indicate consumers may better comprehend information conveyed in percentages, than in karats or parts per thousand, which many consumers do not fully understand. 2008 platinum attitude study at 14-15.

[256] Under JVC's proposal, for products that meet the Guides' thresholds, marketers would not have to use percentages. Rather, they would continue to use karats for gold, and parts per thousand for silver and platinum group metals. Roundtable Tr. 16:7-10, 57:4-15; JVC comment 27 at 20, 39-40; JVC comment 44 at 5 n.13.

[257] *See* Proposed Notes to 23.3(b)(9) and 23.5(b)(1) and (2).

As noted above, this disclosure is consistent with Section 23.7, which provides guidance concerning certain platinum/base metal alloys.[258] Traditionally, platinum jewelry had been produced as nearly pure or combined with other PGMs, and platinum alloyed with non-PGMs did not share the same characteristics as pure platinum or platinum/PGM alloys. Newer alloys do not always perform like the more traditional purer platinum alloys. To alleviate deception based on this difference, the Commission advised marketers of these newer alloys to disclose that they differ from traditional platinum.[259] Qualifications are preferable to prohibiting the claim because they do not prevent sellers from providing truthful information.[260]

Stamping. The proposed guidance advises marketers that they may non-deceptively stamp items with quality marks accurately disclosing their precious metal content.[261] Again, this guidance accords with Section 23.7, which provides examples indicating that a platinum/base metal alloy may be stamped using ppt and chemical abbreviations, even though the product descriptions include full compositional disclosures and the performance disclosure described above.

When the Commission initially proposed these provisions in 2008, some commenters argued that such disclosure would likely become separated from the jewelry over time and, as a result, jewelers would not be able effectively to appraise, resize, or repair the jewelry at a later date. While this may be true, prohibiting marketers from describing platinum/base metal alloys as "platinum" or advising them to describe the product as something other than "platinum" at the

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[258] 16 CFR 23.7(b)(4).

[259] 75 Fed. Reg. 81449 n.96 (Dec. 28, 2010).

[260] As the Commission noted, for example, advising marketers not to use the term "platinum" in those circumstances would prevent them from describing a product composed of 84% platinum and 16% copper as "platinum," even though competitors could use the term to describe a product composed of only 50% platinum, 45% iridium, and 5% copper.

[261] *See* Proposed Notes to 23.3 (b)(9) and 23.5 (1) and (2).

time of purchase does not solve this problem because jewelers would still not have the information necessary to identify, value, resize, or repair the jewelry in the future. The Commission therefore determined that physically stamping the jewelry to indicate its composition would best address these concerns (though the Guides do not require products to be stamped).[262] The record lacks new evidence warranting a change to this guidance.

Similarly, advising sellers that they may stamp other below-threshold products with accurate content disclosures should assist consumers seeking to derive value from their purchase in the resale market. Moreover, stamping comports with JVC's consumer perception study, which showed a vast majority (79 percent) of consumers believe a stamp indicates an item is made with precious metal.[263]

D. Describing Gold Quality

1) Current Guides

Section 23.4 provides that it is unfair or deceptive to misrepresent the presence, quantity, or karat fineness of gold or gold alloy in a product.[264] This section states it may be misleading to use the word "gold" or any abbreviation to describe all or part of a product composed throughout of gold alloy unless the term is immediately preceded by an equally conspicuous, correct designation of the alloy's karat fineness.[265] In addition, the section provides examples of markings and descriptions consistent with these principles, all of which refer to gold quality expressed in karats. For example, Section 23.4(c)(1) states that a product or part composed

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[262] 75 Fed. Reg. 81443, 81452 (Dec. 28, 2010).

[263] JVC comment 27, exh. 2 at 30. Although JVC argued that stamping could mislead consumers into assuming a below-threshold product contains more precious metal than it actually does, the guidance advising accurate content disclosures (whether in product descriptions or quality stamps) should help prevent deception in this respect.

[264] 16 CFR 23.4(a).

[265] 16 CFR 23.4(b)(2). Unqualified use of the word "gold" or any abbreviation may be misleading if used to describe all or part of a product that is not composed throughout of "fine (24 karat) gold." 16 CFR 23.4(b)(1).

throughout of "gold alloy of at least 10 karat fineness" may be marked and described as "gold" when the word "gold," wherever it appears, is immediately preceded by an equally conspicuous, correct designation of the alloy's karat fineness (*e.g.*, "14 Karat Gold," "14 K. Gold," or "14 Kt. Gold"). This provision further states the product may also be marked and described by a designation of the alloy's karat fineness unaccompanied by the word "gold" (*e.g.*, "14 Karat," "14 Kt.," or "14 K.").[266]

2) Comment

One commenter (JVC) addressed how to describe gold quality. It recommended that the Commission amend Section 23.4 to add examples that describe and mark gold quality using parts per thousand ("750 gold" or "750") as an alternative to karats ("18Kt gold" or "18Kt").[267] JVC did not specifically cite to consumer perception evidence to support its recommendation. However, its comment attached survey data addressing consumers' preferred gold content descriptions, as well as data reflecting their comprehension of gold karat disclosures.

The survey data showed that consumers preferred karat designations over other descriptions such as parts per thousand. Specifically, the Google Insight Research survey asked consumers if it is more important to have the gold content listed by "weight (*e.g.*, 14K)," "percentage (*e.g.*, 66% gold)," or "parts per thousand (*e.g.*, 950PPT)." In response, 43.4 percent selected weight (karats), 13.7 percent selected percentage, and 2.5 percent selected parts per thousand.[268] The survey also asked consumers how they would prefer to see the gold content of

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[266] 16 CFR 23.4(c)(1).

[267] JVC comment 27 at 3. Outside the United States, gold quality is often expressed in parts per thousand. Roundtable Tr. 17:5-15.

[268] 32.6 percent of respondents had no preference, and 7.8 percent selected "the amount of gold does not matter to me"). JVC comment 44, exh. 1.

such a product described. Nearly 60 percent of respondents selected karats, approximately 16 percent selected percentage, and slightly more than 4 percent selected parts per thousand.[269]

Through another series of questions, the survey assessed respondents' comprehension of gold karat disclosures. The data revealed that many consumers do not fully understand the meaning of "karat," and suggested karats may be a confusing way to express the purity of precious metal to a substantial majority of consumers.[270]

3) Analysis

The Commission does not propose adding examples to Section 23.4 advising marketers that they may describe and mark gold quality in parts per thousand instead of karats. Rather than help marketers prevent deception, the change could actually confuse consumers. While the record suggests consumers do not fully understand traditional karat designations, they are able to compare the amount of gold across products using karats. For example, they understand that 18 karat is purer than 14 karat gold. However, the Harris study indicates that consumers likely cannot translate karats into parts per thousand because they are unaware of how many karats are in pure gold. Accordingly, consumers likely may not be able to determine that an 18 karat ring (75 percent pure gold) is purer than a 600 parts per thousand ring (60 percent pure gold). Moreover, the survey data indicates consumers prefer karats to describe gold jewelry, in contrast to the small minority that chose parts per thousand. Adding parts per thousand examples therefore would not be useful and could create more confusion. The Commission poses several questions concerning these issues to obtain additional information.

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[269] 25.5 percent of respondents indicated no preference. JVC comment 44, exh. 1.

[270] Approximately 71 percent of consumers surveyed could not correctly answer the question of how much gold is in 14K gold; 28.1 percent thought that 14K referred to 14% gold, while 16 percent thought 14K represented 100% gold. JVC comment 44, exh. 1. Moreover, only 37.5 percent of respondents could correctly identify "purity of the gold" as the correct definition of a karat; 25.3 percent thought a karat indicates "percentage of gold," while 22.7 percent thought it meant "weight of the gold." JVC comment 44, exh. 1.

E. Palladium

1) Current Guides

Section 23.7 provides it is unfair or deceptive to use the words "platinum," "iridium," "palladium," "ruthenium," "rhodium," and "osmium" (referred to as the "Platinum Group Metals" or "PGMs"), or any abbreviation, to mark or describe all or part of a product if doing so misrepresents the product's true composition.[271]

2) Comment

While the Guides do not distinguish between palladium and other PGMs, JVC recommended separate standards for palladium, distinct from other PGMs.[272] In support of its proposal, JVC submitted survey data showing that although most consumers are not familiar with this PGM, they expect a product described as palladium to contain at least a minimum amount. JVC contended that, as palladium jewelry becomes more prevalent, consumers will likely expect palladium products to be as durable as those made with other precious metals. To meet consumer expectations, JVC proposed palladium standards that largely mirror the existing platinum guidance. However, unlike platinum, JVC stated that because consumers do not yet have established perceptions of palladium, marketers should not be required to disclose when a palladium/base metal alloy does not share the same attributes as traditional platinum jewelry.

JVC supported its proposal by citing consumer perception testing showing that consumers are mostly unfamiliar with palladium.[273] When asked about this metal, 43 percent of respondents indicated they had never heard of palladium, and an additional 47 percent indicated

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[271] 16 CFR 23.7(a).

[272] JVC comment 27 at 4.

[273] JVC comment 27 at 16 n.12.

they had heard of it, but were not familiar with it.[274] Moreover, 63 percent of respondents did not know that palladium is a PGM.[275] Despite this unfamiliarity, consumers had certain expectations for palladium products. Specifically, 86 percent of respondents agreed an item should contain a minimum amount of palladium to be described as palladium.[276] Separately, 90 percent of respondents indicated that if they were buying a piece of jewelry stamped or described as palladium, they would want to know how much palladium it contains.[277] In addition, 79 percent agreed that, if buying a product made of palladium and other metals, it would be important to know the identity of the other metals.[278] Without citing the study, JVC also contended that, because sellers market palladium as a precious metal, consumers will expect palladium to exhibit durability comparable to other precious metals.

JVC stated that, to meet these expectations, it is important to set a minimum threshold for using the term "palladium." It recommended that those standards largely mirror the existing platinum standards.[279] For instance, JVC proposed that the term "palladium" should only be allowed for products that are at least 500 parts per thousand palladium. Furthermore, in JVC's view, unqualified use of the term "palladium" should be reserved for describing all or part of an industry product composed throughout of 950 parts per thousand of pure palladium. It also stated that products containing at least 850 parts per thousand pure palladium may be marked as

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[274] Only 10 percent of respondents were either very or extremely familiar with it. JVC comment 27, exh. 2 at 33.

[275] Twenty-six percent of respondents correctly answered that palladium is a PGM. *Id.*

[276] JVC comment 27, exh. 2 at 34.

[277] *Id.*

[278] *Id.*

[279] JVC noted that, in this respect, the current Guides differ from standards that CIBJO set for the use of palladium in jewelry. JVC comment 27 at 22.

palladium if the stamp or description is preceded by a number indicating the parts per thousand of pure palladium in the product.

For products that contain between 500 and 850 parts per thousand pure palladium, JVC recommended additional disclosures. Specifically, products containing between 500 and 850 parts per thousand pure palladium, and at least 950 PGMs, may be marked as palladium if the stamp or description of each PGM component is preceded by a number indicating the parts per thousand of each PGM. For products containing between 500 and 850 parts per thousand pure palladium, but not at least 950 parts per thousand PGMs, JVC argued that the Guides should allow use of the word "palladium" or abbreviation accompanied by a number or percentage indicating the parts per thousand of pure palladium in the product only if sellers identify the other metals by immediately listing the product's full composition with the name (not chemical abbreviation) and percentage of each metal. However, in contrast to current guidance regarding platinum alloys of similar quality, JVC's proposal would not require sellers to disclose that the product may not have the same attributes as traditional palladium products. JVC explained that, unlike platinum, consumers do not yet have set perceptions of palladium because it is far less established as a jewelry component.[280]

3) Analysis

The Commission declines to propose amendments to address palladium beyond the guidance in Section 23.7, which already advises marketers not to use the term "palladium" in a manner that misrepresents a product's composition.[281] However, unlike the evidence supporting the Commission's platinum guidance, the perception data does not explain which qualities or

[280] JVC comment 27 at 17.

[281] 16 CFR 23.7(a).

attributes consumers specifically associate with palladium jewelry. Moreover, there is no evidence of how much palladium would be needed for a product to satisfy consumer expectations. For example, although the Harris study showed consumers expect a product described as palladium to contain at least a minimum amount, it did not indicate where such a baseline should be set.[282] Similarly, the record does not reveal whether the presence of base metals in a palladium alloy (rather than other PGMs) would materially alter performance. The Commission therefore lacks a basis for proposing further guidance.

F. Product Marking

1) Current Guides

The Guides address product marking in several locations, including the sections on gold (23.4), vermeil (23.5), silver (23.6), platinum group metals (23.7), and pewter (23.8). Many sections include examples of "markings or descriptions" that may be misleading, as well as "markings and descriptions" consistent with the Guides' principles. For instance, Section 23.4(c)(1) states a gold alloy of at least 10 karat fineness may be "marked and described" as "gold" only if an equally conspicuous, correct designation of the karat fineness immediately precedes the word "gold" (*e.g.*, "14 Karat Gold," "14 K. Gold," or "14 Kt. Gold"). This provision further states the product may also be "marked and described" by a designation of the alloy's karat fineness unaccompanied by the word "gold" (*e.g.*, "14 Karat," "14 Kt.," or "14 K.").[283]

Section 23.9 provides additional guidance for the use of quality marks. It states the term "quality mark," as used in the Guides, means "any letter, figure, numeral, symbol, sign, word, or

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[282] In contrast, perception data shows that most consumers expect platinum jewelry to contain at least 60 percent pure platinum. *See, e.g.*, JVC comment 27, exh. 2 at 35.

[283] 16 CFR 23.4(c)(1).

term, or any combination thereof, that has been stamped, embossed, inscribed, or otherwise placed on any industry product," and indicates the product is composed throughout, or has a surface application, of any precious metal or precious metal alloy.[284] Under this section, quality markings include ones that use the words "gold," "karat," "silver," "vermeil," "platinum" (including platinum group metals), or their abbreviations, either separately or as suffixes, prefixes, or syllables.[285]

The Guides also reference the National Stamping Act as it relates to product marking. Specifically, the guidance in Sections 23.4 and 23.6 regarding gold and silver markings and descriptions states these provisions are subject to the Stamping Act's applicable tolerances.[286] In addition, Section 23.9 notes that any manufacturer or dealer subject to section 294 of the Stamping Act who applies a quality mark or imports any article bearing a quality mark must apply their trademark or name to the article.[287]

2) Comments

[284] 16 CFR 23.9. Note 1 to this section states that if a "quality mark is engraved or stamped on an industry product, or is printed on a tag or label attached to the product," it should be a legible size, placed so consumers are likely to see it, and remain attached until the item is sold.

[285] 16 CFR 23.9.

[286] 16 CFR 23.4(d); 16 CFR 23.6(e).

[287] 16 CFR 23.9 Note 2 (citing 15 U.S.C. 297).

Two commenters discussed jewelry marking. As described below, JVC proposed amendments to clarify use of the term "mark" in sections addressing precious metals and quality marks. In addition, HRI made numerous recommendations concerning precious metal jewelry marking and standards enforcement.

JVC stated that the Guides' use of the term "mark" is ambiguous.[288] In its view, "mark" means a stamp in some sections, but in others, it apparently refers both to a stamp and a description on a tag. To correct this ambiguity, JVC recommended removing the word "mark" and replacing it either with "quality stamp," "description," or both, depending on the context.

HRI raised several concerns about jewelry marking practices. It explained that the lack of a compulsory hallmarking system and limited enforcement have generated doubts about the accuracy of stamps on precious metal items manufactured in the United States.[289] To address these concerns, HRI recommended that the Commission incorporate the marking and fineness standards of the National Stamping Act throughout the Guides and emphasize the consequences for violations. HRI also urged establishing use of the karat designation rather than millesimal (parts per thousand) for gold, and use of the millesimal for silver, platinum, and palladium. In addition, it recommended regulations to articulate laws governing all precious metal item sales in the United States, as well as Stamping Act amendments or new legislation establishing import and export criteria, to strengthen enforcement against under-karating practices. Among other things, HRI recommended that sellers be required to guarantee items sold in the secondary market as pre-owned, vintage, estate, and antique, such as through a special stamp indicating an after-production assurance of the item's fineness mark.

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[288] JVC comment 27 at 3.

[289] HRI comment 26.

Separately, HRI suggested that the Guides add separate definitions for several terms: hallmark; compulsory hallmarking; fineness mark; trademark; registered trademark; and responsibility mark. HRI also proposed establishing a national hallmarking system and creating a national registry of all maker's marks, sponsor's marks, responsibility marks, and trademarks.

3) Analysis

The Commission does not propose to remove the word "mark" and replace it with alternatives as JVC suggests. JVC's proposal would limit the Guides' current guidance by making it applicable only to marks physically stamped, embossed or inscribed on an item. In contrast, the Guides apply to marks otherwise placed on products, thus including inked and other marks. There is no basis in the record for such a limitation. Moreover, the Commission does not propose any amendments to resolve the issues HRI identified because HRI's recommended changes are either unsupported by the record or beyond the scope of this review.

(a) Use of the Term "Mark"

Section 23.9 (now renumbered as Section 23.10) defines "quality mark" in a manner consistent with the National Stamping Act.[290] Thus, the Guides use this term to mean not only marks physically stamped or inscribed, but also ones "otherwise placed on" the product. Section 23.9 contains specific guidance for marks stamped on a product or attached thereto.[291] The suggested amendments, however, would limit this guidance to marks that are stamped,

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[290] As the Commission previously noted during the 1996 review, the Stamping Act goes beyond quality marks stamped, embossed, or inscribed on a product; it also applies to material attached to the product (such as on a tag or label) and surrounding material (such as a box, package, cover, or wrapper in which the item is enclosed or encased). The Guides do not require quality marks, but if such a mark is used, it must be accurate within the Stamping Act's prescribed tolerances. 61 Fed. Reg. 27193 n.169.

[291] 61 Fed. Reg. 27193-94. Similarly, the guidance in Sections 23.4(b)(9) (advising against use of a "quality mark" implying gold content to describe a product that is not composed throughout of at least 10 karat gold) and 23.7(c)(1) (providing PGM abbreviations that may be used for "quality marks") applies to marks attached to, as well as stamped on, a product.

embossed, or inscribed on an item.[292] The record does not contain evidence that the existing guidance is no longer necessary to prevent deception. The Commission therefore declines to propose its elimination.[293]

(b) HRI Recommendations

The Commission does not propose amending the Guides to reinforce the National Stamping Act as HRI recommends. Although the Guides cite applicable provisions of the Stamping Act as they relate to certain jewelry marking practices, the Commission issued the Guides to help marketers avoid claims that may be unfair or deceptive under Section 5 of the FTC Act, not to execute or amend the Stamping Act. Additionally, creating a national hallmarking system or marking registry, or establishing new import and export criteria for precious metal goods, is beyond the scope of the Commission's authority.

Finally, the Commission does not propose any amendments concerning fineness designations and secondary market sellers. The Guides already provide examples of markings and descriptions for gold products that use karat fineness designations, as well as silver and platinum examples that use parts per thousand. HRI did not identify revisions necessary to "establish" these respective designations in the Guides, nor did it provide a basis for doing so. Similarly, the record does not contain evidence of deception showing the need to require special stamping for pre-owned, vintage, estate, and antique items in the secondary market, especially in light of the significant burdens such affirmative disclosures would entail.

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[292] JVC comment 27, exh. 1 at 12.

[293] The Commission, however, proposes to revise one section to eliminate potential confusion regarding the term "mark." Specifically, Section 23.7(c)(5) states that a particular platinum alloy may be "marked or stamped accurately, with a quality marking on the article . . ." (emphasis added). This guidance may be confusing, however, because the term "mark" as used in the Guides already encompasses stamping. Therefore, the Commission proposes to eliminate the words "or stamped," so that it would read: "[the particular alloy] may be marked accurately, with a quality marking on the article . . . ."

G. Lead-Glass-Filled Stones

1) Current Guides

Section 23.23 addresses "misuse" of the words, "ruby," "sapphire," "emerald," "topaz," "stone," "birthstone," "gemstone," and similar terms. It states it is unfair or deceptive to use the unqualified name of any precious or semi-precious stone to describe any product that is not in fact a natural stone of the type described.[294] Section 23.23 also provides that it is unfair or deceptive to use the name of any precious or semi-precious stone, or the word "stone," "gemstone," "birthstone," 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," "synthetic," or by the word "imitation" or "simulated," to indicate clearly the nature of the product and the fact that it is not a natural gemstone.[295]

Additionally, this section states it is unfair or deceptive to use the word "laboratory-grown," "laboratory-created," "[manufacturer name]- created," or "synthetic" with the name of any natural stone unless the product being described "has essentially the same optical, physical, and chemical properties as the stone named."[296]

Separately, Section 23.22 advises marketers to disclose treatments to gemstones if: (1) the treatment is not permanent; (2) the treatment creates special care requirements for the gemstone; or (3) the treatment has a significant effect on the stone's value.[297]

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[294] 16 CFR 23.23(a).

[295] 16 CFR 23.23(b).

[296] 16 CFR 23.23(c).

[297] 16 CFR 23.22.

2) Comments

The Commission's 2012 Notice discussed issues raised by the increased marketing of stones comprising a mixture of ruby/corundum and lead glass. These stones, often called "composite rubies," "hybrid rubies," or "glass-filled rubies," often contain a considerable percentage of lead glass. Manufacturers of these products inject ruby or corundum[298] with high-refractive-index lead glass to fill fractures and cavities and add significant weight. The lead glass has a golden yellow color that augments the stone's natural color. In many cases, the ruby or corundum would not hold together as a single stone without the lead glass. Moreover, their method of production may differ significantly from techniques traditionally used to treat or enhance natural rubies. The Commission sought comment on whether and how it should amend the Guides to address these products.

As discussed below, all commenters addressing the issue agreed that marketers should not use the unqualified word "ruby" to describe these products. All but one such commenter stated that marketers should not describe them as "laboratory-grown," "laboratory-created," "[manufacturer name]- created," or "synthetic." The commenters additionally opined that

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[298] Corundum is the mineral known as "ruby" only when it occurs naturally in a red color with good transparency. *See, e.g.*, AGA, comment 12 at 5. According to some commenters, manufacturers creating lead-glass-filled stones often use low quality, opaque corundum, which does not meet the definition of "ruby." For example, in a statement appended to JVC's comment, gemologist Christopher P. Smith noted that a manufacturer of such products "takes low-grade rough corundum that would otherwise only be useful for industrial purposes as an abrasive and turns it into a transparent stone." He also explains that infusing lead glass into low-grade corundum produces transparent stones that are a composite of corundum and high lead-content glass. In contrast, the traditional method of heating rubies involves, in some cases, adding fluxing agents to the ruby during the heating process. JVC, comment 27, Statement of Christopher P. Smith, G.G. at 3; *see also* JEA, comment 13 at 4 (citing an article by Kenneth Scaratt of GIA, which describes how low-quality opaque corundum is transformed into " a faceted product, which is sold as ruby"); *but see* AGA, comment 12 at Att. 18 (stating that low-quality rough "ruby" is the starting material for the lead-glass treatment) and at Att. 33 ("This particular ruby started out as very low quality ruby. In order for it to be cut and polished, it was necessary to treat it . . . .").

marketers should not call these products "treated rubies." They differed, however, on which terms accurately describe them.[299]

(a) Use of the Unqualified Word "Ruby"

All ten commenters addressing this issue agreed that marketers should not use the unqualified word "ruby" to describe these products because they are not natural stones.[300] AGA stated that gem testing indicates these products are neither rubies nor glass, "but a new type of imitation that combines properties of both, each of which is inseparable from the other – in short, a new type of 'composite' (*i.e.*, an imitation created from two or more materials being joined together in some way, to imitate a rarer, and more costly gem)."[301] AGA expressed concern that marketers sell these products as "treated rubies," thereby misleading consumers about the products' nature, quality, weight, durability, and value and garnering inflated prices.[302] Similarly, American Society of Appraisers (ASA) stated this is a new class of manufactured product, "in which the proportion of natural material and artificial substance is impossible to determine precisely."[303] ASA noted that these products lack rubies' durability and rarity.[304] Gemological Institute of America (GIA) described these products as "gemstones held together by artificial binders/fillers," and therefore not natural rubies.[305]

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[299] The commenters primarily focused on stones comprising a mixture of ruby/corundum and lead-glass. The Commission therefore requests comment on whether it should also issue additional guidance for other stones.

[300] AGA comment 12 at 5; American Society of Appraisers (ASA) comment 24 at 2; Gemological Institute of America (GIA) comment 25 at 1; JEA comment 13 at 6; JVC comment 27 at 31; JTV comment 17 at 3; National Retail Federation (NRF) comment 23 at 2; Eisen comment 10 at 1; Samuel Getz Designs comment 3 at 1; Schenk comment 8 at 2.

[301] AGA comment 12 at 5.

[302] *Id.* at 6.

[303] ASA comment 24 at 2.

[304] ASA further claimed that many consumers "have paid fine ruby prices" for these products, although they did not provide any specific data. *Id.*

[305] GIA comment 25 at 1.

JVC likewise recommended the Guides clearly convey that marketers not describe these products simply as "rubies"[306] based on the Harris study. In this study, a large percentage of respondents (67 percent) stated it would not be accurate to call a product a "ruby" if it were made of "a mixture of ruby and lead glass."[307]

(b) Use of the Words "Laboratory-Grown," "Laboratory-Created," "[Manufacturer Name]-Created," or "Synthetic" to Qualify "Ruby"

The Guides state that marketers should not call a stone "laboratory-grown," "laboratory-created," "[manufacturer name]-created," or "synthetic" unless it shares the optical, physical, and chemical properties of the stone named.[308] Several commenters addressing this issue stated that lead-glass-filled ruby/corundum lacks the same optical, physical, and chemical properties as rubies.[309] AGA noted that these products are identifiable by contraction bubbles in the glass, a distinct bluish and orangey color flash, and a golden to red body color in the lead glass.[310] AGA also stated that, unlike rubies, many ordinary household chemicals and routine repair could significantly damage these products.[311] Moreover, JVC noted that lead glass is singly refractive, whereas ruby is doubly refractive.[312] In addition, JVC described lead glass as softer and more prone to scratches, abrasion, and breakage than natural rubies.[313] Finally, JVC stated that lead-

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[306] JVC comment 27 at 31.

[307] *Id.* In addition, 60 percent stated it would be inaccurate to call a product a "ruby" when the product is made up of "small bits of ruby bound together with lead glass."

[308] 16 CFR 23.23(c).

[309] AGA comment 12 at 5-9; JVC comment 27 at 29-30; Schenk comment 8 at 2; JEA comment 13 at 6; Samuel Getz Designs comment 3 at 1.

[310] AGA comment 12 at 5-9 and attachments 24-30.

[311] *Id.* at 9.

[312] JVC comment 27 at 29.

[313] *Id.* at 27-28.

glass-filled composite rubies contain a significant amount of lead, which is absent from both natural rubies and the glass component in traditionally-treated rubies.[314]

All but one of these commenters further asserted that, due to these optical, physical, and chemical differences, these products should not be called "laboratory-grown," "laboratory-created," "[manufacturer name]-created," or "synthetic" rubies.[315]

(c) Use of the Words "Treated Rubies"

Three commenters asserted that marketers should not call these products "treated rubies."[316] JVC explained that "treated ruby" refers to gem-quality corundum treated with a traditional method, such as heating to modify color or adding chemicals to heal open fissures.[317] These traditional methods do not add significant weight to the stone, but infusing lead glass into ruby or corundum does.[318] AGA similarly stated that unlike fillers routinely used to treat rubies to improve appearance, lead glass cannot be removed without destroying the product's structural cohesiveness.[319] Finally, JEA asserted that when an artificial material such as glass is used during the treatment process and becomes the dominant component, the end product is not a "treated stone," but rather a "manufactured product."[320]

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[314] *Id.* at 29; *see also* Schenk comment 8 at 1 (stating that lead-glass-filled composite rubies have very different properties than natural rubies and require very special handling).

[315] Samuel Getz Designs comment 3 at 1; JEA comment 13 at 6; JVC comment 27 at 30; Schenk comment 8 at 1. AGA described the optical, physical, and chemical differences between lead-glass-filled stones and natural rubies but did not specifically address whether the Guides should advise marketers not to use terms such as "laboratory-created" to describe these products. AGA comment 12 at 5-9.

[316] AGA comment 12 at 6; JEA comment 13 at 5-6; JVC comment 27 at 27-28; *but see* NRF comment 23 at 2 (stating that marketers can call these product "treated rubies," "enhanced rubies," or "reinforced rubies").

[317] JVC comment 27 at 26-27.

[318] *Id.* at 5.

[319] In contrast, fillers used in traditional ruby treatments, such as common silica glass, oil, or epoxy resins, can be removed if necessary without affecting the stone's structure. AGA comment 12 at 8.

[320] JEA comment 13 at 4 (citing "A Discussion on Ruby-Glass Composites & Their Potential Impact on the Nomenclature in use for Fracture-Filled or Clarity-Enhanced Stones in General," Kenneth Scarratt of GIA

(d) Proposals for Describing Lead-Glass-Filled Composite Stones

The commenters differed in their recommendations regarding the terms marketers should use to describe lead-glass-filled composite stones.

JEA, ASA, and GIA suggested marketers call these stones "manufactured product[s]."[321] Others suggested marketers should be able to use the term "ruby," as long as it is qualified.[322] For example, JTV argued that preventing marketers from identifying these products as rubies "would be an artificially imposed requirement, inconsistent with standard recognized gemological terms, and would deprive many lower income consumers of the ability to own a ruby."[323] JTV therefore recommended different terms depending on whether the ruby material would hold together without filler and whether the composite material derives from the same "ruby rough." In JTV's view, if the mineral retains its composition as a single stone, marketers should call the product "lead-glass filled ruby." If it does not, marketers should call the product "composite" or "hybrid" lead-glass-filled ruby with special care requirements. Finally, if the product consists of "bonded, untreated pieces," then marketers should call it "manufactured ruby with special care requirements."[324]

In contrast, AGA's comment included a statement from GemResearch Swisslab (GRS) and American Gemological Laboratories (AGL) suggesting it "does not make sense to create different levels of how to describe these stones, as a lay person will be unlikely to make some of

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Laboratory Bangkok, http://www/gia.edu/research-resources/news-from-research/Ruby-Glass%20Composites-etc.pdf).

[321] JEA comment 13 at 6; ASA comment 24 at 3, GIA comment 25 at 1.

[322] JTV comment 17 at 6; JVC comment 27 at 5.

[323] JTV comment 17 at 6.

[324] JTV comment 17 at 5-6.

these distinctions on their own."[325] GRS and AGL opined that the terms "hybrid," "manufactured," and "composite," as qualifiers to "ruby," would effectively distinguish these products from traditionally-heated rubies.[326]

JVC suggested the terms "composite," "imitation," "manufactured," or "simulated" to qualify the term "ruby." While acknowledging there is no industry consensus on identifying and describing these products, JVC opined these terms effectively convey that lead-glass-filled products differ from treated rubies and will not react to wear like an unheated or traditionally-heated ruby.[327] In support of its recommendation, JVC cited the Harris study, in which 52 percent of respondents stated that "composite ruby" accurately described a product consisting of a "mixture of ruby and lead glass."[328] Forty-three percent responded that the phrase "manufactured ruby" accurately described a product consisting of "a mixture of ruby and lead glass."[329] JVC opined that the phrase "hybrid ruby" is confusing based on the Harris study and a JVC-conducted focus group but did not elaborate.[330] JVC did not test the terms "simulated" or "imitation" ruby.

3) Analysis and Proposed Guidance

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[325] AGA comment 12, Attachment 21 (September 2011 press release from GemResearch Swisslab and American Gemological Laboratories). AGA submitted no consumer perception evidence to confirm this.

[326] *Id.*

[327] JVC comment 27 at 5, 31-32 (recommending the following language: "It is unfair or deceptive to use the unqualified name or the unqualified varietal name of any precious or semi-precious stone to describe a product that is made of disparate parts consisting of a mineral combined with a substantial quantity of lead glass or any other binder that is itself colored, if when the binder is substantially removed, the underlying material may not hold together as a single stone, unless such word or name is immediately preceded by "imitation," "manufactured," "composite," or "simulated.") (Industry Task Force on FTC Jewelry Guide Review, Draft Amended Guides at 18).

[328] Fifty-eight percent of respondents thought the phrase "composite ruby" accurately described a product made up of "small bits of ruby bound together with lead glass." The numbers cited above and in this footnote include respondents who found these terms to be "extremely accurate" or "very accurate."

[329] Forty-two percent of respondents thought the phrase "manufactured ruby" was an accurate descriptor for a product consisting of "small bits of ruby bound with lead glass."

[330] JVC comment 27 at 26, n. 28.

The Guides already adequately address much of the commenters' concerns. However, the Commission proposes adding a new note to help prevent deception resulting from the increased marketing of these products. The proposed note states it would be unfair or deceptive to describe products filled with a substantial quantity of lead glass: (1) with the unqualified word "ruby" or name of any other precious or semi-precious stone; (2) as a "treated ruby" or other "treated" precious or semi-precious stone; (3) as a "laboratory-grown," "laboratory-created," "[manufacturer name]-created," or "synthetic" ruby or other natural stone; or (4) as a "composite ruby," "manufactured ruby," or "hybrid ruby," or other precious or semi-precious stone. The Commission also proposes some examples of terms marketers could use to describe these products non-deceptively.[331]

(a) Likely Deceptive Terms

i. Unqualified Name of Precious or Semi-precious Stone

Section 23.23(a) (now renumbered as Section 23.25) states it is unfair or deceptive to use the unqualified word "ruby" or name of any other precious or semi-precious stone to describe a product that is not, in fact, a natural stone of the type described. The Commission based this guidance on consumer expectation that a "ruby" or other gemstone is a natural, mined stone. As commenters discussed, however, when manufacturers combine ruby with a substantial percentage of lead glass, the lead glass becomes an integral part of the blended product, resulting in a stone that is not natural. Therefore, describing such a product with the unqualified name of a gemstone would deceive consumers. Accordingly, sub-section one of the Proposed Note states it would be unfair or deceptive to describe products filled with a substantial quantity of lead glass

[331] Now renumbered as proposed Section 23.25.

with the unqualified word "ruby" or name of any other precious or semi-precious stone.[332]

ii. "Treated" Stone

Under the current Guides, it would be deceptive to call lead-glass-filled products "treated" stones because they are not, in fact, precious or semi-precious stones that merely have been treated. Consumers expect that stones described as "treated" are otherwise natural stones. The commenters concurred that products filled with a substantial quantity of lead glass are not natural stones. They also contrasted these products with traditionally-treated rubies. Traditional treatments involve heating natural stones to modify color or adding chemicals during the heating process, neither of which adds significant weight to the stone. In contrast, a significant portion of the weight of lead-glass-filled stones is from the lead glass, not from the stone. Accordingly, sub-section two of the proposed Note provides it would be unfair or deceptive to describe products filled with a substantial quantity of lead glass as a "treated ruby" or other "treated" precious or semi-precious stone.[333]

iii. "Laboratory-Created," etc.

The Guides state it is deceptive to use the terms "laboratory-grown," "laboratory-created," "[manufacturer name-created]," or "synthetic" to qualify the name of a natural stone unless the product has essentially the same optical, physical, and chemical properties as the stone named.[334] This provision reflects consumer expectation that, for example, "laboratory-grown rubies" are optically, physically, and chemically the same as natural rubies. There is no evidence in the record indicating that this expectation has changed. Moreover, the comments indicate that mixtures of ruby and lead glass have different optical, physical, and chemical properties than

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[332] Proposed Note to Section 23.25(1).

[333] Proposed Note to Section 23.25(2).

[334] Section 23.23(c).

natural rubies. Accordingly, sub-section three of the proposed Note provides it would be unfair or deceptive to describe lead-glass-filled products as "laboratory-grown," "laboratory-created," "[manufacturer name]-created," or "synthetic" rubies or other natural stones.[335]

iv. "Composite [stone]," "Manufactured [stone]," and "Hybrid [stone]"

Under Section 5 of the FTC Act, an advertiser is responsible for all its reasonably conveyed claims, whether express or implied.[336] A claim can be deceptive even when it misleads a significant minority of consumers acting reasonably.[337] The Harris study demonstrates that a significant minority of consumers likely are deceived by the terms "composite ruby," "manufactured ruby," and "hybrid ruby" to describe stones filled with a significant amount of lead-glass. While over half of respondents[338] considered the term "composite ruby" an accurate descriptor (52 or 58 percent, depending on the product description), over 42 percent did not.[339] An even greater percentage (about 57 percent) indicated the terms "manufactured ruby" [340] and "hybrid ruby"[341] were not entirely accurate descriptors.

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[335] Proposed Note to Section 23.25(3).

[336] *See Sears, Roebuck, & Co.*, 95 FTC 406, 511 (1980), *aff'd*, 676 F.2d 385 (9th Cir. 1982).

[337] *Telebrands Corp*., 140 FTC 278 (2005), *aff'd*, 457 F.3d 354 (4th Cir. 2006). *See also* Guides for the Use of Environmental Marketing Claims ("The Green Guides"), Statement of Basis and Purpose, *http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf*.

[338] When the study described the product as a "mixture of ruby and lead glass," 52 percent believed "composite" ruby to be accurate, compared to 58 percent when the study described the product as "small bits of ruby bound with lead glass."

[339] When the study described the product as a "mixture of ruby and lead glass," 14 percent stated this term was "not at all accurate." An additional 35 percent stated this term was only "somewhat accurate." When described as "small bits of ruby bound with lead glass, 10 percent stated that this term was "not at all accurate." An additional 32 percent stated this term was only "somewhat accurate."

[340] Seventeen or 18 percent (depending on product description) stated the term "manufactured ruby" was "not at all accurate," and 40 percent stated the term was only "somewhat accurate."

[341] When described as "a mixture of ruby and lead glass," 17 percent stated the term "hybrid ruby" was "not at all accurate," and 40 percent stated it was only "somewhat accurate." When described as "small bits of ruby bound

Moreover, the Commission is concerned consumers may confuse the term "manufactured" with terms used to describe laboratory-created stones (*e.g.*, "laboratory-created," "[manufacturer name]-created"). The Commission requests comment, including consumer perception evidence, on this term.

Accordingly, sub-sections four through six of the proposed Note, respectively, provide it would be unfair or deceptive to describe lead-glass-filled products as "composite," "hybrid," "manufactured" rubies or stones without qualification.[342]

(b) Proposed Non-Deceptive Terms

The Commission also proposes some terms that describe these products more accurately.[343] Specifically, under the proposed Guides, if the underlying mineral used to make the product is low-grade corundum (not ruby), which is then infused with lead glass, marketers may call it "lead-glass-filled corundum" or "lead-glass-filled composite corundum." In such instances, marketers should not use the term "ruby" because the products do not possess the properties of ruby. If, on the other hand, when the underlying mineral is ruby, *e.g.*, occurs naturally in red color with good transparency, marketers may use the terms "lead-glass-filled ruby" or "lead-glass-filled composite ruby."[344]

Although accurate, these proposed terms may imply certain characteristics lacking in these products. For example, using the term "lead-glass-filled corundum" might deceptively imply that a product is a single stone infused with lead glass rather than a product composed of

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with lead glass, 29 percent stated that the term "hybrid ruby" was "not at all accurate," and 42 percent said the term was "somewhat accurate."

[342] Proposed Note to Section 23.25(4)-(6).

[343] Proposed Note to Section 23.25(1) and (2).

[344] Some commenters explicitly distinguish "corundum" from "ruby" as the starting material for infusion with lead glass, while others do not make that distinction. The Commission seeks comment on whether it should distinguish between "ruby" and "corundum."

multiple pieces fused together with lead glass. Therefore, the Commission invites comment on whether these proposed terms imply deceptive claims and requests that commenters provide any supporting evidence.

Finally, despite commenters' suggestions that the Guides provide other terms to describe these products, such as "manufactured product," the Commission declines to do so because it lacks clear evidence on how consumers perceive these terms.

H. Gemstone Treatments and the Term "Natural"

1) Current Guides

Currently, Section 23.22 of the Guides advises marketers to disclose treatments to gemstones if: (1) the treatment is not permanent; (2) the treatment creates special care requirements; or (3) the treatment has a significant effect on the stone's value.[345] In the first circumstance, Section 23.22(a) advises the seller to disclose that the gemstone has been treated, and that the treatment is, or may not be, permanent. In the second, Section 23.22(b) advises the seller to disclose that the gemstone has been treated and has special care requirements. This subsection states it is "also recommended that the seller disclose the special care requirements to the purchaser." In the third circumstance, Section 23.22(c) advises the seller simply to disclose that the gemstone has been treated.

Section 23.24 states it is unfair or deceptive to use the word "natural" or similar terms to "describe any industry product that is manufactured or produced artificially."[346]

2) Comments

[345] 16 CFR 23.22.

[346] 16 CFR 23.24.

Two commenters, AGA and JEA, discussed whether the Commission should modify its guidance on gemstone treatments and, relatedly, whether the Guides adequately address the term "natural."

AGA argued the Commission should revise the Guides to advise marketers to disclose any treatment beyond cutting and polishing because all treatments, regardless of type, implicate at least one of the three conditions enumerated in the current Guides.[347] It stated that many treatments are not permanent, and even permanent treatments create special care requirements. According to AGA, for example, heating alone can cause increased brittleness, such that normal wear damages the product. AGA also opined that all treated gemstones sell for less -- often far less -- than untreated stones, no matter how minimal the treatment.[348]

Additionally, AGA explained that many consumers are unaware there are two categories of "natural" stones (*i.e.*, not manufactured or produced artificially) -- treated and untreated stones -- and that untreated stones are significantly more valuable than stones that attain a similar appearance through treatments such as heating. AGA also noted that gemstone treatments are increasingly common. Therefore, according to AGA, using the unqualified term "natural" likely misleads consumers who are unaware of the value differences between treated and untreated stones.

Similarly, JEA argued that marketers should disclose all gemstone treatments other than cleaning, polishing, and faceting.[349] JEA further recommended that the Guides define the term "natural" as gemstones "occurring in nature without the interference or assistance of man, and

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[347] AGA comment 12 at 3.

[348] AGA comment 12 at 4.

[349] JEA comment 13 at 11.

which have been mined or extracted, and cleaned, polished, and/or faceted."[350] According to JEA, when describing a product that does not meet this proposed definition, marketers should precede the term "natural" with the word "treated" or "enhanced," to indicate that the product is "not a natural gemstone or unmanufactured industry product."[351]

3) Analysis

The Commission proposes retaining Sections 23.22 (Disclosure of treatments to gemstones) and 23.24 (Misuse of the words "real," "genuine," "natural," "precious," etc.) without change.[352] Section 23.22 adequately addresses the commenters' concern that all gemstone treatments either: (a) are not permanent; (b) create special care requirements; or (c) significantly affect a stone's value. In any of these circumstances, the current Guides advise treatment disclosure because such information is material to a consumer's purchasing decision.[353]

The Commission also declines to propose advising marketers to disclose any treatment beyond cleaning, polishing, or faceting that does not fall within conditions (a) through (c) of Section 23.22. Once a treatment is permanent, does not create special care requirements, and

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[350] *Id.* at 11 (noting the American Gem Trade Association and the World Jewellery Confederation (CIBJO) both have defined "natural" similarly).

[351] *Id.* at 14. No commenter submitted consumer perception evidence directly addressing the term "natural." JVC's Harris study asked respondents to indicate whether the following statement is true or false: "If a jewelry piece is labeled as containing a gem, that indicates the gem is of natural origin (*i.e.*, not manufactured)." Therefore, this question did not examine the meaning of "natural," and its relationship to treatments, but instead defined the term as meaning a product that was not manufactured. Additionally, JEA conducted an "informal survey" on its Facebook page, which found that 100 percent of respondents stated the Guides should expressly define "natural." *Id.* at 11.

[352] These sections are now renumbered as proposed Sections 23.24 and 23.26, respectively.

[353] The Guides formerly stated that marketers should disclose only treatments to gemstones that are not permanent or that create special care requirements. In 2000, the Commission added a provision stating marketers should also disclose treatments that significantly affect a stone's value. The Commission explained that there are permanent gemstone treatments, such as heat treatments, that do not create special care requirements but do significantly affect a stone's value. For instance, sapphires are often heat treated to enhance their color. Although this treatment is permanent and does not create special care requirements, an untreated sapphire could be considered more valuable than a heat-treated stone. Thus, the Commission concluded that, absent disclosure of the heat treatment, consumers may be deceived as to a stone's value. *See* 65 FRN 78738 at 78741 (Dec. 15, 2000) (effective date, April 10, 2001).

does not significantly affect a stone's value, the Commission lacks evidence regarding whether consumers consider the treatment material.

Although no commenter specifically discussed Section 23.22's guidance advising particular types of disclosures (*i.e.*, that a treatment is or may not be permanent, or that a treatment has special care requirements), or recommending that sellers disclose any special care requirements, the Commission poses several questions to help evaluate whether this guidance continues to be necessary to prevent deception. During the 1996 review, the Commission found that many consumers lacked detailed knowledge about the nature and types of treatments used to enhance gemstones. The Commission also found that consumers would expect gemstone purchases to retain their appearance over time regardless of any treatments and not to require special care to retain their appearance.[354] The Commission therefore concluded that non-permanent treatments, or any treatments that create special care requirements, should be disclosed. At the time, the record did not demonstrate that a failure to disclose the special care requirements (as distinguished from simply disclosing that the stone had been treated) would be unfair or deceptive.[355] The Commission explained that, because the Guides advise sellers to disclose treatments that create special care requirements, a consumer acting reasonably in the circumstances could be expected to inquire about the process and its permanence, and thus learn about those requirements. However, the Commission added language recommending that sellers disclose the special care instructions because such treatments at the time were relatively new in the marketplace, and consumers might not have been as familiar with their requirements.[356] Given the passage of time, the Commission asks questions to determine whether recommending

[354] 61 FR 27178, 27206 (May 30, 1996).

[355] 61 FR 27178, 27207 (May 30, 1996).

[356] 61 FR 27178, 27208 (May 30, 1996).

that sellers disclose special care requirements, in addition to disclosing that the product has been treated and has special care requirements, is still necessary.

Lastly, the Commission declines to propose a definition of "natural." Section 23.24 (now renumbered as Section 26) states it is unfair or deceptive to use the word "natural" to describe "any industry product that is manufactured or produced artificially." The role of the Guides is to help prevent consumer deception. The Commission issues its guidance based on consumers' actual understanding of particular terms. However, no commenters provided evidence of how consumers understand the term "natural." The Commission therefore lacks a basis to provide further guidance and therefore seeks consumer perception evidence on this term.

I. Varietals

1) Current Guides

Although the Guides caution marketers not to misrepresent, among other things, the "type," "kind," "quality," "character," "substance," "origin," "value," "or any other material aspect of an industry product,"[357] they do not specifically address gemstone varietal names. These names describe a division of gem species or genus based on color, type of optical phenomenon, or other distinguishing characteristic of appearance (*e.g.*, crystal structure).

2) Comments

JVC was the only commenter that discussed whether the current Guides adequately address deception resulting from the misidentification of varietal names.[358] It explained that certain gemstones historically have been marketed to consumers using the varietal name of the mineral (*e.g.*, emerald, amethyst, and ruby) as opposed to the actual mineral species (*e.g.*, beryl,

[357] 16 CFR 23.1.

[358] JVC comment 27 at 3.

quartz, or corundum, respectively).[359] Therefore, JVC expressed concern that some marketers describe a golden beryl as "yellow emerald," thereby using "traditional value association to link their differently-colored product with the traditional product in the mind of a consumer, and thus charge a higher price."[360] In fact, emerald is green beryl, and the correct varietal name for golden beryl is heliodor. Accordingly, JVC recommended the Commission modify the Guides to state that marketers should not misrepresent varietal names.

The Harris study included consumer perception findings for some of these terms, but JVC's comment did not discuss these findings. The Commission analyzes this data below.

3) Analysis and Proposed Guidance

JVC noted that some marketers use certain varietal names incorrectly to exploit consumers' knowledge of a particular stone's value. For example, some sellers label heliodors as "yellow emeralds." Although both heliodors and emeralds are beryls, not all beryls are emeralds. Emeralds differ optically, physically, and chemically from heliodors and are significantly rarer.[361] Therefore, calling a heliodor a "yellow emerald" deceptively implies that a heliodor is rarer than it is and as valuable as an emerald.

The Harris study supports JVC's concerns. In this study, consumers gave a higher retail value to "yellow emeralds" than to "heliodors" or "golden beryl."[362] For example, 41 percent of

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

[360] *Id.*

[361] Although all beryls are colorless in their pure mineral form, varying geologic conditions transform them into varieties with different properties. A beryl may meld with different elements, such as chromium, vanadium, or iron, resulting in a varietal stone with different molecular bonding, crystallization, and color. For example, in rare instances, a beryl may combine with chromium and vanadium to form an intensely green stone, i.e., an emerald. Far more commonly, beryl may combine with iron to form a heliodor (or golden beryl), a yellow stone.

[362] The study also found, however, that the vast majority of respondents were unfamiliar with these terms. Specifically, 94 percent were unfamiliar with the mineral species "golden beryl"; 93 percent were unfamiliar with the incorrect varietal name for this mineral species ("yellow emerald"); and 96 percent were unfamiliar with the

respondents stated that "yellow emeralds" were more valuable than "golden beryls."[363] Similarly, 41 percent stated that "yellow emeralds" were higher in value than "heliodor."[364] Additionally, 44 percent stated "green amethyst" was higher in value than prasiolite (the varietal name for a green form of quartz).[365]

Based on JVC's comment and the Harris study, the Commission proposes a new section [Section 23.28], which states it is unfair or deceptive to mark or describe a product with an incorrect varietal name. It also provides two examples of markings or descriptions that may be misleading: (1) use of the term "yellow emerald" to describe a golden beryl or heliodor and (2) the use of the term "green amethyst" to describe priasolite.

J. Cultured Diamonds

1) Current Guides

The Guides do not specifically address use of the term "cultured" to describe industry products created in a laboratory that have essentially the same optical, physical, and chemical properties of natural gemstones. Section 23.23, however, provides it is unfair or deceptive to use a gemstone name (*e.g.*, diamond) to describe such products unless the name is qualified by the word "laboratory-created," "laboratory-grown," "[manufacturer name]-created," or "synthetic."[366] In connection with petitions submitted by several jewelry industry trade groups in 1986 and 2006, the Commission considered proposals to amend the Guides to state that it is

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correct varietal name ("heliodor"). An additional nine percent have "heard of, but are not familiar" with heliodor. This may indicate that marketers do not use widely use these terms.

[363] Forty-three percent stated that they were equal in value. Sixteen percent of respondents perceived "golden beryl" to be more valuable than "yellow emerald."

[364] Forty-five percent stated they were equal in value. Fourteen percent perceived "heliodor" to be more valuable than "yellow emerald."

[365] Forty-four percent stated they were equal in value. Twelve percent believed "prasiolite" was more valuable.

[366] 16 CFR 23.23(b).

deceptive or unfair to describe such products as "cultured." After reviewing the record, the Commission determined there was insufficient evidence to conclude that using "cultured" in reference to laboratory-created diamonds or other laboratory-created gemstones would be either deceptive or unfair if marketers effectively qualified the term as suggested in Section 23.23.[367] Accordingly, the Commission sought additional evidence.

2) Comments

Only one commenter stated that the term "cultured" appropriately describes laboratory-created diamonds. Six others argued that this term would be misleading. Gemesis argued that the term accurately describes the formation of laboratory-grown diamonds.[368] Gemesis explained that laboratory-grown diamonds form by growing a "diamond seed" into a rough diamond. According to Gemesis, humans intervene only by planting the diamond seed into a growth chamber. They do not manipulate the subsequent growth phase, in which carbon atoms re-crystallize naturally. Therefore, Gemesis asserted this process is analogous to cultured pearl creation.[369]

In contrast, six commenters stated that marketers should use the term "cultured" only to describe an "organic process" facilitated by humans, such as the production of pearls by mollusks with human intervention.[370] They expressed concern that using this term for inorganic, laboratory-created gemstones would confuse consumers.

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[367] *See* FTC letter of July 21, 2008, declining to amend the Guides with respect to use of the term "cultured," available at http://www ftc.gov/os/2008/07/G711001jewelryguides.pdf.

[368] Gemesis comment 45 at 2.

[369] Gemesis also argued that consumers are largely confused by the term "synthetic," which, unlike "cultured," does not explain how laboratory-grown diamonds are grown. Therefore, consumers may believe that "synthetic" is synonymous with "fake." *Id.* at 6-9.

[370] ASA comment 24 at 3; Eisen comment 10 at 1; GIA comment 25 at 1; JEA comment 13 at 6-7; JVC comment 27 at 35.

Only one of these six commenters explicitly addressed use of the term "cultured" in conjunction with the qualifying terms the Guides provide for these gemstones. JVC referenced its 2006 petition to the Commission, in which it warned that qualifying "cultured" with terms such as "laboratory-created" would be ineffective. JVC predicted that, "in face-to-face transactions, retail salespeople would use the shorthand 'cultured' rather than slow up a possible sale with awkward disclosures."[371] It argued that retailers would increasingly use the phrase "cultured diamonds" without qualification, and consumers would therefore become increasingly familiar with this phrase, even if they are not sure what it means.

In support of its assertions, JVC cited its Harris study. Over half of the study's respondents assumed the unqualified term "cultured diamond" referred to a natural stone, while almost half understood the term to be synonymous with "manufactured." JVC argued this research "indicates that the correct use of the term cannot be enforced, and its misuse cannot be prevented." It therefore reiterated that marketers should not use the term "cultured" to describe diamonds.

Finally, JVC stressed that international standards allow the term "cultured" only to describe "organic" natural processes by which an act of human intervention encourages pearl formation in a mollusk in a natural setting. Specifically, CIBJO disallows "cultured" as a descriptor for any product other than a pearl, and draft EU standards currently proposed to ISO member states specifically prohibit the use of qualifiers such as "cultured" to describe a synthetic diamond.[372]

3) Analysis and Proposed Guidance

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[371] JVC comment 27 at 35.

[372] *Id.* at 23-24.

The proposed Guides advise marketers not to use the unqualified term "cultured" to describe laboratory-created diamonds. As discussed below, the consumer perception evidence shows that the unqualified term may convey the deceptive impression that a diamond is natural, *i.e.*, not created in a laboratory. This evidence, however, also shows that qualifiers cure this deceptive impression. Accordingly, the proposed Guides advise marketers to qualify "cultured diamonds" with terms such as "laboratory-created" (*e.g.*, "laboratory-created cultured diamond").[373] The Commission declines to propose aligning the Guides with international standards by prohibiting use of the term "cultured" to describe such diamonds.

The Harris study results suggest that consumers interpret an unqualified "cultured diamond" claim to mean that a "cultured diamond" is natural. Specifically, the study asked respondents whether diamonds described with the terms "cultured" are "a natural product, or manufactured?" In response, over half (53 percent) of respondents stated that a "cultured diamond" is a natural stone. In contrast, only 10 percent stated that a "laboratory-created diamond" is natural.[374]

The study results also indicate that consumers do not understand that a stone described with the unqualified term "cultured" is a laboratory-created stone. The study asked respondents to choose terms that they associate "with the stone that had the highest retail value." While ten percent selected "cultured diamond," only one percent of respondents selected "laboratory-grown diamond" and "synthetic diamond," demonstrating respondents incorrectly distinguished "cultured diamonds" from laboratory-created diamonds.[375]

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[373] Proposed Section 23.12(c)(3).

[374] In addition, 10 percent stated that a "synthetic diamond" is a natural stone, and 19 percent stated that a "laboratory-grown diamond" is a natural stone.

[375] Eighty-four percent selected "diamonds" as the stone with the highest retail value.

The study, however, also suggests that the phrase "cultured diamond" can be effectively qualified with terms such as "laboratory-created" and "laboratory-grown." Fifty-three percent of respondents thought a "cultured diamond" was a natural diamond, rather than manufactured. However, when "cultured diamond" was qualified with "laboratory-created" (*i.e.*, "laboratory-created cultured diamond"), only 13 percent stated the stone was natural.[376] Moreover, there was a minimal difference between respondents who stated "laboratory-created cultured diamonds"[377] were natural (13 percent) and those who thought "laboratory-created diamonds" were (10 percent).

Accordingly, the Commission proposes adding a new example to Section 23.11 (now renumbered as Section 23.12), which states it is unfair or deceptive to use the term "cultured" to describe laboratory-created diamonds unless the term is immediately accompanied by "laboratory-created" or by a phrase of like meaning.[378]

Finally, the Commission declines to propose aligning the Guides with international standards that prohibit use of the term "cultured" to describe synthetic diamonds. Although the Commission strives to harmonize its guidance with international standards whenever possible, such standards are not necessarily based on deception or unfairness. In contrast, the FTC Guides are based solely on deception. Therefore, to advise against any use of a term, the Commission would have to find that it would be deceptive under any circumstance. As discussed above, however, the consumer perception evidence demonstrates that the term "cultured diamond" can be effectively qualified.

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[376] Nineteen percent of respondents stated a "laboratory-grown diamond" was natural. The study did not examine the phrase "laboratory-grown cultured diamond."

[377] Emphasis added.

[378] Proposed Section 23.12(c)(3).

K. Gem/Gemstone

1) Current Guides

Section 23.25 ("Misuse of the word 'gem'") states it is "unfair or deceptive to use the word 'gem' to describe . . . a ruby, sapphire, . . . or other industry product that does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem."[379] A note to 23.25 cautions that "[n]ot all diamonds or natural stones, including those classified as precious stones, possess the necessary qualifications to be properly termed 'gems.'"

Section 23.25(b) addresses the use of the word "gem" to describe a laboratory-created product. It provides that is unfair or deceptive to use the word "gem" to describe such a product unless it possesses the beauty, symmetry, rarity, and value necessary for qualification as a gem. In these circumstances, the word "gem" should be "immediately accompanied, with equal conspicuousness, by the word 'laboratory-grown,' 'laboratory-created,' or '[manufacturer name]-created,' 'synthetic,' or some other phrase of like meaning, so as to clearly disclose that it is not a natural gem." Further, the note to 23.25 states that marketers generally should avoid using the word "gem" with respect to laboratory-created stones because "few laboratory-created stones possess the necessary qualifications to properly be termed 'gems.'"[380]

Similarly, Section 23.20(j), regarding misuse of the terms such as "cultured pearl," states that it is "unfair or deceptive to use the word 'gem' to describe, identify, or refer to a pearl or cultured pearl that does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem.[381] The accompanying note cautions that marketers should avoid the word

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[379] 16 CFR 23.25(a).

[380] 16 CFR 23.25, Note. This note also states that imitation diamonds and other imitation stones should not be described as "gems."

[381] 16 CFR 23.20(j).

"gem" with respect to cultured pearls "since few cultured pearls possess the necessary qualifications to properly be termed 'gems.'"[382]

2) Comments

The only three commenters addressing this issue recommended the Commission revise its guidance regarding Section 23.25. Boyle Fredrickson urged the Commission to eliminate the distinction between "gem" and gemstone," noting that they are synonymous in the dictionary.[383] Boyle Fredrickson further opined that the Guides fail to provide clear guidance because they provide (at Section 23.25(a)) a "subjective circular reference to the same word," *i.e.*, a product is a "gem" when it has the beauty, symmetry, rarity, and value of a gem.[384] Boyle Fredrickson also suggested eliminating Section 23.25(b), which advises against use of the word "gem" to describe a laboratory-created product unless the product, among other things, has the "value necessary for qualification as a gem." Boyle Fredrickson argued this guidance is inconsistent with Section 23.23, which allows marketers to describe rubies, birthstones, and gemstones, etc. as "laboratory-created" without regard to value.[385]

Arem similarly critiqued the Commission's guidance: "[t]erms involving hardness, beauty, durability, rarity, etc. are descriptive adjectives and may not be used to define the product."[386] He therefore argued that the Commission should "abandon the outdated, misleading,

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[382] 16 CFR 23.20(j), Note. This note also states that imitation pearls should not be described as "gems."

[383] Boyle Fredrickson comment 20 at 5-6.

[384] *Id.* at 5.

[385] *Id.*

[386] Submitted with JEA comment 13 at 2.

and incorrect use of attributes to serve as definitions."[387] According to Arem, a gemstone "is a mineral that is cut and polished for ornamental purposes."[388]

Finally, JEA focused on a gem's inorganic character and suggested the Commission add the following definition to Section 23.25: "A gem is, with rare exception (pearl, coral, amber), an industry product made of an inorganic mineral or rock used in adornment."[389]

No commenter submitted consumer perception evidence on this issue.

3) Analysis and Proposed Guidance

The Commission agrees that the current Guides provide inadequate guidance for the term "gem." To rectify this problem, the Commission proposes eliminating Section 23.25 ("Misuse of the word 'gem'") and adding the term "gem" to Section 23.23 (Misuse of the words "ruby," "sapphire," "emerald," "topaz, "stone," "birthstone," "gemstone," etc.).[390] For the same reason, the Commission also proposes to eliminate Section 23.20(j) and its accompanying note, which provide similar guidance for pearls.

Section 23.25 provides that an industry product can only be considered a "gem" if it possesses the beauty, symmetry, rarity and value necessary for qualification as a gem. Similarly, Section 23.20 advises marketers not to describe pearls or cultured pearls as gems unless they possess the beauty, symmetry, rarity, and value necessary for qualification as a gem. This guidance is circular and relies on highly subjective judgments. The Commission, however, lacks evidence regarding how consumers understand the terms "gem" and "gemstones," including

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[387] *Id.* at 2.

[388] *Id.* at 1.

[389] JEA also suggested definitions for the terms "natural," "treated," "synthetic," and "imitation." JEA comment 13 at 14.

[390] Renumbered as Section 23.25 in the Proposed Guides.

whether consumers understand the term "gem" to mean a gemstone that meets certain criteria, as the Guides suggest.[391]

Moreover, separate guidance on the terms "gem" and "gemstone" may be unnecessary if consumers interpret these terms as synonyms. While not determinative, industry use of these terms suggests that this is the case. For example, the American Gem Trade Association (AGTA) refers to itself as the "colored gemstone industry,"[392] and its information manual provides guidance on "gemstones," but does not mention "gems." The AGTA's "Frequently Asked Questions" section does not mention "gems" when addressing the "value and quality of a gemstone." Instead, it states, "[s]imply put, the type of gemstone and color you select should be the one you like the most. . . . However, colored gemstones are judged by their beauty and rarity." Similarly, the International Gem Society's website states that it is "[d]edicated to bringing quality information . . . to everyone interested in gemstones."[393]

The Commission, therefore, proposes to eliminate Sections 23.25 and 23.20(j) (now renumbered as Section 23.21). The Commission, however, does not propose new sections for the term "gem" because, as noted above, consumers likely view this term as synonymous with

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[391] One dictionary lists "gem" and "gemstones" as synonyms, yet provides somewhat different definitions for each (defining gem as a "precious or sometimes semiprecious stone cut and polished for ornament" and gemstone as a "mineral or petrified mineral that when cut and polished can be used in jewelry"). Merriam-webster.com**.** Other sources use these terms interchangeably. *See e.g.*, National Geographic website ("Many minerals form beautiful crystals, but the most prized of all are gemstones. Uncut gems are often fairly ordinary looking. It's only when they are cut and polished that they obtain the brilliance and luster that makes them so valued." http://science.nationalgeographic.com/science/earth/inside-the-earth/minerals-gems/).

[392] *See* AGTA Code of Ethics, http://www.agta.org/about/ethics html.

[393] *See also*, Tiffany & Co. website (referring only to gemstones, *e.g.*, "Tiffany & Co. has strict protocols for the sourcing of gemstones." http://www.tiffany.com/csr/responsiblesourcing/mininggemstones.aspx); JTV (website includes a glossary that defines "gemstone," but not "gem"; states that "[m]ost gemstones are actually mineral crystals . . . . A few grow large enough to be cut into beautiful gemstones. The three characteristics that qualify a mineral crystal to be a gemstone and help determine its value are durability, beauty, and rarity." http://www.jtv.com/library/gemstone-glossary.html); *but see*, International Colored Gemstone Association website, which refers to terms interchangeably ("Choosing a Gem. A gemstone is the naturally occurring crystalline form of a mineral, which is desirable for its beauty, valuable in its rarity, and durable enough to be enjoyed for generations." http://www.jewelinfo4u.com/gemstones.aspx).

"gemstone."

The Commission requests consumer perception evidence on the terms "gem" and "gemstone," and solicits comments on whether consumers consider products labeled as "gems" more valuable, symmetrical, or rare; whether and how marketers use the term "gem" to describe pearls; and whether consumer perception of this term differs depending on whether a product is a pearl or a gemstone.

In addition, to make clear that marketers should not misuse the term "gem," just as they should not misuse the term "gemstone," the Commission proposes to add the term "gem" to existing Section 23.23 ("Misuse of the words 'ruby,' 'sapphire,' . . . 'gemstone,' etc.") (now renumbered as Section 23.25). Therefore, proposed Section 23.25 states it is "unfair or deceptive to use the word 'ruby,' . . . 'gemstone,' 'gem,' or similar term to describe a laboratory-grown . . . stone unless, unless such word or name is immediately preceded with equal conspicuousness by the word 'laboratory-grown,' . . . ." To be consistent, the Commission also proposes to eliminate Section 23.20(j), which provides similar guidance for pearls. It does not, however, propose further guidance for the term "gem" with regard to pearls. The remainder of Section 23.20 and Section 23.19 provide sufficiently detailed guidance to prevent deception.[394]

L. Flawless

1) Current Guides

The Guides include two sections relating to the words "flawless" and "perfect." Section 23.12 addresses the use of these terms to describe diamond jewelry, stating it is unfair or deceptive to use the word "flawless" to describe any diamond that discloses flaws, cracks, inclusions, or other blemishes or imperfections. Additionally, Section 23.26(a) provides "[i]t is

[394] Renumbered as Section 23.21 and Section 23.20 in the Proposed Guides.

unfair or deceptive to use the word 'flawless' as a quality description of any gemstone that discloses blemishes, inclusions, or clarity faults of any sort when examined under a corrected magnifier . . . by a person skilled in gemstone grading." Further, Section 23.26(c) states "[i]t is unfair or deceptive to use the word 'flawless,' 'perfect,' or any representation of similar meaning to describe any imitation gemstone."

2) Comments

One commenter addressed guidance for the terms "flawless" and "perfect." Boyle Fredrickson contended that Section 23.26(c), which advises marketers not to use the terms "flawless" or "perfect" to describe any imitation gemstone, is unfair to consumers. He argued this guidance prevents marketers from informing consumers that simulated stones can be flawless. Boyle Fredrickson further noted that Section 23.23 (which addresses "Misuse of the words 'ruby,' . . . 'stone,' 'birthstone,' 'gemstone,' etc.") already advises marketers using such terms to disclose when a product is simulated or imitation, so consumers already know that it is not a natural stone.

3) Analysis

The Commission does not propose eliminating guidance advising marketers not to use terms such as "flawless" or "perfect" to describe imitation gemstones.[395] Even if a marketer were to accurately disclose that a simulated or imitation product had no flaws, the terms "flawless" or "perfect" likely would still deceptively imply that the product is a laboratory-created stone with the same optical, physical, and chemical characteristics of the natural stone it is imitating. Moreover, because the Guides already advise marketers not to use these terms to describe

[395] Section 23.26 is renumbered as 23.28 in the Proposed Guides.

imitation stones, the Commission is reluctant to change this guidance without evidence that consumers will not be misled.

M. Geographic and Regional Identification of Pearls

1) Current Guides

Section 23.1 states it is unfair or deceptive to misrepresent "the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, price, value, preparation, production, manufacture, distribution, or any other material aspect of an industry product."[396]

More specifically, Section 23.20 addresses the misuse of regional designations and other descriptions of pearls such as "cultured pearl," "seed pearl," and "Oriental pearl." For example, Section 23.20(g) states it is unfair or deceptive to use the term "South Sea pearl" (or "South Sea cultured pearl") unless it describes, identifies, or refers to a pearl (or cultured pearl) that is taken from (or formed in) a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia.[397]

Section 23.21 of the Guides addresses misrepresentations regarding cultured pearls. Specifically, this section states it is unfair or deceptive to misrepresent "the manner in which cultured pearls are produced, the size of the nucleus artificially inserted in the mollusk and included in cultured pearls, the length of time that such products remained in the mollusk, the thickness of the nacre coating, the value and quality of cultured pearls compared with the value

[396] 16 CFR 23.1.

[397] 16 CFR 23.20(g).

and quality of pearls and imitation pearls, or any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls."[398]

2) Comments

Two commenters suggested the Commission amend the Guides to address geographic or regional identifiers.

The first, JEA, recommended two amendments concerning the use of geographic or regional names to describe pearls. Specifically, JEA proposed that the Commission modify Section 23.20(g) to state: "It is an unfair or deceptive practice to use a geographic or regional name for natural and cultured pearls that were not formed in the actual waters of the regional designation."[399] JEA also suggested that the Commission revise Section 23.21 to state: "It is unfair or deceptive to misrepresent the manner or location in which cultured pearls are produced, the size of the nucleus artificially inserted in the mollusk and included in cultured pearls, the length of time that such products remained in the mollusk, the thickness of the nacre coating, the value and quality of cultured pearls as compared with the value and quality of pearls and imitation pearls, or any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls."[400] JEA did not provide an explanation for these proposals.

The second commenter, ASA, proposed several changes concerning marketers' use of geographic or regional names. ASA argued that it is dangerous to allow "a geographic place name to be used to describe a material when it is not from that place" because "a gemstone's quality and rarity are often implied by its place of origin to ordinary buyers, who are also not

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[398] 16 CFR 23.21.

[399] JEA comment 13 at 14.

[400] *Id.* (emphasis added to highlight JEA's proposed revision).

familiar with its other value factors, including its current market prices."[401] For example, ASA explained that international group Gemstone Industry and Laboratory Conference (GILC) approved using "paraíba" to describe copper-bearing tourmalines found in western Africa. According to ASA, the jewelry industry previously used "paraíba" to describe tourmaline found in Paraíba, Brazil, which had a high copper content and more intense blue or blue-green color than tourmaline found elsewhere. In ASA's view, since its discovery in 1989, "the resulting beauty and rarity" of paraíba tourmaline from Brazil "drove up its value far above any [other] tourmaline."[402] ASA, therefore, stated that calling inferior tourmaline from West Africa "paraíba" deceives consumers.

To address these concerns, ASA urged the Commission to create a new provision, "Section 23.27 – Misuse of geographic or regional identification," which would state: "It is unfair and deceptive to use a geographic or other term of regional significance in connection with the description of a stone when that stone does not come from that geographic location or region. An exception would be stones that utilize acceptable scientific suffixes such as 'tanzanite' or 'labradorite.'"[403]

Based on its contention that misusing geographic or regional identifiers allows marketers to make misleading implied claims about a gemstone's rarity, ASA recommended Guide revisions to focus on this type of misrepresentation. Specifically, ASA proposed amending Section 23.1 (general deception) to state it is unfair or deceptive to misrepresent "rarity." In

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[401] ASA comment 24 at 3.

[402] ASA comment 24 at 3.

[403] ASA comment 24 at 4. Similarly, JEA also noted that the Guides should address "the misuse of an origin name to falsely increase the rarity and/or value of a less valuable gemstone, *i.e.*, 'Paraiba-colored,' 'Paraiba-like,' 'Kasumigaura-like,' 'Chinese-Kasumigaura,' etc." However, JEA did not provide an explanation or evidence for this suggestion. JEA comment 13 at 16.

addition, ASA proposed that the Commission create the following substantiation requirement: "Where a seller makes claims pertaining to a gemstone's rarity, that claim must be substantiated through documentation that an average consumer can understand as to the impact of rarity on the stone's value."[404]

3) Analysis

The Commission does not propose amendments to address geographic or regional identification claims about pearls or gemstones. The Guides already address material false claims about origin with the general deception provision (Section 23.1), which advises marketers not to misrepresent a product's type, kind, quality, color, character, substance, origin, value, or other material aspect.[405] However, there is no evidence that using a term signifying a geographic or regional identification to describe a product not from the identified location is always a material misrepresentation.[406] In addition, as discussed *supra*, the Commission proposes a new section [23.28], which states it is unfair or deceptive to use the incorrect varietal name of a product.[407] The record does not demonstrate that additional guidance is necessary to prevent deception.

Section 23.21[408] states it is unfair or deceptive to misrepresent "the manner in which cultured pearls are produced" or "any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls." Thus, to the extent the particular

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[404] ASA comment 24 at 4.

[405] 16 CFR 23.1.

[406] For example, consumers are not deceived if marketers advertise their Wisconsin-made cheese as "Cheddar," even though it was not made in the village of Cheddar in England, where cheddar cheese originated.

[407] *See* discussion at III.I., *supra*.

[408] Section 23.22 in the Proposed Guides.

location in which a cultured pearl formed is material to consumers, the Guides already advise marketers against misrepresenting this aspect of cultured pearl production.

More specifically, Section 23.20[409] advises marketers not to misuse certain terms implicating regional designations, such as "South Sea [cultured] pearl"[410] and "Biwa cultured pearl."[411] The Commission issued this guidance in response to evidence that marketers used these terms deceptively. Commenters in the 1996 review described how companies used foreign names to confuse consumers. For instance, the value of "Biwa" pearls appreciated as Japanese freshwater pearl production neared extinction. Yet, many importers used "Biwa" to market freshwater pearls with a similar appearance at "Biwa" prices, but which came from countries such as China at a fraction of the cost.[412] Similarly, commenters reported that South Sea pearls commanded a strong market due to their attractive quality and size and noted they formed in a different type of oyster than Japanese akoya pearls.[413] Accordingly, for these particular terms, the Commission issued specific guidance to address material misrepresentations regarding product origin. However, no commenter has presented evidence that additional guidance regarding origin claims about pearls is necessary to prevent deception. The Commission therefore does not propose revising the Guides to address the use of geographic or regional identifiers for pearls more broadly.

Similarly, the Commission does not propose changes to address geographic or regional identifiers for gemstones. There is no evidence that using a term signifying a geographic or

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[409] Section 23.21 in the Proposed Guides.

[410] 16 CFR 23.20(g) (pearl taken from saltwater mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia).

[411] 16 CFR 23.20(h) (pearl grown in freshwater mollusk in the lakes and rivers of Japan).

[412] 61 Fed. Reg. 27178, 27203 (May 30, 1996).

[413] 61 Fed. Reg. 27178, 27201 (May 30, 1996).

regional identification to describe a gemstone that does not come from the identified location is always a material misrepresentation. Furthermore, the record does not establish that additional guidance regarding claims about gemstone rarity (whether express or implied through the use of a particular geographic or regional name) is necessary to prevent consumer deception. No commenter submitted consumer perception evidence showing whether or how complete information concerning gemstone rarity would impact consumer perception of the product's value, or whether such information would otherwise be material to consumers. Likewise, the record does not contain evidence of consumer harm resulting from misrepresentations regarding the origin or rarity of any particular type of gemstone.

As for "[P]araíba tourmalines," the record indicates that marketers have begun using "[P]araíba" to describe copper-bearing tourmalines that are found in Africa as well as Brazil, and which are similar in at least some respects. However, the extent to which "[P]araíba" conveys an established trade name, varietal, or geographic identifier is unclear. There is no evidence showing how consumers understand this term. The Commission poses several questions concerning these issues to obtain additional information.

N. Freshwater Pearls

1) Current Guides

Section 23.19 addresses misuse of the word "pearl,"[414] and Section 23.20 addresses misuse of various terms such as "cultured pearl" and "seed pearl."[415] Certain of these terms specifically refer to products formed in freshwater or saltwater mollusks. For example, Section 23.20(g) states it is unfair or deceptive to use the term "South Sea cultured pearl" unless it

[414] 16 CFR 23.19.

[415] 16 CFR 23.20.

describes, identifies, or refers to "a cultured pearl formed in a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia."[416] Similarly, Section 23.20(h) states it is unfair or deceptive to use the term "Biwa cultured pearl" unless it describes, identifies, or refers to "cultured pearls grown in fresh water mollusks in the lakes and rivers of Japan."[417]

The Guides, however, do not advise marketers to disclose whether pearls are developed in freshwater, rather than saltwater.

2) Comments

In the 1996 review, some commenters suggested that using the word "cultured" to describe freshwater pearls would create confusion because consumers tended to associate the term "cultured pearls" with pearls that were round, whereas freshwater pearls were often irregularly-shaped and smaller. Recent developments in the culturing process have affected pearl shape, size, quality, and color, such that freshwater products may resemble saltwater products in many respects. Thus, using the word "cultured" to describe such freshwater pearls might not pose the same concerns. Therefore, the Commission sought comments on whether additional disclosures would be necessary to avoid deception.

Three commenters responded on this issue.[418] Two of them (GIA and JEA) recommended affirmative disclosures, while the third (JVC) advised no changes. A fourth commenter (AGA) questioned whether the Guides clearly advise marketers to disclose that certain types of freshwater pearls are cultured, but did not address whether marketers should affirmatively disclose that a product developed in freshwater.[419]

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[416] 16 CFR 23.20(g).

[417] 16 CFR 23.20(h).

[418] GIA comment 25; JEA comment 13; JVC comment 27.

[419] AGA comment 12.

GIA and JEA proposed amending the Guides to require marketers to disclose the "growth environment" in which cultured pearls developed – *i.e.*, to specify whether the pearls were grown in saltwater or freshwater.[420] Noting the variation in price between saltwater and freshwater cultured pearls, GIA stated that disclosure of the growth environment "will reduce the possibility that consumers may be confused by the use of the word 'cultured' alone."[421] Similarly, JEA stated that freshwater cultured pearls "have become the dominant force in world markets," making cultured pearls available to consumers who otherwise could not afford saltwater versions. JEA contended freshwater cultured pearls should therefore be identified as such, "to protect the value of scarcer pearl varieties."[422]

In contrast, JVC recommended no changes to the Guides to address disclosures specific to freshwater pearls, indicating the current disclosures sufficiently address deception.[423]

AGA did not make any particular recommendations regarding this issue. However, it noted that Section 23.20 implies freshwater pearls that are not round or bead-nucleated may not require disclosure as "cultured." According to AGA, although the pearl industry once advocated such a position, it is now considered arcane.[424]

No commenters submitted evidence on whether it is material to consumers that a pearl developed in freshwater, or otherwise supporting a disclosure that a cultured pearl formed in freshwater. Likewise, the record does not contain evidence of consumer harm resulting from

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[420] GIA comment 25; JEA comment 13 at 9.

[421] GIA comment 25.

[422] JEA comment 13 at 9.

[423] JVC comment 27 at 37.

[424] AGA comment 12 at 11.

misrepresentations or lack of disclosure regarding the freshwater or saltwater formation of cultured pearls.

3) Analysis

Although some commenters recommended the Commission revise the Guides to advise marketers to disclose when a cultured pearl developed in freshwater, the Commission declines to do so. The Commission only advises marketers always to make disclosures when doing so is always necessary to prevent deception. The record, however, does not establish that disclosing a product's freshwater growth environment is necessary in all, or any, cases. The consumer perception evidence does not indicate whether a freshwater growth environment is material to purchasing decisions, nor does it show that a lack of disclosure regarding this element of pearl formation causes consumer harm. The Harris study examined only whether using the term "cultured" in conjunction with "freshwater pearls" had any impact on consumer perceptions of product value.[425]

Moreover, to the extent that the distinction between freshwater and saltwater were material to consumers, marketers would have to disclose that a pearl was developed in freshwater under Section 23.21, which advises marketers not to misrepresent the manner in which cultured pearls are produced, including any "material matter relating to the formation" of such pearls.[426]

Furthermore, the Commission finds that no changes are needed to address AGA's concern about whether the Guides' "cultured" disclosures apply to freshwater pearls that are not

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[425] Specifically, the study asked which product would be considered more valuable: a necklace made with "freshwater pearls" or a necklace made with "cultured freshwater pearls." Forty-three percent of respondents chose the necklace made with "freshwater pearls," whereas 19 percent thought the necklace with "cultured freshwater pearls" was more valuable. In addition, 16 percent of respondents thought both necklaces would have equal value, and 21 percent were not sure. JVC comment 27, exh. 2 at 10.

[426] 16 CFR 23.21. Section 23.22 in the Proposed Guides.

round or bead-nucleated. Section 23.20(b) discusses use of the term "seed pearl" (which JVC characterizes as a type of freshwater pearl)[427] and expressly advises marketers to use "cultured" as a qualifying term to describe seed pearls that are cultured.[428] In addition, Section 23.19 advises it is unfair or deceptive to use the word "pearl" to describe, identify, or refer to a pearl product created when a mollusk coats with nacre a nucleus that humans planted in the mollusk's shell or mantle, unless the terms "cultured" or "cultivated" immediately precede "pearl." 16 CFR 23.19(b).[429] This guidance applies regardless of the pearl's growth environment (freshwater or saltwater) and shape (round or bead-nucleated).

O. Disclosure of Treatments to Pearls

1) Current Guides

The current Guides do not specifically advise marketers to disclose pearl treatments. With respect to cultured pearls, Section 23.21 states it is unfair or deceptive to misrepresent "the manner in which cultured pearls are produced, . . . the thickness of the nacre coating, the value and quality of cultured pearls as compared with the value and quality of pearls and imitation pearls, or any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls."[430]

Section 23.22 advises marketers to disclose that a gemstone has been treated if the treatment: (a) is not permanent; (b) creates special care requirements; or (c) has significant effect on the stone's value.[431] The Guides do not expressly define the term "gemstone" either to

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[427] JVC comment 27 at 37. The Guides define seed pearls as small pearls measuring approximately two millimeters or less. 16 CFR 23.18(d). Renumbered as Section 23.21(b) in the Proposed Guides.

[428] 16 CFR 23.20(b).

[429] Renumbered as Section 23.20(b) in the Proposed Guides.

[430] 16 CFR 23.21.

[431] 16 CFR 23.22.

include or exclude pearl products. Section 23.0, however, states that the Guides apply to "jewelry industry products, which include, but are not limited to, the following: gemstones and their laboratory-created and imitation substitutes; natural and cultured pearls and their imitations. . . ."[432] Section 23.0 thus implies "gemstones" and "pearls" are separate product categories.[433]

2) Comments

The 2012 FRN sought comments on whether the Guides should advise the disclosure of treatments to pearl products and, if so, the types of disclosures that should be made. Among other things, the FRN solicited comments and evidence regarding whether there are any treatments to pearl products that are not permanent, and whether any treatments create special care requirements. The Commission also asked whether there is any value disparity between a pearl product that has been treated in a manner that is permanent and does not create special care requirements, and one that has not been treated.

As described below, nearly every commenter agreed that the Commission should revise Section 23.22, which addresses treatments to gemstones, specifically to include pearls.[434] With

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[432] 16 CFR 23.0.

[433] Separately, Section 23.20(j) notes that "[u]se of the word 'gem' with respect to cultured pearls should be avoided since few cultured pearls possess the necessary qualifications to properly be termed 'gems.'" 16 CFR 23.20(j), Note.

[434] JVC comment 27 at 37, exh. 1 at 17. Similarly, JEA recommended that the Guides direct marketers to disclose treatments to pearl products, such as by creating a new provision specific to pearl treatments that would advise marketers to disclose the treatments and any special care instructions. JEA comment 13 at 9-10. In addition, JEA recommended a new note to Section 23.21 (Misrepresentation as to cultured pearls), which would state that pearls are gemstone products, and that treatments to pearls should accordingly be disclosed in the manner prescribed in Section 23.22 (Disclosure of treatment to gemstones). Furthermore, JEA proposed adding pearls to the products listed in Section 23.23, which addresses misuse of the words "ruby," "sapphire," "emerald," "topaz," and the name of any other precious or semi-precious stone, as well as misuse of the words "stone," "birthstone," "gemstone," and similar terms. 16 CFR 23.23(a), (b). JEA comment 13 at 14-15. JEA did not, however, explain its reasons or submit evidence to support these recommendations, which would extend current guidance concerning gemstones, precious and semi-precious stones to encompass pearls. The Commission therefore declines to propose JEA's suggested revisions on this point.

the exception of GIA,[435] the commenters all agreed that marketers should disclose any treatment to a pearl product that: (a) is not permanent, (b) creates special care requirements, or (c) significantly affects the product's value. However, commenters disagreed about whether specific treatments such as bleaching and dyeing should be disclosed.

Several commenters recommended disclosures on grounds that treatments significantly affect value. For instance, one commenter stated pearl treatments should be disclosed because there is a significant value difference between treated and untreated pearls, even when the treatment is permanent.[436] Similarly, AGA contended certain treatments should be disclosed, even if permanent, "because they can have a significant influence on the apparent quality, and thus value, of the pearl."[437] Moreover, JEA noted that even manufacturing experts may be unable to distinguish treated from untreated pearls through visual inspection alone.[438]

Commenters, however, disagreed regarding disclosure of specific treatments. For example, AGA contended even permanent bleaching should be disclosed, due to its effect on value.[439] JEA agreed, stating that bleaching is a common practice which, at high concentrations, may damage a pearl's nacre. However, it recommended disclosure regardless of the bleach concentration (*i.e.*, irrespective of the likelihood that the treatment will cause damage).[440] In

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[435] GIA stated "all applied treatments, techniques or processes must be disclosed to ensure that the consumer is completely informed as to what they are purchasing." Whether GIA sought to qualify or limit its recommendation to treatments that meet one of the three conditions outlined in Section 23.22 of the current Guides is unclear. GIA comment 25.

[436] Eisen comment 10.

[437] AGA comment 12 at 11-12.

[438] JEA comment 13 at 10.

[439] AGA comment 12 at 11-12.

[440] JEA comment 13 at 9-10.

contrast, JVC described bleaching as a routine, permanent treatment that should not trigger a disclosure.[441]

Commenters also agreed that marketers should disclose pearl dyeing, but gave different or unspecified reasons for the disclosure. Two commenters stated that dyeing should be disclosed, either because it is not permanent and likely requires special care instructions, or because it affects value.[442] One of these commenters specifically noted that "little is known about the long-term stability of color treatments in pearls."[443] Three other commenters recommended disclosure, but did not explain why.[444] They did not address, for instance, whether dyeing is permanent, creates special care requirements, or significantly affects product value.

In contrast, JVC stated that dyeing is permanent, does not create special care requirements, and does not affect value. Nonetheless, it recommended disclosure because most consumers "are unaware that many of the pearl products they buy have been dyed and may be misled to believe these are naturally occurring colors."[445] Specifically, JVC proposed that the Commission add a separate note to Section 23.22 to advise disclosure for "pearl and cultured pearl products in which the color has been artificially altered beyond normal processing, for example by dyeing."[446] JVC explained that although pearl dyeing is "prolific," it is not a

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[441] JVC comment 27 at 37-38.

[442] Schenk comment 8; AGA comment 12 at 11-12.

[443] AGA comment 12 at 11.

[444] *See* Samuel Getz Designs comment 3; GIA comment 25; JEA comment 13 at 9-10. In a separate example, JVC identified irradiation as a pearl treatment that is not permanent and creates special care requirements, whereas AGA suggested irradiation may be permanent, but should nevertheless be disclosed because of its effect on a pearl's value. JVC comment 27 at 37; AGA comment 12 at 11-12. Thus, both commenters recommended disclosing irradiation treatments, though for different reasons.

[445] JVC comment 27 at 5.

[446] *Id.* at 37, exh. 1 at 17.

"routine practice that is required to bring the product to market."[447] According to JVC, AGTA and CIBJO "already require that . . . members disclose the dyeing of pearls, and it should be a standard industry practice in order to prevent consumer confusion and deception."[448]

JVC cited the Harris study in support of its recommendation. The study surveyed consumers regarding their familiarity with "brightly colored pearls (*e.g.*, pearls colored bright green, red, or hot pink)." The study found that 40 percent of respondents had never heard of these products. Only 12 percent reported being familiar with them. The study also indicated that 63 percent of respondents could not correctly identify that "brightly colored pearls" (which, for purposes of the survey, were described as bright green, red, or hot pink) were dyed artificially. In addition, 92 percent of respondents indicated it would be important for sellers to disclose that "some brightly colored pearls get their color from dyeing treatments that artificially color the final product," even where the treatment is permanent and does not require special care.[449]

3) Analysis and Proposed Guidance

The Commission proposes new guidance to address treatments to pearl products.[450] This guidance will largely mirror the current guidance regarding gemstone treatments. The Commission, however, declines to propose amendments specifically identifying which treatments should be disclosed for the reasons discussed below.

The record indicates there are pearl treatments that significantly affect quality, value, characteristics, or other material properties of pearls. Information regarding these treatments is likely to affect consumers' purchasing decisions. For instance, absent disclosure of a treatment

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[447] *Id.* at 38.

[448] *Id.*

[449] Specifically, 32 percent thought it "extremely important," 35 percent thought it "very important," and 25 percent thought it "somewhat important." JVC comment 27, exh. 3 at 11-12.

[450] Proposed Section 23.24.

that is not permanent, consumers would not expect a pearl's appearance to change over time. Moreover, consumers may be deceived if not informed there are special care requirements necessary to preserve the product. Similarly, absent disclosure of a treatment that significantly affects value, consumers may falsely believe that a treated pearl is as valuable as a similar, untreated one. Many of these treatments go beyond standard industry practices that are routinely used to bring products to market, such as drilling and polishing, and may not be readily apparent to the average consumer.

Accordingly, to help prevent consumer deception, the Commission proposes a new section with language that tracks the current guidance regarding treatments to gemstones.[451] Specifically, the Commission proposes a new Section 23.23, titled "Disclosure of treatments to pearls and cultured pearls." This provision states: "It is unfair or deceptive to fail to disclose that a pearl or cultured pearl has been treated if: (a) The treatment is not permanent. The seller should disclose that the pearl or cultured pearl has been treated and that the treatment is or may not be permanent; (b) The treatment creates special care requirements for the pearl or cultured pearl. The seller should disclose that the pearl or cultured pearl has been treated and has special care requirements. It is also recommended that the seller disclose the special care requirements to the purchaser; (c) The treatment has a significant effect on the product's value. The seller should disclose that the pearl or cultured pearl has been treated."

As with the current guidance regarding treatments to gemstones, the Commission poses questions to help evaluate whether the guidance recommending that the seller disclose the special care requirements for a treated pearl or cultured pearl is necessary to prevent deception. A seller's disclosure that the product has been treated and has special care requirements may be

[451] Section 23.22, now renumbered as proposed Section 23.24.

enough to prompt a consumer acting reasonably under the circumstances to inquire about the process and thus learn what the special care requirements are.

In addition, the Commission proposes including a Note to the new Section 23.23 analogous to the Note to Section 23.22 in the current Guides, which provides that the recommended disclosures apply to sellers at every level of trade and may be made at the point of sale prior to sale, except where a product can be purchased without personally viewing the product (*e.g.*, direct mail catalogs, online services, televised shopping programs), in which case disclosures should be made in the solicitation for, or description of, the product.[452]

Given the discrepancies among commenters regarding whether certain treatments meet one of the three conditions (*e.g.*, whether bleaching or dyeing is permanent or significantly affects value), the Commission does not propose specifying which particular treatments should be disclosed pursuant to this framework.[453] However, the mere fact that a treatment diverges from tradition should not trigger a disclosure requirement, absent evidence that failing to disclose would be deceptive. In determining whether a practice is deceptive, the Commission considers whether there is a material representation or omission that is likely to mislead consumers acting reasonably under the circumstances.[454] In developing the guidance for gemstone treatment disclosures in Section 23.22, the Commission determined it likely would be deceptive for sellers to fail to disclose a gemstone treatment if it is not permanent, creates special care requirements, or significantly affects product value.

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[452] *See* 16 CFR 23.22, Note (now renumbered as Section 23.24).

[453] For example, one commenter stated that "lapidary treatment" of cultured pearls (to make them rounder and more lustrous) should be disclosed, because it is "not in keeping with traditional cultivation practices." Schenk comment 8.

[454] Deception Policy Statement, Cliffdale Associates, Inc., 103 F.T.C. 110, 174 (1984), Letter dated Oct. 14, 1983, from the Commission to Chairman John D. Dingell.

P. Deception Generally and Misleading Illustrations

1) Current Guides

Section 23.1 states it is unfair or deceptive to misrepresent "the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, price, value, preparation, production, manufacture, distribution, or any other material aspect of an industry product."[455] Section 23.2 addresses the use of misleading illustrations, and states it is unfair or deceptive to "use, as part of any advertisement, packaging material, label, or other sales promotion matter, any visual representation, picture, televised or computer image, illustration, diagram, or other depiction which, either alone or in conjunction with any accompanying words or phrases" misrepresents any material aspect of an industry product.[456]

2) Analysis and Proposed Guidance

To streamline the Guides, the Commission proposes to eliminate Section 23.2 as superfluous, and incorporate its guidance within Section 23.1's general deception provision. Section 23.2 gives examples of misleading illustrations which are misrepresentations already addressed by the general deception provision. Thus, retaining Section 23.2 as a separate section is unnecessary. The Commission will, however, propose to retain the example set forth in the Note to Section 23.2 (regarding illustrations or depictions of diamond or other gemstone size) by transferring it to Section 23.1 as Note 3.

Q. "Hand-Made" Claims

1) Current Guides

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[455] 16 CFR 23.1.

[456] 16 CFR 23.2.

Section 23.3(a) ("Misuse of the terms "hand-made," "hand-polished," etc.") advises against making "hand-made" or "hand-wrought" claims unless the product was entirely shaped and formed from raw materials with hand labor and manually controlled methods. A note to Section 23.3(a) explains "raw materials" includes "bulk sheet, strip, wire, and similar items that have not been cut, shaped, or formed into jewelry parts, semi-finished parts, or blanks." Section 23.3(b) further advises marketers not to claim that a product is "hand-forged, hand-engraved, hand-finished, or hand-polished, or has been otherwise hand-processed," unless such operations were accomplished by hand labor and manually-controlled methods.

2) Comment

One commenter recommended revising the Guides' "hand-made" provision. Specifically, Walker Metalsmiths suggested amending Section 23.3 to clarify that the term "hand-made" applies not only to items "hand-wrought" from wire, sheet, or bar stock, but also to those cast from hand-carved or hand-modeled wax or cast from hand-made molds.[457] In addition, it recommended adding precious metal clays, ingots, and casting grain to the raw materials listed in the note. It also argued that the marketers should be able to claim a product is "hand-made" even when the product contains machine-made "incidental findings" (*i.e.*, parts used to join jewelry components).

3) Analysis

The Commission declines to propose revising the guidance on "hand-made" to specifically include products cast from hand-carved or hand-modeled wax or from hand-made molds. The commenter does not provide a basis for why these processes meet the Guides' criteria for "hand-made." Moreover, the Commission cannot list all the processes satisfying this

[457] Walker Metalsmiths comment 5.

criteria. Marketers meeting this criteria, however, may non-deceptively call these processes "hand-made." On the other hand, the current Guides do provide a list of items that are considered "raw materials."[458] Based on the commenters' suggestion, the Commission proposes adding precious metal clays, ingots, and casting grain to this list.

Finally, the Commission does not propose amending the Guides to address "incidental findings." The Commission clarifies, however, that to the extent consumers may find the incorporation of such minor, pre-formed items material to a "hand-made" claim, it would be deceptive to make this claim without further qualification.

R. Use of the Term "Enamel"

One commenter urged the Commission to provide guidance for "enamel" claims because of the term's potential to confuse consumers.[459] This commenter explained that "enamel," including "plique-a-jour enamel," can refer to a variety of materials not limited to paint or glass. Without information about how consumers interpret the term and evidence of deceptive claims, however, the Commission does not propose any amendment to address this issue.

S. Appraisals and Appraisers

ASA recommended new Guide provisions related to appraisals and appraisers.[460] ASA asserted that consumers associate these terms with levels of education and experience typically held by professional appraisers in other fields, such as real estate. ASA asserted that, because of the absence of minimum education and experience standards for jewelry appraisers, use of the terms "appraiser" and "appraisal" can mislead consumers. ASA did not provide any consumer perception evidence in support of its position.

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[458] Note to Section 23.3 Paragraph (a).

[459] Whittle Art Studio comment 7.

[460] ASA comment 2.

To address this problem, ASA recommended expanding the general guidance in section 23.0(c) to cover "appraisals." ASA also suggested that individuals representing themselves as an "appraiser" should disclose their education, experience, and other credentials. Finally, in ASA's view, the Guides should state that any documents presented in an "appraisal" must comply with the Uniform Standards of Professional Appraisal Practice, or with the substance and principles of those standards.

The Commission does not propose to expand the Guide to cover appraisals and appraisers. The record does not contain evidence of widespread misrepresentations related to appraisals. Absent such evidence, the Commission declines to recommend affirmative disclosures about the competence and qualifications of individuals involved in the jewelry industry.

IV. REQUEST FOR PUBLIC COMMENT

The Commission invites comment on all issues raised in this Statement, including all aspects of the proposed, revised Jewelry Guides. In addition, the Commission requests responses to the following specific questions:

A. Surface Application of Precious Metals

1. What expectations of durability do consumers have for products with a surface application of precious metals as compared to products composed throughout of precious metals?

    a. Please specify which metal you are referring to if your answer varies depending on the metal.

    b. Do these expectations differ by type of product, *e.g.*, wedding ring, brooch?

    c. Provide any evidence supporting your position.

2. How do consumers understand the qualifiers for coated products described in Sections 23.4(b) and (c) (*e.g.*, "gold plate(d)," "gold filled," "rolled gold plate," "gold overlay," "gold electroplate(d)," "heavy gold electroplate," "gold flashed," "gold washed") and in

Section 23.5 (“vermeil”)? Please specify which terms you are referring to in your response.

a. Do consumers distinguish between these terms? If so, how do they understand the differences between these terms in terms of durability and value?

b. Do consumers understand “plate(d)” to describe only electrolytic applications?

c. Are any of these qualifiers used for other precious metal coatings, such as silver, platinum, and platinum group metals? If so, do consumers understand these terms differently when used to describe these metals? How? Please specify which metal you are referring to if your answer varies depending on the metal.

d. Provide any evidence supporting your position.

3. Do the qualifiers in Sections 23.4(b) and (c), and in Section 23.5, adequately qualify the use of “gold” terms or other abbreviations to describe a coated product?

a. Why or why not?

b. Provide any evidence supporting your position.

4. Are there other disclosures that would adequately qualify the reference to a precious metal to describe a coated product?

a. If so, what are they?

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

c. How do consumers interpret them?

d. Provide any evidence supporting your position.

5. Should the Commission amend the silver section of the Jewelry Guides (23.6) to advise marketers against using silver terms to describe all, or part of, a coated product unless they adequately qualify the term to indicate the product has only a surface layer of the advertised precious metal?

a. If so, why? If not, why not?

b. Provide any evidence supporting your position.

6. Should the Commission amend the platinum section of the Jewelry Guides (23.7) to advise marketers against using platinum terms to describe all, or part, of a coated product unless they adequately qualify the term to indicate the product has only a surface layer of the advertised precious metal?

a. If so, why? If not, why not?

b. Provide any evidence supporting your position.

7. Is there any evidence that consumers better comprehend one method of disclosing the amount of precious metal in the outer layer of a surface application over another (for instance, weight ratio versus percentage, versus coating thickness)?

8. Should the Guides advise disclosure methods that differ depending on the application method?

   a. If so, why? If not, why not?

   b. Provide any evidence supporting your position.

9. The Commission proposes to eliminate Section 23.4(c)(2), a safe harbor advising marketers that they may use the term "gold plate" without qualification (other than fineness) to describe products on which at least 10K gold has been applied by any process (electrolytic or mechanically plated) when coatings have a minimum thickness throughout equivalent to one-half (1/2) micron of fine gold.

   a. Is retaining the safe harbor threshold set forth in Section 23.4(c)(2) (*i.e.*, gold alloy coating of at least 10 karats with a minimum thickness throughout equivalent to one-half micron of fine gold) necessary to prevent deception?

   b. If so, why? If not, why not?

   c. Provide any evidence supporting your position.

10. Is there any evidence that applying a thicker layer of lower-karat gold equivalent to 15 millionths of an inch (approximately 0.381 microns) of 22 karat gold produces comparable results in terms of coating durability, tarnish resistance, corrosion resistance, or other attributes? If so, please provide it.

11. The Commission proposes to revise the safe harbors in Section 23.4(c)(4) for using the terms "gold electroplated" and "gold plated" to state a minimum thickness of 15 millionths of an inch using 22 karats. Would an electrolytic application of 7 millionths of an inch of 22 karat gold be adequate to assure reasonable durability?

12. The proposed safe harbors for "heavy gold electroplate(d)" and "heavy gold plate(d)" applications retain the minimum thickness amount in Section 23.4(c)(4) of 100 µin (2.5 µ), but uses 22 karat gold. Is this necessary to prevent consumer deception?

   a. If so, how?

   b. Provide any evidence supporting your position.

13. The Commission proposes to update the safe harbor in Section 23.4(c)(3) for using the terms "gold filled," "gold overlay," and "rolled gold plate" to specify a minimum coating thickness of 170 millionths of an inch (approximately 4.3 microns). It also proposes to

retain the advice that marketers using the terms "gold overlay" and "rolled gold plate" should disclose the actual weight ratio of the item when the plating does not constitute 1/20th of the weight of the metal in the entire article. Are these revisions necessary to prevent deception?

a. If so, why? If not, why not?

b. Provide any evidence supporting your position.

14. The proposed safe harbor for "vermeil" applications retains the minimum thickness amount in Section 23.5(b) of 100 µin (2.5 µ), but uses 22 karat gold. Is this necessary to prevent consumer deception?

a. If so, how?

b. Provide any evidence supporting your position.

15. How do consumers understand the phrase "over" when used to describe jewelry (such as "gold over silver")?

a. Does marketers' use of this phrase cause consumer confusion or deception?

b. If so, should the Commission issue guidance to address the use of the term "over"? What should the guidance be?

c. Provide any evidence supporting your position.

16. How do consumers understand the phrase "gold layered" when used to describe jewelry?

a. Does marketers' use of this phrase cause consumer confusion or deception?

b. If so, should the Commission issue guidance to address the use of the phrase "gold layered"? What should the guidance be?

c. Provide any evidence supporting your position.

17. How do consumers understand the term "clad" when used to describe precious metals?

a. Does marketers' use of this phrase cause consumer confusion or deception?

b. If so, should the Commission issue guidance to address the use of the term "clad"? What should the guidance be?

c. Provide any evidence supporting your position.

18. How do consumers understand the phrase "bonded" when used to describe jewelry?

a. Does marketers' use of this phrase cause consumer confusion or deception?

b. If so, should the Commission issue guidance to address the use of the term "bonded"? What should the guidance be?

c. Provide any evidence supporting your position.

19. How do consumers understand the term "gold-tone" or "goldtone" when used to describe jewelry?

a. Does marketers' use of these terms cause consumer confusion or deception?

b. If so, should the Commission issue guidance to address the use of these terms? What should the guidance be?

c. Provide any evidence supporting your position.

20. Are there other terms not addressed in the current Guides or in the Commission's proposed amendments that marketers use to describe coated jewelry products?

a. If so, what are those terms?

b. How do consumers understand these terms?

c. Does marketers' use of these terms cause consumer confusion or deception?

d. If so, should the Commission issue guidance to address the use of these terms? What should the guidance be?

e. Provide any evidence supporting your position.

21. Should the Commission delete the Note to Section 23.4(b) concerning use of the words "Duragold," "Diragold," "Noblegold," "Goldine," "Layered Gold," and terms of similar meaning?

a. If so, why? If not, why not?

b. Provide any evidence supporting your position.

22. Should the Commission retain the Appendix to the Jewelry Guides – Exemptions Recognized in the Assay for Quality of Gold Alloy, Gold Filled, Gold Overlay, Rolled Gold Plate, Silver, and Platinum Industry Products?

a. If so, why? If not, why not?

b. Are any changes to the Appendix needed to address consumer deception?

c. Provide any evidence supporting your position.

B. Products Consisting of More than One Precious Metal

23. The Commission proposes to advise marketers to list precious metals in the order of their relative weight in the product from greatest to least, unless the context makes it clear that the metal listed first is not predominant. Would this proposal alter how surface-plated products are described?

    a. If so, how? Provide any evidence supporting your position.

    b. How would this proposed guidance affect provisions in the Guides concerning precious metal surface applications? For example, to prevent consumer deception, would a provision regarding use of the term "gold overlay" have to be amended to advise manufacturers to describe the product instead as "silver with gold overlay"?

24. Are there examples of non-deceptive descriptions and markings listing precious metals out of order of their relative weight?

    a. If so, please provide them.

    b. Does your answer differ depending on where the description appears, *e.g.*, hangtags vs. advertisements vs. marking? If so, how?

    c. Provide any evidence supporting your position.

C. Alloys with Precious Metals in Amounts Below Minimum Thresholds

[GOLD]

25. What do consumers expect in terms of performance or other objective qualities when purchasing a product described or marked as "gold"?

    a. Does the type of product or the intended duration of use affect consumers' expectations for the product's performance or other objective qualities?

    b. Provide any evidence supporting your position.

26. Is there a specific word or phrase that could be used to describe gold alloy products of less than 10 karats that would adequately convey how they differ from products with at least 10 karats in terms of the properties, attributes, or qualities material to consumers?

    a. If so, identify the word or phrase and provide evidence demonstrating that it adequately conveys the differences between the products.

27. Are alloy jewelry products containing less than 10 karats of gold currently being marketed?

    a. If so, how are such products described?

    b. How are such products marked?

    c. Provide marketing material exemplars describing or showing such products.

28. How do consumers understand a gold content disclosure that is stated as a percentage, rather than karats (*e.g.*, "33% gold" versus "8 karats")?

    a. Are consumers able to compare accurately the gold content of different jewelry items when one is described using karats, and the other using percentage?

    b. Will using percentages for this disclosure confuse consumers?

    c. If evidence indicates percentages disclosures will confuse consumers because the content disclosures for other gold products use karats, is there other evidence that indicates the benefits of percentage disclosures will outweigh the confusion?

    d. Provide any evidence supporting your position.

29. In addition to disclosing the amount of gold in an alloy, what other information, if any, is needed to avoid consumer deception?

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

    b. How do consumers interpret such additional disclosures?

    c. Provide any evidence supporting your position.

[SILVER]

30. Section 23.6 advises it is unfair or deceptive to use the terms "solid silver" "sterling silver," "sterling," and the abbreviation "Ster." to mark, describe, or otherwise represent all or part of an industry product unless it is at least 925/1,000ths pure silver.

    a. How do consumers understand the terms "solid silver," "sterling silver," "sterling," and "Ster."?

    b. Would an amendment advising marketers to use the terms "solid silver," "sterling silver," "sterling," or the abbreviation "Ster." to mark or describe all or part of a product that is less than 925/1,000ths pure silver, but otherwise has all the material properties and attributes of traditional sterling silver, create consumer confusion or cause consumer injury?

    c. Why or why not?

    d. Provide any evidence supporting your position.

31. Section 23.6(c) advises it is unfair or deceptive to use the terms "coin" or "coin silver" to mark, describe, or otherwise represent all or part of an industry product unless it is at least 900/1,000ths pure silver.

    a. How do consumers understand the terms "coin" and "coin silver"?

b. Would an amendment advising marketers they may non-deceptively use the terms "coin" or "coin silver" to mark or describe all or part of a product that is less than 900/1,000ths pure silver, but otherwise has all the material properties and attributes of traditional coin silver, create consumer confusion or cause consumer injury?

c. Why or why not?

d. Provide any evidence supporting your position.

32. What do consumers expect in terms of performance or other objective qualities when purchasing a product described or marked as "silver"?

a. Does the type of product or the intended duration of use affect consumers' expectations for the product's performance or other objective qualities?

b. Provide any evidence supporting your position.

33. Is there a specific word or phrase that could be used to describe silver alloy products of less than 925/1,000ths pure silver that would adequately convey how they differ from products with at least 925/1,000ths in terms of the properties, attributes, or qualities material to consumers?

a. If so, identify the word or phrase and provide evidence demonstrating that it adequately conveys the differences between the products.

34. Are alloy jewelry products containing less than 925/1,000ths pure silver currently being marketed?

a. If so, how are such products described?

b. How are such products marked?

c. Provide marketing material exemplars describing or showing such products.

35. How do consumers understand a silver content disclosure that is stated as a percentage, rather than parts per thousand (*e.g.*, "85% silver" versus "850 silver")?

a. Are consumers able to compare accurately the silver content of different jewelry items when one is described using parts per thousand, and the other using percentage?

b. Will using percentages for this disclosure confuse consumers?

c. If evidence indicates that percentages disclosures will confuse consumers because the content disclosures for other silver products use parts per thousand, is there other evidence that indicates the benefits of percentage disclosures will outweigh the confusion?

d. Provide any evidence supporting your position.

36. In addition to disclosing the amount of silver in an alloy, what other information, if any, is needed to avoid consumer deception?

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

    b. How do consumers interpret such additional disclosures?

    c. Provide any evidence supporting your position.

[**PLATINUM]**

37. Are there significant differences between platinum alloys that are at least 500 parts per thousand pure platinum and those that are less than 500 parts per platinum in terms of the properties, attributes, or qualities material to consumers?

    a. If so, describe those differences in detail.

    b. Provide any evidence supporting your position.

38. Is there a specific word or phrase that could be used to describe platinum alloy products of less than 500 parts per thousand pure platinum that would adequately convey how they differ from products with at least 500 parts per thousand in terms of the properties, attributes, or qualities material to consumers?

    a. If so, identify the word or phrase.

    b. Provide evidence demonstrating that it adequately conveys the differences between the products.

39. Are alloy jewelry products containing less than 500 parts per thousand pure platinum currently being marketed?

    a. If so, how are such products described?

    b. How are such products marked?

    c. Provide marketing material exemplars describing or showing such products.

40. How do consumers understand a platinum content disclosure that is stated as a percentage, rather than parts per thousand (*e.g.*, “45% platinum” versus “450 platinum”)?

    a. Are consumers able to compare accurately the platinum content of different jewelry items when one is described using parts per thousand, and the other using percentage?

    b. Will using percentages for this disclosure confuse consumers?

    c. If evidence indicates percentages disclosures will confuse consumers because the content disclosures for other platinum products use parts per thousand, is there other

evidence that indicates the benefits of percentage disclosures will outweigh the confusion?

d. Provide any evidence supporting your position.

41. Is there any evidence that disclosing the amount of platinum contained in a below-threshold alloy (*i.e.*, less than 500 parts per thousand pure platinum) will sufficiently alert consumers to the differences between products containing platinum in amounts above and below the Guides' thresholds?

a. In addition to disclosing the amount of platinum in the alloy, what other information, if any, is needed to avoid consumer deception?

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

c. How do consumers interpret such additional disclosures?

d. Provide any evidence supporting your position.

D. Describing Gold Quality

42. To what extent are gold jewelry products presently sold in the United States described or marked using parts per thousand?

a. Is the gold quality of these products also described or marked using karat designations?

b. Provide any evidence on this issue.

43. How well do consumers understand gold content expressed in parts per thousand?

a. Are consumers able to compare accurately the gold content of different jewelry items when one is described using karats, and the other using parts per thousand?

b. Provide any evidence supporting your position.

44. Should Section 23.4 be revised to include examples that describe and mark gold quality using only parts per thousand, in addition to the existing karat examples?

a. Why or why not?

b. Provide any evidence supporting your position.

E. Lead-Glass-Filled Stones

45. The comments on, and the Commission's analysis of, lead-glass-filled stones centered on rubies, as did the submitted consumer perception evidence. However, other stones filled

with substantial amounts of lead glass may be marketed with similar terms and therefore raise similar issues.

a. Should the Commission amend the Guides to address lead-glass-filled composite stones other than rubies? If so, does the proposed guidance ensure that consumers will not be misled about the composition of other lead-glass-filled composite stones and these products' performance, durability, value, and any special care requirements?

b. Provide any evidence supporting your position.

46. How do consumers understand the term "manufactured" when used to describe a gemstone (*e.g.*, "manufactured ruby")?

a. Does marketers' use of this phrase cause consumer confusion or deception?

b. If so, should the Commission issue guidance to address the use of this term? What should the guidance be?

c. Provide any evidence supporting your position.

47. Do the terms suggested in the proposed Note to Section 23.23 (now renumbered as Section 23.25) as examples of accurate descriptors for lead-glass-filled products imply deceptive claims? For example, a product may be composed of multiple pieces of corundum fused together with lead glass. In this example,

a. Would the term "lead-glass-filled corundum" to describe such a product deceptively imply that this product is a single stone infused with lead glass?

b. Would the term "lead-glass-filled composite corundum" be more accurate?

c. Is it material to consumers whether lead-glass is infused into one piece of corundum rather than multiple pieces?

d. Some commenters explicitly distinguish "corundum" from "ruby" as the starting material for infusion with lead glass, while others do not make that distinction. Should the Guides distinguish between "ruby" and "corundum" in its guidance for lead-filled stones?

e. For a. through d. above, explain why or why not and provide any evidence supporting your position.

F. Gemstone Treatments and the Term "Natural"

48. Is it material to consumers to know about a treatment that:

a. is permanent;

b. does not create special care requirements for the gemstone; or

c. has a significant effect on the stone's value?

d. Why or why not?

e. Provide any relevant consumer perception evidence.

49. Are consumers familiar with the nature and types of treatments used to enhance gemstones? Provide any evidence on this issue.

50. Are consumers aware that many gemstone treatments create special care instructions for enhanced stones? Provide any evidence on this issue.

51. Is the Commission's guidance advising sellers to disclose that a gemstone has been treated and has special care requirements necessary to prevent deception?

52. Is the Commission's guidance recommending that sellers identify the special care requirements still necessary to prevent deception?

53. How do consumers understand the term "natural" when used to describe gemstones?

a. Does marketers' use of this term cause consumer confusion or deception?

b. If so, should the Commission issue guidance to address this term? What form should this guidance take?

c. Provide any evidence supporting your position.

G. Varietals

54. Should the Commission revise the Guides by adopting the proposed Section 23.27?

a. If so, why?

b. If not, why not?

c. Provide any evidence supporting your position.

H. Cultured Diamonds

55. How do consumers understand the terms:

a. "laboratory-grown cultured diamond";

b. "[manufacturer name]-created cultured diamond";

c. "synthetic cultured diamond"?

d. Provide any relevant consumer perception evidence.

56. Are there other disclosures that would adequately qualify the term "cultured" in the context of diamonds? Provide any relevant consumer perception evidence.

I. Gem/Gemstone

57. Would eliminating Section 23.25 (Misuse of the word "gem") create consumer confusion or cause consumer injury?

    a. Why or why not?

    b. Provide any evidence supporting your position.

58. Would eliminating Section 23.20(j) create consumer confusion or cause consumer injury?

    a. Why or why not?

    b. Provide any evidence supporting your position.

59. How do consumers understand the terms "gem" and "gemstone"?

    a. Do they differentiate between these terms?

    b. Do consumers consider products labeled as "gems" to be more valuable, symmetrical, or rare than "gemstones"?

    c. Provide any relevant consumer perception evidence.

60. Do marketers use the term "gem" to describe pearls?

    a. If so, how?

    b. Provide any evidence supporting your position.

61. How do consumers understand the term "gem" in the context of pearls?

    a. Do they differentiate between pearls described as "gems" and other pearls?

    b. Do consumers consider pearls labeled as "gems" to be more valuable, symmetrical, or rare than other pearls?

    c. Provide any relevant consumer perception evidence.

J. Geographic/Regional Identification of Pearls

62. Are any pearl products marketed or sold using names or terms that indicate a geographic or regional designation other than the location where the pearl formed?

    a. If so, what are the names or terms?

b. Does use of these names or terms result in consumer deception?

c. Provide any evidence on this issue.

63. Should Section 23.21 be revised to state it is unfair or deceptive to misrepresent the location in which cultured pearls are produced?

a. Why or why not?

b. Provide any evidence supporting your position.

64. How do consumers understand the term "paraíba" or "Paraíba" when used to describe a gemstone product?

a. Provide any evidence supporting your position.

65. Is there a standard or consensus in the industry regarding how copper-bearing tourmalines are identified and described?

a. If so, does the industry standard meet consumer expectations regarding such products?

b. To what extent is "paraíba" used to describe tourmalines found in Africa?

c. Provide any evidence supporting your position.

66. Does copper-bearing tourmaline found in Brazil differ from copper-bearing tourmaline found in Africa with respect to its optical, physical, or chemical properties?

a. If so, how does it differ?

b. Are there any other material differences between copper-bearing tourmaline found in Brazil and copper-bearing tourmaline found in Africa?

c. If so, what are the differences?

d. Provide any evidence supporting your position.

67. To the extent copper-bearing tourmalines found in Africa are marketed and sold using the term "paraíba" or "Paraíba," is there any evidence of consumer misperception or injury resulting from the practice? If so, please provide it.

68. Should the Commission amend the Guides to address claims about product rarity?

a. If so, why? If not, why not?

b. Provide any evidence supporting your position.

K. Disclosure of Treatments to Pearls

69. Is it material to consumers to know about a treatment that:

    a. is permanent;

    b. does not create special care requirements for the pearl or cultured pearl; or

    c. has a significant effect on the pearl product's value?

    d. Why or why not?

    e. Provide any relevant consumer perception evidence.

70. Are consumers familiar with the nature and types of treatments used to enhance pearls and cultured pearls? Provide any evidence on this issue.

71. Are consumers aware that many pearl treatments create special care instructions for the product? Provide any evidence on this issue.

72. Is the Commission's guidance in proposed Section 23.23 advising sellers to disclose that a pearl or cultured pearl has been treated and has special care requirements necessary to prevent deception?

73. Is the Commission's additional guidance recommending that sellers identify the special care requirements necessary to prevent deception?

L. Hand-Made Claims

74. Would a revision adding precious metal clays, ingots, and casting grain to the list of "raw materials" listed in the Note to Section 23.3 Paragraph (a) risk consumer deception?

    a. If so, why? If not, why not?

    b. Provide any evidence supporting your position.

M. Synthetic Claims

75. Section 23.23(c) of the current Guides states that it is unfair or deceptive to use the word "synthetic," among other terms, with the name of any natural stone to describe any industry product unless such industry product has essentially the same optical, physical, and chemical properties as the stone named. How do consumers understand the term "synthetic" when used to describe a diamond or other gemstone?

    a. Does marketers' use of this phrase cause consumer confusion or deception?

    b. Do consumers differentiate the term "synthetic" from the terms "laboratory-grown," "laboratory-created," "[manufacturer name]-created"?

    c. Do consumers differentiate the term "synthetic" from the terms "imitation" or "simulation"?

d. Provide any evidence supporting your position.

Appendix of Abbreviations

Abbreviated Form	Company/Organization/Individual Name	Comment #
Barnett	Barnett	2
Samuel Getz Designs	Samuel Getz Private Jewelers & Designers, Inc.	3
Carter	Anthony Carter	4
Walker Metalsmiths	Walker Metalsmiths	5
Whittle Art Studio	Whittle Art Studio	7
Schenk	Wayne Schenk	8
MJJ	MJJ Brilliant Jewelers	9
Eisen	Susan Eisen	10
Rolly	Rolly Jewellery Private Ltd.	11
AGA	Accredited Gemologists Association	12
JEA	Jewelers Ethics Association	13
JTV	Jewelry Television	14/17/#00042
TSI	TSI Holding Company	16
Boyle Frederickson	Boyle Fredrickson, S.C.	20
Sterling/Richline	Sterling Jewelers Inc./ Richline Group Inc.	21/22/#00009
NRF	National Retail Federation	23
ASA	American Society of Appraisers	24
GIA	Gemological Institute of America	25
HRI	Hallmark Research Institute	26
JVC	Jewelers Vigilance Committee	27/#00044
Rio Grande	Rio Grande Inc.	#00003/#00013/ #00031
Ranch Jewelry Design	Ranch Jewelry Design	#00004
Poteat	Veronica Poteat	#00005
JETT	Jewelry Engineering Techology and Training Research	#00006
J. Cast	Jessica Cast	#00007
D. Cast	Devin Cast	#00008
JBV	JBV Design Studio	#00010
James Binnion Metal Arts	James Binnion Metal Arts, LLC	#00011
Paradigma Jewelry	Paradigma Jewelry, LLC	#00012
Gold Brand Holding	Gold Brand Holding	#00014/#00015
Relios	Relios, Inc.	#00016
Kemp Metal Products	Kemp Metal Products	#00017
LeachGarner	LeachGarner	#00018/#00019/ #00039/#00043

Hoover & Strong	Hoover & Strong, Inc.	#00020
Kodosky	Robin Kodosky	#00021
Golden Spirit	Golden Spirit	#00022
Sala	Mackenzie Sala	#00023
New Annex	New Annex Plating, Inc.	#00041
PGI	Platinum Guild International USA	#00025