

FEDERAL TRADE COMMISSION

16 CFR Part 23

Guides for the Jewelry, Precious Metals, and Pewter Industries

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Request for public comment.

SUMMARY: The Commission is seeking comment on whether the platinum section of the FTC's Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 CFR 23, should be amended to provide guidance on how to mark or describe non-deceptively products containing between 500 and 850 parts per thousand pure platinum and no other platinum group metals.

DATES: Written comments must be received on or before September 28, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Jewelry Guides, Matter No. G711001" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H (Annex Y), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments in electronic form, as prescribed below. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2004).¹

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public

Comments filed in electronic form should be submitted by clicking on the following: <http://secure.commentworks.com/ftc-jewelry> and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the <http://secure.commentworks.com/ftc-jewelry>. You also may visit <http://www.regulations.gov> to read this request for comment, and may file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, (202) 326-3038.

interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

The Guides for the Jewelry, Precious Metals, and Pewter Industries (“Jewelry Guides” or “Guides”), 16 CFR 23, address claims made about precious metals, diamonds, gemstones and pearl products. The Jewelry Guides provide guidance as to when claims about jewelry products may be deceptive and, for certain products, discuss when disclosures should be made to avoid unfair or deceptive trade practices. The Guides also provide examples of markings or descriptions that the Commission would not consider unfair or deceptive. The Commission is seeking public comment on Section 23.7 of the Guides, which addresses claims for products made of platinum.

Industry guides are administrative interpretations of the application of Section 5 of the FTC Act, 15 U.S.C. 45(a). The Commission issues industry guides to provide guidance for the public to conform with legal requirements. Guides provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry. 16 CFR Part 17. Failure to follow industry guides may result in corrective action under Section 5 of the FTC Act. In any such enforcement action, the Commission must prove that the act or practice at issue is unfair or deceptive.

Recently, several jewelry manufacturers informed Commission staff that they were seeking to market products that contain platinum, but differ in composition from traditional platinum products. Platinum products that have been marketed thus far typically contain over 85% pure platinum or contain a combination of pure platinum and platinum group metals (PGM)

that total 95% PGM.² Some manufacturers propose to market products containing more than 50% but less than 85% pure platinum and no other PGM.³ Subsequently, the staff responded to a request for a staff opinion regarding the application of the platinum section of the Guides to the marketing of a product containing 585 parts per thousand (ppt) pure platinum and no other PGM. The FTC staff opinion letter concludes that the Guides do not specifically address the marketing of such an alloy.⁴ The letter also stated that the staff would recommend that the Commission publish a Federal Register Notice soliciting comments on whether the platinum section of the Jewelry Guides should be revised to address how to market non-deceptively products containing 500-850 ppt pure platinum and no other PGM.

II. Background

The platinum section of the Jewelry Guides contains a general prohibition against the deceptive use of the term “platinum” and specific examples where the Commission would consider use of the term “platinum” unfair or deceptive.⁵ Section 7(a) of the Jewelry Guides states that it is “unfair or deceptive to use the words ‘platinum,’ ‘iridium,’ ‘palladium,’

² The Platinum Group Metals include platinum, iridium, palladium, ruthenium, rhodium and osmium.

³ The staff also is aware that other companies are selling similar products but marketing them under names other than “platinum.”

⁴ The request for a staff opinion and the staff’s response to that request can be found at www.ftc.gov/os/statutes/jewelry/letters/karatplatinum.pdf and <http://www.ftc.gov/os/statutes/jewelry/letters/karatplatinum002.pdf> respectively.

⁵ On April 8, 1997 (62 FR 16669), the Commission published the current platinum section of the Jewelry Guides. The section was revised as part of a comprehensive review of all of the provisions of the Guides.

‘ruthenium,’ ‘rhodium,’ and ‘osmium,’ or any abbreviation to mark or describe all or part of an industry product if such marking or description misrepresents the product’s true composition.”⁶

16 CFR Part 23.7(a).

Section 7(b) provides examples of markings or descriptions for products containing platinum that may be misleading:

(1) Use of the word “Platinum” or any abbreviation, without qualification, to describe all or part of any industry product that is not composed throughout of 950 parts per thousand pure Platinum.

(2) Use of the word “Platinum” or any abbreviation accompanied by a number indicating the parts per thousand of pure Platinum contained in the product without mention of the number of parts per thousand of other PGM contained in the product, to describe all or part of an industry product that is not composed throughout of at least 850 parts per thousand pure platinum, for example, “600Plat.”

(3) Use of the word “Platinum” or any abbreviation therefor, to mark or describe any product that is not composed throughout of at least 500 parts per thousand pure Platinum.

16 CFR 23.7(b).

Section 7(c) includes four examples of markings and descriptions that are not considered deceptive. The first example lists the four and two-letter abbreviations for the PGM that would not be considered unfair or deceptive. The remaining three examples provide examples of descriptions for certain platinum products:

(2) An industry product consisting of at least 950 parts per thousand pure platinum may be marked or described as “Platinum.”

(3) An industry product consisting of 850 parts per thousand pure Platinum, 900 parts per thousand pure Platinum or 950 parts per thousand pure Platinum may be marked “Platinum” provided that the Platinum marking is preceded by a number indicating the amount in parts per thousand of pure Platinum . . . Thus, the following markings may be used: “950Pt.,” “950Plat.,” “900Pt.,” 900Plat.,” “850Plat.,” or “850Pt.”

⁶ This section also lists the Platinum Group Metals.

(4) An industry product consisting of at least 950 parts per thousand PGM, and of at least 500 parts per thousand pure Platinum, may be marked “Platinum,” provided that the mark of each PGM constituent is preceded by a number indicating the amount in parts per thousand of each PGM, as for example, “600Pt.350Ir.,” 600Plat.350Irid.” or “550Pt.350Pd.50Ir.” or “550Plat.350Pall.50Irid.”

16 CFR 23.7(c).

Last year the staff received letters stating that several jewelry manufacturers were seeking to market products containing between 500 and 850 ppt pure platinum and no other PGM. On December 15, 2004, one manufacturer requested an opinion from the FTC staff regarding the application of the Jewelry Guides to a product that consists of 585 ppt pure platinum and 415 ppt non-precious metals. The request stated that the manufacturer’s reading of the Guides indicated that the platinum section did not prohibit marking or describing the product as “Platinum” and that the Guides do not address how to mark or describe an alloy with this composition other than to require that any representation be truthful and not misrepresent the product’s composition.

The staff posted this request on the FTC’s website on December 17, 2004 to seek industry input. The staff notified several major jewelry trade associations that the request had been posted and invited the industry to provide comments by January 5, 2005, which the staff later extended until January 10, 2005. The staff received sixteen comments from jewelry trade associations and retailers.⁷

On February 2, 2005, the staff responded to the request for an opinion. The staff letter stated:

⁷ Comments were received from the Jewelers Vigilance Committee, Platinum Guild International, Manufacturing Jewelers & Suppliers of America, American Gem Society, Jewelers of America, Sonny’s On Fillmore, Kwiat, Inc., Cornell’s Jewelers, Michael Bondanza, Inc., PMI, Traditional Jewelers, Stanley Jewelers Gemologist, Davidson & Licht, Henne Jewelers, Johnson Matthey, MJ Christensen.

The Guides provide that, in order for a product to be marked or described as “platinum,” the product must contain a minimum of 500 ppt pure platinum. 16 C.F.R. § 23.7(b)(3). In addition, the Guides provide that, if a product contains 500 ppt pure platinum but less than 850 ppt pure platinum, the marketer must disclose the amount in ppt of the remaining PGM in the product. 16 C.F.R. § 23.7(b)(2).

In our opinion, a literal reading of the Guides indicates that they do not address the marketing of the Karat Platinum alloy, except to the extent that they require a minimum of 500 ppt pure platinum. The provisions of Section 23.7 that address misuse of the word “platinum” do not discuss how to mark or describe an alloy that contains over 500 ppt pure platinum but no other PGM.

The staff letter further explained that the marketing of the alloy would be subject to Section 23.1 of the Guides, which contains a general prohibition on deception, as well as Section 5 of the FTC Act.⁸ The letter opined that the staff considers the alloy to be sufficiently different in composition from products consisting of platinum combined with other PGM as to require clear and conspicuous disclosure of the differences. The staff noted that it did not appear that simple stamping of the jewelry’s content (e.g., 585Plat., 0PGM) would be sufficient to alert consumers to the differences between the alloy and platinum products containing other PGM.

The staff letter provides general, but not specific, guidance for marketers seeking to mark or describe products that contain 50-85% pure platinum but no other PGM. Because of the public interest in this issue, the Commission is soliciting public comment as to whether the Guides should be revised to address specifically how to mark or describe such products.

Comments submitted previously stated that platinum alloys with no other PGM may present special issues that may require marketers to provide additional information. For example, commenters stated that it is unclear whether such products would possess certain

⁸ Section 5 of the FTC Act prohibits deceptive acts or practices, in or affecting commerce. 15 U.S.C. 45(a).

qualities typically associated with traditional platinum products, such as being hypoallergenic. In addition, commenters questioned whether the presence of non-precious metals in the product might present unique issues in conjunction with jewelry repairs and other procedures, such as re-sizing. For instance, commenters asked whether a product with high copper content might require a bench jeweler to use atmosphere control equipment to avoid damaging the product. Accordingly, the Commission is soliciting public comment on whether the Guides should be amended to address products composed of 500-850 ppt pure platinum and no other PGM.

Staff also has received some inquiries regarding the application of the platinum section of the Guides to the marketing of platinum-clad or platinum-coated jewelry products. The platinum section of the Guides currently does not address platinum-clad, filled, plated or platinum-overlay products. Other sections of the Guides, however, address gold and silver-plated jewelry products.⁹ These sections basically advise that the plating must be of a sufficient thickness to ensure reasonable durability. The Commission also seeks comment as to whether the Guides should provide guidance as to how to mark or describe non-deceptively products such as platinum-clad, filled, coated or platinum-overlay jewelry products.

III. Request for Public Comment

The Commission seeks public comment on whether the Jewelry Guides should be amended to discuss specifically how products that contain between 500 and 850 ppt pure platinum and no other PGM should be marked or described. In addition, the Commission seeks public comment on whether the Guides should be revised to provide guidance on how to mark or

⁹ See 16 CFR 23.4 and 23.6 (addressing gold-plated, gold-filled, gold-overlay, gold-electroplated and silver-plated jewelry products).

describe platinum-clad, filled, plated or platinum-overlay products. The Commission is particularly interested in comments addressing the following questions:

1. Should the platinum section of the Jewelry Guides be amended to address with particularity products that contain 500-850 ppt pure platinum and no other PGM?
2. Is there empirical evidence on what consumers generally expect in terms of performance or other objective qualities when purchasing a product marked or described as “platinum”? What does that data show?
3. Are products containing 500-850 ppt pure platinum and no other PGM currently being marketed, and if so, how? Is there empirical evidence, *e.g.*, copy testing or other research, as to how consumers interpret the disclosures or marketing materials, or proposed disclosures and marketing materials, accompanying such products?
4. For products containing 500-850 ppt pure platinum and no other PGM what, if any, additional information, in addition to disclosure of the product composition, may be necessary to prevent deception under Section 5 of the FTC Act? How do these disclosures compare to disclosures already required for other jewelry products, for example, gold?
5. Are there significant differences between the 500-850 ppt pure platinum alloys with no PGMs and other platinum products in terms of durability, scratch resistance, tarnish, hypoallergenicity, ability to hold settings, or similar qualities? What evidence is there on these issues?
6. How would a product containing 500 ppt pure platinum and no other PGM be marked if it were being sold outside the United States? Is there an international standard that addresses a product with this composition?
7. Should the platinum section of the Jewelry Guides be amended to address other products that

contain platinum, such as platinum-clad, platinum-filled, platinum-plated, platinum-coated or platinum overlay products, that are not currently addressed in the section? If so, why? What guidance is needed to ensure that consumers are not misled about the composition of such products and their performance, durability, value and special care requirements, if any? Are such products currently being marketed, and if so, how? How are such products marked if they are sold outside the United States? Are there any international standards that address such products?

All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before September 28, 2005.

By direction of the Commission.

Donald S. Clark
Secretary