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Enforcement Policy on the Marketing of Canadian Diamonds



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Enforcement Policy on the Marketing of Canadian Diamonds

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Introduction

The purpose of the *Competition Act* is to maintain and encourage competition in the Canadian marketplace. The false or misleading representations and deceptive marketing practices provisions of the Act aim to improve the quality and accuracy of marketplace information and discourage deceptive marketing practices.

The Act applies to most businesses in Canada, regardless of size. This policy outlines the approach that the Commissioner of Competition is taking in determining when claims relating to the origin of diamonds would raise issues under the false or misleading representations and deceptive marketing practices provisions of the Act. While these guidelines are not law, they reflect the Commissioner's interpretation of the law and how the Act will be applied on a consistent basis by Competition Bureau ("the Bureau") staff.

Background

In August 2000, the Bureau launched a public consultation to seek comments on how it enforces the Act when reviewing promotional claims alluding to Canada as the origin of a diamond. The Bureau also conducted consumer perception surveys on public views about the Canadian diamond industry.

Diamond mining in Canada is a new and rapidly growing industry, and questions have arisen as to how diamonds may be marketed to prospective purchasers. This consultative process was part of the Bureau's overall commitment to developing enforcement and educational tools through an open and transparent process.

The aim of the process was to determine when claims relating to the origin of diamonds would raise issues under the false or misleading representations and deceptive marketing practices provisions of the Act. The results of this consultation initiative led to the enforcement policy explained below.

General Principles

- 1 The false or misleading representations and deceptive marketing practices provisions of the Act prohibit the making of a materially false or misleading representation to the public for the purpose of promoting a product or business interest. These provisions apply to the promotion of diamonds.

In determining whether a representation is false or misleading, the courts will consider the *general impression* being conveyed to ordinary members of the target audience by the representation in question, as well as its literal meaning.

- 3 A representation in one medium (e.g. newspaper advertisement) must be accurate and not misleading on its face. The representation should not rely upon additional information located in another medium to clarify its meaning.
- 4 It is recommended that clear and precise language be used to reduce the risk of misleading a potential purchaser.

While this policy was developed to specifically address the marketing of diamonds, the same general approach may be applied to other gemstones, e.g. B.C. (British Columbia) jade.

Guide to "Made In Canada" Claims

The Guide to "Made in Canada" Labelling and Advertising (the "Made in Canada" Guide) was adopted in the 1980's to evaluate label declarations and advertising claims which refer to Canada as the country of origin of a product. This guide is not tailored specifically to the jewellery industry and is applied by the Bureau on a case-by-case basis.

Many of the concerns raised during the public consultation related to the application of the "Made in Canada" Guide to the marketing of diamonds. Because this guide was mainly intended for manufactured goods, and not for natural resources such as mineral goods, the Bureau concluded that the guide should be clarified to make explicit the underlying assumption that goods which are wholly obtained or produced in Canada are considered to be Canadian. The guide, now called Guide to "Made in Canada" Claims, also provides additional information to assist businesses in determining whether their products can be marketed as "Made in Canada".

Guidelines Regarding Representations About Diamonds

Diamonds which are mined in Canada would be regarded as having been wholly obtained in Canada. As they evolve from nature and although they may undergo processes to refine them, a fundamentally different product does not emerge. Diamonds mined outside Canada would not normally meet the criteria set in the guide even though they may undergo cutting and/or polishing in Canada since these processes do not result in a fundamentally different product. Moreover, cutting and polishing costs would only represent a small percentage of total production costs.

"Canadian Diamond" Representation

In general the Bureau would not take exception to the representation of a diamond as being a "Canadian diamond" if it could be demonstrated that the diamond originated from a Canadian mine. The overall impression created by the advertisement or representation will be considered when determining whether or not there has been a breach of the *Competition Act*.

Pictorial Representations

Pictorial representations (i.e. logos, pictures or symbols such as the Canadian flag or a maple leaf) associated with a diamond may give the general impression that the diamond is Canadian even in the absence of specific words to this effect.

How to contact the Competition Bureau

Anyone wishing to obtain a copy of the Guide to "Made in Canada" Claims or additional information about the *Competition Act* should contact the



Enforcement Policy on the Marketing of Canadian Diamonds

Competition Bureau's Information Centre at:

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