



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

Division of Enforcement
Bureau of Consumer Protection

January 9, 2003

Andrew G. Berg
King & Spalding
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-4706

Dear Mr. Berg:

This responds to your November 5, 2002 letter on behalf of your client, BHP Billiton Diamonds, Inc. ("BHP Billiton"), which requested a staff advisory opinion on whether the company can make claims that diamonds that are mined in Canada but cut and polished in other countries are "Canadian diamonds" and "Made in Canada" for purposes of their sale in the United States.

I. Background

BHP Billiton Diamonds, Inc., headquartered in Vancouver, British Columbia, Canada mines diamonds in the Lac de Gras area of the Northwest Territories of Canada. BHP Billiton ships rough diamonds extracted from the Canadian mine to diamond cutters in Belgium, Israel, India, Russia, Thailand, or another third country, where the diamonds will be cut, polished, and created into finished diamonds. The diamonds are then shipped back to Canada and imported into the U.S. from Canada. The BHP Billiton proposes to advertise and market these diamonds as "Made in Canada" and to represent the diamonds as "Canadian diamonds."

II. Discussion

Both the FTC and the U.S. Customs Service ("Customs") regulate the use of country-of origin claims. Pursuant to Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, the FTC regulates claims of U.S. origin under its general authority to act against deceptive acts and practices. Foreign origin markings on products, however, are regulated primarily by Customs under the Tariff Act of 1930. Specifically, Section 304 of the Tariff Act, 19 U.S.C. § 1304, requires that all products of foreign origin imported into the United States be marked with the name of a foreign country of origin. Although the FTC shares jurisdiction with Customs over country-of-origin claims, the Commission has jurisdiction over foreign-origin claims in advertising, which Customs does not regulate.

In September 2002, BHP Billiton requested an advance ruling from Customs regarding the country of origin marking of diamonds mined in Canada but cut and polished in Belgium, India, Israel, and other countries. On or about October 3, 2002, the Commissioner of Customs

ruled that “. . . the country of origin of the finished diamonds is Canada for purposes of country of origin marking and they must be so marked.”

BHP Billiton seeks guidance from the FTC staff as to how the FTC would treat a “Made in Canada” claim in the marketing and advertising of its diamonds. The staff concludes that in this case, where BHP Billiton has an express ruling from Customs that its product must be marked as “Made in Canada,” any truthful claim consistent with the Customs’ ruling would not be in violation of Section 5 of the FTC Act. Accordingly, the staff does not believe it would be deceptive for BHP Billiton to market and advertise its diamonds as “Made in Canada” and as “Canadian diamonds” under these circumstances.

Your letter does not address any potential implied claims of “conflict-free” that may arise from a “Made in Canada” claim. Accordingly, this opinion does not address any such questions or implied claims. As you are aware, the recently established Kimberly Process sets up a system of diamond tracking to address concerns and claims that diamonds are “conflict-free,” and compliance with this process is not the subject of your letter.

In accordance with Section 1.3(c) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 1.3(c), this is a staff opinion that has not been reviewed or approved by the Commission or by any individual Commissioner, and is given without prejudice to the right of the Commission later to rescind the advice and, where appropriate, to commence an enforcement action. In accordance with Section 1.4 of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 1.4, your request for advice, along with this response, will be placed on the public record.

If you have any questions regarding this matter, please call me at (202) 326-2890.

Sincerely,

Laura Koss
Senior Attorney