



Jodie Z. Bernstein
Direct: 202-508-6031
jzbernstein@bryancave.com

December 15, 2004

BY FAX AND FEDERAL EXPRESS

Ms. Lydia Parnes
Acting Director, Bureau of Consumer
Protection
Federal Trade Commission
600 Pennsylvania Av. N.W.
Washington, D.C. 20580

Re: Jewelry Guide

Dear Ms. Parnes:

I am writing on behalf of Karat Platinum LLC, to request that the staff issue a written statement clarifying a wide-spread industry misconception concerning the application of that portion of the FTC's Guides for the Jewelry, Precious Metals, and Pewter Industries (hereinafter the "Guide") that concerns platinum metals.¹

Platinum jewelry produced in the United States has traditionally been made from platinum alloys containing more than 90% platinum with the remainder of the alloy composed of other, so-called, platinum group metals ("PGMs") such as palladium, ruthenium or iridium, or non-precious metals such as copper.² The rising price of platinum, and the rising demand for platinum jewelry, have led several producers to try to develop an acceptable platinum alloy containing less than 85% platinum. Since the price of other PGMs has risen along with the price of platinum, producers have also sought to develop platinum alloys with little or no PGMs besides platinum.

After a substantial investment of time and resources, a jewelry-grade platinum alloy (the "Alloy") has recently been developed containing 58.5% platinum and no other PGMs. The remaining 41.5% of the alloy is composed of non-precious metals, including copper and cobalt. The Alloy is not only less expensive than traditional platinum alloys, but also produces quality jewelry which is superior in several respects. Karat Platinum, LLC has received a license to produce and market jewelry in the

Bryan Cave LLP
700 Thirteenth Street NW
Washington, DC 20005-3960
Tel (202) 508-6000
Fax (202) 508-6200
www.bryancave.com

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¹ 16 C.F.R. § 23.7.
² The "platinum group metals" include platinum, iridium, osmium, palladium, ruthenium, and rhodium. 16 C.F.R. § 23.7(a). These six metals are located in close proximity on the periodic table of the elements.

United States created from this Alloy. This new technology, for the first time, provides to consumers dramatically enhanced choice for a lower-cost, attractive, readily-available platinum jewelry, and will greatly increase price and quality competition in the platinum jewelry market.

Karat Platinum's efforts to market the new alloy have been impaired, however, by statements in widely disseminated trade industry publications which incorrectly claim that the production and marketing of jewelry from the Alloy is "illegal" under the Guide.³ These include statements that imply that any product containing characteristics that are not specifically addressed by the examples in the Guide are not permitted by the FTC, and statements that all jewelry products containing less than 85% platinum must contain other PGMs. As a result of the publications, jewelry produced from the Alloy has been publicly branded as illegal, understandably causing manufacturers and retailers to hesitate about producing, marketing, and selling such jewelry. Consequently, consumers have less choice and prices remain artificially high.

A platinum alloy containing 58.5% platinum and 41.5% non-precious metals was not envisioned at the time that the Commission published the Guide.⁴ Furthermore, the Guide was not intended to, and does not in fact, prohibit innovation and consumer choice within the Jewelry industry. Rather, the Guide is intended to offer business guidance to the jewelry industry for marketing platinum products. It is based on Section 5 of the Federal Trade Commission Act and the core principles of the Commission's enforcement policy statements: It is "unfair or deceptive" to use the term "platinum" as part of a product's marketing if that marketing "misrepresents the product's true composition."⁵ Moreover, the Commission's comments accompanying the Guide indicate that an "informative marking or description" that represents a product's true composition is one that "will put consumers on notice that the product contains certain precious metals, thereby putting them in a position to inquire of the jeweler as to the relative value of the different metals and the overall value of the product."⁶ Thus, the Guide makes clear that the marketing of all jewelry made from platinum should (1) place consumers on notice that the jewelry contains certain precious metals and (2) provide consumers with enough information to inquire of a jeweler as to the relative value of the different metals and the overall value of the jewelry.

³ For example, the Platinum Guild (representing the platinum industry) has published articles to its members, and to the public, stating that under the Guide, platinum jewelry containing less than 95% platinum must contain other platinum group metals. Similarly, the Jewelers Vigilance Committee (representing the jewelry industry) has published articles to their members stating that only platinum group metals can be mixed with platinum and marked or advertised as a platinum product.

⁴ As is stated above, a jewelry-grade platinum alloy containing less than 85% platinum has only recently been developed. The FTC's guide with respect to the marketing of platinum jewelry was first published in 1979 and was last revised in 1997. Guides for the Jewelry, Precious Metals, and Pewter Industries, 62 Fed. Reg. 16,673 (Apr. 8, 1997).

⁵ 16 C.F.R. § 23.7(a) (2004).

⁶ Guides for the Jewelry, Precious Metals, and Pewter Industries, 62 Fed. Reg. 16,673, 16,674 (Apr. 8, 1997).

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The Guide's examples offer additional suggestions as to non-deceptive marketing. For instance, section 23.7(b)(2) states that for alloys "not composed throughout of at least 850 parts per thousand pure platinum," it "may be misleading" to use "the word 'Platinum' . . . 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."⁷ As the Alloy is composed of 585 parts per thousand of platinum it falls within the type of metal envisioned by part of this example. If rigidly applied, this example suggests that the marketing of jewelry made from the Alloy should indicate that the Alloy contains no PGMs. This approach, however, may not fully convey to consumers the composition of the Alloy. An alternative "best practices" approach would include a comprehensive marketing plan which truthfully and accurately describes the composition of the Alloy.

Karat Platinum does not seek pre-approval of any marketing statements. It does request, however, that the staff issue a written statement correcting the industry misconception that the Guide prohibits all manufacture, marketing, and sale of jewelry made from the Alloy. Specifically, Karat Platinum requests that the staff indicate that the Guide does not regulate the manufacturing of platinum jewelry, and that, to the extent that the Guide regulates the marketing of platinum jewelry, the Guide neither refers to nor prohibits the marketing of platinum jewelry made from the Alloy because, at the time the Guide was written, no such product was envisioned. Furthermore, Karat Platinum requests that the staff indicate that, under the Federal Trade Commission Act, marketers of jewelry made from the Alloy may make truthful and substantiated advertising claims about those products.

Sincerely,


Jodie Z. Bernstein

cc: C. Lee Peeler, Deputy Director
Elaine Kolish, Associate Director, Division of Enforcement

⁷ 16 C.F.R. § 23.7(b)(2) (emphasis added).