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GUIDANCE • EDUCATION • COMPLIANCE



UNDERSTANDING THE FTC GUIDELINES



THE
SMITHEE
GROUP



Introduction

Letter from the CEO

The laws and regulations that govern the manufacture, sale and advertising of jewelry are complex. This JVC book, which explains the July 2018 revision of the Federal Trade Commission Jewelry Guides and other important laws, regulations and standards¹ in plain language is a useful tool for your daily business practices.

When questions arise, you can easily refer to this book for answers. Of course, the staff of the JVC can also help. Members may call or email our office for assistance.

Everyone knows that developing a reputation for integrity and sound business ethics has a positive impact on your bottom line. This book helps you with basic legal advertising compliance information for jewelry businesses. Your business will benefit from going even further than basic compliance with regulations. Ethics includes proceeding into the realm of conduct that goes beyond mere legal requirements, which will improve your relationships with business partners and customers.

Creating this publication required long hours of work by industry professionals who are dedicated to the mission of the JVC. This is possible only through the support of the JVC membership. If you are not already a member, please consider joining so that you can enjoy the many benefits of membership, including alignment with industry members who are committed to building consumer confidence through ethical and compliant business practices.

This book does not constitute legal advice or counsel. For legal advice or counsel, please contact your attorney.

Thank you for your support!

Tiffany Stevens, Esq.

President, CEO & General Counsel

¹ E.g., The National Gold and Silver Stamping Act, 15 U.S.C. Ch. 8, FTC Made In U.S.A Standard and Green Guides.



Purpose

The primary goal of the Federal Trade Commission Jewelry Guides (“Jewelry Guides” or “Guides”) is to ensure jewelry manufacturers and sellers do not deceive or confuse the buyers of their goods. But what exactly is deceptive or confusing? Different people might have differing interpretations.

The goal of the Guides, then, is to define “deceptive” so clearly that it is easily understood. The way to do that is to be very specific. The guidelines rely as much as possible on objective standards such as weight, thickness and standardized jewelry terminology.

Of course, objective standards cannot cover every case. That is why “deceptive” is first defined very broadly, forbidding such things as “inaccurate descriptions.” When you develop your own manufacturing and marketing practices, ask yourself this question: am I fairly representing my product in the marketplace?



Are The FTC Jewelry Guides Enforceable?

There is a common misconception that the Jewelry Guides do not have the force of law, when, in fact, these guidelines can and have been used by the FTC to take enforcement action against a marketer or other industry member who makes a claim inconsistent with the Guides. The Guides have been adopted in the Code of Federal Regulations and outline the standards that the FTC will apply if it brings an action for unfair or deceptive business practices in violation of the FTC Act.

The FTC is empowered to audit your business books and records when it brings an enforcement action. The FTC can also review your inventory and compel you to correct your advertising.

Businesses that violate the Guides may be punished with fines, cease-and-desist orders or worse, depending on the nature of the violation. Moreover, many states have adopted the FTC Guides as state law, thus violations can result in civil and criminal penalties.

Notably, in April of 2019, the FTC sent eight letters to marketers of jewelry warning them that some of their advertisements of laboratory-grown and simulated diamonds may deceive customers. The letters focused on advertisements that failed to follow the Jewelry Guides and Green Guides, both of which are discussed below. You can read a redacted version of these letters on the FTC's website [here](#).

In addition to risking FTC enforcement, if you conduct business deceptively, a competitor can take legal action, as can a customer, a group of customers in a class action, or a trade association. Put simply, following the Jewelry Guides is a smart way to avoid litigation.



What Do The Jewelry Guides Cover?

People. The FTC Guides cover everyone who works in the jewelry industry – including people who operate as partnerships or corporations – at every level of trade, such as manufacturers, suppliers, grading laboratories, and retailers.

Products. The Guides apply to pearls, natural, laboratory-created and simulated gemstones and other jewelry products. The Guides also cover pens and pencils, flatware and hollowware, and other products made from precious metals, alloys and imitations, as well as articles made of pewter.

Activities. The Guides govern sales, manufacturing and marketing, which includes advertising at all levels of the trade. The Guides cover deceptive marketing and misrepresentations of product quality.

Advertising can mean many things, including the labelling of goods and describing and promoting these goods in different mediums (e.g., verbally, on your websites, social media, print, billboards).

Marketing can mean many things – the words you use to describe your products are, of course, covered by FTC Guidelines. These guidelines also apply to any illustrations, symbols, logos and even the brand names you choose for your products.



What Is Deception?

Misrepresentation. You cannot misrepresent any aspect of your product, including its size, weight, color, quality or origin. Deception also includes inaccurate descriptions of your product's value, production, manufacture or distribution.

Misleading Illustrations. You cannot misrepresent any aspect of your product in pictures, illustrations or computer images. For example, a depiction of a diamond or other gemstone as greater than its actual size can mislead consumers, unless you disclose the stone's true size.

Grading. When you sell products based on their grade, you must identify the grading system that you used. You must also use the grading system accurately.

Disclosure. Use common sense when you make any qualifications or disclosures and ensure your statements are clearly understood by consumers. Use adequate type size in written materials and make appropriate descriptions not just on your company sites and receipts, but also in social media descriptions and hashtags. When you qualify any statement, make sure that the qualification is so close to the statement that the two can be read together and that the qualification is made *before* the point of sale.



Advertising “Made in the USA”

You can advertise your products as “Made in the U.S.A” when all (or virtually all) physical parts (including sub-assemblies and components) are of U.S. origin and processing takes place in the U.S. The items can contain only minimal foreign content.

In addition, final assembly or processing must take place in the U.S. To determine if “Made in USA” is used correctly, the FTC will look at, among other things, what part of the product's total manufacturing costs are attributable to U.S. parts and processing.

When virtually all of a product is not made in the U.S., you can qualify the claim of U.S. origin as long as it is sufficiently prominent. For example, you can say “Made in U.S.A from the World's Finest Materials” or “60 percent U.S. content.” Please see page 53 for a more thorough explanation.



The FTC Guides and the National Gold and Silver Stamping Act

The following section is based on an analysis of the FTC Jewelry Guides and The National Gold and Silver Stamping Act (a federal law that has existed for decades). In the area of precious metals, these two documents work in tandem – in other jewelry areas, the FTC Guides are the ruling authority.



Precious Metals and Pewter



Both the FTC Guides and the National Gold and Silver Stamping Act regulate the manufacture, sale and advertising of precious metal jewelry and objects. But these documents differ in one very important way: penalties. The Guides provide for civil enforcement by the government. The penalties available under the Stamping Act are much more extensive, including forfeiture, fines and prison.

For example, gold, silver, and similar goods that are improperly marked with the words “United States assay” or similar words or phrases can be seized by the government. People in the jewelry business, as well as corporate directors or officers or managing agents in partnerships who use or condone the above mark can be fined up to \$5,000 or imprisoned for up to a year.

The penalties for violating the other provisions in the Act are even more extensive. Business competitors and customers can bring lawsuits enjoining further action or asking for damages, including legal expenses. The JVC can also bring a suit for violations of the Stamping Act. The court can award punitive damages in cases where it sees that lawsuits were brought to harass or otherwise interfere with someone’s business.



How To Describe the Content of Precious Metals



How To Describe Gold Content

You don't have to mark the karat fineness on gold objects. But if you want to call an object "gold," you must identify its karat quality. Traditionally, that is done by marking (stamping) the piece. When you mark a piece with its karat quality, legally you must also affix the registered manufacturer or dealer's trademark.

When you do decide to mark a gold object, you must accurately describe the quantity or karat fineness of any gold or gold alloy, and the thickness, weight ration or application method used in gold or gold alloy plating or coatings.

Here are the specific ways to do that:

Gold. You can use the word "Gold" (or an abbreviation) without qualification to describe an object that is made entirely of 24 karat gold. You cannot use a name or terminology to misrepresent your product's gold content or manufacturing method as equal to, better than or different from the standards used in the industry.

Karat Gold. Articles made of any karat gold alloy can be called "gold" as long as the word is immediately preceded by the designation of its karat fineness. The karat designation must be as equally conspicuous as the word or abbreviation for "gold", as in "14K Gold" or "14Kt." Products with hollow centers must be noted near the gold marking, and this note must be equally conspicuous, as in "14K Gold Tubing."

Plated Products, Generally. All products plated with a precious metal using any method must have a “reasonably durable” coating of that precious metal. Although this standard is not well-defined, you must make a business decision about how thick a plating should be based on how the product will be used and what consumers expect. For example, you might want to choose a thicker plating of precious metal on a ring that will be worn frequently on a consumer’s hand versus plating on a brooch that will be pinned to clothing.

Gold Plated. Objects can be called “Gold Plated” or “G.P.” when they are coated with gold or gold alloy of 10 karats or finer with either an: a) electrolytic application with a minimum thickness of .175 micron or 7/1,000,000ths of an inch, or b) a mechanical application with a minimum weight ratio of 1/40th of the weight of the metal in the entire article. You must disclose the karat fineness of the plating. You can also mark the exact thickness of the plate if it is immediately followed by an equally conspicuous designation of the karat fineness, as in “2 microns 12K gold plate.” Use the minimum thickness if the depth of the coating varies.

Gold Filled. Objects can be called “Gold Filled” when you solder or mechanically attach gold alloy plate of 10 karat or finer, as long as the plating comprises 1/20 of the weight of the metal in the entire article. If the plating is between 1/40th and 1/20th, you have to immediately precede the karat designation by the appropriate fraction, as in “1/40th 12 Kt. Rolled Gold Plate.”

Gold Overlay and Rolled Gold Plate. Objects can be called “Gold Overlay” or “Rolled Gold Plate” when you solder or mechanically attach gold alloy plate of 10 karat or finer, as long as the plating comprises 1/40th of the weight of the metal in the entire article and the term is immediately preceded by a designation of the karat fineness of the plating used. The fineness must be as conspicuous as the descriptive term, as in “14 Kt. Gold Overlay” or “18k RGP.”

Gold Electroplate. Objects can be called “Gold Electroplate” when you use an electrolytic process of affix gold or gold alloy of 10 karat or finer with a minimum overall thickness of 0.175 microns (7/1,000,000 millionths of an inch).

You can call objects “Heavy Gold Electroplate” when you use 10 karat gold or finer with a minimum overall thickness of 21/2 microns (100/1,000,000ths of an inch). All electroplated objects can specify the process along with the marking, as in “Gold Electroplate (X Process).”

Gold: Standards for Fineness. The actual fineness of the gold or gold alloy used in your products should not vary by more than 3/1,000ths from the amount indicated in the quality mark stamped or engraved on the object or printed on the accompanying label or package.

Solder. When an object is tested for fineness, you must analyze its main part, apart from any solder or inferior alloy used to construct the object. Overall, the fineness of the entire object, including any solder, must not vary by more than 7/1,000ths from the amount indicated in its quality mark.



How To Describe Vermeil

You can call an object “vermeil” when it is made of a sterling silver base that is coated (or plated) with gold or a gold alloy of 10 karat or finer. The gold coating must have a minimum thickness of two and one half (2½) microns. Objects made of sterling silver coated with a base of metal such as nickel plated with gold can be called vermeil only when you disclose the presence of the base metal.

Objects Exempt From Assay

- When you assay the quality of vermeil objects, you need not include certain parts of the objects that are considered minor. For example, you can exclude joints, catches, screw and springs, as well as permanently encased metallic parts in a nonmetallic covering.

Objects Exempt From Assay

- When you assay precious metal jewelry and objects, certain parts that are considered minor do not have to be included in the assay. Which parts you can exclude depends on the karat fineness and type of object.

Karat Gold Objects. When you assay the quality of karat gold objects, you need not include posts and nuts for attaching interchangeable ornaments and metallic parts that are completely and permanently encased in a nonmetallic covering. These also include field pieces and bezels for lockets, bracelet and necklace snap tongues, as well as wire pegs or rivets used to apply mountings or other ornaments.

Gold-filled and Gold-plated Objects. The assay of gold-filled, gold overlay and rolled gold plate objects (other than watch cases) need not include joints, catches, screws, pin stems and the pins used in such things as scarf pins or hat pins. Also excluded: locket field pieces and bezels; the posts and separate backs of lapel buttons; bracelet and necklace snap tongues; springs and metallic parts permanently covered in a non-metal.

Optical Products. When you assay the quality of karat gold optical products, you can exclude the hinge assembly; washers, bushings and nuts of screw assemblies; dowels; spring for spring shoe straps; metal parts permanently encased in a non-metallic covering; and the coil and joints springs of oxfords.

When you assay the quality of gold-filled, gold overlay and rolled gold plate optical products, you may exclude the screws; the hinge assembly; the washers, bushings, and tubes and nuts of screw assemblies and dowels. Also excluded: pad inserts, springs for spring shoe straps, cores and inner windings of comfort cable temples; the handle and catch of oxfords as well as metal parts permanently covered in a non-metal.



How To Describe Silver Content

Sterling Silver

Objects can be called “solid silver,” “sterling” or “ster” when they contain at least 925/1,000ths pure silver.

Coin Silver

Objects can be called “coin” or “coin silver” when they contain at least 900/1,000ths pure silver.

Other Silver Alloys

Objects can be called “silver” when the alloy is under 900/1,000ths pure silver only when the fineness of the alloy is disclosed. For example, a product can be called “750 Silver” when the alloy is 750/1,000ths pure silver.

Silver Coated or Silver-plated

Silver-coated or silver-plated objects must be so coated with silver as to provide a durable covering of the base metal on which it has been affixed. Because various objects are subject to different degrees of wear, the thickness of the coating on these objects (or parts of objects) does not have to be uniform.

Silver: Standards for Fineness

The actual fineness of the silver or alloy used in your products should not deviate by more than 4/1,000ths from the amount indicated in the quality mark stamped or engraved on the object or printed on an accompanying label or package. For example, an object labeled “sterling silver” cannot vary by more than 4/1,000ths from the requisite 925/1,000ths pure silver content requirement.

Solder

The assay should be of the main part of the object, apart from any solder or alloy used for brazing or construction. Overall, the fineness of the entire object, including any solder, should not deviate by more than 10/1,000ths from the amount indicated in its quality mark.

- **Example**

When works are attached to a sterling silver watch case with solder and the solder tolerance is less than sterling silver, you should include the solder in the overall assay. If the result is within the tolerance for sterling silver, you can call the watch “sterling silver.” In addition, the solder must be within its own tolerance.

Objects Exempt From Assay Exemptions:

- When you assay the quality of silver objects, you may exclude certain parts of the objects that are considered minor. For example, pin stems of brooches are exempt, field pieces and bezels for lockets, as are bracelet and necklace snap tongues and other joints, catches or screws as well as metallic parts that are completely and permanently covered in a nonmetallic coating.



How To Describe The Platinum Group Metals

You must accurately use the words “platinum,” “iridium,” “palladium,” “ruthenium,” “rhodium,” and “osmium” and their abbreviations to describe products made of the platinum metals.

The specifics of this principle are outlined below.

Platinum

Objects may be marked and called “platinum,” “Plat.” Or “Pt.” when they are made of at least 950 parts per thousand of pure platinum. However, you cannot call objects “platinum” that are not made up of at least 500 parts per thousand of pure platinum.

When an object is made of at least 850 parts per thousand pure platinum, you can call it “platinum” as long as you include the appropriate fineness qualification, as in “850Plat.”

Objects made up of at least 500 parts per thousand pure platinum, but less than 850 parts per thousand pure platinum, and at least 950 parts per thousand of the platinum group metals can be marked and called “platinum,” as long as you also include the number of parts per thousand of the other platinum group metal used. For example, “600Pt. 350Ir.” or “550Plat.350Pall.50Irid.” When quality stamping, it is permissible to use parts per thousand and chemical abbreviations.

If objects are made of at least 500 but less than 850 parts per thousand pure platinum, and less than 950 parts per thousand platinum group metals, you must disclose the full composition of the product by name and not chemical abbreviation and the percentage of each metal, totaling 100%. The use of

“parts per thousand” is not permitted. For example, “50% Platinum, 40% Copper, 10% Cobalt” or “60% Platinum, 40% Cobalt” or “80% Platinum, 10% Cobalt, 10% Copper.” It is necessary to convert the amount in parts per thousand to a percentage that is accurate to the first decimal place, for example: 58.5% Platinum, 41.5% Cobalt.

Platinum: Standards for Fineness

The actual fineness of the platinum used in your products should not include more than 50 parts per thousand of iridium, palladium, ruthenium, rhodium or osmium from the amount indicated in the quality mark stamped or engraved on the object or printed on an accompanying label or package. When an object is tested for fineness, you must analyze its main part, apart from any solder or inferior alloy used to construct the object.

Solder

Overall, the fineness of the entire object, including any solder, must not deviate by more than 50/1,000ths from the amount indicated in its quality mark.

Rhodium Plating

Although the jewelry industry often knows that most white gold alloy products and some silver alloy products are plated with a layer of rhodium in the manufacturing process to enhance the white color of the product, many consumers are unaware of this fact. Often, consumers believe that their white gold alloy products tarnish when in fact the products’ rhodium plating is simply wearing away. To avoid confusion, advertisers of rhodium-plated products must disclose this fact. For example, a 14 karat white gold ring with rhodium plating could be properly described as “14K WG – RH. Plated”. Manufacturers of these products must also ensure that the rhodium plating is of reasonable durability.

Objects Exempt From Assay Exemptions:

- When you assay the quality of platinum objects, you need not include parts of the objects that are considered minor. These include springs, winding bars, sleeves and crown cores, as well as screws, rivets and bracelet and necklace snap tongues.
- For platinum objects that are less than 500/1,000ths pure, you can also exclude ear-screw backs, pin tongues, joints and catches as well as scarf pin stems and hat pin sockets, as long as these parts are made from the same quality platinum as the rest of the object. Similarly, you can exclude lapel button backs and posts, hat pin sockets and shirt stud backs.

How To Describe Pewter Content

Objects can be marked “pewter” if they include at least 900 parts per thousand Grade A tin, with the balance comprised of metals reasonably used in pewter.



✓ How To Use Quality Marks & Trademarks

Guidance on Quality Marks

If you choose to stamp, brand, engrave or otherwise mark your objects in a way that purports to indicate that the object is made wholly or partially by a precious metal or alloy, your marking must be easily understood by consumers.

Here are specific ways to apply this principle.

Legibility

Quality markings must be legible. When you engrave or stamp a quality mark on an object or print it on a label attached to the object, the mark should be easily read by people with normal vision. Any tags or labels should remain attached to the object until it is purchased.

Type Size

The size of the letters and words used in quality marks is important. The entire mark should appear in the same size type; the same is true when more than one mark appears on a single object if not including more than one mark would be misleading. For example, a gold electroplated product would be marked improperly if the word “electroplate” appeared in small type and the word “gold” in larger type.

Gold and Silver Quality Marks

Gold Alloys. Merchandise made of inferior base metals that are covered with gold or its alloys may be labeled or engraved with karat markings as long as the quality mark is qualified in ways that would make the construction clear to consumers. For example, the objects might be labeled rolled gold plate, gold filled or electroplate.

Silver Alloys. Similarly, merchandise plated with silver or its alloys should be clearly described as such. However, in no case should you use the words “sterling” or “coin.”

Object Sets. Sometimes objects are made up of two or more parts that are complete in themselves, such as a set of silverware. If the objects are not identical in quality, and one of them carries a quality mark, every other separate part should carry a quality mark of a similar size and pattern.

Findings. Like other objects made of gold, findings can be quality marked. If you do, however, you must also affix your manufacturer’s trademark.

Guidance on Trademarks

Manufacturers and dealers in gold and silver jewelry that has been stamped with a quality mark indicating its precious metal content, such as “14 Kt.,” must by law affix their registered manufacturer or dealer’s trademark to the merchandise.

The trademark should be very close to the precious metal quality stamp. The trademark should be applied for or registered with the federal government within thirty days after the merchandise is offered for sale.

To help buyers, trademarks should be stamped in type or lettering that is at least as large as the quality mark and as close to the quality mark as possible. This provides recourse for buyers in cases of underkarating or any other disputes over precious metal misrepresentation, as it allows buyers to identify the manufacturer or dealer of disputes items.



Defining and Describing Diamonds, Pearls, and Colored Gemstones



What Is A Diamond?



You can use the word “diamond” to describe natural stones that are formed of pure carbon crystallized in the isometric system, as long as they have been symmetrically fashioned with at least 17 polished facets. In addition, the stones must have a hardness of 10, a specific gravity of about 3.52 and a refractive index of 2.42.

Laboratory-Created Diamonds

You can use the word “diamond” to describe laboratory-created stones only when the word “diamond” is immediately preceded by equally conspicuous words that make clear the human-made nature of the stone, i.e., qualifiers. These stones must have essentially the same optical, physical and chemical properties as natural diamonds. The qualifiers accepted by the FTC include “laboratory-created,” “laboratory-grown,” and “[manufacturer name]-created.”

Rough Diamonds

You can describe as a “rough diamond” an uncut or unfaceted object that otherwise satisfies the definition of a diamond outlined above.

Rose Diamonds

You can describe as a “diamond” an object that has been fashioned with less than 17 facets when you co-join the number of facets or the shape name of a diamond as in “rose diamond.”

Industrial-grade Diamonds

You cannot represent industrial grade diamonds or other non-jewelry quality diamonds as jewelry quality.

Imitation Diamonds

You can use the word “diamond” to describe imitation or simulated stones only when the word “diamond” is immediately preceded by equally conspicuous words that make clear the simulated nature of the stone, as in “simulated diamond” or “imitation diamond.”

Using the word “faux” alone does not adequately disclose that a diamond is not natural. Refer to the above section on imitation diamonds for appropriate disclosure guidance.

How To Describe Diamonds Correctly

What is a “flawless” diamond?

You can describe a diamond as “flawless” when a person skilled in diamond grading, using a corrected magnifier at 10-power with adequate illumination, can find no cracks, carbon spots, internal lasering or any other imperfections.

What is a “perfect” diamond?

You can describe a diamond as “perfect” when the stone is of superior color and make and also meets the definition of “flawless.”

Rings or other pieces of jewelry can be described as “flawless” or “perfect” when they include a principal diamond (or diamonds) and other stones of lesser quality, as long as you disclose that the description applies only to the principal diamond(s).

Describing Diamond Treatments

Disclosing Treatments

Diamond treatments that are not (or may not be) permanent, create special care requirements or significantly affect the stone's value should be disclosed to consumers. These include coating, impregnation, irradiation and heating, as well as nuclear bombardment, surface diffusion or dyeing. You should also disclose applications of colored or colorless oil or epoxy-like resins, wax, plastic or glass.

Coloring, Irradiating and Other Treatments

Diamonds that have been treated by artificial coloring, tinting or coating as well as by irradiation, nuclear bombardment or infusion of foreign substances should be labeled as such. So should laser drilling, fracture filling, and any other permanent undetectable treatments that affect the diamond's value.

How to Inform Consumers

Consumers should be informed of the diamond treatments at or prior to the point of purchase. When diamonds are sold through direct-mail catalogs, online, or anywhere they can be bought without viewing, the disclosure should be part of the solicitation, i.e. in the description of the product. Moreover, we recommend that any special care requirements arising because of a treatment be communicated to consumers. For example, dyed ruby sellers should disclose the treatment and advise consumers to "avoid household chemicals and ultrasonic."



Describing Diamond Weights

Points and Carats. The standard unit of weight for a diamond, a carat, equals 200 milligrams or 1/5 gram. A diamond may also be represented by points; one point is one hundredth (1/100) of a carat. Under the Jewelry Guides, if you use the word “point” to describe the weight of a diamond, you must also state the diamond’s weight as decimal parts of a carat, as in “25 points or 0.25 carat.”

Tolerance ranges must be reasonable. For example, you can identify a diamond’s weight as 1/2 carat when the weight of your diamond ranges between 0.42 carat and 0.55 carat. But this would not be acceptable if you have never sold a diamond with a carat weight of 0.55.

Catalogs and Advertisements. Diamond sellers who use fractional representations of diamond weight in catalogs or other printed materials must inform consumers on each page where such representations are made that the actual diamond weight is within a specified range. You can do so by referring consumers to a chart or another detailed explanation, as in “diamond weights are not exact; see chart on page 46 for ranges.”

Decimals. Decimal parts should be accurate to the last decimal place as in 0.47 carat. When diamond weights are stated only to one decimal place, the stated figure should be accurate to the second decimal place. For example, 0.5 carat would represent a diamond that weighted between 0.495 carats and 0.504 carats.

Fractions. When diamond weights are stated as fractional parts of a carat, you must inform consumers that the diamond weight is not exact, in a conspicuous manner and close to the statement of its weight. In addition, you should disclose the reasonable range of weight for each fraction (or the weight tolerance used).



Describing Diamond Colors & Cuts

What is a “blue white” diamond?

“Blue white” stones must show only blue colors under normal, northern daylight or its equivalent.

What is a “properly cut” diamond?

When you describe diamonds as “properly cut” or “modern cut” or the like, the stones should be evenly cut, not lopsided, and not cut so thick or so thin as to detract substantially from the brilliance of the stone. Moreover, stones that are commonly called “fisheye” or “old mine” should not be described as “properly cut.”

What are “brilliant” or “full cut” diamonds?

A round diamond that has at least 32 facets plus the table above the girdle, and at least 24 facets below, can be described as “brilliant cut” or “full cut.”

Diamonds of other shapes — such as emerald (rectangular)-cut, pear-shaped, heart-shaped, oval-shaped, and marquise (pointed oval)-cut diamonds — can also be described as “brilliant cut” as long as you co-join with it the shape of the diamond.



What Is A Pearl?

Pearls are calcareous concretions of alternating concentric layers of carbonate of lime and organic material formed by oysters. Pearls are created when the mantle of the oyster is irritated by some foreign body or because of some abnormal physiological condition, neither of which has been induced by humans.

These are the various types of pearls.

Cultured Pearls.

The composite product created when a sphere of calcareous mollusk shell or other nucleus, planted by humans inside the shell of a mollusk or in its mantle, is coated by the mollusk with nacre.

Imitation Pearls.

Manufactured products comprising any materials that look like pearls or cultured pearls.

Seed Pearls.

Small pearls measuring about 2 millimeters or less.

How To Describe Pearls

Natural Pearls. Describing an item as a “pearl” without qualification denotes a natural pearl and not a cultured pearl. If the pearl you sell is not a natural pearl (like most pearls in the trade today) you must inform consumers with proper qualifying language, i.e., by using the word “cultured.”

- **Example**

“Freshwater Pearl,” “South Sea Pearl,” “Tahitian Pearl,” and “Baroque Pearl” must be called “cultured” when they are cultured. The proper description is “freshwater cultured pearl,” “Tahitian cultured pearl.”

Imitation Pearls. You can use the word “pearl” to describe imitation pearls only when the word is immediately preceded by, in an equally conspicuous way, the words “artificial,” “imitation,” “simulated” or any other word or phrase that conveys that meaning.

Words you should not use:

Imitation pearls should not be described as “real,” “genuine,” “precious,” or in similar terms. Nor should you describe them as “cultured pearls,” “cultivated pearls” or the like. You should not use the terms “semi-cultured pearl,” “pre-mature cultured pearl,” or “kultured” to describe imitation pearls. Also avoid similar terms such as “cultured-like” or “part-cultured” to describe imitation pearls.

Words you can use with qualification:

You can use the terms “faux pearls,” “fashion pearl,” “mother of pearl” or similar terms as long as you immediately precede them in an equally conspicuous way with words indicating clearly that the product is not a pearl, such as “artificial” or “simulated faux pearl.”

Regional Pearls. Pearls, cultured pearls and imitation pearls that are given regional designations must satisfy the requirements outlined in the law, below.

Oriental Pearls. Oriental pearls have a distinctive appearance; they are the type taken from salt water mollusks living in the Persian Gulf, and generally recognized in the jewelry trade as Oriental pearls. Cultured or imitation pearls cannot be described as Oriental pearls.

South Sea Pearls. South Sea pearls are taken from salt water mollusks of the Pacific Ocean South Sea Islands, Australia or Southeast Asia. When these pearls are cultured, as most are, describe them as “cultured South Sea pearls.”

“Biwa” Cultured Pearls. Biwa cultured pearls are cultured pearls grown in fresh water mollusks in the lakes and rivers in Japan.

Regional Cultured or Imitation Pearls. You can use the terms “Japanese pearls,” “Chinese pearls,” “Mallorca pearls,” or any other regional designation to describe cultured or imitation pearls when the designation is immediately preceded by, and equally conspicuous, the words “cultured,” “artificial,” “simulated,” and the like.

Terminology for Cultured & Imitation Pearls

Seed Pearls. You must accurately qualify descriptions of seed pearls, as in “cultured seed pearl” or “imitation seed pearl.”

“Natural” Pearls. Cultured and imitation pearls should not be described using such words as “natural,” “natura,” or “nature’s.” You can use the word “organic” to describe an imitation pearl as long as you make clear to the consumer that the pearl is not a natural or cultured pearl.

Synthetic Pearls. Do not describe cultured or imitation pearls as “synthetic.”

Cultured Pearl Products. You do not have to discuss how cultured pearls are produced. When you do, however, you must do so accurately. Your descriptions of cultured pearls should accurately describe the manner in which the pearls are produced, including the size of the nucleus that was artificially inserted in the mollusk and is inside the pearl, as well as how long the nucleus remained in the mollusk.

Disclosing Treatments

Pearl treatments that are not permanent, create special care requirements or have a significant effect on the product’s value should be disclosed prior to purchase; this includes dyeing.

While heating and irradiating pearls are treatments that are generally permanent and require no special care, we recommend disclosing these treatments anyway. We also recommend disclosing applications of

colored or colorless oil or epoxy-like resins, wax, plastic, or glass to err on the side of transparency.

Other factors to note: Although not required by the Jewelry Guides, you may want to disclose the thickness of the nacre coating, the value and quality of cultured pearls relative to pearls and imitation pearls, and anything else purchasers may consider significant.



What Are Colored Gemstones?

Colored gemstones are natural precious or semi-precious stones. They can be described using their ordinary names, such as ruby, sapphire, emerald, or topaz.



How To Describe Gemstones

Laboratory-created Gemstones. Laboratory-created gemstones must have essentially the same optical, physical and chemical properties as their natural counterparts. You can use a gemstone name to describe laboratory-created stones only when the gemstone name is immediately preceded by equally conspicuous word or phrase that make clear the human-made nature of the stone. The FTC accepts the following phrases for disclosure of laboratory-created gemstones: “laboratory-created,” “laboratory-grown,” and “[manufacturer name]-created.”

Imitation Gemstones. You can use the names of gemstones or words like “birth stone” or “gemstone” to describe imitation or simulated stones only when the gemstone names are immediately preceded by equally conspicuous words that make clear the simulated nature of the stone.

Faux Gemstones. Using the word “faux” does not adequately disclose that the stone is not natural.

Varietal Names. Do not use the incorrect varietal name for a stone. For example, golden beryl stones should be referred to as “heliodor,” not as “yellow emerald.” Similarly, prasiolite should not be referred to as “green amethyst,” although both stones are of the quartz species.

Gemstone Treatments

Disclosing Treatments

Gemstone treatments that are not permanent, create special care requirements or have a significant effect on the product's value should be disclosed to consumers. These include coating, impregnation, irradiation, and heating, as well as nuclear bombardment, surface diffusion, or dyeing.

While heating and irradiation are treatments that are normally permanent and require no special care, we recommend disclosing these treatments anyway. We also recommend disclosing applications of colored or colorless oil or epoxy-like resins, wax, plastic, or glass to err on the side of transparency.

Composite Gemstones. Any gemstone that is filled or bound together by another substance must be called either a “manufactured” gemstone, “composite” gemstone, or “hybrid” gemstone, and the fact that it has special care requirements or does not perform like the named stone must be disclosed. This includes products such as rubies that have been filled with lead glass or turquoise bound with a polymer.

- **Examples**
“Composite ruby – lead-glass filled – special care required” or
“composite turquoise – polymer-bound.”

How To Inform Consumers

Consumers should be informed of gemstone treatments when the stones are sold, i.e. prior to sale or at the point of purchase. When stones are sold through direct-mail catalogs, online, or anywhere they can be bought without in-person viewing, the disclosure should be part of the solicitation, i.e., conspicuously included in the product's description in the catalog or website listing, etc. Moreover, we recommend that any special care requirements arising because of the treatment be communicated to consumers.

Gemstone Terminology

Artificial Gemstones. Stones that have been manufactured or produced artificially should not be described as “genuine,” “semi-precious,” or anything else that would induce consumers to believe the gemstones are natural.

What is a “flawless” gemstone?

You can describe as “flawless” any gemstone that is free from blemishes, inclusions and clarity faults of any sort when the stone is examined under a corrected magnifier at 10-power with adequate illumination by a person skilled in gemstone grading. Imitation stones cannot be called flawless.

What is a “perfect” gemstone?

You can describe as “perfect” gemstones that qualify as “flawless” and that are also of superior color and make.



Jewelry Terminology

What can you label “hand-made”?

You can label an article “hand-made” when its entire shaping from raw materials, its finishing and decoration was done manually, so that you could vary the construction, design, and finish of each part of each separate item. The Guides define raw materials as: bulk sheet, strip, wire, precious metal clays, ingots, casting grain, and similar materials that have not been cut or shaped into jewelry parts, semi-finished parts or blanks.

Similarly, you can label an article “hand-polished,” “hand-engraved,” or the like when the process was done manually, creating individual effects on each object.

What can you call “rust proof”?

When an object will be immune from rust and other forms of corrosion during its life expectancy, you can describe it using such terms as “corrosion proof,” “noncorrosive,” or “rust proof.”

When all parts of an object will not be materially damaged by corrosion or rust during most of its life under normal conditions of use, you can describe it using such terms as “corrosion resistant” or “rust resistant.”

- **Example**
Pure nickel, austenitic stainless steels, and gold alloys of 10 karat fineness or more can be labeled corrosion or rust resistant.



Foreign and Domestic Claims of Origin

When you label, advertise, promote, or describe your products, you are sometimes legally required to identify the country of origin of the goods. Also, sellers of domestic goods may have economic incentives to claim that their goods are “Made in the U.S.A.”

Origin claims are regulated by federal law, U.S. Customs and Border Patrol (“Customs”) regulations, and FTC policy. The FTC regulates claims of U.S. origin under its general authority to act against deceptive acts and practices. Foreign origin markings on products are regulated primarily by the U.S. Customs Service under the Tariff Act of 1930.

The FTC has jurisdiction over foreign origin claims only when these claims exceed the disclosures required by Customs, such as claims of foreign or local processing or assembly. And of course, the FTC has jurisdiction over foreign origin claims in advertising; U.S. Customs does not regulate advertising.



Country of Origin Claims

An article of foreign origin (or its container) imported into the United States must be marked in a conspicuous place with its country of origin. The marking must be legible, indelible, as permanent as possible and applied in such a way that the ultimate purchaser in the United States clearly understands from where the article originates.

What is regulated?

Words, phrases or abbreviations used to indicate the country origin, as well as methods of marking, including printing, stenciling, stamping, branding, and labeling. The mark, however, must be created and placed conspicuously. Remember, the point is to inform the consumer of the objects' country of origin.

What objects do not have to be marked with country of origin?

Numerous exceptions apply to the origin labeling requirements. If an article cannot be marked, or you cannot mark it without damaging it, you need not mark the article itself. Nor must you use origin markings when doing so would be prohibitively costly.

However, when objects need not be marked, you must instead mark the immediate container. The container marking must indicate to the ultimate purchaser the English language name of the country of origin.

Objects intended for use by importers (and not intended for sale in their imported form), as well as objects that will be further processed in the United States by importers, need not be marked with the country of origin. However, you cannot process articles merely to conceal their origin, or to obliterate, destroy, or permanently conceal the country of origin marking already on the article.

You need not mark objects with the country of origin if the ultimate purchaser would know it anyway because of its character. For example, "Tahitian cultured pearls" do not have to be marked with their country

of origin since sellers, to identify or advertise the pearls, have already informed purchasers that the pearls are of foreign origin.

Containers used by importers or to hold items that will be processed more in United States do not have to be marked with the country of origin. Nor do containers of items, like Tahitian cultured pearls, which are already identifiable.

These marking rules do not apply to articles that were produced more than twenty years before they were imported into the United States. Also exempt are certain articles imported in substantial quantities from 1932 to 1937 that did not have to be marked to indicate their country of origin. These include light bulbs, lumber and timber, telegraph poles, and bundles of shingles.

What are the countries of origin for assembled objects?

Objects produced in assembly operations are considered to originate in the country in which they were fully assembled. You should mark them as follows:

- Assembled in (country of final assembly);
- Assembled in (country of final assembly) from components of (name country or countries of origin of all components); or
- Made in or product of (country of final assembly).

When an imported product uses materials and/or processing from more than one country, the country of origin is considered to be the last country in which a “substantial transformation” took place. A substantial transformation is a manufacturing or other process that creates a new and different article,

What are the penalties for incorrect country-of-origin markings?

When you obliterate, conceal, deface, destroy, remove, alter, or obscure any country of origin mark with the intent to conceal the or imprisoned for up to one year, or both, the penalties increase for subsequent violations. Upon conviction or the second (or any subsequent) violation of the country-of-origin marking laws, you can be fined up to \$250,000 or imprisoned for up to one year, or both.

which has a new name, character, and use.

Notably, under a November 2019 ruling, which you can view [here](#), U.S. Customs and Border Patrol determined that rough diamonds cut and polished in India underwent a substantial transformation, thus making the diamonds’ country of origin India (and not Botswana where these stones were mined or the U.S. where they were evaluated or China where they were sawn and blocked).

When U.S. Customs finds that an object is not of foreign origin (that is, it undergoes its last substantial transformation in the United States), there is generally no requirement that it be marked with a country of origin.

When you import an object (or its container) that is not marked properly, it can be exported or destroyed. Should you want to correct the defect, you will be assessed an additional customs duty. You must reimburse the government for the costs of the customs officers and employees (including their salaries) assigned to supervise the export, destruction, or marking of unmarked goods. Moreover, the goods will not be delivered until they are properly marked and all compensation, duties, levies, and other expenses are paid.

Federal Trade Commission Domestic Origin Claims

The Federal Trade Commission policy governing use of “Made in U.S.A” and other U.S. origin claims requires all such claims in labeling, advertising, other promotional materials (and all other forms of marketing through digital or electronic means, such as the internet or electronic mail) be substantiated by evidence that the product is all (or virtually all) made in the United States. In December 1997, the FTC issued an “Enforcement Policy Statement” to provide guidance for making claims of domestic origin; this statement covers jewelry sold in the U.S.

To be clear, unlike imported goods which must be labelled with the country of origin, there is no requirement to mark goods as “Made in the U.S.A.” The FTC’s policy simply requires the truthfulness of such claims if the seller chooses to make them.

Keep in mind that the FTC’s Made in U.S.A policy applies to the phrase “Made in U.S.A” and any similar phrases as well as any symbols, images or geographic references (e.g., U.S. flags or map photos or cartoons, references to U.S. locations, headquarters or factories) that may convey a U.S. origin claim either alone or in conjunction with other images or phrases.

Meeting The “All Or Virtually All” Standard

A product is all (or virtually all) made in the United States when all of its significant parts and processing are of U.S. origin. When a product is advertised with an unqualified “Made in U.S.A” claim, it should contain only a negligible amount of foreign content.

The FTC will look at a variety of factors to decide if your claim is deceptive. For instance, the final assembly or processing of the product must take place in the United States. The FTC will also consider what portion of the product’s total manufacturing costs is attributable to U.S. parts and processing, and how far foreign content is removed from the finished product.

If you buy component parts from a U.S. supplier that are made up of other component parts or materials, you cannot assume that the parts are made of 100% U.S. goods. You must inquire as to the percentage of U.S. content in the piece. Foreign content that is incorporated further back in the manufacturing process, however, is probably less significant to the consumer than a direct input to the finished product.

For example, where some of the steel used to manufacture a computer case is of foreign origin, the amount of the steel used constitutes a small part of the total cost of the computer. Moreover, consumers are less likely to worry about the origin of the small amount of steel used in a computer case than the more significant component parts, such as the monitor or keyboard. However, if a product is made entirely of steel (such as a pipe), the origin of the steel is more significant to the consumer.

For jewelry and objects made of gold, a claim of “Made in the U.S.A” without qualification would probably not comply with the FTC policy. Gold generally is imported into the U.S., and it is a significant part of the value of the object because the gold is only one step removed from the finished product. Clearly, it is an integral component of the article.

In recent history, the FTC has increased its enforcement in this area, settling disputes over allegedly deceptive claims by a hockey puck seller, backpack business and mattress company.

Qualifying U.S. Origin Claims

When a product is not all (or virtually all) made in the United States, you must qualify any claim of U.S. origin in a manner sufficiently clear, prominent, and understandable to prevent deception. You can choose the form of the disclosure, but the FTC will look at the prominence, size, and style of type; proximity to the claim being qualified and absence of contrary claims to decide if your disclosure meets the policy statement.

Qualified claims can be general, as in “made in U.S.A of U.S. and imported parts,” or more specific such as “75% U.S. content.” These claims can identify the parts or the particular foreign country from which the parts come, as in “made in U.S.A from imported Tahitian cultured pearls” or “designed and fabricated in U.S. with 14K imported gold.”

When you make such claims, make sure the final product assembly is done in the United States. When a product was substantially transformed abroad (and is therefore required by Customs to be labeled with country of origin), it is confusing and deceptive to use a claim of “Made in U.S.A. of U.S. and imported parts.”

Claims About Specific Parts or Processes

You can tell consumers that a particular manufacturing process or other process was done in the U.S. or that a particular part was manufactured in the U.S., as long as the claim is truthful and substantiated. Reasonable consumers should understand that the claim refers to the specific process or part and not to the general manufacture of the product. This includes claims that a particular part was made in the U.S. or a product was designed in the U.S., as these claims are sufficiently specific for a consumer to infer that the general product is of U.S. origin.

In many cases, the most appropriate label for sellers is: “Assembled in the United States,” without any qualification, because assembly can be a complex operation that covers a wide range of processes. This label should be limited to products that are substantially transformed in the U.S. or have undergone principal and substantial assembly in the U.S. This avoids contradictory labeling, goods being labeled both “Made in [foreign country]” and “Assembled in the U.S.”

Comparative Claims

You can make U.S. origin claims that contain a comparative statement such as, “more U.S. content than_____”, as long as these claims are truthful and substantiated. The basis for comparison should be clear (for example, refer to another leading brand or to a previous version of the same product) and should not exaggerate the amount of U.S. content.

Comparative claims of U.S. content should be made only for products in which there is a meaningful difference in U.S. content. For example, comparison claims between products which do not have a significant amount of U.S. content will likely be considered misleading.





False Advertising and Deceptive Pricing

When your marketing strategy includes product descriptions and advertised prices, you must comply with a variety of federal regulations governing advertising. Your city, state, or country may also have laws covering deceptive pricing or false advertising claims. Local jurisdictions often develop their own sets of standards and practices. Please educate yourself and your staff on the local consumer protection laws and regulations covering these subjects, as this book only covers federal laws and guidelines.

The Lanham Act: False Advertising And Misrepresentation

You or your business can be sued for damages created by false advertising, misleading descriptions or misrepresentations of fact under sections 43(a) and 35 of the Lanham Act, a federal statute. Before 1988, these provisions could be used only for two reasons: to prevent false identifications using trademarks that were not registered to the user, and false representations of a product's geographical origin. The only remedy was a cease-and-desist order and while successful actions could be brought to stop these two practices, money damages were available only when registered trademarks were infringed.

In 1988, the Lanham Act was revised to better promote fair dealing and protect competitors and consumers from deceptive trade practices. Now the prohibition against false representations and identification covers claims that can mislead or deceive as well as statements that are literally false.

Deceptive Practices

Any person, company or government agency can sue anyone who falsely represents or improperly describes goods or services sold in commerce, under section 43(a). You can also bring lawsuits for misuse of trademark. For example, you could sue someone who falsely placed a Tiffany trademark on a piece of jewelry not manufactured by the Tiffany company. You can also sue for other violation of your rights as a trademark owner, for instance, when a competitor claims to manufacture jewelry that is actually made by you.

The Lanham Act prohibits any statements or representations of fact, or words, terms, names, or symbols that cause confusion or misrepresent the truth. For example, advertising a diamond as “the finest available” implies that the stone is graded D flawless; so, if the diamond is of a lesser quality, but the actual grade is not disclosed, the consumer may mistakenly believe the diamond is of the highest grade and clarity. Because this advertisement can mislead consumers and injure competitors, it is prohibited by the Lanham Act.

The statute also prohibits false use or misuse of a trademark. For example, when a company claims it is selling “Waterford Crystal” (assuming Waterford is a registered trademark), its competitors could bring a lawsuit on the grounds that the advertising causes consumer confusion if the glass products sold are not in fact made by Waterford. Similarly, competitors can sue when a company falsely claims it is affiliated with or represents another company.

False statements about origin or any deception about the affiliation or connection of one company, product or service to another are also covered by the statute.

- **Examples**

Claiming a product is “Made in Italy” when only an incidental part was made there would constitute a false designation of origin; falsely advertising a product as a “David Yurman” design would also be unlawful.

Similarly, you cannot claim that a product is “approved by airline pilots” or “used exclusively by Elizabeth Taylor” unless there is actual evidence to back up these claims.

Recovering Damages

By law, a variety of damages may be available for successful lawsuits. You may recover any profits resulting from misleading or false statements of fact and money to cover the damages you suffered because of false claims or advertising. You may also recover the costs of bringing the lawsuit. The amount of damages will be decided by the jury (or judges, if they are dissatisfied with the jury decision).

Who can sue?

Generally, any jewelry manufacturer, wholesaler, retailer, or anyone who believes they will be or have been damaged by a competitor’s false or misleading misrepresentation or description can bring a lawsuit. A successful claim can prevent the competitor from continuing its deceptive conduct. You can also be awarded any profits from the misrepresentations, as well as other damages and attorney’s fees.

The JVC can bring a lawsuit on behalf of the industry. Established trade associations have long been granted standing to sue to protect their members and the buying public from fraudulent commercial practices.

These Lanham Act provisions provide strong economic incentive for competitors to ensure that the public is not misled. They also create a self-regulatory incentive; to protect yourself from lawsuits that could forfeit your profits, make sure that your advertising claims are truthful and fair.



The FTC Guides Against Deceptive Pricing

The FTC Guides Against Deceptive Pricing (“Pricing Guides”), published in 1963, set the standard for price advertising in the U.S. with the goal of promoting truthful advertising and offers of bargains without gimmicks that fool consumers into mistakenly believing they are getting a bargain.

Price advertising can be especially troublesome to businesses that desire to avoid consumer deceptive but want to use discount pricing as a marketing tool. Thus, the FTC Pricing Guides are a tool for businesses to test whether their pricing policy and advertising satisfy the goal of the guides.

These guides have not been updated since 1963 because many municipalities and states have passed local laws and regulations that govern price advertising; these laws can vary widely. For example, pricing policy in New York (which is near many other major commercial areas) is substantially different from pricing policy in Montana (a smaller,

more homogeneous market than NY). You should familiarize yourself with the truth-in-pricing laws and regulations in all of the areas where you do business.

As with the other guidelines, laws and policies discussed in this book, remember the key word – truthfulness. Offers that are fair, clear, and truly represent your pricing policy and the goods offered satisfy the FTC Pricing Guides and your area’s local laws. Adhering to these guides and local laws is good for your business and will help you avoid unpleasant, expensive litigation and maintain your reputation for sound integrity and business practices.

Former Price Comparisons

Many businesses appear to offer products at a price reduction from the original price. For example, “fifty percent off our regular price” compares the current price to a former one. However, to use this former price comparison tactic, the former price represented must be legitimate. When the former price is artificially inflated, consumers do not get true bargain, as the so-called “reduced” price is probably the price the seller originally intended to offer.

What is a legitimate former price?

A price for which the product has actually been offered. A former price is not necessarily fictitious because no products were sold at that price. However, to establish a legitimate former price, the product must have been openly and actively offered for sale in the ordinary course of business for a reasonable amount of time in the recent past. The “reasonable time” is often defined by local law – for example, for 10 out of the last 60 days. You cannot set a former price only to establish a fictitious higher price on which you will then base a deceptive comparison. Similarly, you cannot falsely represent a former price as a selling price if it was merely an asking price (as in “formerly sold at \$1,000” when most sales were negotiated to below \$1,000) unless a substantial amount of goods were sold at the selling price.

Also, the former price must have been offered in the recent past; comparisons to ten-year-old prices are not relevant to consumers buying today.

- **Example**

A retail jewelry store offers a diamond ring for sale at “fifty percent off the regular price,” however, the ring has never been sold by the store at that “regular price.” In fact, the discount represents a fifty percent increase over the price the retail jeweler paid the wholesale supplier and the discounted price represents the amount a comparable ring is regularly sold for in the retail market. When a customer asks about the ring, he is told to wait until the 50% off sale starts. In reality, the retailer never intends to sell the ring for the inflated price, which was established only to support the discounted price. This pricing strategy is deceptive.

Put simply, advertised sales must provide actual savings to retail customers. Moreover, the savings must be meaningful. When you advertise a sale but reduce prices only by pennies, no true discount exists.

Comparable Value Comparisons

Another commonly used advertising method compares your price to that of other retailers in your area. These claims must be truthful, of course. For example, a retail jeweler may advertise “14K gold San Marco bracelet, price elsewhere \$350; our price \$275.” This advertising is not deceptive if other retail outlets in the area sell the bracelet for \$350; however, if most sell it for \$275, the “discounted price” is misleading.

Similarly, you cannot advertise comparison prices for goods that are not similar. For example, a retailer who sells a hollow 14K gold bangle bracelet cannot compare its price to a solid 14K gold bangle bracelet. Advertisers who offered jewelry for one price and claim that similar products are sold elsewhere for a greater price must be reasonably certain that the goods compared are of comparable quality and actually available for that higher price in the area.

Manufacturer's List Price

A manufacturer's list or suggested retail price is not necessarily the price for which a particular product is generally sold in a specific area. However, many consumers will believe they are getting a bargain when retailers offer jewelry at prices reduced from the manufacturer's suggested price. Such advertising is misleading unless a substantial number of sales in your area are made at the list price.

National advertisers who can establish that the list price is used in principal retail outlets (that normally do not discount) can offer

discounts from the list price. National advertisers do not have to research prevailing prices for products sold across the country, as long as the advertised price is based on an honest estimate of the actual retail price and does not appreciably exceed the highest price of actual sales.

As true with all comparative price advertising, the price to which your price is being compared must be an actual price at which comparable goods are offered. Using inflated prices as a basis for comparison is always deceptive.

Offers Conditional On Other Merchandise Purchases

“Buy one, get one free!”
“Two for the price of one!”

These are the advertisements offering bargains conditional on other purchases. Obviously, no one is offering free merchandise because the purchaser must buy one product to get the other one free.

Consumers are misled when a seller increases the regular prices for items that must be bought or decreases the products' quality or quantity.

Conditional offer advertising is acceptable as long as the price of the required purchase has not been artificially inflated to cover the cost of the “free” or discounted item(s). You cannot attach any conditions to the sale other than the sale of the first item.

Wholesale vs. Retail Price

Retailers should not offer goods at “wholesale” or “factory” prices unless they are the same prices paid for purchases directly from a manufacturer. “Retail” means sales to the ultimate consumers. “Wholesale” means sales of merchandise, usually in large quantities, to someone who intends to resell it or use the merchandise as a supplier. You cannot represent yourself as a wholesaler or selling at wholesale prices when you sell at prices exceeding the manufacturer's purchase price.

For example, it is deceptive to use the phrase “wholesale prices direct to the public” or any like phrase, when the prices offered are not identical to the prices paid by the seller. Local consumer laws and regulations often address this type of price advertising.

Miscellaneous Price Advertising

A few more price advertising rules to remember:

- You cannot offer seconds, irregular or imperfect products for sale at reduced prices without disclosing the true nature of the goods offered.
- A “limited offer” should be in fact limited; you must increase the price at a later date.
- Do not represent a price as offered only to select customers when it is available to everyone.

Other Important Considerations: Green Guides, Digital Marketing & Social Media

Green Guides

FTC's Green Guides, which set forth the Commission's views on environmental claims, advise marketers not to make broad, unqualified claims that an item or service is "environmentally friendly," "green" or "eco-friendly." According to the FTC, very few products, if any, have all the attributes consumers seem to perceive from such claims, making these claims nearly impossible to substantiate.

These guides apply to broad "green" claims as well as specific claims and certifications/seals such as claims that a product is made from recycled materials, free of certain substances, recyclable or made with renewable energy.

Digital Marketing and Social Media Influencers

Let's not forget that marketing occurs in many different mediums (e.g., print, direct marketing, social media). So, you must keep the FTC Jewelry Guidelines and additional FTC guidance in mind with everything you do, even on social media platforms; this guidance also applies to social media influencers.

Social Media Influencer Disclosure Requirements

Under the FTC's Disclosures 101 for Social Media Influencers Guide, social media influencers must disclose when they have any financial, employment, personal or family relationship with a brand if they are advertising or promoting a product or service.

- This disclosure is required whether influencers think their followers know about their brand relationship or not and applies whether an influencer is given free or discounted products or other perks to mention a particular brand or its goods or services.

- The disclosure must be hard to miss and must be made in simple and clear language.

Correct: "Thanks to [Brand X] for the free product" + #ad #sponsored

Incorrect: No disclosure in text or message + #sp or #spon #collab or #thanks

Customer Reviews and Other Indicators of Social Media Influence

In line with its mission to prevent consumer deception and confusion, the FTC frowns upon the use of phony customer reviews and other indicators of social media influence such as phony follower accounts, bogus likes and fake views.

For example, in 2019, the FTC brought action against a company selling these indicators of social media influence, as the services provided by that company allowed purchasers to deceptively boost their credibility with potential clients, investors and more. The FTC also brought action sanctioning another company's use of the company's employees to post fake reviews from different accounts created to hide the fake identities.

Put simply, you should avoid and discourage:

- Posting, encouraging or paying others to post fake reviews about your business, its products, services or employees; and
- Any action that artificially inflates the number of views or likes your business or products receive on social media or any other medium.

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One of the major differences between TSG and other digital resources is our extensive and in-depth expertise in consumer research and analytics. TSG provides our clients with consumer-centric knowledge and insights rather than solely hypotheses based on assumptions derived from one-dimensional “dashboard data” alone. TSG’s experience includes some of the largest and most well-known brands and companies around the world including Coca-Cola, McDonald’s, Serena Williams, Comcast, Del Monte, EA Games, Disney, General Mills, Kroger, VF Corp, Salesforce, Cox Automotive, Signet, Rio Tinto, and many more.

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