



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

Office of the Secretary

September 9, 2014

Cecilia L. Gardner
President, CEO, and General Counsel
Jewelers Vigilance Committee
25 West 45th Street Suite 1406
New York, New York 10036

Dear Ms. Gardner:

Thank you for your June 17, 2014 letter to the Federal Trade Commission (“FTC”). In that letter, you requested a staff advisory opinion stating that “Made in the USA” claims for jewelry made from minerals and metals recycled in the United States (the “Request”) do not deceive consumers. Members of the Commission staff in the Enforcement Division of our Bureau of Consumer Protection have reviewed the Request in conjunction with consumer perception evidence submitted in December 2013 by Request co-signatory Mark Hanna, of Richline Group, Inc.

The Commission staff may, in accordance with Section 1.3(c) of the Commission Rules of Practice and Procedure, 16 C.F.R. § 1.3(c), provide Staff Opinions under certain circumstances. In this case, however, the Commission staff cannot provide an opinion stating that “Made in the USA” claims for recycled jewelry do not deceive consumers. We outline our concerns below.

As you know, the Commission enforces Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices. A claim that a product is “Made in the USA” when it is not, or when it is made in the USA but contains a significant amount of foreign-made components, may be deceptive if it is likely to mislead consumers into purchasing or using the advertised product.

¹ A claim need not mislead all – or even most – consumers to be deceptive under the FTC Act. Rather, the claim need only deceive some consumers acting reasonably. ²

¹ *In the Matter of Novartis Corp.*, 127 F.T.C. 580, 679 (1999), *aff’d and enforced*, 223 F.3d 783 (D.C. Cir. 2000); *In the Matter of Stouffer Foods Corp.*, 118 F.T.C. 746, 798 (1994); *In the Matter of Kraft, Inc.*, 114 F.T.C. 40, 120 (1991), *aff’d and enforced*, 970 F.2d 311 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 1254 (1993).

² *See FTC Policy Statement on Deception*, 103 F.T.C. 174 (1984) (*appended to In the Matter of Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 177 n.20 (1984) (“A material practice that misleads a significant minority of reasonable consumers is deceptive.”)); *see also FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 572 (7th Cir. 1989) (“[T]he FTC need not prove that every consumer was injured.”).

originated in the United States, based on the record before us, it appears that an unqualified U.S.-origin claim may deceive a significant number of consumers.⁴ However, if additional testing were to show that recycling gold and precious minerals changes consumer perception of U.S.-origin claims for those items, we would reevaluate.

Although the Commission staff cannot provide an opinion stating that “Made in the USA” claims for recycled jewelry do not deceive consumers, the Commission understands the importance of advertising domestic content and processes. Therefore, FTC staff is available to work with you and your members to craft qualified claims that serve the dual purposes of conveying non-deceptive information to consumers and highlighting work done to recycle gold and other jewelry in the United States.

We appreciate the opportunity to review your submission, and hope the above information will be useful to you.

Sincerely,

Donald S. Clark
Secretary

cc: David Cochran
President and CEO, Manufacturing Jewelers and Suppliers of America

Mark Hanna
Chief Marketing Officer, Richline Group, Inc.

David Bonaparte
President and CEO, Jewelers of America

Doug Hucker
CEO, American Gem Trade Association, Inc.

⁴ The Commission has found that claims in a variety of different contexts that are misleading to a significant minority of consumers are deceptive. *See In the Matter of Telebrands Corp.*, 140 F.T.C. 278, 325 (2005); *Firestone Tire & Rubber Co. v. FTC*, 481 F.2d 246, 249 (6th Cir. 1973); *FTC v. John Beck Amazing Profits, LLC*, 865 F. Supp. 2d 1052, 1070 n.88 (C.D. Cal. 2012); *see also FTC Green Guides Statement of Basis and Purpose*, at 51 (Oct. 1, 2012), available at <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc->