



Canadian JewellersTM Association

Deceptive Marketing Practices Directorate
Competition Bureau
50 Victoria Street
Gatineau, Quebec
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greenwashingconsultationecoblanchiment@cb-bc.gc.ca.

Re: Public consultation on *Competition Act's* new greenwashing provisions

Date: September 25, 2024

From: **Canadian Jewellers Association (CJA)**

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The Canadian Jewellers Association (CJA)

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The Canadian Jewellers Association (CJA) is the national trade association representing the jewellery and watch sector since 1918. CJA liaises with the government to ensure fair and equitable treatment. The CJA builds trust, awareness, understanding, and desirability for Canadian jewellery products. CJA is the voice of the Canadian jewellery industry, providing leadership in ethics, education, and communication. The CJA promotes consumer trust and assists its members to follow best business practices.

General comments

The CJA welcomes the opportunity to comment on the new greenwashing provisions in the *Competition Act*. The Canadian jewellery/watch industry is built upon consumer trust. Truth in advertising is essential. Deceptive marketing practices, in whatever form, are a grave concern in undermining consumer confidence in the products we sell. Consumers deserve clarity and truth when purchasing jewellery and watch products.

For the Competition Bureau to “*tackle unsupported environmental claims, commonly known as greenwashing,*” the **terms of reference need to be defined**. What does “**substantiate**” mean? Should “sustainable” be used as it is difficult to define? Businesses need to understand what they can and cannot do when making claims about environmental effects when advertising products and/or services.

Are there certain types of claims about environmental benefits of products or services that are less likely to be based on adequate and proper testing? Is there something about those types of claims that makes them harder to test?

Yes. Lab-grown diamonds (LGDs) are often presented as more environmentally sustainable/friendly than natural diamonds. A report worth noting:

[Microsoft Word - Trucost Report FINAL Press Release.docx \(naturaldiamonds.com\)](#)

Information on manufacturing LGDs

Methane is used by many growers as the source of carbon.

Large amounts of electricity are used.

There appear to be few direct emissions or waste products. Hydrogen is a likely by-product as methane is chemically CH₄ (carbon with 4 hydrogens) and the carbon becomes part of the diamond.

The source of electricity is a likely issue. As an example, in China, the largest producer, coal is a common source of fuel for generating electricity, so there is a high carbon emission for producing that electricity.

In terms of LGDs, the amount of electricity used should be easily measured during the manufacturing process.

2. What should the Bureau consider when it evaluates whether testing to support claims about the environmental benefits of products or services is “adequate and proper”?

To understand or to evaluate whether the testing to support claims about the environmental benefits of products or services is adequate and proper the following should be considered:

- **What is the product?**
- **What is the process of production?**
- **What and quantity of natural resources are used to produce the product?**
- **Are there any by-product/s post/during the production process?**
- **What happens if production fails? Whether production is 100% successful or are there any probabilities?**
- **If there are by-products, are they harmful or can be repurposed to be used in any way?**
- **How is the waste managed post the production is complete?**

In addition, from the Bureau’s archived Guide:

The CAN/ CSA - ISO 14040 Series of Standards details environmental impact considerations from the "cradle-to-grave" of a product or service (see Clause 3.3 of this Guide).

Such considerations include

- *design of the product;*
- *extraction of any raw materials used in the product or process;*
- *materials (including energy) used in the production process;*
- *emissions created during production (air, water, solid waste, etc.);*
- *toxicity of these materials and emissions;*
- *environmental impacts of the distribution system (including packaging and transportation);*
- *environmental impacts that occur during use of the product or service;*
- *durability, reusability, and recyclability of the product;*
- *consumer packaging and its disposal; and*
- *final disposal of the product.*

3. What challenges may businesses and advertisers face when complying with this provision?

Given the global supply chain, the Canadian jewellery industry places much reliance on “know your supplier”. This points to it being imperative that Canadian guidelines are in sync with global standards.

4. What other information should the Bureau be aware of when thinking about how and when to enforce this provision?

There is constant development and change in technological innovation thus, including/changing/ accepting, and accommodating these changes is necessary to do so quickly.

74.01 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

(b.2) makes a representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that is not based on adequate and proper substantiation in accordance with internationally recognized methodology, the proof of which lies on the person making the representation;

1. What kinds of claims about environmental benefits are commonly made in the marketplace about businesses or business activities? Why are these claims more common than others?

Same as (b.1).

2. Are there certain types of claims about the environmental benefits of businesses or business activities that are less likely to be based on “adequate and proper substantiation in accordance with internationally recognized methodology”? Is there something about those types of claims that makes them harder to substantiate?

Again, reference (b.1) #2- LGDs are frequently advertised with “environmental claims”. These claims should be relatively easy to substantiate.

3. What internationally recognized methodologies should the Bureau consider when evaluating whether claims about the environmental benefits of the business or business activities have been “adequately and properly substantiated”? Are there limitations to these methodologies that the Bureau should be aware of?

International norms/standards for environmental claims for the jewellery industry

The Canadian jewellery/watch industry must be in sync with international standards. Several global associations, as well as the CJA, set international greenwashing standards for the jewellery/watch industry.

AGTA- American Gem Trade Association (refer to Appendix A)

[AGTA FTC-2022-0077-0642 attachment 1.pdf](#)

CJA- Canadian Jewellers Association

[CJAGemstoneGuidelines-2023.pdf \(canadianjewellers.com\)](#)

JVC -Jewelers Vigilance Committee (refer to Appendix B)

[JVC | Upholding Jewelry Industry Ethics & Integrity \(jvclegal.org\)](#)

[JVC US FTC-2022-0077-1078 attachment 2.pdf](#)

RJC- Responsible Jewellery Council

[Home • Responsible Jewellery Council](#)

WJI2030- Watch and Jewellery Initiative 2030

[Watch & Jewellery Initiative 2030 \(wjinitiative2030.org\)](#)

WGC- The World Gold Council

[Gold Industry Declaration of Responsibility and Sustainability Principles | World Gold Council](#)

CIBJO- The World Jewellery Confederation

www.cibjo.org

[What is a Diamond?](#)

[The Guidelines - CIBJO](#)

[LGD-Guidelines-CIBJO-Final-2024.pdf](#)

[Environmental, Social and Governance Principles for Laboratory-Grown Diamonds - CIBJO](#)

[CIBJO-ESG-Principles-CIBJO-Congress-2023.pdf](#)

From CIBJO website:

“In June 2021, the Confederation released the “Laboratory-Grown Diamond Guidance.” The result of a three-year project, which included members of both the laboratory-grown and natural diamond sectors, includes a set of operating standards and principles for the laboratory-grown diamond sector that are designed to enhance consumer confidence both in the product and the jewellery industry.”

United Nations

[THE 17 GOALS | Sustainable Development \(un.org\)](#)

4. What other factors should the Bureau take into consideration when it evaluates whether claims about the environmental benefits of businesses or business activities are based on “adequate and proper substantiation in accordance with internationally recognized methodology”?

In particular, review the CIBJO material above and the JVC (US) letter to the FTC.

5. What challenges may businesses and advertisers face when complying with this new provision of the law?

Knowing and trusting their suppliers to substantiate their claims. In addition, conducting business in a marketplace where provisions are not enforced creates an uneven playing field.

6. What other information should the Bureau be aware of when thinking about how and when to enforce this new provision of the law?


The CJA looks forward to the Competition Bureau’s revised Guidelines and the enforcement of the new provisions.

Thank you.

Sincerely,



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APPENDIX A



American Gem Trade Association
3030 LBJ Freeway, Suite 840
Dallas, Texas 75234

April 10, 2023

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (annex J)
Washington, DC 20580

Green Guides Review Matter No. P954501

AGTA is an association of 1015 members in the United States and Canada of natural colored gemstone and cultured pearl professionals dedicated to promoting the natural-colored gemstone trade while maintaining the highest ethical standards among its members and within the industry.

Summary of AGTA Recommendations:

- The Commission should use the generally accepted definition of “sustainable” as developed by the Brundtland Commission in 1987: “meeting the needs of the present without compromising the ability of future generations to meet their own needs.”
- To the extent possible, commonly used terms (ethical, responsible, conflict-free, etc.) should be defined by the FTC for the benefit of the consumer, and for the integrity of the supply chain.
- The FTC should have guidance in place that prevents companies from making unsubstantiated environmental claims.
- The term “recycled” should not be permitted to be applied to precious metals, diamonds, or gemstones.
 - Ban the use of the term “recycled” from being applied to all gem material inclusive of diamonds and colored stones.
 - Ban the use of the term “recycled” from being applied to gold, platinum, palladium, and silver. Allow for use of the term “recovered from e-waste” to be applied exclusively to metals that are recovered from e-waste.

- The term “carbon free” should not be permitted in the jewelry industry as this is misleading. The term “carbon neutral” should be allowed with substantiation as this more accurately reflects the carbon offsets being used by some companies.
- Terms indicating that a stone or precious metal was “never-mined” or is “mining-free” should not be permitted.

PLEASE SHARE ANY EVIDENCE CONCERNING CONSUMER PERCEPTION OF ENVIRONMENTAL CLAIMS, INCLUDING CLAIMS NOT CURRENTLY COVERED BY THE GUIDES. DOES THIS NEW INFORMATION INDICATE THE GUIDES SHOULD BE MODIFIED? (FTC Q. A7)

The following terms related to environmental claims in the jewelry industry are prevalent:

- Clean, recycled, ethical, responsible, sustainable, conflict (conflict-free), eco, certified, and “newly” mined).
 - Some of these terms “ethical, responsible” intentionally connote both environmental and social benefits without providing any specifics.

The lack of legal definitions for these terms is creating an environment ripe for greenwashing in industry.

- Recommendations:
 - These terms should be defined by the FTC for the benefit of the consumer, and for the integrity of the supply chain.
 - The FTC should have guidance in place that prevents companies from making unsubstantiated claims.
 - The term “recycled” should not be permitted to be applied to precious metals, diamonds, or gemstones. (see response to question on recycling below for additional detail)

PLEASE SHARE ANY EVIDENCE OF INCREASED CONSUMER INTEREST IN PARTICULAR ENVIRONMENTAL ISSUES. DOES THIS NEW INFORMATION INDICATE THE GUIDES SHOULD BE MODIFIED? (FTC Q. A8)

PLEASE SHARE ANY EVIDENCE OF POTENTIALLY UNFAIR OR DECEPTIVE ENVIRONMENTAL MARKETING CLAIMS NOT COVERED BY THE GUIDES. (FTC Q. A15)

- There is an increasing use of the term “carbon-free” in the jewelry industry. Some companies may in practice be using carbon offsets, and be carbon “neutral.” However, the “carbon-free” claims are misleading to consumers:
 - <https://www.brilliantearth.com/news/carbonfree-commitment/>
 - <https://www.vrai.com/journal/post/three-must-know-facts-that-set-vrai-apart>
 - <https://www.theverge.com/2022/3/2/22951332/aether-diamonds-carbon-capture-air-climate-change>

- Recommendations:
 - The term “carbon neutral” should be allowed with substantiation as this more accurately reflects the carbon offsets being used. The term “carbon free” should not be permitted.
 - We also believe that the terms indicating that a stone or precious metal was “never-mined” or is “mining-free” should not be permitted as mining is still required for the manufacturing of all gemstones, and all precious metals (gold, platinum, etc.) were mined at one point in time. Ban the use of the term “never mined” from being applied to metals and gemstones.
 - See: <https://www.jckonline.com/editorial-article/lab-grown-diamonds-mining-free/>
 - See: <https://auratenewyork.com/pages/sustainability> “Basically our gold is never mined.”
 - See: <https://www.bluenile.com/diamonds/lab-grown-diamonds-> “Why choose lab grown diamonds? - As with any jewelry purchase, the choice to buy lab grown diamonds is a personal one. Lab diamonds offer affordability for many styles. Though all our diamonds at Blue Nile are ethically sourced, many people who prefer non-mined diamonds opt for lab grown diamonds.

SHOULD THE COMMISSION REVISE THE CURRENT DEFINITION OF “RECYCLED CONTENT”? THE GUIDES STATE MARKETERS MAY MAKE “RECYCLED CONTENT” CLAIMS ONLY FOR MATERIALS RECOVERED OR OTHERWISE DIVERTED FROM THE SOLID WASTE STREAM, EITHER DURING THE MANUFACTURING PROCESS OR AFTER CONSUMER USE. DO THE CURRENT GUIDES PROVIDE SUFFICIENT GUIDANCE FOR “RECYCLED CONTENT” CLAIMS? IF SO, WHY? IF NOT, WHY NOT, AND WHAT GUIDANCE SHOULD BE PROVIDED? WHAT EVIDENCE SUPPORTS YOUR PROPOSED REVISION(S)? (FTC Q. B7)

The term “recycled” is particularly problematic in the jewelry industry.

GEM MATERIAL: DIAMONDS & COLORED STONES

- “Recycled” is typically used to describe previously owned or estate stones. These stones are simply being re-used. The term “recycled” is misleading.
- There is no evidence that diamonds or colored stones are being thrown into landfills in an amount that is meaningful.
- There is no evidence that colored stones, result in environmental damage when landfilled.
- The use of the term “recycled” is being used to upcharge consumers. It is not diverting materials from landfills nor is it solving an environmental problem.
- See: <https://www.brilliantearth.com/conflict-free-diamonds/>
 - “Recycled diamonds are a responsible choice. These diamonds have been mined, cut, and polished, were previously purchased, and are now being made available again. Because they are repurposed after a prior purchase, these diamonds require no new mining. This reduces the demand for new diamond mining and avoids perpetuating ongoing abuses. Our recycled diamonds have been graded by an independent gemological lab, so can be compared to newly mined diamonds for their quality characteristics.”

PRECIOUS METALS

- Precious metals – the term “recycled” should not apply. Rather, “recovered” should be used and should only apply to noble metals (e.g. gold, platinum, palladium, silver) that are recovered from e-waste.
- In the jewelry industry, the term “recycled” is currently particularly problematic as it is being applied to gold that is in the normal supply chain. It is effectively being used to 1) upcharge consumers for a product that has no additional environmental

benefit AND 2) greenwash gold that is coming from illicit sources. The core issue is that recycled gold is not traceable.

- The term “recycled” should not be permitted to apply to noble metals (gold, platinum, palladium, silver) from a scientific standpoint. Because of their lack of chemical reactivity, they do not pose a threat to the environment when disposed of in landfills. Therefore, recycling does not have an environmental impact. The demand for noble metals does not decrease as the amount of “recycled” metals increases.

- According to a report by the Carnegie Endowment for International Peace,
 - "An analysis of the UAE’s imports in 2016 showed that at least 46 percent of its gold supply came from countries that would be “red-flagged” by the OECD as being conflict-affected or high-risk countries had their country of origin been recorded rather than the country through which the gold transited. For example, gold from the Democratic Republic of Congo (DRC) and South Sudan are both commonly trafficked through Uganda, thus disguising its origins and resulting in it being considered Ugandan gold from a regulatory standpoint.

 - The process of reselling ASGM gold freely exported from red-flagged sources to Dubai jewelers and refiners (via the emirate’s bustling souk) essentially launders illicit ASGM gold into a refined product that is acceptable to the world’s most reputable gold hubs.

- Recommendations:
 - Ban the use of the term “recycled” from being applied to all gem material inclusive of diamonds and colored stones.

 - Ban the use of the term “recycled” from being applied to gold, platinum, palladium, and silver. Allow for use of the term “recovered from e-waste” to be applied exclusively to metals that are recovered from e-waste. Precious metals do not end up in landfills, do not cause environmental damage if they do end up in landfills, recycling does not diminish the demand for newly mined metals, and recycling is already the status quo.

IN 2012, THE COMMISSION DECLINED TO ISSUE GUIDANCE ON “ORGANIC” CLAIMS FOR NON-AGRICULTURAL PRODUCTS. SHOULD THE COMMISSION REVISIT THIS DETERMINATION? **NO**

IN 2012, THE COMMISSION DETERMINED IT LACKED A BASIS TO GIVE SPECIFIC GUIDANCE ON HOW CONSUMERS INTERPRET “SUSTAINABLE” CLAIMS. SHOULD THE COMMISSION REVISIT THIS DETERMINATION? YES

IF SO, WHY, AND WHAT GUIDANCE SHOULD BE PROVIDED? WHAT EVIDENCE SUPPORTS MAKING YOUR PROPOSED REVISION(S)? WHAT EVIDENCE IS AVAILABLE CONCERNING CONSUMER UNDERSTANDING OF THE TERM SUSTAINABLE? (FTC Q. B12)

- The jewelry industry is seeing a proliferation of new, ill-defined terms that are creating confusion among consumers.
- The Commission should use the generally accepted definition of “sustainable” as developed by the Brundtland Commission in 1987: “meeting the needs of the present without compromising the ability of future generations to meet their own needs”
- This definition is particularly important to the colored stone industry. Some interpret “sustainable” as applying only to renewable resources, which would exclude all colored stones, diamonds, and precious metals. The Brundtland Commission definition allows for the inclusion of non-renewables. This is imperative to prevent lab-grown gems from claiming that they are the only “sustainable” option.

DO YOU HAVE ANY OTHER SUGGESTIONS FOR TERMS THAT SHOULD BE DEFINED OR COMMENTS ON THE GREEN GUIDES/ENVIRONMENTAL MARKETING YOU WOULD LIKE TO SHARE WITH US?

Recommendations:

- The FTC should provide more guidance to prevent the use of unsubstantiated and otherwise misleading claims. For example, “locally sourced” is being used in the jewelry industry to indicate a lower carbon footprint, however this is not necessarily the case. Below are examples of currently unregulated terms -
 1. **Sustainable** - The Commission should regulate the use of all terms related to, or suggestive of “sustainable” practices that are not precisely defined or substantiated to protect the consumer from deceptive practices and to prevent illicit materials from being greenwashed or whitewashed as “sustainable” “ethical” “recycled” etc.
 2. **Locally Sourced** – This is seen in some descriptions of Montana Sapphires. It is assumed that “local” implies a lower carbon footprint. However, there is no guarantee that the gem material has not left the US for cutting or other processing.

3. **Certified** – There are many independent certification schemes in the jewelry industry.
 - A. AGTA considers that describing a Gem Report or any document as a “Certificate” when presenting a gemstone to a consumer at all levels is a deceptive trade practice and SHALL not be allowed.
 - B. Reports produced by gem labs are only the expression of a lab opinion. They should not be presented as “certificates” since subjective opinions are included and the information on the reports is not guaranteed.



April 21, 2023

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Guides for the Use of Environmental Marketing Claims; Docket No. FTC-2022-0077

Filed Electronically

To the Commission:

The Jewelers Vigilance Committee (JVC) is a non-profit trade association that encourages ethical business practices and promotes honest representation in the jewelry and watch industries. Since 1917, JVC has been the sole jewelry industry organization dedicated to educating industry members on the legal, regulatory, and ethical considerations relevant to selling jewelry. JVC publishes educational resources to guide the jewelry industry on subjects including: fairly representing jewelry products in all mediums, increasing ethical supply chains, and implementing federally-compliant anti-money laundering policies. Hundreds of small and medium-sized businesses rely on JVC's publications and individual guidance for answers to questions on compliant trade practices and resolutions for common legal and regulatory issues. JVC welcomes the opportunity to contribute to the Federal Trade Commission's request for comments on the ongoing need for the Green Guides and looks forward to the Commission's perspectives and revision on these topics.

Below, JVC has commented on the specific questions asked by the FTC that are relevant to the jewelry and watch industries.

A. General Issues

1. Is there a continuing need for the Guides? Why or why not?

Jewelers Vigilance Committee

[Redacted signature block]

The FTC Green Guides continue to be vitally important to protect and inform consumers in the United States.

American consumers are increasingly concerned about the environment and environmental issues and this concern is reflected in their desire to make meaningful, “green” choices when purchasing goods and services.¹ As the world reacts to climate change and environmental crises, consumers look to words and phrases such as “sustainable,” “ethical,” and “environmentally-friendly” when making their purchasing decisions. To fully understand what these terms mean, consumers need the guidance and clarification that the Green Guides can provide.

Businesses also need the guidance the Green Guides offer. First, so that they can correctly and effectively advertise their products and inform their customers, but also to ensure fair competition between and among retailers and providers. As some jewelry businesses move toward using laboratory-grown gemstones in their products and others find new ways of creating products, marketing claims of sustainability, recyclability and environmental friendliness proliferate. Businesses need to know what can and cannot be claimed when advertising their products amidst all of these changes: the jewelry industry can be complex and confusing, and clarification of these issues is something that would specifically benefit our unique industry.

As a result, it is more important than ever that the FTC continues to offer guidance for consumers and businesses, alike.

2. What benefits have the Guides provided to consumers? What evidence supports the asserted benefits?

¹ See, e.g., Amish Shah, *Lab-Grown Diamonds: Ethical Consumerism for the Fine Jewelry Industry*, FORBES (Apr. 11, 2022) <https://www.forbes.com/sites/forbesbusinesscouncil/2022/04/11/lab-grown-diamonds-ethical-consumerism-for-the-fine-jewelry-industry/?sh=5e5d71297734> (noting increased consumer expectations of “good corporate citizenship.”)

In the past decade, consumers have increasingly and consistently shown that they want to make purchasing choices that are less harmful and/or more beneficial to the environment. The Green Guides – by providing manufacturers and retailers of fine jewelry and watches with guidance regarding definitions and terminology – help to ensure that consumers have the information they need to make meaningful, informed choices. Examples of this include the use of the term “ethical” when describing laboratory grown diamonds, which can be confusing to consumers. While the process used to create laboratory grown stones may be less harmful to the environment, it comes with its own environmental concerns.²

3. What modifications, if any, should be made to the Guides to increase their benefits to consumers?

For the jewelry and watch industries, the Green Guides need to be updated to reflect changes in the industry and the world. There is a serious need for better definitions and clarification of terms as they relate to the jewelry industry due to increased manufacturing capacity and technological changes, combined with increased consumer interest in the environment and how purchases may impact the future of the world. Terms that severely require clarification include: “recycled,” “sustainable,” “renewable,” “carbon-neutral,” “ethical/ethically mined/ethically grown,” and “eco/environmentally friendly.” In the jewelry industry, manufacturers and consumers alike would benefit from requirements that businesses making eco-claims outline the specific benefits of those claims.

Further, there is a need to address the environmental claims made by laboratory-grown diamond and gemstone producers and purveyors as the sector continues to grow. The proliferation and democratization of this technology has led to an influx of new businesses marketing their products with green color fonts, pictures of irrelevant leaves and trees, and environmental terminology without providing evidence of actual benefits. Baseless

² See Oliver Milman, *Are Laboratory-grown Diamonds the More Ethical Choice to Say ‘I Do’?*, THE GUARDIAN (Mar. 10, 2020), <https://www.theguardian.com/lifeandstyle/2020/mar/10/diamonds-lab-grown-climate-change> (noting potential environmental impact of laboratory-grown stones).

environmental claims are harmful to the consumer and to veteran businesses in the sector who are acting responsibly and taking the FTC’s requirements seriously.³ Consumers and businesses alike need guidance on how these technologies – and the resulting products – affect the environment and how they can be advertised, as a result.⁴

Finally, the power or threat of enforcement would make the Green Guides more beneficial for consumers by ensuring that businesses adhere to the guidelines. When the FTC has the ability to assess financial penalties and to enforce the guidelines, it matters. The warning letters that the FTC issued to companies regarding disclosures in diamond advertising (regarding violations of the Guides for the Jewelry, Precious Metals, and Pewter Industries (the “Jewelry Guides”) and the Green Guides) in 2019 are a prime example of this. The letters, sent to eight jewelry marketers, warned that the FTC was ready to take actions – including the imposition of civil penalties – to enforce the Jewelry Guides, and this possibility has had a meaningful effect on the industry.⁵

With this review of the Green Guides, it is important for the FTC to note that the jewelry industry is very specialized compared to many of the other industries covered therein. Many members of the jewelry industry are small to medium sized family-owned or privately held companies. While the sophistication level of many businesses in the industry is high, the majority of jewelry retailers located around the country are small businesses with few resources, especially in comparison with others affected by the Guides. Overly broad edicts in the Guides may unintentionally exclude smaller players in our industry, be impossible to

³ For example, at least some companies took significant corrective action and have put resources behind ensuring compliance with the Green Guides after the FTC’s warning letters in April 2019. Rob Bates, *FTC’s Warning Letters Ripple Through Lab-Grown Industry*, JCKONLINE (Apr. 8, 2019), <https://www.jckonline.com/editorial-article/ftcs-warning-letters-lab-grown/>.

⁴ On a related note, consumers would benefit greatly from better dissemination of the information provided in the Guides, and from further enforcement of the principles set forth in the Green Guides. Currently, purchasers seem only vaguely aware that the FTC has provided guidance regarding “green” marketing and advertising. Better dissemination of this information would be of great benefit to consumers.

⁵ See *supra* note 3. JVC frequently cites to these letters when providing guidance to retailers and manufacturers, showing both that the FTC is paying attention to these issues and that it is willing to use its enforcement power when necessary.

substantiate, or weaken the ability of industry members to make claims. Thus, making the Guides possible for businesses of all sizes to comply with will have a strong benefit to our industry and other industries who have smaller players in the space. Moreover, many of the jewelry industry's needs are unique. We would like to see the Guides provide more industry-specific clarity and guidance without hindering our members' ability to make claims.

a. What evidence supports your proposed modifications?

The FTC enforcement letters sent to eight jewelry marketers in 2019 were tremendously helpful to JVC when working to effect FTC compliance with advertisers. The warning letters to these jewelry marketers instructed that some of their on-line advertising of certain laboratory-created and synthetic diamonds might be deceptive to consumers and in violation of the guidelines set forth in the Jewelry Guides. The clarification these warning letters provided had an immediate effect on the industry and allowed JVC to give better compliance guidance as a result.

In 2021, the FTC issued its "Made in the USA Labeling Rule" (the "MUSA Rule"), which, importantly, gave the Commission the power to pursue financial punishments for violations. Since then, the FTC has prevailed in numerous actions against companies who have violated the MUSA Rule, many with stiff penalties involved.⁶

In both examples, when the FTC has the power to enforce the guidelines, the industry takes notice.

b. How would these modifications affect the costs the Guides impose on businesses, particularly on small businesses?

Further clarification of the guidelines as they specifically relate to the jewelry industry would help retailers avoid spending additional money on website or other advertising materials in an ongoing effort to adhere to the FTC recommendations. Increased clarity from the FTC

⁶ See, e.g., FTC Decision and Order re: Lions Not Sheep Apparel, LLC, July 28, 2022, https://www.ftc.gov/system/files/ftc_gov/pdf/C4772%20Decision%20and%20Order.pdf (in which the FTC fined the company \$211,335.00 for various violations); US v. Lithionics Battery, LLC, Case 8:22-cv-00868-KKM-AEP (in which the FTC brought suit in Florida Federal District Court and was awarded a judgement of \$105,319.56.)

would help businesses correctly advertise their products from the start, decreasing the likelihood that advertising materials will have to be changed later. This is especially true for small and medium-sized businesses, which comprise the majority of the jewelry industry.⁷

c. How would these modifications affect benefits to consumers?

Our proposed modifications would give consumers more much-needed information with which to make purchasing decisions. The jewelry industry can be confusing for consumers and increased clarity in defined terms (such as “environmentally friendly,” “green,” and “recycled”) would allow consumers to feel more secure with and informed in their choices. JVC has reviewed many of the FTC comments that have been submitted thus far and found that the majority of respondents, from various fields, are asking for clarification and better definitions of existing terms used frequently with this type of marketing. These terms appear to be a point of confusion for businesses owners and consumers alike.

4. What impact have the Guides had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?

To date, the Green Guides have had a moderately positive impact on the flow of truthful information to consumers in the jewelry industry. We believe that further clarifications and language would be beneficial given the unique needs of the jewelry and watch industries, which could greatly impact consumers.

The current version of the Green Guides has proven to be overly broad regarding the specific needs of the jewelry industry. As a result, consumers have not been able to get accurate information about the products they are purchasing. The vagueness surrounding terms such as “recycled” and “sustainable” has led to greenwashing: marketers using undefined environmental terms to attract consumers who want to “do the right thing” when purchasing

⁷ For reference, Signet Jewelers, the largest jewelry retailer in the United States, accounts for 9.3% of the U.S. jewelry market. Signet’s total sales for fiscal year 2022 were a mere \$7.8 billion. Rob Bates, *Signet Claims 9% of U.S. Jewelry Market*, JCKONLINE (Mar. 19, 2022), <https://www.jckonline.com/editorial-article/signet-9-u-s-jewelry-market/>.

fine jewelry and watches without documenting any actual environmental benefits. While some companies go to great lengths to show evidence of their business practices,⁸ other advertisers are able to make questionable, unsupported claims due to the lack of clarity in the Guides. Moreover, the scientific complexity of the many different contributing industries to jewelry (such as mining, manufacturing, and recovery and reuse of precious metals) makes an overly broad approach meaningless for consumers and businesses alike – especially with no enforcement to ensure compliance. While businesses should not be discouraged from taking even small steps that do, in fact, reduce environmental impact, the current definitions are too broad for many to make effective choices while not deceiving consumers.

Further, the global nature of the online marketplace means that some thought should be given to harmonization of the FTC’s rules with those in the rest of the world. Another comment noted that the new version of the Green Guides should be more in alignment with the Paris Agreement. Making efforts to connect globally through the rewritten Guides would be productive to retailers in every space as most online retailers benefit from the global reception of their brands.

5. What significant costs have the Guides imposed on consumers and/or consumer and environmental organizations? What evidence supports the asserted costs?

At JVC, a substantial amount of staff time and resources is spent dealing with vague “green” claims and complaints, and advising consumers on what the Green Guides require of businesses. Likewise, consumers are spending time and resources looking for meaningful assurances regarding their purchasing decisions, only to find that information about environmental claims is scarce and what resources are available (such as the Green Guides) are unclear. The Green Guides may not be imposing these costs on consumers, but modifications to

⁸ See, e.g., Monica Vinander’s sustainability webpage, <https://www.monicavinader.com/us/sustainability>; Brilliant Earth’s statement on recycled gold jewelry, <https://www.brilliantearth.com/recycled-gold-jewelry/>; Cooks on Gold’s answer to the question “Is recycled gold more ethical and sustainable?”, <https://www.cooksongold.com/blog/learn/what-is-recycled-gold/#:~:text=Typically%2C%20recycled%20gold%20is%20seen,than%20mining%20for%20new%20alloys.>



the Guides could help consumers make purchasing decisions more easily, with less expenditure of time or money.

6. What modifications, if any, should the Commission make to the Guides to reduce the costs imposed on consumers?

Currently, consumers who care about the environmental impact of their jewelry and watch purchases must wade through and research numerous unsubstantiated “green” claims made by retailers/advertisers. The Guides’ impact on these particular industries will only serve to help consumers make more informed purchasing choices.

8. Please provide any evidence that has become available since 2012 concerning consumer interest in particular environmental issues. Does this new information indicate the Guides should be modified? If so, why, and how? If not, why not?

In the last ten years there have been numerous studies and articles describing how consumers are increasingly making purchasing decisions based on environmental and “ethical” concerns. A 2022 joint study by the Baker Retailing Center at the Wharton School of the University of Pennsylvania and First Insight found that, “Over two-thirds of the consumers say that they are willing to pay more [for sustainable products]”, “almost three-quarters of consumers say that sustainability is a very or somewhat important purchase consideration,” and “[c]onsumers are shopping sustainable brands out of a desire to help the environment—by reducing production waste, by reducing their carbon footprint, out of concern for animals – and less so to be recognized as a good citizen (social signaling).”⁹ In a recent article, industry-leader JCK noted that industry members “are increasingly elevating environmental, social, and governance (or ESG) practices and principles in their everyday operations” and adds that, “evolving consumer tastes and greater awareness about sustainably produced goods provide another compelling reason to invest the time and money into defining your ESG

⁹ *The Sustainability Disconnect Between Consumers & Retail Executives*, FIRSTINSIGHT, <https://www.firstinsight.com/white-papers-posts/the-sustainability-disconnect-between-consumers-and-retail-executives> (last accessed April 11, 2023).



accomplishments and goals.”¹⁰ And the New York Times has highlighted the fact that “[a]s part of their corporate responsibility programs **and in response to growing customer concern**, watch brands are increasing their use of responsibly mined gold, taking steps, for example, to reduce pollution and improve working conditions for miners” (emphases added.)¹¹ However, the same article pointed out that, “[i]n its 2018 report about gold in the watch industry, the World Wide Fund for Nature made a strong push for recycled gold. But since then, the organization has refined its views. ‘There is no industry standard for what ‘recycled’ is composed of,’ said Damian Oettli, the organization’s head of markets, noting that ‘too often what is called recycled gold has only been freshly mined, partly refined and marked as recycled in the final refining process. So it is still part of the problem with irresponsible mining.’”¹²

There is ample evidence to show that consumers (and many businesses) have a great deal of interest in the environmental and ethical issues surrounding jewelry and watch production, but they are confused as to how to identify and define products that are “green.”¹³ Modifying the Green Guides to clarify terms, add definitions and specifically address the needs and concerns of the jewelry and watch industries would be tremendously helpful to consumers and businesses, alike.

11. What significant costs, including costs of compliance, have the Guides imposed on businesses, particularly on small businesses? What evidence supports the asserted costs?

The vagueness of the Green Guides adversely affects small businesses. Business owners feel the pressure to add “green” certification claims to their marketing materials in order to

¹⁰ Martha C. White, *How to Develop a Sustainability Report (and Why You Should)*, JCKONLINE (July 06, 2022), <https://www.jckonline.com/article-long/how-to-sustainability-report/>.

¹¹ Anders Modig, *Watch Brands Increase the Use of Responsibly Mined Gold*, N.Y. TIMES (Nov. 8, 2022), <https://www.nytimes.com/2022/11/08/fashion/watches-responsibly-mined-gold.html>.

¹² Id.

¹³ See, e.g., *Responsible Awareness Industry Survey*, Ethical Metalsmiths, https://docs.google.com/forms/d/1Itc6Xg_JFZmQIicyiBELJI02WXDHazNJTvtUBNUvz0/viewanalytics (last accessed Apr. 19, 2023) (showing how microbusinesses in the jewelry industry have a strong desire to obtain information and resources and want support for implementing changes in their businesses.)

compete with other companies making similar assertions. There are a myriad of high-cost certification programs available to businesses as a result of the Guides.¹⁴ For the jewelry industry, this is especially problematic. Numerous organizations have put forth “certification” programs to supposedly ensure “sustainable”, “earth-friendly”, or “ethical” practices in the industry,¹⁵ but the Guides’ lack of clarity on these terms has led to confusion on the part of businesses, leaving them open to meaningless “certification” schemes and at risk of enforcement for being unknowingly out of compliance.

12. What modifications, if any, should be made to the Guides to reduce the costs imposed on businesses, particularly on small businesses?

The FTC should clarify how the Green Guides affect the jewelry and watch industries. Specifically, it should address how businesses should tailor their advertising and avoid spurious certification schemes.

a. What evidence supports your proposed modifications?

b. How would these modifications affect the consumer benefits provided by the Guides?

Additional clarity regarding how the Green Guides relate to the jewelry and watch industries will only serve to help consumers make more informed choices. Clarity on how the process of making and mining jewelry affects the environment, and educating consumers on why this is not necessarily against a green initiative would be productive.

15. What potentially unfair or deceptive environmental marketing claims, if any, are not covered by the Guides?

¹⁴ Library of Congress Research Guide, Green Business: Sources of Information, Standards and Certifications, <https://guides.loc.gov/green-business/businesses-going-green/standards-certifications> (last visited Apr. 11, 2023).

¹⁵ See, e.g., SCS Global Services’ Certified Responsible-Source Jewelry, <https://www.scsglobalservices.com/certified-responsible-source-jewelry>; B-Corp Certification <https://www.bcorporation.net/en-us/certification>; Responsible Jewellery Council, Code of Practices Certification Standards, <https://responsiblejewellery.com/standards/code-of-practices-2019/>. See also Kyle Roderick, *How Jewelers Implement Sustainable Practices and Enhance the Industry*, PRISM, American Gem Trade Association (Feb. 15, 2023), <https://agta.org/from-prism-volume-1-2023-ethics-in-action/>.



At JVC, we are frequently approached with complaints about advertising that include potentially unfair or deceptive environmental marketing claims. Explicit claims such as “sustainable,” “carbon-free,” “recycled,” “green,” “ethical” and “environmentally friendly/sound” are common. Additionally, some retailers make implicit environmental claims by using “green” fonts, imagery, and language in their advertising – something equivalent to using the American flag to imply “Made in the USA.”

a. What evidence demonstrates the existence of such claims?

Please see the following links for a sampling of just a few unsubstantiated claims of “sustainable”, “ethical”, “recycled” jewelry: <https://thefuturerocks.com/pages/contact>; <https://www.miadonna.com/pages/about-us>; <https://www.monicavinader.com/us/sustainability>. (Because the Green Guides do not define “sustainable,” some retailers apply the term to laboratory-grown diamonds, making consumers believe that choosing a man-made stone is substantially better for the environment than a mined stone without adequate evidence to support the assertion.)¹⁶

As noted above, the jewelry industry is complicated enough for consumers; this onslaught of “green” advertising is sure to add to the confusion. Consumers need the FTC to establish recognized terms and standards regarding how these claims can be made.

b. With reference to such claims, should the Guides be modified? If so, why, and how? If not, why not?

Please see our responses in Section B of this comment for the JVC’s suggestions on modifications to the Green Guides.

¹⁶ See, e.g., Jessica Booth, *Sustainable Diamonds: Everything You Need to Know*, BRIDES (Sept. 28, 2022), <https://www.brides.com/sustainable-diamonds-5116317> (“[a] sustainable diamond is a diamond that has been ethically sourced, a lab-grown diamond made in a lab using environmentally-sound practices, or a recycled diamond that has been reused, reset, or resized.”)



16. What modifications, if any, should be made to the Guides to account for changes in relevant technology or economic conditions? What evidence supports the proposed modifications?

The Green Guides should address the proliferation of laboratory-grown stones and the environmental claims associated with these items. As noted above, these stones are being marketed as “sustainable” (the use of which term we also address in Section B, below) and better for the environment.¹⁷ Neither claim has been proven to be true and both are misleading to consumers. As the technology around man-made diamonds and other stones continues to develop, the FTC Green Guides should be modified to address these changes, the environmental impact associated with these new technologies and the public perception of the stones produced.

18. Are there international laws, regulations, or standards with respect to environmental marketing claims the Commission should consider as it reviews the Guides? If so, what are they? Should the Guides be modified to harmonize with these international laws, regulations, or standards? If so, why, and how? If not, why not?

Members of the international community have also been addressing the issue of environmental claims since the last Green Guides update. Most notably, in March of this year, the European Parliament put forth the “Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on substantiation and communication of explicit environmental claims” (the “Green Claims Directive”), setting out “a commitment to tackle false environmental claims by ensuring that buyers receive reliable, comparable and verifiable information to enable them to make more sustainable decisions and to reduce the risk of ‘green washing’”.¹⁸

¹⁷ See, e.g., Shreyansh Sojitra, *Lab Grown Diamonds a Greener Choice?*, *Diamondrensu* (Sep. 15, 2022), <https://diamondrensu.com/blogs/lab-grown-diamonds/lab-grown-diamonds-a-greener-choice> (“... environmental concerns are not an issue with lab grown diamonds, as they do not harm the ecosystem and recycle laboratory-produced waste.”)

¹⁸ https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en

More specific to the jewelry and watch industries, in their Blue Books, The World Jewellery Confederation (CIBJO) strives to achieve consistency in grading standards and terminology for the diamond, colored gemstone, pearl, precious metals and jewelry industries, as well as responsible sourcing practices.¹⁹ The Watch and Jewelry Initiative 2030 is a global initiative “committed to a common core of key sustainability goals in three areas: building climate resilience, preserving resources, and fostering inclusiveness.”²⁰ The Responsible Jewellery Council, an international organization of jewelry and watch businesses, works to advance “supply chain integrity and sustainability in the global jewellery and watch industry.”²¹

As consumers have increasingly fluid access to the global marketplace, the FTC Green Guides should consider the rules and standards that apply to environmental marketing issues and claims internationally in an effort to establish consistent standards throughout the world.

19. Should the Commission initiate a proceeding to consider a rulemaking under the FTC Act related to deceptive or unfair environmental claims?

Yes, as noted above we support enhanced enforcement mechanisms of any kind on this important issue.

B. Specific Claims

1. Carbon Offsets and Climate Change, 16 CFR 260.5. The Guides currently include guidance relating to carbon offsets. Should the Commission consider revising this section or provide additional guidance addressing other types of advertising claims related to carbon offsets and /or climate change?

- a. Are there any specific claims related to carbon offsets not currently addressed by the Green Guides that are appropriate for further consideration during the review?**
- b. What, if any, evidence is there of deceptive claims related to climate change in the market?**

¹⁹ <https://www.cibjo.org/the-blue-books/>

²⁰ <https://www.wjinitiative2030.org/>

²¹ <https://responsiblejewellery.com/about/history/>

- c. If such evidence exists, what specific guidance should the FTC provide to help marketers avoid deceptive claims?**
- d. Is there any consumer research available regarding consumer perception of climate change-related claims such as "net zero," "carbon neutral," "low carbon," or "carbon negative"?**
- e. Are there any specific deceptive claims related to climate change prevalent in the market?**
- f. If evidence of deception exists, what specific guidance should the FTC provide to help marketers avoid deceptive claims? What evidence supports your proposed revision?**

Businesses in the jewelry industry have used carbon offset claims to make environmental claims.²² However, these claims truly don't illustrate measurable differences between products, nor do they accurately communicate climate benchmarks that businesses are achieving in their own supply chains. In fact, some carbon offsets may be totally worthless and instead of addressing and reducing climate change, actively contribute to it.²³

Carbon neutrality certifications based mostly on offsetting do not actively change what has already happened in a supply chain and do not certify whether a company is reducing its emissions. In addition, some carbon offset claims represent emissions reductions that will not occur for two years or longer. This is a claim that is too far removed from its action to be relevant to a consumer's decision to make a purchase. JVC suggests that the FTC amend the Green Guides to declare it is deceptive to misrepresent, directly or by implication, that a carbon offset represents emission reductions that have already occurred or will occur in the immediate future.

²² See, e.g., Rob Bates, *Can Lab-Grown Diamonds Ever Really Be Sustainable?*, JCKONLINE (June 7, 2019), <https://www.ickonline.com/editorial-article/lab-grown-diamonds-sustainable/>.

²³ Patrick Greenfeld, *Revealed: more than 90% of rainforest carbon offsets by biggest certifier are worthless, analysis shows*, THE GUARDIAN (Jan. 18, 2023), <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>.

Some businesses are making claims that their laboratory-grown diamond products are mining-free.²⁴ These businesses are using it as an environmental benefit claim without acknowledging that the components and equipment necessary to produce their products often come from mined sources, and that the precious metal these products are set in is also mined.²⁵ As mentioned above, there should also be guidance on what mining specifically means to the environment and how to compliantly market products that are mined within the environmental space.

The FTC should also consider specifically defining the terms “carbon-neutral”, “net-zero”, “carbon-free”, and “carbon-negative”, and require companies to be specific about how far into their supply chains they have measured the data they are referencing when using these claims.

5. Recyclable, 16 CFR 260.12. Should the Commission revise the Guides to include updated guidance on “recyclable” claims? If so, why, and what guidance should be provided? If not, why not?

- a. What evidence supports your proposed revision(s)?**
- b. What evidence is available concerning consumer understanding of the term “recyclable”?**
- c. What evidence constitutes a reasonable basis to support a “recyclable” claim?**

The inherent value of the products used in the jewelry industry means that almost all of the component parts used to make fine jewelry are reused in the jewelry lifecycle. Fine jewelry components, including gemstones and precious metal, are holders of wealth (and sometimes treated as commodities); there are thousands of years of tradition of reusing, recycling, and passing down jewelry through generations. Rarely does this material get discarded. Precious

²⁴ Diamond Foundry claims “no mining” in its products: <https://diamondfoundry.com/pages/just-diamond>. A retailer in the US claims that laboratory-grown diamonds in its products are “100% mine free”: <https://www.sarahojewelry.com/service/diamond-guide/>.

²⁵ “Mining-free’ implies there was no mining involved in the diamonds’ production. But very few products in this world can be considered truly mining-free . . . [m]anufacturing high-pressure high-temperature (HPHT) diamonds requires graphite. Producing lab-grown diamonds with the chemical vapor deposition (CVD) method requires high-purity methane and hydrogen. The methane is generally sourced from the mining of gas, oil, and coal, as well as oil drilling.” Rob Bates, *No, Lab-Grown Diamonds are Not Mining Free*, JCKONLINE (Feb. 8, 2023), <https://www.jckonline.com/editorial-article/lab-grown-diamonds-mining-free/>.



metals and gemstones will be refined, recut, and reused over and over again; the continued popularity of estate jewelry alone as its own market indicates the value in reusing and reselling these products.

Jewelry is the slowest fashion of all: nothing is wasted, and everything is reused because of the sheer amount of value contained therein. Fast fashion products end up in the ground; jewelry products start in the ground and stay out.

6. Recyclable, 16 CFR 260.12. The Guides provide that marketers can make an unqualified “recyclable” claim when recycling facilities are available to a substantial majority of consumers or communities where the item is sold. “Substantial majority” is defined as 60%.

a. Should the Guides be revised to update the 60% threshold? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision? Is there any recent consumer perception research relevant to the 60% threshold?

b. Should the Guides be revised to include guidance related to unqualified “recyclable” claims for items collected by recycling programs for a substantial majority of consumers or communities but not ultimately recycled due to market demand, budgetary constraints, or other factors? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision?

7. Recycled Content, 16 CFR 260.13. The Guides state marketers may make “recycled content” claims only for materials recovered or otherwise diverted from the solid waste stream, either during the manufacturing process or after consumer use. Do the current Guides provide sufficient guidance for “recycled content” claims? If so, why? If not, why not, and what guidance should be provided? What evidence supports your proposed revision(s)?

The current definition of “recycled content” technically does not cover claims related to jewelry industry products. None of the major products used in the jewelry industry – namely diamonds, colored gemstones, platinum, gold, silver, or other precious metals – are ever intentionally placed into the waste stream.²⁶ Bench scraps are reused, melee²⁷ diamonds are

²⁶ One U.S. mine, the Bingham Canyon Mine, does recover gold and silver as a byproduct of copper mining. <https://www.riotinto.com/en/operations/us/kennecott>. Some have proposed that because the gold is a byproduct of the main mining purpose, it should be considered scrap and therefore any jewelry use is a recycled use. We strongly disagree with this assertion.

²⁷ Small diamonds, generally categorized as those 0.2 carats and under.



sent in for regrading, possible recutting, and resale²⁸, and even the carpets under jewelers' benches catching metal scrap and dust are sent in for precious metal reclamation.²⁹ One privately-owned major American jewelry and component supplier in the industry uses specialized filters in its manufacturing facilities that help them reclaim precious metal particles released into the air during the manufacturing process.³⁰

The jewelry industry currently uses the term "recycled" to describe the content of their products when they are using precious metal that has been sourced from refiners certifying "recycled" precious metals, scraps from the manufacturing or bench jeweler process, or precious metal and gemstones that have been reclaimed from previously worn jewelry. Many businesses insist on using this terminology despite potentially not qualifying under the FTC guidelines, and only recently has its prolific use come into question in the industry.³¹ In fact, the FTC itself has noted the uncertain origin of recycled precious metal in a previous advisory opinion stating that precious metal surrendered for recycling in the U.S. is ineligible to be advertised as "Made in USA".³² Due to the current self-regulated practices within the jewelry industry, an expansion of available terminology would help companies to make environmentally-related claims that are relevant and meaningful about their products.

1. Reusable Precious Metal

Under the FTC's current definition, one of the only significant sources of precious metal that would qualify as "recycled" (due to being diverted from the waste stream) is electronics

²⁸ See, e.g., White Pines purchasing of melee diamonds, <https://whitepinediamonds.com/diamond-and-estate-jewelry-buying-services.html>.

²⁹ See, e.g., Manhattan Gold & Silver, *Precious Metal Can Hide in the Darndest of Places* (Apr. 28, 2015), <https://www.mgsrefining.com/blog/2015/04/28/precious-metal-can-hide-in-the-darndest-places/>.

³⁰ Stuller, a privately-owned jewelry manufacturer in Lafayette, LA uses high efficiency filters to recapture precious metals in its Donaldson Torit Dust Collector throughout the company's manufacturing facilities.

³¹ Rio Grande, a Berkshire-Hathaway company, has backed away from making recycled claims about its precious metal, as the company felt they could not reliably substantiate the origin.

³² Letter from FTC Staff in Response to Request for Advisory Opinion Filed by the Jewelers Vigilance Committee and Other Groups (Sept. 19, 2014), https://www.ftc.gov/system/files/documents/closing_letters/made-usa/140909madeisusajvc.pdf, p. 2-3.

waste recovery, but this is a fraction of the material that is used in refining recycled precious metal.³³ The jewelry industry currently uses recycled terminology because of its green halo effect; its usage implies that the industry is doing something positive for the environment by reusing precious metal. However, there is no evidence that businesses shifting to recycled precious metal is reducing the amount of mining or carbon emissions from said mining. Precious metal mining, whether legal or not, provides a source of income for vulnerable and powerful populations globally. And evidence shows that gold obtained through illegal mining in the Amazon enters the US market through smuggling and being sold into pawn shops to be refined into recycled precious metal.³⁴ Thus, making a distinction and specification of sourcing is important for recycled claims as well.

Limited supplies of certified recycled precious metals has led industry bodies that regulate these products to broaden their definitions to include items like investment products (pure precious metal cast into bars, placed in a vault, traded on the open market, and then sent to a refiner to be refined into “recycled” precious metal).³⁵ These certification bodies are pressured to expand the definitions by members with a vested interest in increasing the volume of available “recycled” precious metal so that they can shift their entire sourcing models to

³³ Another source of recycled precious metal is spent automotive catalyst, a rich source for platinum group metals. See Salman Karim & Yen-Ping Ting, *Recycling pathways for platinum group metals from spent automotive catalyst: A review on conventional approaches and bio-processes*, SCIENCE DIRECT, Resources, Conservation, and Recycling, Vol. 170 (2021).

³⁴ Nicholas Nehamas, *How drug lords make billions smuggling gold to Miami for your jewelry and phones*, MIAMI HERALD (Jan. 24, 2018), <https://www.miamiherald.com/news/local/community/miami-dade/article194187699.html>.

³⁵ For example, the LBMA defines recycled gold as “[g]old that has been previously refined. This term traditionally encompasses anything that is gold-bearing and has not come directly from a mine in its first gold life cycle. In practical terms, recyclable material includes end-user, post-consumer products, scrap and waste metals, and materials arising during refining and product manufacturing, and investment gold and gold-bearing products. This category may also include fully refined gold that has been fabricated into grain, Good Delivery bars, medallions and coins that have previously been sold by a refinery to a manufacturer, bank or consumer market, and that may thereafter need to be returned to a refinery to reclaim their financial value or for transformation into other products (e.g., 1 kilo bars).” https://cdn.lbma.org.uk/downloads/Articles/Responsible-Gold-Draft-Document-V9-September-Final_20210925.pdf. While its definition has not yet been finalized, the Responsible Jewellery Council has also proposed including investment products in its definition of material eligible to be called recycled. <https://responsiblejewellery.com/standards/standards-development-harmonisation/chain-of-custody-review-2022-2023/>.

benefit from the consumer-perceived green halo of the terminology.³⁶ Until we finally master alchemy, high consumer demand for recycled metals will outstrip the amounts of post-consumer or post-processing precious metal available to be recycled and used for new product.

2. Proposed Additional Terminology

To cover the activities outlined in the jewelry industry above, JVC proposes additional terminology to be defined by the FTC. This will ensure that the jewelry industry is not carved out of the environmental marketplace when making claims about its products but is also not contributing to the greenwashing of the market by incorrectly using recycled terminology. Creating inclusive but more specific terminology allows businesses to better differentiate their products and communicate more accurate information to consumers. In addition, there are newly mined metals that are already being sourced with an eye towards responsible business practices.³⁷ Businesses following these processes should be allowed to make environmental-related claims about their products that are relevant and meaningful.

Another segment of the industry currently using recycled terminology is diamonds and gemstones. Faceted stones recovered from existing jewelry are often referred to as “recycled”, even though they too are not diverted from the waste stream and do not usually change in form when re-set into new jewelry. This process also requires reworked terminology to accurately communicate the reused nature of the gemstones to the consumer. Terminology suggested

³⁶ Pandora, the world’s largest jewelry retailer, has publicly committed to exclusively using recycled silver and gold by 2025. See <https://pandoragroup.com/sustainability/circular-innovation/towards-recycled-silver-and-gold>. They have also offered bonds to investors that are linked directly to their ability to achieve these sustainability targets; if they do not meet the targets, the bonds pay out at a higher rate. See Lenore Fedow, *Pandora Puts Money Where its Mouth Is Via Sustainability Bonds*, NATIONAL JEWELER (Mar. 7, 2023), <https://nationaljeweler.com/articles/11747-pandora-puts-money-where-its-mouth-is-via-sustainability-bonds>.

³⁷ For examples of the broad scope of businesses committed to responsibility in sourcing, see, e.g., Fairmined, an initiative whose label certifies gold and silver of responsible origin, <https://fairmined.org/>; Platinum Guild International’s corporate social responsibility statement, <https://platinumjewelry.com/what-does-sustainability-meant-to-the-platinum-producers/>.



includes “reused”, “repurposed”, and “responsible” and JVC defers to the Commission to suggest definitions or other terminology that would cover this activity.³⁸

Ultimately, consumers want to make decisions about products that are the least harmful possible, and with the current “recycled” terminology, there is no legitimate way for them to make those choices in the jewelry industry. And while policy-wise we of course want to encourage recycling, the jewelry industry has been committed to this long-term due to the value of its component parts. The jewelry industry should benefit from the perceived value of the recycling system without making misleading claims.

11. Organic. In 2012, the Commission declined to issue guidance on “organic” claims for nonagricultural products. Should the Commission revisit this determination? If so, why, and what guidance should be provided? If not, why not?

- a. What evidence supports making your proposed revision(s)?**
- b. What evidence is available concerning consumer understanding of the term “organic” with respect to non-agricultural products?**
- c. What evidence constitutes a reasonable basis to support an “organic” claim in this context?**

The Gemological Institute of America defines an organic gem as gem material formed by a living organism, such as a plant or animal.³⁹ Organic gems falling under this definition include saltwater and freshwater pearls, coral, conch pearls, abalone, and amber. Other jewelry

³⁸ One example of potential new terminology is proposed by the Precious Metals Impact Forum. The forum suggests that reused gold be broken down into two defined terms: 1) recycled gold ([g]old recovered from any product containing less than 2% of gold in weight, destined to be discarded, and returned to a refiner or other downstream intermediate processor to begin a new life cycle as “recycled gold”. Freshly mined material, including tailings and any wastes and by-products of mining operations are excluded from this section), and 2) reprocessed gold ([g]old produced from any product containing more than 2% of gold in weight with the purpose of changing its state (e.g., bullion melted to create jewelry, jewelry melted to become a bar being sent to a refinery, unsold or used or broken jewelry being melted to create new jewelry or a different type of product, sputtering targets, manufacturing scraps, ...). *Definition of Recycled and Reprocessed Gold*, Precious Metals Impact Forum, https://s3.amazonaws.com/kajabi-storefronts-production/file-uploads/sites/151146/themes/2148017577/downloads/5a287a8-ce50-2dd4-e38-7edda1c682/Definition_of_recycled_gold_and_reprocessed_gold_-_PMIF_version_1_December_2022.pdf (last accessed Apr. 19, 2023.)

³⁹ Richard Liddicoat, *HANDBOOK OF GEM IDENTIFICATION*, 12th ed., rev., Gemological Institute of America, 1987, p. 350.



organizations, including CIBJO (World Jewellery Confederation), also follow this designation.⁴⁰ Any additional definition from the FTC should ensure that the jewelry industry can continue to use this word consistent with the scientific standards of gemological laboratories.

- 12. Sustainable. In 2012, the Commission determined it lacked a basis to give specific guidance on how consumers interpret “sustainable” claims. Should the Commission revisit this determination? If so, why, and what guidance should be provided? If not, why not?**
- a. What evidence supports making your proposed revision(s)?**
 - b. What evidence is available concerning consumer understanding of the term “sustainable”?**
 - c. What evidence constitutes a reasonable basis to support a “sustainable” claim?**

The restraint of the Commission in 2012 to refrain from defining “sustainable” is reasonable and in retrospective context a demonstration of the Commission’s integrity and good sense. Additionally, at that time, this decision hit the difficult balance the Commission must always strike between “chilling” commercial speech and promoting a free and fair market for the American consumer.

However, in the interim, the market, the consumer’s mind, and trends have changed considerably and while many executives across industries struggle to face this reality,⁴¹ consumers have come to expect responsible behavior from brands, *especially* luxury brands.⁴² In the time that has elapsed since the last Green Guides revision, eco-friendly commercial behavior and so-called “sustainable” and ethical commercial behaviors – behaviors that encompass climate and environmental impact along with labor, human rights and other similar considerations – are not only preferred, but expected by a greater portion of the American consumer population. Consumers are willing to and do pay double digit premiums on products

⁴⁰ CIBJO, the World Jewellery Confederation, publishes two Blue Books with relevant information, the Pearl Book and the Coral Book, in which both products are referred to as organic gems.

⁴¹ *Supra* note 9.

⁴² Report, *From Surging Recovery to Elegant Advance: The Evolving Future of Luxury*, BAIN & COMPANY (Dec. 20. 2021), <https://www.bain.com/insights/from-surging-recovery-to-elegant-advance-the-evolving-future-of-luxury/> (finding that “[t]he expanding universe of luxury customers expects more from brands than before (the pandemic). Well beyond product considerations, they seek personalization and alignment with their values, a strong voice on social issues, and real action and responsibility when it comes to sustainability.”)

they have been told meet green and sustainable claims.⁴³ In lieu of doing the work of actually producing and operating under those values, companies are currently able to claim that they do so without much of a guardrail until they hit outright fraudulent claims.

In addition, the words “sustainable” or the similar “sustainability” have been so used and misused they seem to have become meaningless to the consumer, and ironically, in some cases have even evolved into red flags for problematic business behavior by savvy consumers, almost automatically evoking “greenwashing”.⁴⁴ For sustainability, in the absence of any meaning, anything goes.

In our industry, amongst the JVC membership across the entire supply chain, we see that the companies which take these values and impacts most seriously completely stay away from the word, and indeed words similar to “sustainable”.⁴⁵ Instead, we see companies engaging in essentially long-form storytelling using the OECD five step framework as a structure for their own sourcing and then marketing actions.⁴⁶ In addition, we see these companies often combining that effort by selecting several of the UN Sustainable Development Goals and then

⁴³ In a survey of 500 U.S. fine jewelry consumers conducted in December 2021 by Platinum Guild International titled “ESG Perceptions”, the study found that most consumers state they would pay a 15-20% more for all sustainable aspects, with particular importance on environmentally responsible, human rights and fair labor practices. Further, 45% of 18-39 year olds report they had a conversation with their jewelry about sustainability compared to 34% for ages 40-65.

⁴⁴ Emma Marris, *The World is Finally Cracking Down on Greenwashing*, THE ATLANTIC (Mar. 1, 2023), <https://www.theatlantic.com/science/archive/2023/03/greenwashing-refuses-to-die/673241/>.

⁴⁵ While Toby Pomeroy Jewelry still uses the word sustainable on its website, the context illuminates the issue: “In 2006, Toby Pomeroy sparked a revolution in the jewelry industry by creating a line of recycled metals. It all began while Toby had a thought . . . Why not ask my refiner to purify previously used scrap gold and silver separately from newly mined metals, then create jewelry from these reclaimed metals. He called Torry Hoover of Hoover & Strong refiners who, after some deliberation, accepted the request. Toby’s intention was to give designers, manufacturers, and retailers reclaimed metals they could be proud of and put pressure on the mining industry, sending a message the world cares how we are treating the planet and its people. While this breakthrough has by now become a well-established choice for sustainable jewelry, it is no longer enough . . . high-volume companies cannot source enough truly ethical materials to meet their needs in the current market. Empty green marketing in the industry like this makes us complacent. We hear recycled materials and think that solves the problem, but it is not enough. Gold was never headed toward the landfill, and there is no transparency beyond the last melt. We cannot verify where the recycled gold comes from, and it is easy enough to mix in dirty gold.”

<https://tobypomeroy.com/eco-gold/>.

⁴⁶ OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, <https://www.oecd.org/daf/inv/mne/mining.htm> (last accessed Apr. 11, 2023).



mapping their commercial behavior,⁴⁷ and turning it into a marketing and consumer facing narrative to “show their work” of how they source their materials and what impacts their company.⁴⁸ This is a wordy, time consuming, and baroque approach to sustainability. The high price point, often (but not always)⁴⁹ high touch consumer experience in jewelry allows for this sort of lengthy disclosure for some consumers. But it loses its space to pontificate and its effectiveness both moving down the price scale and into the digital advertising realm.

Additionally, consumers buying jewelry deserve clarity and forthrightness, perhaps especially at the lower end of the price point spectrum. The purchase of jewelry is one of the larger purchases an American will make in her lifetime,⁵⁰ and the importance of that large sum along with the fact that many consumers are intimidated and not fully expert in the scientific and technical aspects of how jewelry is valued and produced make clarity essential for achieving a baseline of consumer protection.

After months of consultation with a wide array of JVC members spanning the entire supply chain, we ask that the word “sustainable” remain undefined by the FTC. The misuse of the term in the interim between Green Guides revisions has sullied the possibility of now

⁴⁷ Examples of mapping from jewelry companies and organizations include: Ethical Metalsmiths <https://ethicalmetalsmiths.org/blog/how-jewelry-can-support-un-sustainable>; Pandora <https://pandoragroup.com/sustainability/resources/un-sustainable-development-goals>; The Responsible Jewellery Council <https://www.responsiblejewellery.com/action/sdgs/>; and Signet <https://www.signetjewelers.com/our-company/signet-love-inspires-foundation/UNSDGs/>.

⁴⁸ Hamilton Jewelers, a family-owned jewelry company with retail locations in Princeton, NJ, Palm Beach, FL, and Palm Beach Gardens, FL, uses the term “sustainability” only when it can add additional context around its use. <https://www.hamiltonjewelers.com/pages/Sustainability.html>.

⁴⁹ There has been significant spike in the past several years of Direct to Consumer (DTC) jewelry brands where the consumer buys online never having seen or touched the piece of jewelry itself. This was true before the pandemic. Misty White Sidell, *Rise of the Direct to Consumer Jeweler*, WOMEN’S WEAR DAILY (Jan. 8, 2020). A significant upward trend post-2020 continues today. Clay Morris, *Competition in the Jewellery Market is Heating Up*, BUSINESS OF FASHION (Nov. 22, 2022), <https://www.businessoffashion.com/articles/retail/direct-to-consumer-jewellery-versus-incumbents/>.

⁵⁰ The average price of an engagement ring in 2022 was \$5,800. *The Knot 2022 Real Weddings Study*, THE KNOT (Feb. 14, 2023), <https://www.theknot.com/content/wedding-data-insights/real-weddings-study#engagement-2>. The entry price for a luxury watch is between \$5,000-\$10,000. Roberta Naas, *How Much Do I Have to Spend to Get a Luxury Watch*, THE WATCH PAGES, <https://www.thewatchpages.com/how-much-do-i-have-to-spend-to-get-a-luxury-watch/> (last accessed Apr. 11, 2023).



attaching meaning.⁵¹ In addition, many of our industry’s products, as well as many other industries are not and can never be sustainable as they inherently come from the earth and do not regenerate; the material components are finite.

As an alternative, we support the use of the word “responsible”. In the words of New York Times writer Vanessa Friedman, who also advocates for this word: “[i]t may sound semantic, but it is the difference between an end goal that appears impossibly, perhaps discouragingly, out of reach, and the process of at least trying to get there: step by step, increment by increment, decision by decision.”⁵² The term responsible should have a real definition developed as part of the Commission’s review of the Green Guides. We would also strongly support a bifurcation of the claim of “responsible” between “responsible products” (finished goods that are themselves environmentally net positive in some way) and “responsible business practices” (for those companies whose products might not ever meet the strict definition of “responsible” but who demonstrate ethical labor, sourcing and other similar types of behavior.)⁵³ We believe this would give businesses the real opportunity to claim positive behavior, and consumers the transparency and clarity to make purchases based on claims which are actually meaningful.

We do not want to see jewelry and other wide swaths of products available to the American consumer thrown out of the arena with regard to environmental marketing claims.

⁵¹ A national survey of 2,000 Americans revealed 71% of respondents believe companies claim to be sustainable — even when their actions aren’t. And it’s that distrust that has less than a third (26%) of respondents being “very likely” to believe a company who uses words like “green” to describe their products. Results found 71% believe the term “green” is used so often it’s become meaningless — with eco-friendly (57%) and sustainable (36%) also high on the list of overused and empty terms. Marie Haaland, *Americans Believe These Sustainability Terms are Overused by Many of Today’s Companies*, SWNS DIGITAL (Sept. 6, 2021), <https://swnsdigital.com/us/2021/06/americans-believe-these-sustainability-terms-are-overused-by-many-of-todays-companies/>.

⁵² Vanessa Friedman, *Redefining ‘Sustainable Fashion’*, THE NEW YORK TIMES, <https://www.nytimes.com/2022/05/07/style/redefining-sustainable-fashion.html> May 7, 2022.

⁵³ One such possible source of inspiration for responsible business practices is the Benefit Corporation (i.e. “B Corp”) Certification model, a rigorous, multidimensional, and holistic assessment of a company’s actions and impact. <https://www.bcorporation.net/en-us/certification>

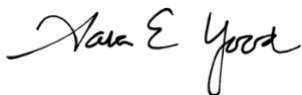
Many products and services available in the US are related in some way to mining, and carving out this enormous cohort of items available to the US consumer would be detrimental to American commerce. What meaning could these claims have if only a miniscule portion of the marketplace is eligible to try to enact behavior to claim them? We want to encourage behavior that benefits (or at least harms to the least extent possible) the Earth and its people, and having a path to have that behavior rewarded with a viable environmental marketing claim does just that.

JVC asks the Commission to strongly discourage the use of the word “sustainable” or make clear there is no meaning for it to try and eliminate it from marketing by all.

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Jewelers Vigilance Committee



Additional Signatories:

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SOCIETY**

Consumer Protection Since 1934"

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**BLACK IN JEWELRY
COALITION**



**ETHICAL
METALSMITHS**

The Community for
Responsible Jewelry



INDIAN DIAMOND &
COLORSTONE ASSOCIATION

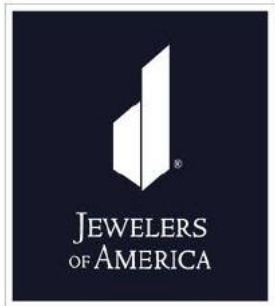


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MANUFACTURERS ASSOCIATION

Initiatives
in Art and Culture

JBT

24K Peace of Mind.



MJSA

PROFESSIONAL EXCELLENCE
IN JEWELRY MAKING & DESIGN



NYCJW

The Plumb Club
EDUCATE. INNOVATE. CONNECT.



U.S. JEWELRY COUNCIL

WJA

WOMEN'S JEWELRY ASSOCIATION

- American Gem Society
- American Watch Association, Inc.
- Black in Jewelry Coalition
- CIBJO- The World Jewellery Confederation
- Diamond Manufacturers and Importers Association of America
- Ethical Metalsmiths

- Indian Diamond & Colorstone Association
- International Diamond Manufacturers Association
- Initiatives in Art & Culture

- Jewelers Board of Trade
- Jewelers of America
- Manufacturing Jewelers and Association of America
- New York Diamond Dealers Club
- NYC Jewelry Week
- The Plumb Club
- United States Jewelry Council
- Women's Jewelry Association