



Launch of ACCC publications on the Australian Jewellery Industry

Louise Sylvan
ACCC Deputy Chair

Sydney, September 5, 2005

The jewellery industry in Australia is dynamic and intensely competitive.

Indeed, it's impossible to walk through any shopping mall, or even empty your mail box, without being aware that some jeweller is having a sale.

There's no doubt advertising and promotions, including offers of savings and descriptions of jewellery and gemstones, have a significant influence in attracting consumers.

At the same time, a technological revolution is underway in the industry, with new gemstone treatments constantly being developed enabling previously flawed gemstones to appear near perfect, while man-made 'gemstones' also appear to be gaining a greater foothold in the Australian market.

The problem for consumers is that very few have the expertise to be able to determine if the gemstones they are being sold are as authentic as is claimed, and in particular, if the price they are being quoted is a genuine bargain. In short, in most cases, consumers are relying on the honesty and reputation of the jeweller.

Jewellers and others involved in the industry therefore have a particular responsibility to ensure representations they make about price and quality are accurate and that material facts are disclosed to consumers.

Sadly, it's become clear to the ACCC that some members of the industry have inadequate knowledge of their legal obligations or in some cases, even wilfully disregard them.

To help jewellers comply with the law, the ACCC has therefore produced two publications that all members of the Australian jewellery industry, including jewellery manufacturers, wholesalers, retailers and valuers should read:

- Advertising and Promotions in the Jewellery Industry – a guide to the Trade Practices Act, and
- a one page Industry Checklist summarising the key principles from the Guide

The Guide is designed to give the jewellery industry the basic information it needs to comply with the Trade Practices Act and similar provisions in state and territory fair trading legislation.

While we accept many in the industry are doing the right thing, today's launch is sending a clear signal to those who do not comply with the law, that they now risk action being taken against them by the ACCC, state offices of fair trading and other interested parties.

Development of the publications

That said, the ACCC acknowledges the contribution of members of the industry, as well as State and Territory fair trading agencies, in the development of the publications.

Last year members of the industry (the Jewellery and Timepieces Industry Code Committee) advised the ACCC of issues relating to jewellery advertising and in particular unfair practices relating to two price advertising. They requested clarification of the ACCC's position on this latter issue.

The ACCC then consulted broadly with industry including the Jewellers Association of Australia, the Australian Jewellery and Gemstone Industry Council, the National Council of Jewellery Valuers, the Diamond Council of Australia, the Gemmological Association of Australia, the Queensland Sapphire Producers Association and individual traders.

Although there appeared to be a degree of uncertainty and confusion relating to the trade practice implications of two price advertising, industry also highlighted other areas of concern and uncertainty, relating to:

- the use of valuations in the sales process where the valuations fail to reflect the true worth or normal market price for the particular pieces of jewellery
- the failure to disclose that gemstones have been treated or are not natural
- bait advertising; and
- the use of descriptors in relation to artificial and man-made gemstones.

Over the following months the ACCC worked closely with these associations in identifying the key areas and issues to be addressed - from industry's perspective.

The final Guide contains the views of the ACCC in relation to:

- comparative price advertising, including 'was/now', strike though price advertising, comparisons with Recommended Retail price and the use of valuations in comparative price advertising;
- 'fictitious' sales, including misleading representations relating to the purpose of so called 'sales'
- disclosure of relevant facts and conditions, including disclosure of gemstone treatments;
- the use of terms such as 'imitation', 'synthetic', 'cultured' and 'created';
- misrepresentations relating to the origin, composition and/or quality of gemstones and jewellery; and
- the liability of parties who are knowingly concerned in a breach.

The Industry Checklist draws on the key elements of the Guide and provides a quick reference to the essential, yet basic principles.

Compliance issues and enforcement

The ACCC sees education as an important step in improving compliance with the Act. However the jewellery industry must now do its bit. The ACCC will be looking closely at businesses that continue to engage in unfair practices.

The ACCC is particularly concerned by a reported upswing in what is called 'two price advertising' in the jewellery industry – for example, where a product is said to be 'valued' at a particular figure and is offered at a 'special' price; or where an original price is crossed out and replaced with a discounted price; or simply where 'Was/Now' price representations are made. These representations imply that consumers are making a price saving by paying less than they otherwise would.

This may come as a shock to some in the industry, but if those savings are not real, those making such claims are very likely to be in breach of the Trade Practices Act.

In short, a 'Was' price must be a genuine previous selling price:

- goods must have been offered for sale at the 'Was' price for a reasonable period;
- any recommended retail price quoted must be a genuine selling price at which the goods were sold
- and valuations referred to in comparative price advertising should reflect the 'worth' or normal price for the particular piece of jewellery in the market in which it is being sold – and not some inflated figure.

The ACCC has received allegations of representations being made such as

- 'Was \$14,400, Now \$7,200' where there is no evidence the items was ever sold for anything like \$14,400.
- jewellery being sold at \$3,250, yet, a week later, during a 50% off sale, the same item was advertised as being 'reduced from \$4,400'
- a ring said to be valued at \$9,900 but later independently valued at \$2,750.

In short, if the savings are not real then the claims are illegal. And just in case some are tempted to say "but this happens all the time" we have the court cases to back this up.

The ACCC has successfully prosecuted a music chain for advertising 'was' and 'now' prices in a catalogue when the goods had never been offered for sale at the higher 'was' price.

Just last month the ACCC accepted undertakings from Sportmart admitting it had never sold products at its outlets at a recommended retail price and that it may have misled consumers by creating the impression that they were obtaining a significant saving.

Even as we speak, the ACCC is currently investigating what it believes to be a significant breach relating to two price advertising by a member of the jewellery industry.

Consumers are entitled to expect that retailers, including jewellery retailers, are telling the truth when they make claims about the saving to be made from goods on sale.

Similarly, members of the industry often make representations relating to the purpose of a sale or promotion such as 'Closing Down sale', 'Stock take sale' or 'Liquidation sale'. Again, not only must the sale offer genuine discounts, but the alleged purpose of the sale must also be true.

It is also essential that descriptions of jewellery are truthful. The ACCC has received a number of complaints from consumers alleging that they have been misled about the quality of jewellery they have been sold.

The ACCC has recently been engaged in discussion with a trader regarding its representation of imitation sunstone as Australian sandstone. It is also currently having discussions with a trader who appears to have misrepresented triplet as solid opals, has implied that certain stones are natural when in fact they are artificial, and misrepresented imitation pearls as being real pearls.

We have also received reports that reproduction jewellery is sometimes being misrepresented as 'antique' jewellery.

And it is not only the ACCC that is on the lookout for these matters. The South Australian Minister for Consumer Affairs has recently taken action against a trader who has falsely represented that jewellery he was selling was genuine gold when in fact it was only gold plated. The total gold content was less than 1% gold.

The guide sets out the ACCC's views on disclosure when gemstones have been treated and the use of the terms 'cultured', 'imitation', 'synthetic' and 'created' in relation to natural, laboratory-made and artificial 'gemstones'.

Business should not state or imply that an artificial or imitation stone is natural or is a laboratory made gemstone. For example, businesses risk breaching the Act if they describe a cubic zirconia as some type of diamond.

The ACCC considers that the descriptor 'laboratory created' is unlikely to be misleading when used to describe laboratory made diamonds. It also considers that the descriptor 'created' is unlikely to be misleading particularly if traders provide additional information to ensure consumers understand what is meant by the word 'created' when used in this context.

However, it may be inferred from the word 'cultured' that a gemstone has been produced by a predominantly organic process, albeit with some human intervention. Given this, the use of the descriptor 'cultured' for laboratory made gemstones risks being misleading and deceptive.

You are also likely to breach the Act if you fail to disclose, or only partially disclose, that a gemstone is not natural or has been enhanced or otherwise treated.

Disclosing a partial truth may of itself create an obligation to disclose the whole truth. For example, describing an item as a 'Biron Emerald' (a man/laboratory made emerald) may mislead consumers to believe it is a specific type of natural emerald. Also describing a gemstone as 'natural' without disclosing it has been treated may breach the Act.

The ACCC also believes that consumers would have a reasonable expectation that any treatment of gemstones to enhance their aesthetic appearance and value would be disclosed where the treatment is either not permanent or creates special care

requirements, such as through the application of colourless oils, or the previous practice of fracture filling.

Additionally, businesses which fail to disclose gemstone treatments, where the value of treated gemstones is significantly less than the value of an equivalent untreated gemstone, may also risk contravening the misleading and deceptive conduct provisions of the Act.

The ACCC understands that certain treatments are difficult to detect. Consumers are nevertheless entitled to rely on a valuer's or jeweller's expertise. If it is difficult to detect a treatment then it would be prudent to disclose this fact to consumers.

And it is not just those directly engaging in the conduct that will breach the Act. A person will also be liable if they are knowingly concerned in a breach. For example, if a retailer uses a valuation in a misleading or deceptive manner, irrespective of whether he/she knew it was misleading, then the retailer will have contravened the Act. In addition, if the valuer knows the retailer is using the valuations in a misleading and deceptive manner and does nothing to prevent that misuse, then the valuer may also contravene the Act as a person knowingly concerned in the contravention.

The Consumer Information Flyer

The other side of the equation is educating consumers.

Consumers also need to be better informed and to know what questions to ask when purchasing jewellery, gemstones and jewellery related services – including valuations and jewellery repairs.

Better informed consumers will be less likely to be misled when making purchases. To this end the ACCC will also shortly be releasing a *Consumer Information Flyer* which will put purchasers of jewellery, gemstones and jewellery-related services on notice about relevant issues and their rights as consumers.

It forewarns consumers that 'all that glistens is not gold!'; in particular that

- ⇒ jewellery may contain naturally formed gemstones, man-made gemstones or even stones that are imitations of genuine gemstones
- ⇒ gemstones may be treated to disguise imperfections and to enhance their appearance
- ⇒ not all treatments are easily detectable; and
- ⇒ the relative value of treated gemstones may be significantly less than their untreated equivalent.

The flyer also suggests consumers ask a number of questions when purchasing jewellery and jewellery related services, in particular that.

- ⇒ if a valuation is referred to they should check what it means
- ⇒ ensure that if words such as 'synthetic' or 'created' are used that they understand what these terms mean.

Finally, the flyer outlines the rights of jewellery consumers – including redress in the event they have been misled or warranties have been breached.

I'm delighted to say that many members of the industry have expressed their willingness to make this Flyer available to their clients.

Close

So the jewellery industry is on notice.

The ACCC will be looking for an overall improvement in advertising and selling practices and an end to the misleading, deceptive and false practices presently being engaged in. But it is not just the ACCC looking at these issues - other jurisdictions are also currently considering conduct in the jewellery industry. Implementing the Checklist and referring to the Guide is the safest way of protecting your business and ensuring customers keep coming back for each and every future jewellery purchase.