



Northwest
Territories Resources, Wildlife and Economic Development

Ms. Joanne D'Auray
Deputy Commissioner of Competition
Fair Business Practises Branch
Omission of Competition
Industry Canada

SEP 22 2000

By Fax 819 953-4792

Dear Ms D'Auray:

Competition Bureau Notice on Consultation

This submission is in response to the Competition Bureau's Notice of Consultation with respect to "Canadian" diamonds.

There is a wide range of factors that must be considered when trying to resolve this issue. We would like to preface the discussion by confirming that the question being posed (Comments on the Competition Bureau's enforcement approach under the Competition Act when reviewing "Made in Canada" representations used in the promotion and advertising of diamonds) refers to diamonds at the consumer level (i.e. polished diamonds).

We have attempted to outline some of the issues and relevant factors to be considered as follows.

Diamond Specific Aspects

- 1) Rough diamonds are essentially an untraceable product. No one can look at an individual rough diamond or stone and state with certainty where the stone was mined.
- 2) Once a rough diamond is polished there is no independent manner to determine the origin of the rough from which it was manufactured. Recently, the Kimberly Process (part of the international community's efforts in which the Government of Canada is participating, to address the conflict diamonds issue) has stated that there is no commercial way to identify the source of a diamond, either as rough or polished.
- 3) The laser engraving of an image on the girdle of a polished diamonds proves nothing about the origin of the rough diamond.

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International Aspects

- 4) The issue is more than a domestic Canadian issue. The majority of the rough diamonds mined in Canada will be sold overseas, and will be manufactured overseas. There are indications of interest in the US and Japanese markets in a "Canadian Diamond".
- 5) Any definition established in Canada, by federal authorities is enforceable only in Canada. However diamond marketed as a "Canadian Diamond" in Canada is likely to be introduced into the US market as well. If the term "Canadian Diamond" is going to be accepted in the largest diamond jewellery market in the world, we must consider what expectations an US consumer will have of a product called "Canadian". There may even be requirements under the North American Free Trade agreement to harmonize these types of guidelines.

In the United States, the Federal Trade Commission (FTC) provides guidance on US Origin claims. The standard set by the FTC is "all or virtually all". When a marketer makes an unqualified claim that a product is "Made in the USA", it should, at the time the representation is made possess and rely upon a reasonable basis that the product is in fact all or virtually all made in the United States. When a product sold in the US claims to originate from a specific jurisdiction (i.e. Canadian Maple syrup), the FTC's test is based on the US guidelines (all or virtually all) not on the guidelines established by the specific jurisdiction.

- 6) The international diamond industry, in association with the United Nations is attempting to address the issue of tracking and monitoring rough diamonds in order to track their origin, so as to eliminate the illegal trade of "conflict diamonds". In time, this process may lead to a global certification system for rough diamonds that will assist in the identification of the origin of the rough diamonds. However to impact the consumer (and therefore directly impact this issue), the certification system must go another step, linking the rough to the final polished product. The global certification process would require legislation in numerous countries (including Canada), and will require take considerable time and resources to implement.
- 7) The majority of diamonds mined in Canada are sold outside of Canada. These diamonds will be traded, mixed and divided outside of Canada. The majority of diamonds mined in Canada are manufactured outside of Canada and the majority of polished diamonds produced from diamonds mined in Canada are sold to consumers outside of Canada. Administration and enforcement of any definition by the Canadian government will be very difficult and probably impossible once the rough diamonds have left the hands of the primary producer.

Canadian Aspects

- 8) Federal government positions and mandates must be considered, such as Industry Canada's mandate to build the competitive advantages Canada needs for long term productive growth, and the Department of Foreign Affairs and International Trade's strong participation in the various processes addressing "conflict diamonds".
- 9) There is considerable interest across Canada in the diamond industry. While mining only occurs within the NWT at this time, exploration projects are underway in Ontario, Manitoba, Saskatchewan and Alberta. Within these jurisdictions, mineral resources are a provincial authority.
- 10) At this time, the Ekati Mine is the sole producer in Canada. The diamond industry has termed the qualities and characteristics (colour, how do they cut, brittleness etc) of the current Ekati Mine production (all from one pipe "Panda") as "Canadian diamonds". However, as production from new pipes and mines in Canada enter the rough diamond marketplace, the description is likely to evolve perhaps into "BHP" production or "Diavik" production. In some cases pipe specific terminology will develop "Panda", "Misery" or "A-154 South" production as the characteristics of the rough diamonds vary considerably between the various pipes.
- 11) Diamond manufacturing facilities exist across Canada, from New Brunswick to Vancouver and to the NWT. Some of these facilities purchase rough diamonds from the Canadian producer, while others purchase in Antwerp from the open market. It appears that many of these facilities wish to capture and build on the image of a "Canadian Diamond". An enforceable credible definition of a "Canadian" diamond could strengthen this growing new industry, and help ensure that it can compete against the established world centers such as Antwerp and Tel Aviv.
- 12) Images that have been associated with a "Canadian Diamond" include pure, clean, clear, environmental clean, a diamond that was produced in a democratic, open economy where fair wages are paid and the environment protected. If these images are only associated with the rough diamond and the manufacturing is not done under similar conditions or situation, it becomes difficult (and perhaps unethical) to promote the image to the consumer.

Enforceability and Credibility

- 13) Any definition must be credible and defensible not only within Canada, but outside of Canada. A loose unenforceable definition could actually encourage diamonds from less desirable origins to be "re-born and redefined" as Canadian. An unenforceable or uncheckable definition could destroy whatever premium the "Canadian Diamond" has achieved to date and whatever credibility Canada has earned to date in the international diamond world.
- 14) The consumer is paying a premium for a "Canadian" diamond. Yet it is unlikely that they have full understanding of the diamond industry and the fact that it is impossible to identify the origin of a polished diamond, especially once it has entered the open market. The premium being requested, and being paid is solely because the diamond is identified as "Canadian". The consumer must be afforded as great a certainty as possible to ensure they receive value for money and are protected.
- 15) The onus should be on the communicator (or retailer) to prove any representations or statements that they make to a consumer, rather than the consumer having to prove that a statement or representation was false. The federal government must ensure that the guidelines are consistent with this principle, and that the responsibility of proof remains with the communicator.

Existing Guidelines

In the 1996 Guidelines with respect to the Sale and Marketing of Diamond, Coloured Gemstones and Pearls, issued by Industry Canada in consultation with the Canadian industry, diamonds and geographical origin is covered under D3.3 (page 15).

"In the selling, advertising, offering for sale or distribution of industry articles, it is contrary to the purposes of these guidelines to make a statement as to the geographical origin of an industry article unless its origin can, in fact, be substantiated."

The Guidelines do not outline what substantiation is in fact required. At this point in time, it is virtually impossible to substantiate the origin of a polished diamond.

Whatever the definition accepted by the Competition Bureau and the industry, it must set and establish the substantiation required for a communicator to make a statement concerning the geographical origin of diamonds. This substantiation should be auditable, traceable, and verifiable by the consumer, government and the industry, and the onus must be on the retailer to provide the proof, not on a consumer to show the statements or representations were false.

When does a diamond come into being?

A rough diamond (as a product) would be deemed to come into being when it has been mined, cleaned and sorted. Until that time, the characteristics (size, quality, shape colour) of the rough diamond (again as a product) would not be known.

A polished diamond (the product this notice of consultation is referring to) would come into being when it is fully cut and polished.

Consumer's likely feel that a diamond comes into being when it is manufactured i.e. cut and polished.

What do consumers and trade buyers perceive the terms "Canadian Diamond" to mean?

A consumer perception and expectations will be different from a trade buyer. A trade buyer is (or should be) familiar with the industry, and the severe limitations on anyone's ability to track a diamond through the open market, or to categorically state the origin of a particular rough or polished diamond. Within the trade, the term "Canadian Diamond" would be understood as "mined in Canada".

A consumer likely perceives a "Canadian Diamond" as reflecting the images of Canada. These would include environmentally safe mining, production and manufacturing, high quality, fair wages, clean operating processes, western democratic and economic standards being applied to all aspects of the issue.

What are purchases' expectations when they seek out a "Canadian Diamond"?

A consumer is not, and should not be expected to be familiar with the intricacies of the diamond industry. Without market research is it difficult to say, however we feel that an average consumer would expect a "Canadian Diamond" to be mined, cut and polished in Canada.

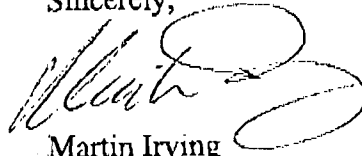
Is it industry practice to refer to the origin of the diamond, gem or other stone as the place where it was mined?

The retail jewellery industry does refer to a gemstone's county of origin as the place where it was mined, regardless of where it was processed or cut. However for decades the diamond industry has been structured (by the monopolist control of De Beers) in such a manner as to disguise the origin of the rough diamond. The marketing system (Central Selling Organisation) did not allow the origin of a diamond to be known. The philosophy has been 'a diamond is a diamond is a diamond'.

A reason for this could have been the fact that prior to 1989, most of the rough diamond production was coming from Communist Soviet Union and apartheid South Africa.

Thank you for the opportunity to provide comments, and we hope that this process will continue to move forward.

Sincerely,

A handwritten signature in cursive script, appearing to read "Martin Irving". The signature is written in black ink and is positioned above the printed name.

Martin Irving
Director, Diamond Projects