



INDEPENDENT WOMEN'S FORUM

April 2, 2004

Federal Trade Commission
Office of the Secretary, Room 159-H (Annex A)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Contact Lens Rule, Project No. R411002

Dear Sir or Madam:

On February 4, 2004, the Federal Trade Commission (FTC) issued the proposed contact lens rule. The Independent Women's Forum (IWF) believes that this rulemaking will impact its members and other women consumers and therefore are submitting these comments.

Founded in 1992, IWF is a nonprofit, nonpartisan policy organization dedicated to research and public education on policy issues concerning women. Our mission is to advance the spirit of enterprise and self-reliance among women and support the principles of political freedom, economic liberty and personal responsibility.

The manner in which the FTC implements the Fairness to Contact Lens Consumers Act (FCLA) will have a disproportionate effect on women, who comprise over 65 percent of total contact lens wearers. This statistic, however dramatic, actually understates how implementation of the FCLA will impact women. As the primary caregivers in most households -- and the ones who frequently function as the health-care "decision maker" within a family -- women often bear responsibility to obtain lenses for all members of the household (which may include themselves, their spouses and their children).

Moreover, for working women, balancing the needs of job and family presents constant challenges. Convenience and the ability to use our time *efficiently* are paramount. The FTC's definition of "business hours," as it is currently written, seriously undermines women's autonomy by reversing the conveniences that have been created, in part, to support working women and mothers, and it does not reflect the needs of contemporary America. Therefore, the FTC should reconsider its proposed definition of business hours and revise it to include significantly expanded hours.

"9 to 5" Business Hours Are Not Convenient For Women

The FTC has currently defined business hours to mean the time between 9 a.m. and 5 p.m., during weekdays (Monday through Friday), excluding Saturdays, Sundays and federal holidays.

Moreover, the examples provided by the FTC in the proposed rule that illustrates how the business hour definition works with the prescription verification process (e.g., waiting until Wednesday morning for a verification that was sent on 10 p.m. Monday night), actually establish an eight-hours-plus-one-day rule for the verification process. Because the contact lens prescription verification process is closely tied to the definition of business hours, such restrictive business hours will only serve to limit existing conveniences and prove to be a hardship for working women and mothers who choose to purchase their contact lenses from sellers other than their prescribing eye care professional.

For example, under the FTC's current interpretation of business hours, if a consumer places a contact lens order at 5:01 p.m. on Friday evening, the verification process doesn't begin to expire until Monday. However, if Monday is a federal holiday, the verification process is further extended and does not begin to toll until Tuesday morning at 9 a.m. Compound this already long waiting period with the FTC's "eight-hour plus one day" rule, and the contact lenses cannot be shipped until Wednesday morning, which means that even with the use of overnight shipping, the consumer will not receive their lenses for nearly a week.

In essence, the consumer must wait a total of six days to receive their contact lenses. This extraordinary waiting period serves no other purpose than to frustrate consumers, including working women and mothers who buy for themselves as well as family members. For such women, the proposed rule presents a completely unnecessary delay and an unworkable situation. Under existing industry standards, women are not subjected to such inconvenience and, in fact, often receive contact lenses overnight.

The conveniences associated with purchasing contact lenses are essential. The traditional nuclear family where the working husband supports a stay-at-home wife and children no longer represents our society. Today, 17 percent of households are traditional families, compared to 67 percent in the 1940s. Divorce is at its highest rate, and the traditional family has been replaced with single parents and second marriages. Also, more families are maintained by women who must act as both primary breadwinner and caregiver. In 2000, 12.8 million families were maintained by women, representing 17.8 percent of all families, compared with 5.6 million or 10.8 percent of all families in 1970. In 2000, 78.5 percent of women who maintained families were employed.

Even in a traditional family structure, both parents commonly are employed outside the home. More women are working today than ever before, and many of them have children. The number of working women has grown from 5.3 million in 1900 to 18.4 million in 1950 to 66 million in 2001. Women made up 18.3 percent of the labor force in 1900, 29.6 percent in 1950 and 46.6 percent in 2001.¹ In 2000, 72.3 percent of women with children younger than 18 were in the labor force.²

¹ AFL-CIO, "Facts about Working Women's," 2001

² Department of Labor, Employment Characteristics of Families, 2000, 2001.

As a result of the rising number of unconventional family structures such as single parents and dual-earner families, the standard 9-to-5 schedule is no longer the “one size fits all” solution for working women. Women must juggle both family obligations as well as full work weeks. The reality of our contemporary society is business hours must be convenient for working families.

Retailers have recognized this fact and accommodated consumers, especially women who are responsible for many of the family’s needs, by extending business hours far beyond 5 p.m. and often include Saturday, Sunday and federal holidays. These flexible business hours allow working women to maintain the delicate balance between family and work. The Internet has also proven to be a significant advancement that alleviates some of the pressures of maintaining personal and family necessities.

However, the FTC’s definition of business hours severely deviates from the increasing conveniences that have been gained through extended business hours and Internet shopping. The FTC’s proposed business hour definition threatens to restrict the contact lens market and limit access to contact lenses by establishing uncompromising hours such as “9 to 5, Monday thru Friday” and its eight-hour-plus-one-day interpretation, which will create new and unnecessary inconveniences and challenges for working women and mothers.

The FTC’s proposed definition of business hours also creates an impact on the conveniences associated with Internet shopping because the verification process is closely tied to the business hour definition. Many busy working women choose to escape the time consuming process of driving through traffic from retailer to retailer to obtain household goods. Instead, many women maximize purchases on the Internet and other mail order companies. Business hours, as proposed by the FTC, will severely encumber alternative purchasing options further restricting the freedom to choose when and where contact lenses may be purchased.

The FTC should revise its proposed definition of the business hours to more accurately reflect our contemporary society, where increasing demands are placed on women who manage both family and work. The FTC should also correct its 8 hours plus one day rule and clarify that only eight hours need to expire. Longer business hours, along with this clarification, will yield greater convenience to women that are already overburdened from the many demands associated with these responsibilities.

Contact Lens Prescription Must be Provided Before the Sale of Lenses

Demographically, women represent the majority of contact lens wearers. In addition, women, as a household responsibility, may purchase lenses for other family members. Eye care professionals should not be able to use their health-care façade to intimidate consumers into purchasing more costly lenses. A copy of the prescription will empower consumers, a disproportionate number of whom are women, from an unfair bargaining position.

In addition, price comparison shopping may only occur if consumers obtain a copy of the prescription. For women to be able to choose where and when they purchase lenses and benefit from competitively priced products, it is necessary for optometrists to provide their patients with

a copy of the prescription before lenses are attempted to be sold. Therefore, the FTC should carefully monitor the conduct of eye care professionals to ensure that consumers are provided, at the conclusion of the contact lens fitting and prior to any attempt to sell lenses, a copy of the prescription.

As the economic advisors to IWF, we are confident that the FTC, as a consumer-oriented agency, will seriously consider our comments and incorporate the necessary revision to ensure that working women are guaranteed the necessary conveniences to maintain their independence.

Respectfully,

Nancy Mitchell Pfothenauer

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