

Congress of the United States
House of Representatives
Washington, DC 20515-4402

April 3, 2004

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

Re: Contacts Lens Rule, Project No. R411002

To Whom It May Concern:

I am pleased to file these comments in response to the Federal Trade Commission's (FTC's) February 4, 2004 request for public comment on its proposed Contact Lens Rule.

I was proud to be a co-sponsor of the "Fairness to Contact Lens Consumers Act (FCLCA)," which Congress enacted to (1) provide America's 36 million contact lens wearers with the ability to purchase lenses from their chosen vendor, and (2) to promote competition in the contact lens market. I am concerned that portions of the proposed FTC rule, particularly the definition of "business hour," will undermine Congress' intent in passing this important consumer protection legislation.

In order to protect consumers from the conflict-of-interest present in the sale of contact lenses, Congress adopted what is known as a "passive verification" system. Under FCLCA, a consumer has the right to receive their contact lenses once a seller notifies the prescriber and the prescriber is given 8 business hours, or a similar time as defined by the FTC, to correct any errors in the prescription. Congress included this provision to ensure that failure to confirm a consumer's prescription would not frustrate that consumer's ability to purchase lenses from their chosen vendor.

Congress left it to the FTC to define what constitutes a business hour for the purposes of the verification period. The FTC's narrow definition of "business hour"

would frustrate congressional intent in passing FCLCA by making it less convenient for consumers to purchase contact lenses from wherever they choose.

The FTC's proposed rule narrowly defines a "business hour" as "an hour between 9 a.m. and 5 p.m., during a weekday (Monday through Friday), excluding Federal holidays." The fundamental flaw in the proposed definition of business hour is that it does not accurately reflect business practices. Many eye care providers have expanded hours during the week, and also have Saturday hours. Similarly, many other retailers who sell contact lenses are open on Saturday, Sunday, and most Federal holidays.

Arbitrarily restricting the hours during which a consumer can have their prescription verified is inconsistent with congressional intent because it erects a barrier to that consumer's ability to purchase lenses from their chosen supplier, a result which also has the effect of restricting competition in the contact lens market. The FTC should adopt a definition of business hour that accurately reflects the hours that eye care providers and mass retailers are actually open, and that reflects the way in which consumers actually shop for contact lenses.

In reviewing alternative definitions of business hour, the FTC should consider California's experience with a law that served as a model for the FCLCA. Under California law, a consumer's contact lens order may be shipped no later than 2:00 p.m. on the next business day after a verification request is made. California law also more accurately reflects actual business hours for the sale of contact lenses. Under California law, Saturdays are recognized as a business day.

I urge the FTC to consider the California model as a possible federal standard.

Congress' clear intent in passing FCLCA was to protect consumers and to promote competition. The FTC rulemaking process should not be used to frustrate Congress' will, and adoption of an expanded definition of business hours is necessary to effectuate congressional intent.

Thank you in advance for considering my views.

Sincerely,


JIM MATHESON
Member of Congress