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COMMITTEE ON THE JUDICIARY,
CHAIRMAN



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Congress of the United States
House of Representatives
Washington, DC 20515-4905

May 4, 2004

Mr. Timothy Muris
Chairman, Federal Trade Commission
Office of the Secretary, Room 159-H (Annex A)
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Contact Lens Rule, Project No. R411002

Dear Chairman Muris:

During the 104th Congress, I joined my colleague Rep. Pete Stark to sponsor H.R. 1454, the first federal bill proposed to grant consumers the basic right to receive copies of their contact lens prescriptions. After nearly a decade of hard work, negotiation, and consensus building, I was proud to see these efforts culminate in enactment of the Fairness to Contact Lens Consumers Act (FCLCA), P.L.108-164.

Since I initially proposed contact lens prescription release legislation, I have come to learn how passionately contact lens consumers feel about their rights. Just last year, when Congress was considering the FCLCA, I received dozens of communications from constituents. They want to be entrusted with their own prescriptions. They want to take responsibility for their own health care decisions. They want all the benefits a competitive marketplace has to offer – including lower prices, better service and more convenience. The FCLCA is designed to give consumers all these rights. But whether they receive these basic rights could well be determined by the FTC in this rulemaking.

This legislation was designed and intended to increase competition in the contact lens industry and entrust consumers with greater buying power. By promoting lower prices and greater convenience, the law will help improve ocular health as consumers replace contact lenses more frequently.

As the FTC proposes a final rule concerning implementation of this new law, I hope the Commission will keep in mind the intent of this law, which is to allow consumers to receive their contact lens prescriptions so they can easily shop around to buy their lenses from any number of suppliers. That the law intends consumers be given the right to purchase lenses from prescribers and non-prescribers alike should be apparent from the text of the statute. The purposes of the statute are to give consumers copies of their prescriptions so that they may shop around among prescribing and non-prescribing sellers, and to establish a verification procedure to permit consumers to purchase their lenses from a non-prescriber pursuant to a valid prescription.

The law yields these benefits by giving consumers the right to purchase lenses from prescribers as well as from non-prescribing-sellers, otherwise commonly referred to as “third party sellers.” The statute and the legislative history make clear that states are preempted from erecting regulatory or other barriers the purpose or effect of which are to artificially restrict or limit the ability of consumers to purchase from “third party sellers.” Thus, this new federal law would preempt the adoption by states of licensing procedures that effectively allow only prescribers to sell lenses.

Each year, Americans spend an estimated \$3.5 billion on contact lenses. It is estimated that, in part due to the increased competition this law will spur, these consumers will save approximately \$350 million annually.

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Competition among sellers of lenses will result in lower prices, a greater choice of lens providers, and more convenient ways to fill contact lens prescription.

As the FTC is aware, the market for replacement contact lenses is rapidly evolving. It changed significantly even during the decade we have been working on this legislation. The availability of replacement lenses through retail chains, specialty stores, and mail-order and Internet companies has increased the ability of consumers to shop around based on price, convenience and service, lowering costs for Americans who wear contact lenses.

In order for American consumers to benefit from the modernization of the contact lens market, FCLCA recognizes that consumers need two important things; first, they must have a protected right to receive a contact lens prescription after an examination, and second, they need the accompanying right to have that prescription verified in a timely fashion by their eye care professional, regardless of where the consumer chooses to purchase replacement contact lenses.

Granting those rights to consumers is the central purpose of FCLCA, and the FTC has an obligation to carry out the intent of Congress in writing its regulations. Unfortunately, the FTC falls short of that standard in its definition of "business hour" found in the proposed rule.

The proposed Monday-Friday, 9 a.m. to 5 p.m. business hour period bears no relation to the way either consumers or retailers behave. The proposed business hour period and the proposal that 8 business hours be interpreted as "8 hours plus one day," also does not follow the language of the law, which stated "8 business hours, or a similar time as defined by the Federal Trade Commission." By defining business hours in such a limited and unrealistic manner, the FTC's proposed rule would have the perverse effect of placing additional burdens on the very same consumers the bill was designed to help.

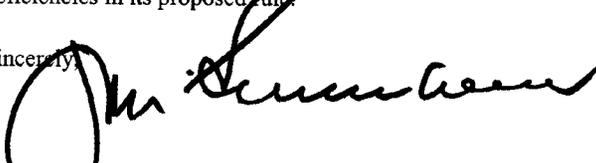
The FTC's adherence to an outdated business model will have a significant effect on the people I represent. The proposed waiting period will result in consumers who choose to order contact lenses via telephone order, mail or Internet services being forced in some cases to wait days to receive their lenses.

For example, take one of my constituents who orders contact lenses from a telephone or Internet provider on the Friday evening before a federal holiday. Under the FTC's proposed rule, the retailer will have to wait until *Wednesday morning* until the prescription is deemed verified. This unnecessarily long waiting period will inconvenience consumers. It is also an unacceptable barrier to competition for these retailers, whose entire business model is predicated on responding to the changing lifestyles of modern families. If such retailers are forced from the market by unrealistic government regulation, the net result will be less competition and, predictably, higher costs to families. Consumers who submit a prescription on a Monday morning should have their prescription verified by the close of business the same day.

Of course, one correlation of a modernized marketplace is increasingly sophisticated consumers who understand that more convenience and competition in the market saves time and money. Consumers should be able to reasonably expect that they may do business with retailers whenever the prescribing eye care professional's offices are open. That way, the FTC will closely track the reality of current business practices, instead of following a definition not grounded in the reality of today's marketplace.

The 36 million Americans who wear contact lenses should have every reason to expect the FTC will interpret a consumer-friendly law in a way that considers the need for convenience and lower prices in the replacement contact lens market. Those of us who have worked for many years to correct problems in the eye care industry also expect the FTC to interpret this law in a manner that benefits the consumer, and we look forward to the FTC correcting the deficiencies in its proposed rule.

Sincerely,



F. James Sensenbrenner, Jr.
Member of Congress