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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of **TRANSITIONS OPTICAL, INC.** **a corporation.**	**Docket No. C-4289**

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Transitions Optical, Inc. ("Transitions" or "Respondent") has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

NATURE OF THE CASE

1. This action concerns Transitions' exclusionary acts and practices in the photochromic lens industry. Transitions has improperly maintained its monopoly power by engaging in exclusionary acts and practices, which include entering into exclusive dealing arrangements that foreclose its rivals from key distribution channels. Transitions' conduct has led to higher prices, lower output, reduced innovation and diminished consumer choice.

RESPONDENT

2. Respondent Transitions is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 9251 Belcher Road, Pinellas Park, Florida 33782. Transitions develops, manufactures and sells photochromic treatments for corrective ophthalmic lenses.

JURISDICTION

3. At all times relevant herein, Transitions has been, and is now, a corporation as "corporation" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The acts and practices of Transitions, including the acts and practices alleged herein, are in commerce or affect commerce in the United States, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

RELEVANT MARKET

5. The relevant product market is no broader than the development, manufacture and sale of photochromic treatments for corrective ophthalmic lenses. The relevant geographic market is the United States.

6. Consumers of corrective ophthalmic lenses (lenses used in eyeglasses to correct vision defects) may purchase those lenses with the option of an add-on photochromic treatment, which protects eyes from harmful ultraviolet ("UV") light. A "photochromic lens," or a corrective ophthalmic lens with a photochromic treatment, will darken when it is exposed to the UV light present in sunlight, and fade back to clear when it is removed from the UV light.

7. Each year, U.S. consumers purchase roughly 76 million pairs of corrective ophthalmic lenses. In 2008, photochromic lenses represented approximately 18-20% of all corrective ophthalmic lens sales in the United States, totaling approximately $630 million in sales at the wholesale level.

8. There are no close substitutes for photochromic lenses, and no other product significantly constrains the prices of photochromic lenses. Photochromic lenses have characteristics and uses distinct from those of clear corrective ophthalmic lenses, polarized lenses (which are designed to remove glare), or fixed-tint lenses (*e.g.*, prescription sunglasses).

TRANSITIONS HOLDS MONOPOLY POWER IN THE RELEVANT MARKET

9. Transitions possesses monopoly power in the relevant market. Transitions' share of the relevant market has been at least 80 percent during each of the past five years. In 2008, Transitions' market share was over 85 percent.

10. Significant and lasting barriers make entry into the relevant market difficult. These barriers include, but are not limited to: (i) product development costs; (ii) capital requirements; (iii) intellectual property rights; (iv) regulatory requirements; and (v) Transitions' unfair methods of competition.

11. Transitions' monopoly power is also demonstrated directly by its ability to exclude competitors and to control prices. The indicia of Transitions' monopoly power include,

but are not limited to, the ability of Transitions: (i) to coerce lens casters, which manufacture and distribute corrective ophthalmic lenses, to accept exclusive dealing arrangements; (ii) to price its product without regard to its competitors' prices; (iii) to impose significant price increases; and (iv) to withhold a desired product – a low-priced, private label photochromic lens – from consumers in the United States, even though Transitions supplies it in other markets.

TRANSITIONS EMPLOYED UNFAIR METHODS OF COMPETITION TO MAINTAIN ITS MONOPOLY IN THE RELEVANT MARKET

12. Beginning in 1999 and continuing through to today, Transitions has engaged in unfair methods of competition that foreclose key distribution channels for existing rivals and impede market entry by potential rivals. Transitions has engaged in acts and practices that, when considered individually and collectively, have the effect of improperly maintaining Transitions' monopoly power in the relevant market. Transitions' exclusionary actions have caused injury to competition and to consumers. Transitions' conduct is likely to continue to harm competition absent the relief requested herein, and violates Section 5 of the FTC Act.

A. <u>The Photochromic Lens Industry</u>

13. Transitions partners with lens casters to produce its photochromic lenses. Specifically, lens casters supply the corrective ophthalmic lenses to Transitions, and Transitions uses proprietary processes to apply patented photochromic dyes or other photochromic materials to the lens. Transitions then sells the lenses, now photochromic, back to the original lens casters. Lens casters are Transitions' only direct customers.

14. Nearly 100 percent of all photochromic lenses are first sold and/or produced by lens casters. Attempts to bypass lens casters by fabricating photochromic lenses at lower levels of the supply chain (*e.g.*, the wholesale optical laboratories or optical retailers) have largely been abandoned as uneconomical.

15. Lens casters sell and distribute these photochromic lenses alongside their clear corrective ophthalmic lenses. Lens casters sell these lenses through two distribution channels: wholesale optical laboratories ("wholesale labs") and optical retailers ("retailers"), each of which represent approximately one half of the downstream market.

16. Wholesale labs sell ophthalmic lenses, including photochromic lenses, to ophthalmologists, opticians and optometrists (collectively known as "eye care practitioners") who are not affiliated with retailers. The wholesale labs grind the lens according to a lens prescription, fit the lens into an eyeglass frame, and deliver the frame with the finished lens to the eye care practitioner. In addition to these laboratory functions, a wholesale lab will often employ a sales force to promote specific lenses to eye care practitioners. Photochromic lens suppliers, such as Transitions, use wholesale labs and their sales forces to market their lenses because wholesale labs are the most efficient means for a photochromic lens supplier to promote and sell its products to the tens of thousands of independent eye care practitioners prescribing photochromic lenses to consumers.

17. There has been considerable consolidation in the wholesale lab channel in recent years as lens casters have begun to acquire wholesale labs. Lens casters generally have used these wholesale labs to sell and promote primarily their own brand of lenses.

18. Retailers represent the other important distribution channel for photochromic lenses, and include national, regional and smaller retail chains. Retailers generally provide both eye care practitioner and laboratory services. They employ their own eye care practitioners who deal directly with consumers. In addition, retailers grind and fit lenses into eyeglass frames and deliver the frame with the finished lens to the consumer. Because retailers employ their own eye care practitioners, the retail channel is generally a more efficient means for promoting and selling photochromic lenses to consumers than comparable efforts through the wholesale lab channel. For example, a decision by the corporate headquarters of one retail chain to buy a specific photochromic lens can have an immediate impact on the prescribing behavior of all the practitioners who are employed by that retailer. The retail channel has also witnessed significant consolidation over time.

B. Transitions' Exclusive Dealing with Lens Casters

19. In 1999, Corning Inc. ("Corning") introduced a new plastic photochromic lens, Sunsensors®, which was a direct challenge to Transitions. Transitions responded to this competitive threat by terminating the first lens caster that began selling the new SunSensors® lens, Signet Armorlite, Inc. ("Signet"), and by adopting a general policy not to deal with any lens caster that sold or promoted a competing photochromic lens. Transitions continues to enforce this policy by, among other things, entering into agreements with certain lens casters that expressly require exclusivity and by publicizing its exclusive dealing policy. Accordingly, even lens casters that have not signed exclusive agreements with Transitions have a clear and well-founded understanding that Transitions will refuse to deal with them if they sell or promote a competing photochromic lens. This understanding is reinforced by Transitions' acts and practices, including but not limited to, the following:

a. Transitions terminated Signet when it began selling a competing photochromic lens, SunSensors®;

b. Transitions announced its policy to deal only with exclusive lens casters;

c. Transitions threatened to terminate other lens casters that did not initially agree to sell Transitions' photochromic lenses on an exclusive basis; and

d. Transitions terminated another lens caster, Vision-Ease Lens ("Vision-Ease"), because Vision-Ease planned to sell a competing photochromic lens, LifeRx®, that it had developed for use on its own ophthalmic lenses.

20. Given Transitions' dominant market position and practice of demanding exclusivity, lens casters face powerful economic incentives to deal with Transitions on an exclusive basis. Transitions' "all-or-nothing" exclusivity policy ensures that lens casters that want to sell a competing photochromic lens will be forced to forgo significant revenues from the

sale of Transitions' products, which can represent up to 40 percent of a lens caster's overall profit. In addition, a lens caster's inability to offer Transitions' photochromic lenses is likely to jeopardize significant sales of its clear corrective ophthalmic lenses as well because many chain retailers and wholesale labs (and their eye care practitioner customers) prefer to buy both clear and photochromic versions of the same lens.

21. Transitions' exclusionary acts and practices exclude rival suppliers of photochromic treatments that need to partner with lens casters to bring their product to market, such as Corning. For example, no major lens caster has been willing to sell the SunSensors® plastic photochromic lens since Transitions terminated Signet. Without access to effective distribution, Corning has been unable to pose a competitive threat to Transitions' monopoly, and has had little incentive to invest in research and development to further innovate and improve its product.

22. Transitions' exclusionary acts and practices also erect significant barriers to entry by the lens casters themselves, which can supply their own ophthalmic lenses. Some lens casters would likely develop their own competing photochromic lens absent Transitions' exclusionary conduct. Only one lens caster, Vision-Ease, has been able to resist Transitions' coercion and introduce a new photochromic lens, LifeRx®. However, Vision-Ease was only able to do so after it entered into secret negotiations with one of the largest optical retailers in the United States. This large retailer's commitment to buy LifeRx® allowed Vision-Ease to secure enough business to replace its lost Transitions sales. Since Transitions terminated Vision-Ease for introducing LifeRx® in 2005, no other lens caster has introduced a new line of photochromic lenses in the United States.

23. Lens casters that are exclusive to Transitions collectively account for over 85% of photochromic lens sales in the United States.

C. <u>Transitions' Exclusive and Restrictive Dealing with Retailers and Wholesale Labs</u>

24. Transitions also has entered into exclusive and other restrictive agreements with its indirect customers: retailers and wholesale labs. These agreements foreclose downstream outlets for photochromic lenses and create significant barriers to entry.

25. Transitions has entered into exclusive agreements with retailers with the purpose and effect of impeding entry into the relevant market. For example, after terminating Vision-Ease for developing and selling a competing photochromic lens, Transitions entered into exclusive contracts with over 50 retailers, including many of the largest retail chains. Most of these exclusive agreements were of long duration and could not be easily terminated. Transitions' conduct deprived Vision-Ease of access to many large retailers (one of the most efficient channels of distribution for photochromic lenses to consumers), which blunted the force of its entry into the market and diminished the ability of Vision-Ease to constrain Transitions' exercise of monopoly power. Potential entrants observed Transitions' exclusionary campaign and were deterred from entering the market.

26. Transitions' agreements with wholesale labs restrict the ability of rivals to promote and sell their photochromic lenses to independent eye care practitioners unaffiliated with a retail chain. For example, Transitions has entered into over 100 agreements with wholesale labs, including 23 of the top 30 independent wholesale labs, that require the wholesale lab to sell Transitions' lenses as its "preferred" photochromic lens and not to promote any competing photochromic lens. The anticompetitive impact of these wholesale lab agreements is augmented by Transitions' exclusive policies with lens casters – at least 50 percent of all wholesale labs are owned by lens casters that sell Transitions' photochromic lenses on an exclusive basis. As a result, rival suppliers of photochromic treatments have only limited access to these lens caster-owned wholesale labs as well.

27. Additionally, Transitions' agreements with retailers and wholesale labs generally provide a discount only if the customer purchases all or almost all of its photochromic lens needs from Transitions. Because no other supplier has a photochromic treatment that applies to a full line of ophthalmic lenses, Transitions' discount structure impairs the ability of rivals to compete for sales to these customers. It also erects a significant entry barrier by limiting the ability of a rival to enter the market with a new photochromic treatment that applies to less than a full line of ophthalmic lenses.

28. Transitions' exclusive and restrictive agreements with indirect customers deprive its rivals of access to outlets for the distribution and sale of competing photochromic lenses, and impair their ability to compete effectively with Transitions or to pose a significant threat to its monopoly. These agreements also deter incremental entry by a supplier with a photochromic treatment that applies to less than the full line of ophthalmic lenses, and reinforce and strengthen the barriers to entry erected by Transitions' policy of requiring that lens casters deal exclusively with Transitions. Transitions' exclusionary practices foreclose its rivals, in whole or in part, from a substantial share – as much as 40 percent or more – of the entire downstream photochromic lens market.

ANTICOMPETITIVE EFFECTS OF TRANSITIONS' CONDUCT

29. The acts and practices of Transitions as alleged herein have the purpose, capacity, tendency, and effect of impairing the competitive effectiveness of Transitions' rivals in the relevant market, and of significantly raising barriers to entry for potential rivals. Transitions' conduct reasonably appears capable of making a significant contribution to the enhancement or maintenance of Transitions' monopoly power.

30. Transitions' conduct also adversely affects competition and consumers by:

a. increasing the prices and reducing the output of photochromic lenses;

b. deterring, delaying and impeding the ability of Transitions' actual or potential competitors to enter or to expand their sales in the photochromic lens market;

c. reducing innovation; and

d. reducing consumer choice among competing photochromic lenses.

31. Additionally, by effectively stifling competition, Transitions has been able to refuse to supply its low-priced, private label photochromic lens in the U.S. market, notwithstanding considerable consumer demand for such a product. Transitions offers this product for sale outside the United States where it faces more competition.

32. There are no legitimate procompetitive efficiencies that justify Transitions' conduct or outweigh its substantial anticompetitive effects.

VIOLATION ALLEGED

33. The acts and practices of Respondent, as alleged herein, constitute monopolization and unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-second day of April, 2010, issues its complaint against Respondent.

By the Commission, Commissioner Ramirez and Commissioner Brill not participating.

Donald S. Clark
Secretary