



American Optometric Association

November 1, 2012

Federal Trade Commission  
Office of the Secretary  
Room H-113 (Annex X)  
600 Pennsylvania Ave., NW  
Washington, DC 20580

**Re: Pet Medications Workshop**

Dear Secretary Clark:

The American Optometric Association (AOA) is pleased to provide a second set of comments in connection with a workshop to examine competition and consumer protection issues in the pet medications industry. The AOA represents approximately 36,000 doctors of optometry, optometry students and paraoptometric assistants and technicians. Optometrists serve patients in nearly 6,500 communities across the country, and in 3,500 of those communities are the only eye doctors. Doctors of optometry provide more than two-thirds of all primary vision and eye health care in the United States.

On October 2, 2012 Clarke D. Newman, OD, FAAO served on a panel for the FTC Pet Medications Workshop. Dr. Newman's purpose was to provide information on how the Fairness to Contact Lens Consumers Act might yield lessons applicable to the pet medications industry.

Dr. Newman discussed patient safety concerns, the problems with the passive verification process, and issues that optometrists have had with deficient verification practices. Dr. Newman was also in a position to defend some false claims made by other panelists.

Challenges to References: One of the panel members baselessly impugned the references cited by Dr. Newman. To claim that the studies published in *Optometry – Journal of the American Optometric Association*, *Ophthalmology*, and *Contact Lens & Anterior Eye* are illegitimate is a falsehood. To state so was an act of desperation meant to distract the FTC from solid, scientific research that the others on the panel found uncomfortable, and for which they had no real answer.

*Optometry – Journal of the American Optometric Association* is distributed to more than 34,000 AOA member optometrists, as well as independent subscribers. The Journal publishes original, peer-reviewed research studies, results of independent studies, and ongoing professional commentaries by and for optometrists and other professionals in medical and optometry-related fields. Dr. Fogel's paper appears in *Optometry – Journal of the American Optometric Association*.

*Ophthalmology* is the journal of the American Academy of Ophthalmology. Dr. Stapleton's paper was published there. *Contact Lens & Anterior Eye* is the journal of the British Contact Lens Association. Dr. Wu's article appears there.

The Release of Contact Lens Prescriptions: The FCLCA provides certain circumstances when the release of a contact lens prescription is not mandatory. Certain specialty, custom rigid gas permeable and soft lens designs are exempt from release under the Contact Lens Rule because they could potentially pose a safety hazard if released. It is not illegal to release such prescriptions, but it is also not mandatory to do so. It is left up to the professional opinion of the Doctor.

Additionally, the American Optometric Association does not encourage members to break the law by not following the Fairness to Contact Lens Consumer Act and the Contact Lens Rule. The AOA has taken great lengths to provide correct information regarding the Fairness to Contact Lens Consumer Act to the membership. Accurate information can be found on the AOA website at <http://www.aoa.org/documents/FinalFCLCARule.pdf>.

Complaints Made Against Optometrists: Panelist Joe Ziedner, General Counsel for 1-800 Contacts, repeatedly referred to complaints against optometrists in the State of Texas, but failed to acknowledge that those complaints were dismissed by the Texas State government as being generated by the company and not by the patients.

FTC Warning to 1-800 CONTACTS and Calls for More Effective Enforcement of Prescription Verification Safeguards: It should also be noted that Mr. Zeidner is well aware of the non-compliance issues raised about his company and his industry, as well as the need for the FTC to take enforcement action to safeguard consumers. In October 2005, the FTC issued a formal warning letter, addressed to Mr. Zeidner, in his role as General Counsel for 1-800 CONTACTS, citing a "substantial number of complaints" arising from the company's contact lens prescription verification practices. The FTC detailed to Mr. Zeidner a series of penalties the company could face and specifically urged 1-800 Contacts' management "to review the [Contact Lens] Rule and revise its practices as necessary to ensure that they comply with its requirements." The following month, in attempting to respond to the FTC's warning, 1-800 CONTACTS acknowledged the accuracy of optometry's longstanding complaints about the industry by asserting that a competing online contact lens seller was engaged in "a pattern and practice... inconsistent with the prescription verification requirements of the FCLCA and...practices that misle[a]d consumers." As the AOA and other national eye health organizations that join with us to meet with FTC officials on prescription verification abuses know well, the Internet contact lens sales industry too often puts patients at risk for the sake of their own profits.



Future Studies: The FTC inquired during the panel about what further study was needed on the impact of the Contact Lens Rule. The AOA recommends a study into the number of patients who receive contact lenses from Internet sellers with expired prescriptions that have not been reviewed, even passively, by the prescribing physician. Relative to that, the study could look at the range of problems associated with the use of automated "robo calls" as a mechanism employed by Internet sellers for prescription verification contacts with doctors' offices. It could

also prove helpful to discover the number of times Internet sellers solicit patients to buy more lenses on expired prescriptions.

Although many panel members were focused solely on the price of contact lenses regardless of harm caused to patients, the AOA reminds the FTC that its mission is to promote competition, rather than just the lowest price. Patients are willing to pay more for better care and better service, just as they are willing to pay more for automobiles than bicycles, and more for smart phones than rotary dialed landline phones. In addition to competition, the FTC should revise its approach to the Contact Lens Rule to make patient safety the priority rather than single-mindedly seeking the lowest price.

The AOA thanks the FTC for inviting us to be a part of the Pet Medications Workshop. We hope that through our participation and comments we have been a helpful resource.

Sincerely,

  
  
Roger L. Jordan, OD  
Chair  
AOA Federal Relations Committee