

FAIRNESS TO CONTACT LENS CONSUMER ACT



AN OVERVIEW

Sydney Knight, Attorney
Division of Advertising Practices
Federal Trade Commission

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My comments today reflect my own views. They do not necessarily reflect the views of the Federal Trade Commission, any individual Commissioner.

FAIRNESS TO CONTACT LENS CONSUMERS ACT

15 U.S.C. §§ 7601-7610

Statute enacted in 2003

In the decade preceding the enactment of the FCLCA , there was a tremendous growth in the use of contact lenses in the United States, and American consumers were spending an estimated \$3.5 billion annually on replacement contact lenses.

Concerns were raised about the lack of competitiveness in the industry.

Congress:

- held a series of Congressional Hearings;
- found that existing practices in the contact lens industry created an unnecessary limitation on the consumer's ability to shop for the best price for their contact lenses.

Congress provided a national standard whereby prescribers of contact lenses must give their patients a copy of their prescription at the end of a contact lens fitting - even if the patient doesn't ask for it.

The Act also imposes a requirement that Prescribers verify contact lens prescriptions to any third party designated by a patient.

A prescription is verified if the prescriber either:

1. The prescriber confirms the accuracy of the prescription by direct communication with the seller, (direct communications includes communication by telephone, facsimile, or electronic mail);
2. The prescriber corrects any inaccuracy in the prescription; or
3. The prescriber fails to communicate with the seller within 8 business hours after receiving the request for verification.

The Act also mandates that:

- ⦿ (1) Prescribers may not require the purchase of contact lenses from the prescriber or another prescriber as a condition of release or verification of a prescription;
- ⦿ (2) Prescribers may not require the patient to pay additional fees as a condition of release or verification of a prescription, and
- ⦿ (3) Prescribers may not require the patient to sign a waiver or release in exchange for the release or verification of a prescription.

Implementation and enforcement of the FCLCA was left to the FTC.

The FTC issued the EyeGlass Rule in 1978

Under that rule, an optometrist or ophthalmologist must provide a patient, at no extra cost, a copy of the patient's eye glass prescription upon completion of an eye exam.

So when called upon by Congress to implement the FCLCA, the FTC issued the Contact Lens Rule in 2004.

The Contact Lens Rule sets forth the manner in which the eight-business hour verification period would be calculated: a business hour is defined in the Rule as one hour between 9 a.m. and 5 p.m., Monday through Friday, excluding holidays.

The Contact Lens Rule also requires that sellers of contact lenses maintain certain types of records, including the seller's verification requests.

Such recordkeeping provisions provide the FTC with an opportunity to investigate whether there has been a Rule violation and to seek civil penalties for any such violations.

The FTC has investigated and brought cases against a number of entities for violation of the Contact Lens Rule.

Since the issuance of the Contact Lens Rule in 2004, the FTC has brought 10 different enforcement actions against various individuals and entities.

See U.S. v. Gene Kim, No. 1:11-cv-05723 (E.D.N.Y. Feb 7, 2012) (consent); *U.S. v. Royal Tronics, Inc.*, No. 0:11-cv-62491 (S.D. Fla. Jan. 27, 2012) (consent); *U.S. v. Thy Xuan Ho*, No. 1:11-cv-03419 (D. Minn. Dec. 27, 2011) (consent); *U.S. v. Gothic Lens, LLC*, No. 1:11-cv-00159 (N.D. Ga. Feb. 3, 2011) (consent); *U.S. v. Jokeshop, LLC*, No. 1:11-cv-11221 (D. Mass. Nov. 29, 2011) (consent); *U.S. v. Contact Lens Heaven, Inc.*, No. 0:08-cv-61713 (S.D. Fla. Dec. 3, 2008) (consent); *U.S. v. Chapin N. Wright, II*, No. 1:08-cv-11793 (D. Mass. Oct. 31, 2008) (consent); *U.S. v. BeWild, Inc.*, No. 2:07-cv-04896 (E.D.N.Y. Dec. 3, 2007) (consent); *U.S. v. Pretty Eyes, LLC*, No. 1:07-cv-02462 (D. Colo. Nov. 28, 2007) (consent); *U.S. v. Walsh Optical, Inc.*, No. 2:06-cv-03591 (D.N.J. Aug. 30, 2006) (consent).

Our settlement orders have provided injunctive relief that, among other things:

- prohibited the defendants from selling contact lenses without obtaining a prescription from a consumer;
- selling contact lenses without verifying prescriptions by communicating directly with the prescriber; and
- from failing to maintain records of prescriptions and verifications.

- The FTC has educational resources available online:
 - **The Contact Lens Rule: A Guide for Prescribers and Sellers**, available at <http://business.ftc.gov/documents/bus62-contact-lens-rule-guide-prescribers-and-sellers>;
 - **Complying with the Contact Lens Rule**, available at <http://business.ftc.gov/documents/bus63-complying-contact-lens-rule>.
- You may also contact the FTC's Division of Advertising Practices staff directly:
 - By phone at 202-326-3090; or
 - By mail to Federal Trade Commission, Division of Advertising Practices, Bureau of Consumer Protection, 600 Pennsylvania Ave., NW, NJ-3212, Washington, DC 20580.