

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



COMMISSIONERS: Joseph J. Simons, Chairman
Maureen K. Ohlhausen
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter

In the Matter of

**1-800 Contacts, Inc.,
a corporation,**

Respondent.

Docket No. 9372

**RESPONDENT'S COMPILATION OF MATERIALS
TO FACILITATE ORAL ARGUMENT PRESENTATION**

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Dated: June 19, 2018

Counsel for Respondent 1-800 Contacts, Inc.

Pursuant to the Commission's April 17, 2018 Order Scheduling Oral Argument, Respondent 1-800 Contacts, Inc. submits the following compilation of materials to facilitate its presentation during the Oral Argument in this matter. The compilation of materials contains only public information that is already in the record of the proceeding.

Dated: June 19, 2018

Respectfully submitted,

/s/ Steven M. Perry

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Counsel for Respondent 1-800 Contacts, Inc.



Respondent's Submission in Advance of Oral Argument

June 26, 2018

What Is Not In Dispute?

What Is Not In Dispute?

The settlement agreements prevented the display of ads in response to a search for “1-800 Contacts.”

We agree.

What Is Not In Dispute?

If rivals could display ads in response to a search for “1-800 Contacts,” they would sell more.

We agree.

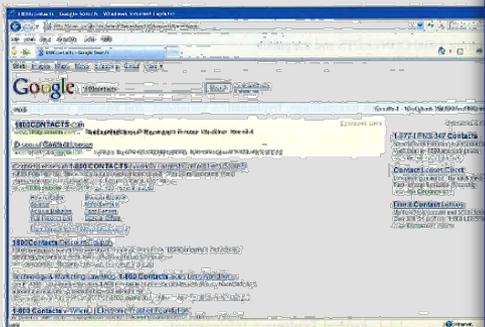
Perspective

Memorial Eye Complaint

30. Memorial Eye's infringing activities continue today, as evidenced by a screen shot prepared on December 17, 2008 that shows sponsored advertisements purchased by Memorial Eye that are triggered upon searching for the 1-800 CONTACTS Marks. As may be seen, the website www.Shipmycontacts.com is featured on the top left portion of the page, right under 1-800 CONTACTS website advertisement, under a "sponsored advertisement" heading.

Case 2:08-cv-00983-DN Document 2 Filed 12/23/2008 Page 9 of 10

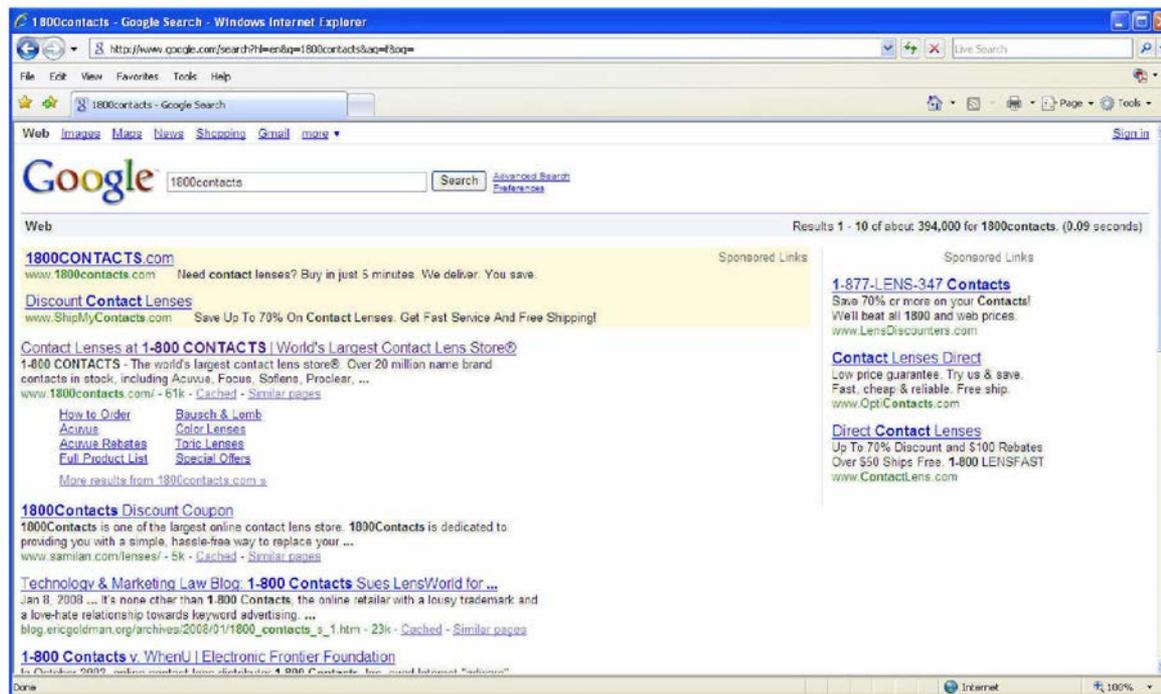
30. Memorial Eye's infringing activities continue today, as evidenced by a screen shot prepared on December 17, 2008 that shows sponsored advertisements purchased by Memorial Eye that are triggered upon searching for the 1-800 CONTACTS Marks. As may be seen, the website www.Shipmycontacts.com is featured on the top left portion of the page, right under 1-800 CONTACTS website advertisement, under a "sponsored advertisement" heading.



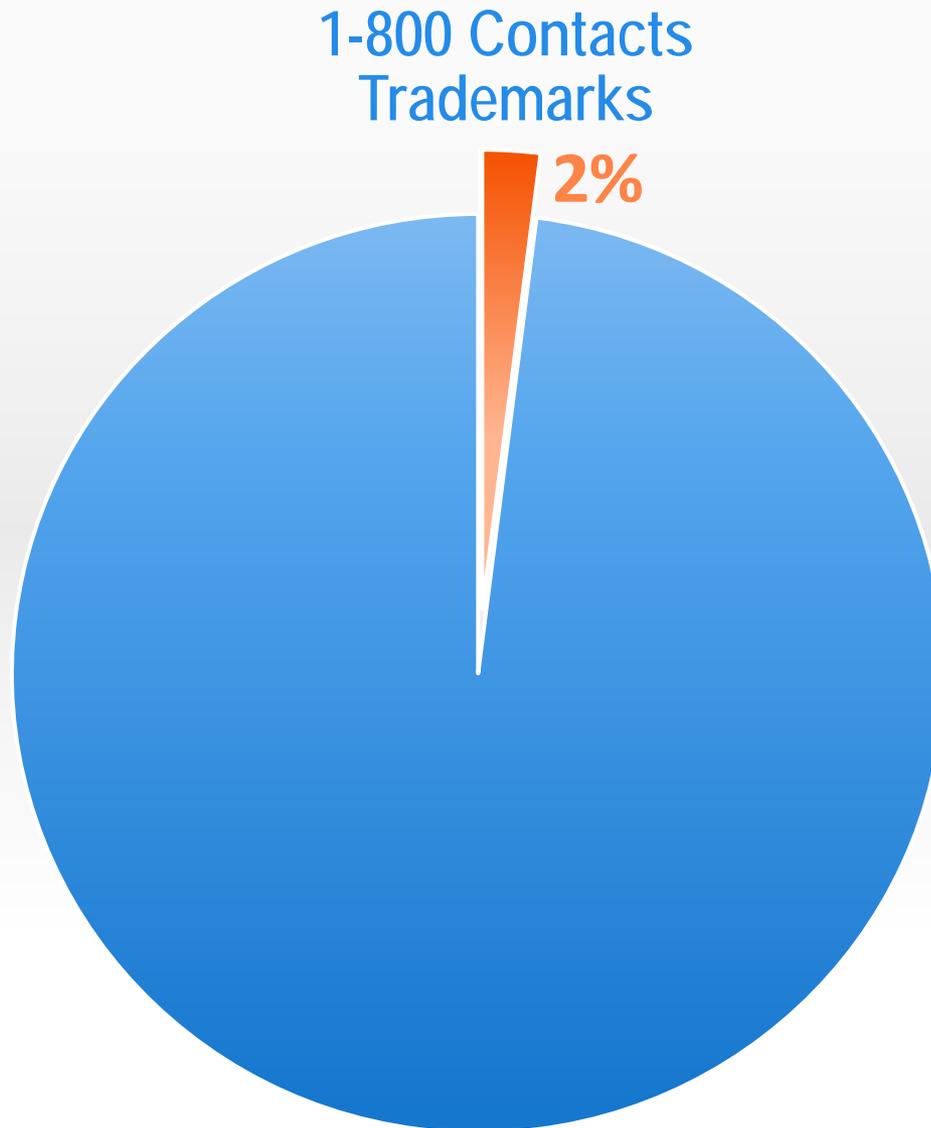
INJURY TO 1-800 CONTACTS AND THE PUBLIC

31. Memorial Eye's unauthorized use of the 1-800 CONTACTS Marks has continued to irreparably injure 1-800 CONTACTS by confusing customers, diverting sales, and diluting the distinctiveness of the 1-800 CONTACTS Marks. If permitted to continue, Memorial Eye's use of the 1-800 CONTACTS Marks will continue to irreparably injure 1-800 CONTACTS, the 1800 CONTACTS Marks, the reputation and goodwill associated with

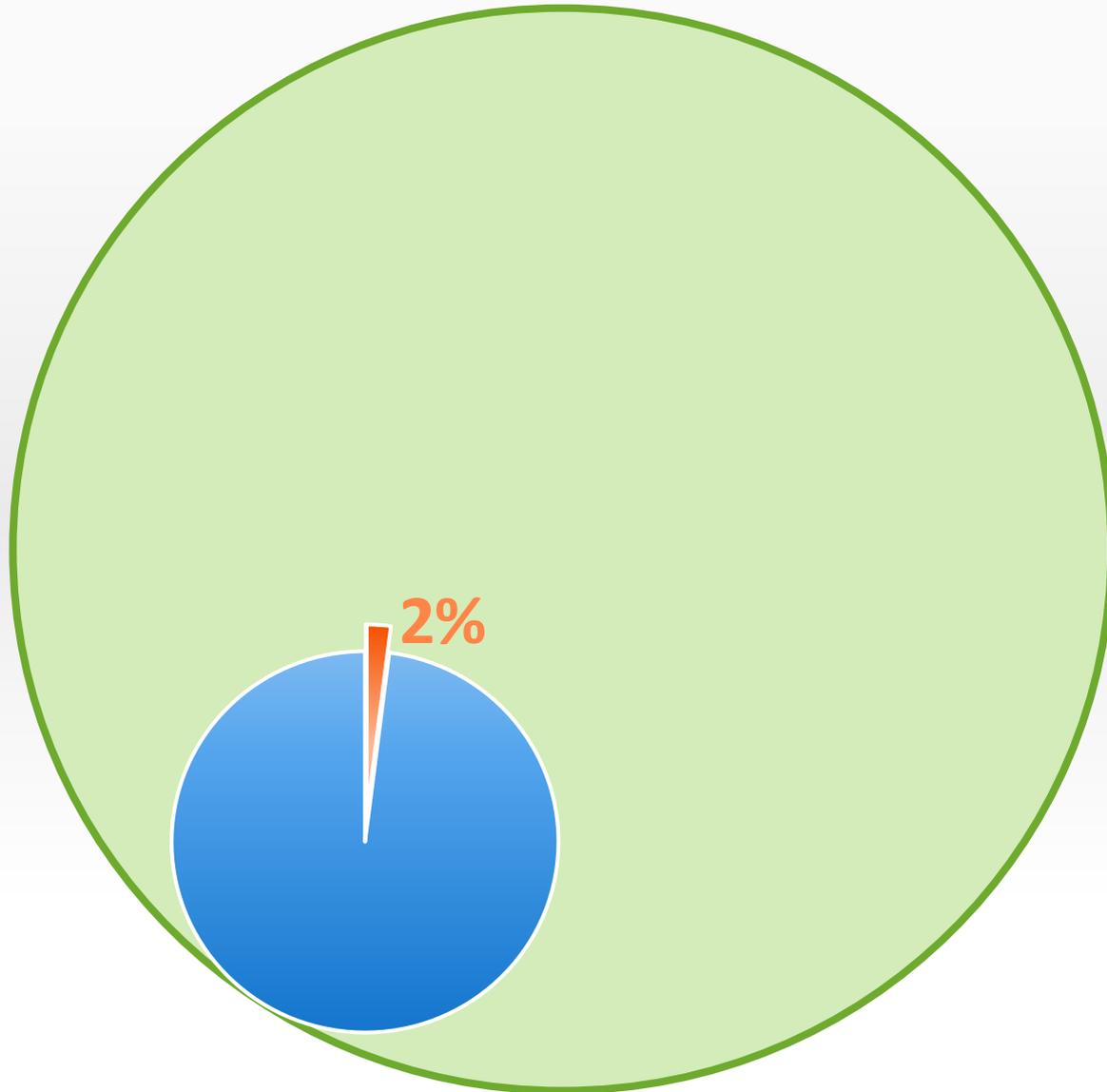
8



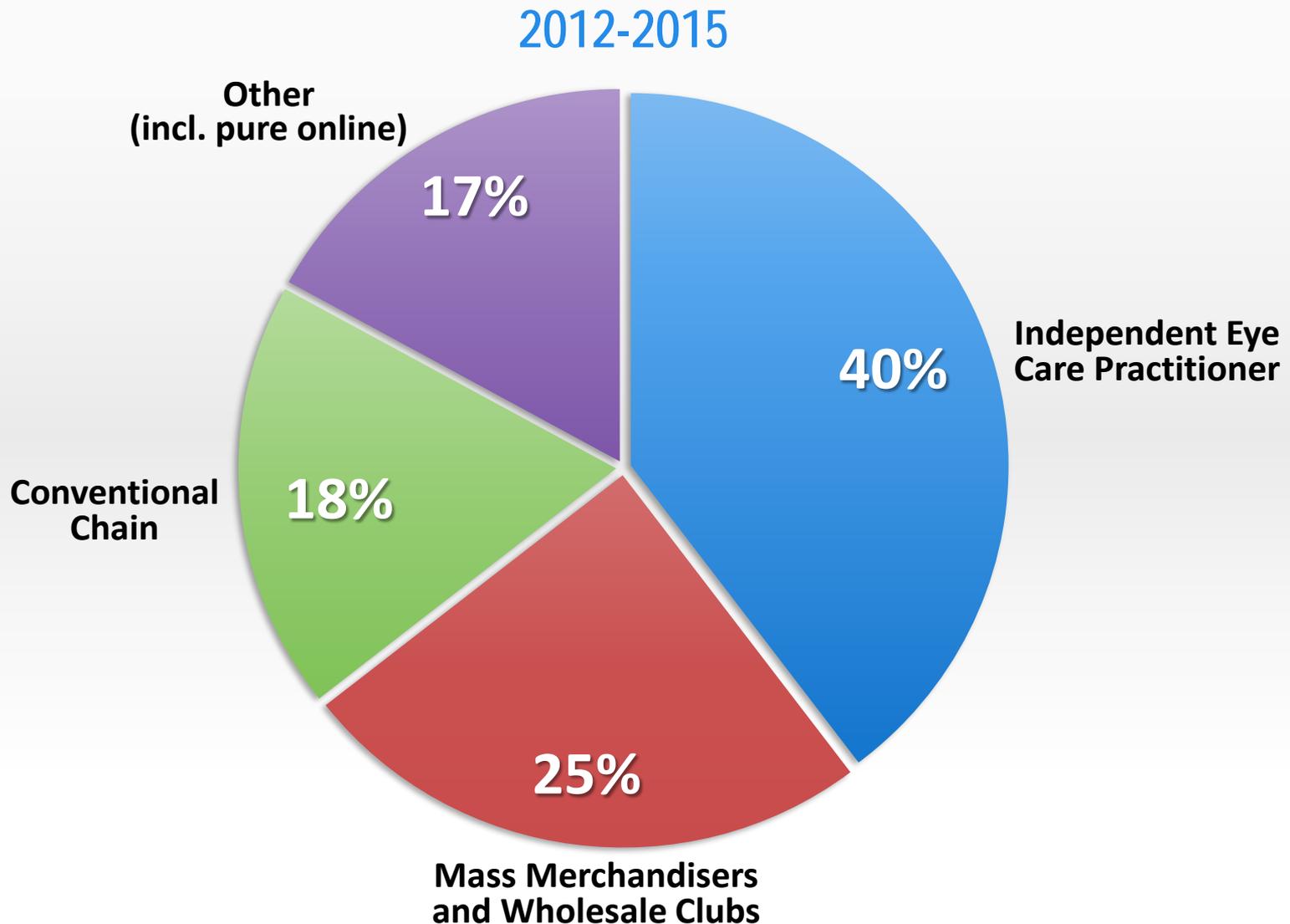
TM Searches Are a Small Fraction of Contact Lens-Related Searches



TM Searches Are An Even Smaller Fraction of Contact Lens-Related Advertising



Online Sales Are A Small Fraction Of Total Sales Of Contacts



"Unbound" Online Sellers of Contacts

Exhibit B: 1-800 Contacts' Unbound Competitors

Competitor name

| | | |
|------------------|--------------------|---------------------|
| Amazon | EyeBuyDirect | Lens factory |
| America's Best | Eyeconic | opticonacts |
| BJ's | Eyedia | pearlevision |
| Cheap contacts | Eyemart | Pricesmart contacts |
| Contactforlenses | Eyemart express | Samsclub |
| Contact Direct | Gotcontactlens.com | saveonlens.com |
| Costco | JC penney | Searsoptical |
| CVS | Lens.com | Target |
| Discount Lens | Lens Direct | Visionpros |
| ebay | Lens discounters | Visionworks |
| | | Walmart |

Consumers Know How to Shop Around



DR. SUSAN ATHEY

Q. Okay. Do you have any evidence that any consumer that searched for 1-800-CONTACTS did not know how to use generic searches for contact lenses?

MS. CLAIR: Objection to the form; vague.

THE WITNESS: I don't have any direct evidence about -- no.

CX 9043 (Athey Dep.) 261:16-21

Overview

Complaint Counsel Did Not Prove

- 1. That 1-800 Contacts did anything more than enter into commonplace settlements of viable claims.**
- 2. A contact lens market limited to online sales.**
- 3. Lower output or supracompetitive prices for contact lenses.**

No Actionable Conduct

No Actionable Conduct

Complaint Counsel did not prove:

1. That 1-800 Contacts did anything more than enter into commonplace settlements of viable claims.
2. A contact lens market limited to online sales.
3. Lower output or supracompetitive prices for contact lenses.

The Commission Favors Such Settlements

No. 12-416

In the Supreme Court of the United States

FEDERAL TRADE COMMISSION, PETITIONER

v.

WATSON PHARMACEUTICALS, INC., ET AL.

TO THE

2. Although the Patent Act does not expressly authorize the use of voluntary settlements to resolve patent-infringement suits, it is well-established that such agreements do not generally violate the antitrust laws.

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Br. of Pet'r, 2013 WL 267027, at *26 (Jan. 22, 2013)

The Commission Favors Such Settlements

No. 12-416

In the Supreme Court of the United States

FEDERAL TRADE COMMISSION

v.

WATSON PHARMACEUTICALS, INC.

ON WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

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When the parties to a Hatch-Waxman settlement simply agree upon a compromise date of generic entry, with no money or similar consideration flowing from the brand-name to the generic manufacturer, the settlement is unlikely to raise antitrust concerns. That is so for two basic reasons.

First, an agreement of that nature fits comfortably within traditional understandings of the way in which private litigation is generally settled. The typical settlement provides for a compromise outcome that falls between the dispositions that would result from judgments in favor of the plaintiff and defendant respectively.

Br. of Pet'r, 2013 WL 267027, at *27 (Jan. 22, 2013)

The Courts Favor Such Settlements

“[The Supreme Court] exempted ‘commonplace forms’ of settlement from scrutiny.”

In re Lipitor Antitrust Litig., 868 F.3d 231, 250 (3d Cir. 2017)
(quoting *FTC v. Actavis, Inc.*, 133 S. Ct. 2223, 2233 (2013))

“The [Supreme] Court noted that it did not intend to disturb commonplace settlement forms.”

In re Loestrin 24 Fe Antitrust Litig., 814 F.3d 538, 544 n.4 (1st Cir. 2016)

How Should *Actavis* Be Applied Here?

In deciding whether the settlements are to be subjected to antitrust scrutiny, the Commission should consider:

- 1. Was the challenged conduct potentially unlawful? Were the claims asserted legally viable?**
- 2. Should the Commission decide how the underlying cases would have come out? If so, can it conclude that in each case the court or jury would have found against 1-800 Contacts on its federal and state claims?**
- 3. Were the settlement agreements commonplace? Was the relief 1-800 Contacts obtained by settlement relief it could have obtained at trial? Did 1-800 Contacts pay the settling parties not to compete or to give it that relief?**

Lawsuits Asserted Viable Claims

COMPLAINT COUNSEL'S AMENDED RESPONSES AND OBJECTIONS TO RESPONDENT'S FIRST SET OF INTERROGATORIES (1-14)

Interrogatory No. 6

State whether Complaint Counsel contend that any Lawsuit or cease-and-desist letters by Respondent constituted or threatened “sham” litigation as defined by the Supreme Court in *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49 (1993).

. . . Subject to, and without waiving, these objections, Complaint Counsel states that it takes no position on whether any Lawsuit or cease-and-desist letters by Respondent constituted or threatened “sham” litigation as defined by the Supreme Court in *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49 (1993) (“PRE”), as this issue is not relevant to the Complaint in this matter. Complaint Counsel therefore does not contend that the lawsuits constituted “sham” litigation as defined by the Supreme Court in *PRE*.

-1-

RX0680-0001

ent constituted or threatened “sham” litigation as defined by the *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49 (1993).

-12-

RX0680-0012

b. 7, it constitutes Respondent's eighth interrogatory.

on to its General Objections, Complaint Counsel specifically objects to the use of the terms “a Keyword” and “navigating to” as vague and ambiguous. Complaint Counsel

-13-

RX0680-0013

RX0680-0012-13

20

Lawsuits Asserted Viable Claims

“Moreover, the Tenth Circuit has held that the purchase of another’s trademark through a search engine for the purpose of diverting internet traffic and using goodwill associated with that trademark, as alleged here, violates the Lanham Act.

Consequently, the Court finds that Plaintiff's claim is not baseless and, it is therefore, protected by Noerr–Pennington immunity.”

1-800 Contacts, Inc. v. Memorial Eye, P.A., Case No. 2:08-CV-983 TS, 2010 WL 988524, *6
(D. Utah Mar. 15, 2010)

“Because the district court and the Tenth Circuit agree that the underlying action was not baseless, this court agrees that Lens’ claims, all of which center on the proposition that 1-800 engaged in sham litigation, should be dismissed with prejudice.”

Lens.com, Inc. v. 1-800 Contacts, Inc., U.S. Dist. Ct., D. Utah, Case No. 2:12CV00352 DS, Order (Mar. 3, 2014)
(RX0573-002)

Purchasing a Trademarked Keyword Can, By Itself, Constitute Infringement

“Whether Defendants’ sponsored advertisements actually include Fair Isaac’s trademarks in the text is not determinative of whether there has been any infringement. . . . A factfinder will need to decide whether Defendants’ purchase of keywords including Fair Isaac’s trademarks, which caused Defendants’ websites to appear on the results page when a consumer ran an internet search consisting of those keywords, created a likelihood of confusion.”

Fair Isaac Corp. v. Experian Info. Sols., Inc., 645 F. Supp. 2d 734, 760-61 (D. Minn. 2009)

Purchasing a Trademarked Keyword Can, By Itself, Constitute Infringement

“The purchase of a competitor’s trademark to trigger search-engine advertising is precisely such a use in commerce, even if the trademark is never affixed to the goods themselves. In effect, one company has relied on its competitor’s trademark to place advertisements for its own products in front of consumers searching for that exact mark. The Lanham Act’s use requirement is not so narrow or cramped that it would fail to treat this conduct as a ‘use in commerce.’”

Hearts on Fire Co., LLC v. Blue Nile, Inc., 603 F. Supp. 2d 274, 282 (D. Mass. 2009)

Underlying Merits Should Not Be Adjudicated

In the Matter of Schering-Plough Corporation, et al.
Docket No. 9297

Opinion of the Commission

An after-the-fact inquiry by the Commission into the merits of the underlying litigation is not only unlikely to be particularly helpful, but also likely to be unreliable.

Finally, we have considered the serious uncertainties that would confront parties who seek to settle patent litigation if the Commission undertook to examine the underlying merits itself later on, and gave them conclusive weight.

136 F.T.C. 956, 997-98 (2003)

Underlying Merits Should Not Be Adjudicated

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

In the Matter of _____)

1-800 COM _____

For antitrust purposes, the Commission need not determine whether 1-800's infringement claims had merit, or who would have won any lawsuit.

D. Bruce H. _____
Acting Director

Geoffrey M. _____
Assistant Director

Barbara R. _____
Deputy Assistant Director

Charles A. _____
Chief Trial Counsel

Bureau of Consumer Protection

Whether 1-800 would have been able to demonstrate that any particular competitor advertisement challenged in its lawsuits infringed the company's trademark is immaterial.

Telephone: (202) 326-2075
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Email: dmatheson@ftc.gov

Counsel Supporting the Complaint

Dated: February 5, 2018

Complaint Counsel's Answering Brief to Respondent's Appeal Brief (Feb. 5, 2018) at 2, 45

The ALJ Found That The Settlements Were of Uncertain Claims

349. In 2013, Memorial Eye decided to settle the case because of the cost of litigation and legal uncertainty regarding the issue of advertisements that are triggered by broad matching of keywords.

FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

352. AC Lens made a business decision to settle with 1-800 Contacts in light of the potential costs and protracted nature of the litigation between the companies.

In the Matter of

1-800-CONTACTS, INC.

353. . . . Web Eye Care settled with 1-800 Contacts in part because of the risks of losing the litigation.

INITIAL DECISION

357. Dr. Evans agrees that, from the settling parties' perspectives, the settlements were economically rational.

Relief Obtained Was Within Court's Power

COMPLAINT COUNSEL'S SECOND AMENDED OBJECTIONS AND RESPONSES TO RESPONDENT'S REQUESTS FOR ADMISSION NOS. 17, 19, 22, 35

Request for Admission No. 19

Admit that the obligations of 1-800 Contacts' counterparties to the Challenged Settlement Agreements under those Agreements was relief that could have been awarded by a court if 1-800 Contacts had prevailed on one or more of the claims released in the Challenged Settlement Agreements.

Response to Request for Admission No. 19

Counsel admits that the obligations of 1-800 Contacts' counterparties to the Challenged Settlement Agreements under those Agreements was comparable to relief that a court of competent and appropriate jurisdiction would have had the legal authority to order if merited in an appropriate case. . . .

... Complaint

1

RX0679A-0001

4

RX0679A-0004

5

RX0679A-0005

Settlements Took a Commonplace Form



HOWARD HOGAN

Q. Okay. Did you reach a conclusion in your work in this case as to whether the 1-800 Contacts settlement agreements that you referred to are commonplace trademark settlement agreements?

A. Yes, I did.

Q. And what is your conclusion?

A. My conclusion is that the trademark settlement agreements at issue in this case are very typical of the kinds of agreements that I negotiated with numerous parties, both on behalf of trademark owners and on behalf of companies that are accused of trademark infringement.

Q. And would you say that these are commonplace agreements?

A. Yes. I -- I -- based on my experience, research and work to date, I can confidently say that these agreements are very commonplace in terms of the settlement agreements that are used to resolve these kinds of disputes.

No Market Power

No Market Power

Complaint Counsel did not prove:

1. That 1-800 Contacts did anything more than enter into commonplace settlements of viable claims.
2. A contact lens market limited to online sales.
3. Lower output or supracompetitive prices for contact lenses.

Congress Recognized Broad Competition



FAIRNESS TO CONTACT LENS CONSUMERS ACT

FAIRNESS TO CONTACT LENS CONSUMERS ACT

submitted the following

R E P O R T

[To accompany H.R. 3140]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, (to be inserted)

The consumer's right to a copy of their contact lens prescription means nothing unless consumers can fill that prescription at the business of their choice. Consumers are now offered a myriad of competitive options to fill contact lens prescriptions from the optometrist's office, to third party sellers like pharmacies, department stores, and Internet or mail order outlets. However, despite the range of options, consumers continue to face a difficult time getting prescriptions filled by alternative third party sellers due to prescription verification obstacles.

29-006

The Contact Lens Rule Assumed Broad Competition

The contact lens market has undergone significant change in recent years. The development of disposable soft contact lenses, followed by the growth of “alternative” retail sources of contact lenses (e.g., non-eye care practitioners), including mail order and Internet firms, and mass merchants, has given consumers a greater choice of sellers and means of delivery when they purchase contact lenses. Such choice can have important benefits to consumers. Competition among contact lens sellers benefits consumers through lower prices, greater convenience, and improved product quality.

Federal Register

Wednesday,
February 4, 2004

Part VI

Federal Trade Commission

16 CFR Parts 315 and 456
Contact Lens Rule; Ophthalmic Practice
Rules; Proposed Rule and Final Rule

No Evidence of Switching Based on Price Increase

Respondent correctly argues that consumers can switch between firms for reasons other than price, including service and convenience, and that the data relied upon by Dr. Evans did not convey what consumers would do in response to a price increase. RB at 85-86. Indeed, Dr. Evans did not know if the survey on which he relied asked consumers what they would do if 1-800 Contacts raised prices. F. 463. Thus, Dr. Evans relied upon switching data that did not directly measure diversion from 1-800 Contacts to other online retailers.

INITIAL DECISION

D. Michael Chappell
Chief Administrative Law Judge

Date: October 20, 2017

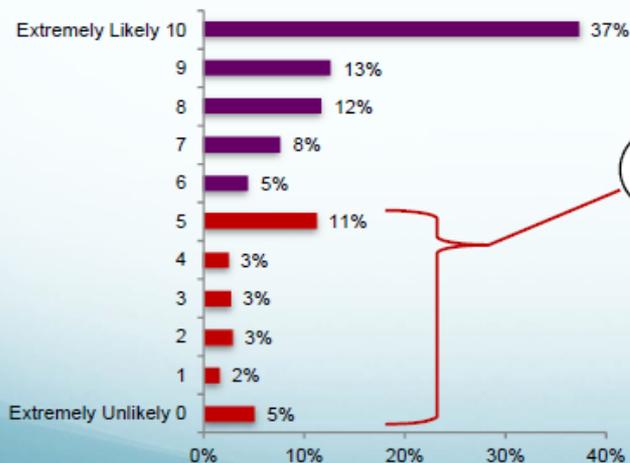
Initial Decision (Oct. 20, 2017) pp. 134-135

No Evidence of Switching Based on Price Increase

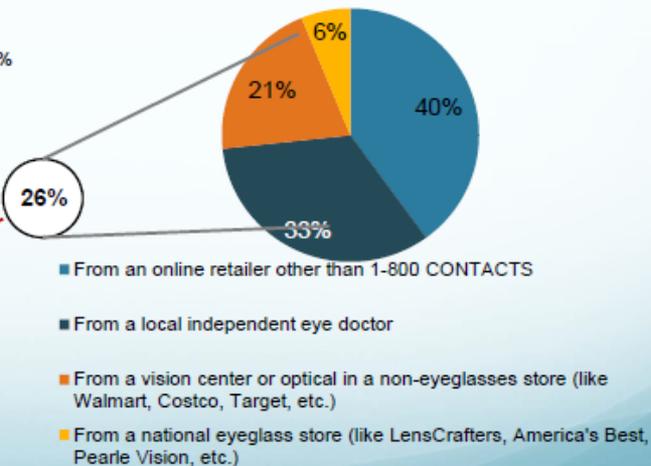
40% of those not likely to come back will go to another online supplier

74% of those surveyed from our “deadfile” are likely to buy from us with their next purchase.

What is the likelihood you will use 1-800 CONTACTS for your next contact lens purchase? (n=816)



Where those who are unlikely to buy from us next will go (n=210)



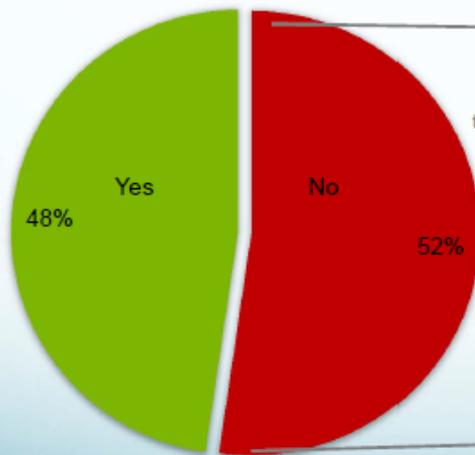
14

No Evidence of Switching Based on Price Increase

Half of those who have left us went to doctors

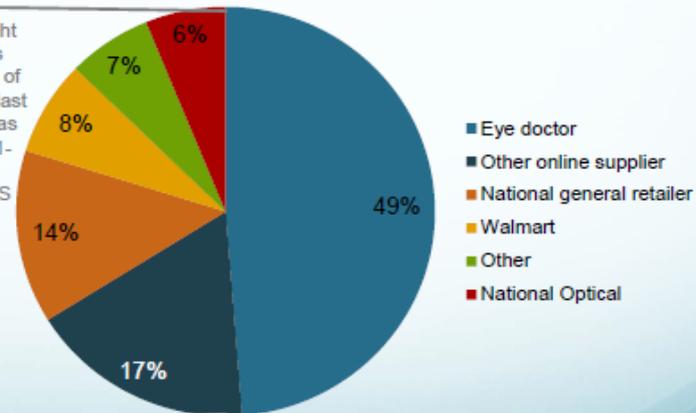
Half of those we're losing are going to their doctors.

Was your last purchase of contact lenses made from 1-800 CONTACTS?



Where did you make your most recent contact lens purchase? (n=490)

Chart on right represents composition of those who's last purchase was NOT from 1-800 CONTACTS



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No Barriers to Entry



DR. DAVID S. EVANS

Q. Are there what you would describe as barriers to entry to that market?

A. There are not barriers to entry in that market in the sense that anyone can set up a -- anyone can set up a website and anyone can start selling contact lenses and can go to a manufacturer and buy things.

Being an online seller of contact lenses, though, or being an online seller in anything does require the ability to use paid advertising effectively, at least when you're just starting out, so for online -- for online firms, the capital requirements tend not to be substantial. It's easy to go out and get a server. You can do everything in the cloud.

For online contact lens sellers -- but this would be true generally for firms getting into online sales -- the challenges to being successful are getting noticed online, so the challenge for any online seller is getting a prominent position in organic -- in organic search and then whatever issues there are in terms of -- in terms of paid advertising.

No Anticompetitive Effects

No Anticompetitive Effects

Complaint Counsel did not prove:

1. That 1-800 Contacts did anything more than enter into commonplace settlements of viable claims.
2. A contact lens market limited to online sales.
3. Lower output or supracompetitive prices for contact lenses.

No Evidence of Lower Output



DR. DAVID S. EVANS

Q. Do you intend to express an opinion at the trial or hearing in this matter that the output, that is, the number of contact lenses sold, has been reduced as a result of the settlement agreements?

A. I do not plan to do so.

CX 9042 (Evans Dep.) 263:17-21



DR. SUSAN ATHEY

Q. Dr. Athey, did you estimate any change in the output of contact lenses?

A. No.

Trial Transcript at 799:7-9

No Evidence More Ads Lowers Prices



DR. SUSAN ATHEY

Q. So you've done no empirical analysis of price elasticity, correct?

A. I've done no empirical analysis of the extent to which increases in searches -- increases in consumer information would impact prices.

CX 9043 (Athey Dep.) 222:17-21

No Evidence of Supracompetitive Prices



DR. DAVID S. EVANS

Q. Okay. And have you quantified what you think is the extent to which 1-800 Contacts' prices are higher than they would have been in the but-for world?

A. I have not.

CX 9042 (Evans Dep.) 257:6-9



DR. SUSAN ATHEY

Q. Okay. And have you conducted any empirical analysis to determine by how much prices would be lower in a world without the settlement than they were with the settlements?

A. No.

Q. Okay. And so you don't intend to offer an opinion about how much prices would be lower in a world without the settlements than they were with the settlements?

A. No.

CX 9043 (Athey Dep.) 201:13-22

**The Settlements Are Not
Inherently Suspect**

The Settlements Are Not Inherently Suspect

- *Clorox* – antitrust analysis of trademark settlement under rule of reason
- *Actavis* – reverse payments require a rule of reason analysis

The Settlements Are Not Inherently Suspect

Because search advertising is highly complex:

Effects not “obvious” from “economic learning” and “experience of the market”

Polygram Holding, Inc. v. FTC, 416 F.3d 29, 36 (D.C. Cir. 2005)

Not clear that an “observer with even a rudimentary understanding of economics could conclude that the arrangements in question would have an anticompetitive effect on customers and markets”

FTC v. Actavis, Inc., 133 S. Ct. 2223, 2237 (2013)

1 800 CONTACTS®

EXHIBIT 1

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Attorneys for Plaintiff



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

| | |
|--|---|
| <p>1-800 CONTACTS, INC. a Delaware corporation, Plaintiff, v. MEMORIAL EYE, PA d/b/a SHIPMYCONTACTS.COM, SHIP-MY- CONTACTS.COM, and IWANTCONTACTS.COM a Texas Professional Association, Defendant.</p> | <p>Case No.:</p> <p><u>COMPLAINT</u></p> |
|--|---|

Plaintiff 1-800 CONTACTS, INC. (“1-800 CONTACTS” or “Plaintiff”) for its Complaint against Defendant Memorial Eye, PA d/b/a SHIPMYCONTACTS.COM, IWANTCONTACTS.COM, and SHIP-MY-CONTACTS.COM (“Memorial Eye” or “Defendant”) alleges:

NATURE OF THE ACTION

1. This is a civil action for damages and injunctive relief arising out of Memorial Eye’s acts of trademark infringement, unfair competition, false designation of origin, false advertising, passing off, and unjust enrichment under federal, state and/or common law as a result of Memorial Eye’s wrongful acts, including willful infringement of 1-800 CONTACTS’ rights in the trademark 1800CONTACTS, 1-800 CONTACTS, and 1 800 CONTACTS (the “1-800 CONTACTS Marks”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) and (b). Upon information and belief, the parties are citizens of different states and the amount in controversy far exceeds the sum or value of seventy-five thousand dollars (\$75,000), exclusive of interest and costs, creating jurisdiction under 28 U.S.C § 1332. Jurisdiction over the state law claims is also appropriate under 28 U.S.C. § 1367(a) and principles of pendent jurisdiction.

3. This Court has personal jurisdiction over Memorial Eye. Upon information and belief, Memorial Eye conducts business in this District, having shipped contacts and other items to this District. In addition, Memorial Eye has purposefully availed itself of the privilege of acting in this District by, among other things, advertising via the Internet in this District and offering interactive websites at www.Shipmycontacts.com, www.iwantcontacts.com, and

www.ship-my-contacts.com (“the Memorial Eye Websites”) and various affiliate websites, which are accessible by Internet users throughout the country, including in this District, which permit users to register online, including in this District, and from which product can be ordered and shipped throughout the country, including in this District. See excerpts from the Memorial Eye Websites at **Exhibits A** and **B**. Memorial Eye has used the 1-800 CONTACTS Marks without authorization or consent from 1-800 CONTACTS, including in this District. The tortious conduct about which 1-800 CONTACTS complains has been committed by Memorial Eye in this District. Memorial Eye’s actions are aimed, at least in part, at this District.

4. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b). A substantial portion of the activity about which 1-800 CONTACTS complains has taken place in this District, and the damages suffered by 1-800 CONTACTS were suffered, at least in part, in this District.

5. Upon information and belief, Memorial Eye transacts business throughout the entire United States, including in the District of Utah. The unlawful acts committed by Memorial Eye, as hereinafter alleged, have been and are, in whole or in part, conceived, carried out and made effective within this District. The interstate trade or commerce described herein by Memorial Eye is carried out in part within this District.

THE PARTIES

6. Plaintiff 1-800 Contacts, Inc. is a Delaware corporation, with its principal place of business at 66 East Wadsworth Park Drive, Draper, Utah 84020.

7. Upon information and belief, Defendant Memorial Eye, PA. is a Professional Association with a mailing address and a principle place of business of 2470 Gray Falls Drive, Suite 150, Houston, TX 77077. See Whois record at **Exhibit C**. Defendant Memorial Eye operates throughout the United States including in the State of Utah.

8. Upon information and believe, Memorial Eye, Inc. also operates under the names iwantcontacts.com and ship-my-contacts.com.

9. The public records for the domain name “ship-my-contacts.com” show Memorial Eye P.A. as the owner of the domain name, at the address of 2470 Gray Falls Dr. Ste 150, Houston, TX 77077. See Whois record at [Exhibit D](#).

10. The public records for the domain name “iwantcontacts.com” show Memorial Eye P.A. as the owner of the domain name, at the address of 2470 Gray Falls Dr. Ste 150, Houston, TX 77077. See Whois record at [Exhibit E](#).

GENERAL ALLEGATIONS

1-800 CONTACTS’ ACTIVITIES AND PROPRIETARY RIGHTS

12. For over a decade, 1-800 CONTACTS has been and is now extensively engaged in the business of selling and distributing contact lenses and eye care products via telephone and fax, through the Internet and by mail (the “1-800 CONTACTS Goods and Services”). Indeed, 1-800 CONTACTS is the market leader in the field of replacement contact lenses, having filled over 16 million orders for over five million customers, with an inventory of over 20 million lenses. 1-800 CONTACTS’ products can be ordered over the Internet via Plaintiff’s website at www.1800contacts.com (the “1-800 CONTACTS Website”).

13. Since at least as early as 1995, the 1-800 CONTACTS Goods and Services have been widely advertised and offered in interstate commerce throughout the United States. The 1-800 CONTACTS Marks are used extensively in various advertising and promotional media, including the Internet, radio, television, trade shows, and through various printed media including direct mail.

14. 1-800 CONTACTS possesses common law and federal registration rights in the mark 1-800 CONTACTS, including U.S. Registration Nos. 2,675,866 and 2,731,114. Copies of these registrations and printouts from the U.S. Patent and Trademark Office database for such registrations are attached at **Exhibit F**.

15. U.S. Registration Nos. 2,675,866 and U.S. Registration No. 2,731,114 are incontestable and constitute conclusive evidence of 1-800 CONTACTS' ownership of the 1-800 CONTACTS Marks, its exclusive right to use the marks throughout the United States, and the validity of the registrations and the marks.

16. As a result of the quality of the 1-800 CONTACTS Goods and Services and the widespread promotion thereof under the 1-800 CONTACTS Marks, the 1-800 CONTACTS Goods and Services have met with substantial commercial success and widespread consumer recognition. As a further result, the 1-800 CONTACTS Marks are extensively known and have become symbols of Plaintiff, its quality products and services, and its goodwill.

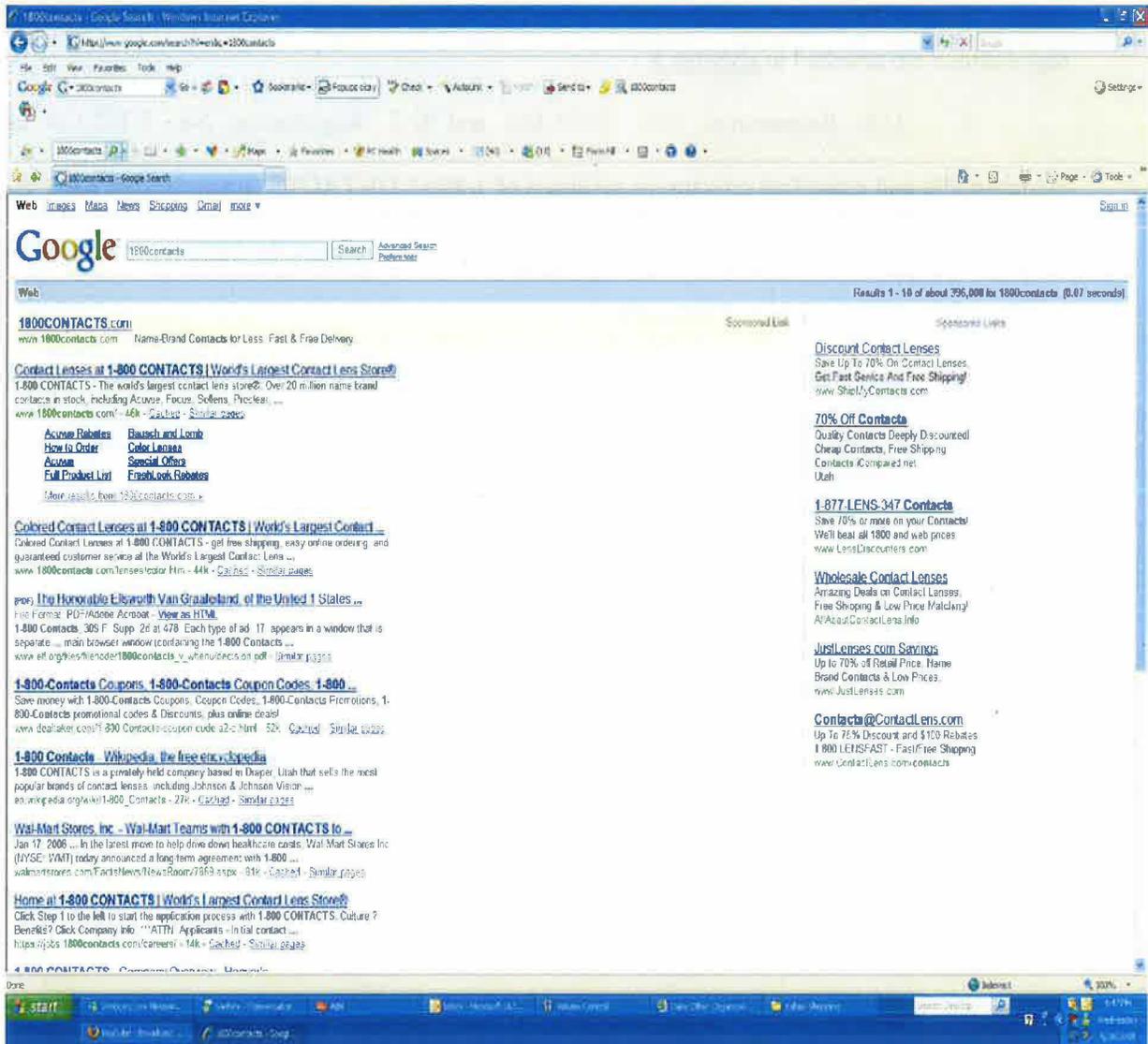
MEMORIAL EYE'S WRONGFUL ACTS

17. Like 1-800 CONTACTS, Memorial Eye offers the sale of replacement contact lenses over the Internet.

18. 1-800 CONTACTS discovered that Memorial Eye had purchased sponsored advertisements from Google, and other search engines, for Plaintiff's Marks to trigger advertising and/or a link to the Memorial Eye Websites. Such infringing activity was immediately brought to the attention of Memorial Eye.

19. Notwithstanding the receipt of the cease and desist letter, Memorial Eye refused to cease using the 1-800 CONTACTS Marks to trigger advertising. For example, a shown in the below screen shot, which was prepared April 30, 2008, when 1800CONTACTS entered into the

search box, links to www.shipmycontacts.com appear on the right side of the screen under the “Sponsored Links” section.



20. The www.shipmycontacts.com website advertisements are triggered upon a search for 1800CONTACTS and thus, use the 1800 CONTACTS trademark as a triggering keyword to display and promote Memorial Eye’s directly competitive goods and services. In

essence, Memorial Eye is using the 1-800 CONTACTS Marks to trick consumers into visiting the Memorial Eye Websites

21. Memorial Eye's actions are specifically aimed at diverting web users who are expressly looking for 1-800 CONTACTS and the 1-800 CONTACTS Goods and Services. Indeed, Memorial Eye goes even so far as to represent to consumers that it is 1-800 CONTACTS and/or that there is an affiliation between 1-800 CONTACTS and Memorial Eye by using a number of variations and mis-spellings of the 1-800 CONTACTS Marks to trigger the Memorial Eye ads.

**THE PARTIES' PAST HISTORY AND
MEMORIAL EYE'S INCESSANT INFRINGEMENT**

22. On or about September 13, 2005, 1-800 CONTACTS' in-house counsel, David Zeidner, contacted Memorial Eye in writing to notify Memorial Eye of the infringement. A copy of the letter is attached hereto as **Exhibit G.**

23. In response to the letter sent by David Zeidner, on or about October 13, 2005, Randall D. Luckey, outside counsel for Memorial Eye communicated to David Zeidner in writing that Memorial Eye would not cease their practices. A copy of the letter is attached hereto as **Exhibit H.**

24. On or about November 3, 2005, David Zeidner responded to Mr. Luckey informing and educating him on how his client could easily take actions to prevent the complained of actions from occurring. A copy of the letter is attached hereto as **Exhibit I.**

25. Shortly after the communication exchange between in-house counsel for Memorial Eye and 1-800 CONTACTS, Memorial Eye's infringement was reduced.

26. On or about September 12, 2007, 1-800 CONTACTS noted an increase in Memorial Eye's level of infringement. Consequently, Plaintiff's outside counsel, Bryan G. Pratt, sent a letter to Memorial Eye concerning Defendant's increasingly infringing acts. A copy of the letter is attached hereto as **Exhibit J**. No response was received from Memorial Eye and a near identical letter was subsequently sent on February 27, 2008, after another noticeable increase in Defendant's infringing acts.

27. On or about March 17, 2008, Memorial Eye's outside counsel, Randall D. Luckey, again responded to 1-800 CONTACTS' cease and desist letters by communicating that Memorial Eye would not cease their practices that cause advertisements for their company from appearing in response to searches for trademarks of 1-800 CONTACTS. A copy of the letter is attached hereto as **Exhibit K**

28. In spite of its previous recognition of the infringement, its knowledge of how to correct and stop the infringement as evidenced by its previous corrective measures, Memorial Eye took no action to remedy the infringement. In fact, upon receiving this communication, infringement by Memorial Eye actually increased.

29. 1-800 CONTACTS closely monitored the display of advertisements by Memorial Eye and not only observed advertisements for the Memorial Eye websites appearing in response to searches for trademarks of 1-800 CONTACTS, but also for confusingly similar variations of the trademark, such as 1800 contacts, 1 800 contacts, 1-800-contacts, and 1-800 contacts. Incredibly, advertisements for the Memorial Eye websites also appear for searches for 1800CONTACTS' website and for misspellings of the 1-800 CONTACTS marks such as 1800 contacts.com, 800 contacts, 1-800 contacts, 1800contacts.com, www.1800contacts.com, www.1800contacts, 1800contact, 1800cantacts, and 800contacts.

800 CONTACTS' reputation for exceedingly high-quality services and products, and the public interest in being free from confusion, mistake or deception.

32. Memorial Eye's use of the 1-800 CONTACTS Marks has caused and will continue to cause confusion, mistake or deception as to the source or origin of Memorial Eye's goods and services and is likely to falsely suggest a sponsorship, connection, license, endorsement or association of Memorial Eye's goods and services with 1-800 CONTACTS, thereby injuring 1-800 CONTACTS and the public.

33. Memorial Eye's use of colorable and confusingly similar imitations of the 1-800 CONTACTS Marks, including misspellings, hyphenation variations, and spacing variations, is part of a deliberate plan to trade on 1-800 CONTACTS' goodwill and otherwise unfairly compete with 1-800 CONTACTS and benefit therefrom. Memorial Eye knew of 1-800 CONTACTS' tremendous success and the 1-800 CONTACTS Marks and intentionally engaged in trademark infringement with full knowledge of 1-800 CONTACTS' rights and in the face of notice not to engage in such activities.

COUNT I

Federal Trademark Infringement

Violation of 15 U.S.C. § 1114

34. 1-800 CONTACTS incorporates by reference the allegations of Paragraphs 1-33 of this Complaint.

35. The unauthorized appropriation and use by Memorial Eye in commerce of the 1-800 CONTACTS Marks, in connection with goods and services that are identical or substantially similar to those offered by 1-800 CONTACTS, is likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Memorial Eye's services and commercial

activities, and thus directly, jointly, and/or contributorily infringes 1-800 CONTACTS' rights in its federally registered marks under 15 U.S.C. § 1114. Memorial Eye's actions have been carried out in willful disregard of 1-800 CONTACTS' rights in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

COUNT II

**Federal Unfair Competition, False Designation of Origin,
Passing Off, and False Advertising**

Violation of 15 U.S.C. §1125(a)

36. 1-800 CONTACTS incorporates by reference the allegations of Paragraphs 1 – 35 of this Complaint.

37. The unauthorized use by Memorial Eye of the 1-800 CONTACTS Marks in connection with Memorial Eye's business is likely to cause the public to mistakenly believe that Memorial Eye's contact lens replacement services originate from, are endorsed by, or are in some way affiliated with 1-800 CONTACTS and thus constitutes trademark infringement, false designation of origin, passing off, and unfair competition and is likely to cause the 1-800 CONTACTS Marks to lose their significance as indicators of origin. Likewise, Memorial Eye has used the 1-800 CONTACTS Marks in connection with false and misleading descriptions or representations of fact in commercial advertising or promotion, thereby misrepresenting the nature, characteristics, and qualities of their or another entity's goods, services, or commercial activities. Memorial Eye's actions are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

38. Upon information and belief, the appropriation of the 1-800 CONTACTS Marks by Memorial Eye as set forth above is part of a deliberate plan to trade on the valuable goodwill established therein. With knowledge of 1-800 CONTACTS and 1-800 CONTACTS' rights and

with the deliberate intention to unfairly benefit from 1-800 CONTACTS' goodwill, the actions of Memorial Eye have been carried out with willful disregard of 1-800 CONTACTS' rights and in violation of 15 U.S.C. Section 1125(a).

COUNT III

**Common Law Unfair Competition, Misappropriation,
and Trademark Infringement**

Unfair Practices Act – Utah Code Ann. §13-5-1 *et seq.*

39. 1-800 CONTACTS incorporates by reference the allegations of Paragraphs 1 – 38 of this Complaint.

40. By its aforesaid calculated conduct to increase business and profits by deceiving and confusing members of the public, Memorial Eye continues to misappropriate the valuable goodwill of the 1-800 CONTACTS Marks, to infringe 1-800 CONTACTS' rights therein, and to unfairly compete with 1-800 CONTACTS under the common law and the laws of Utah. Memorial Eye's use of the 1-800 CONTACTS Marks to promote, market or sell products and services constitutes an unfair practice under Utah Code Ann. §13-5-1 *et seq.* Memorial Eye's use of the 1-800 CONTACTS Marks is an unfair or deceptive method of competition occurring in trade or commerce that impacts the public interest and has caused and is causing injury to 1-800 CONTACTS and consumers.

COUNT IV

Unjust Enrichment

41. 1-800 CONTACTS incorporates by reference the allegations of Paragraphs 1 - 40 of this Complaint.

42. Memorial Eye is being unjustly enriched to the damage and irreparable harm of 1-800 CONTACTS.

DEMAND FOR RELIEF

WHEREFORE, 1-800 CONTACTS requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. That 1-800 CONTACTS is the owner of the entire right, title and interest in and to the 1-800 CONTACTS Marks, that the 1-800 CONTACTS Marks are valid, enforceable and violated by Memorial Eye and that Memorial Eye has violated and is violating other relevant federal and state laws and regulations.

B. That Memorial Eye, their Affiliates, agents, servants, employees, attorneys, and all persons in active concert or participation with them, be preliminarily and permanently enjoined and restrained from:

1. Further infringement of the 1-800 CONTACTS Marks and from unfairly competing with 1-800 CONTACTS; from using any variation of the 1-800 CONTACTS Marks and any other marks or names that are confusingly similar to or that dilute the distinctiveness of those proprietary materials, including but not limited to use as domain names, trademarks, services marks, business names, meta tags, sponsored advertisement triggers, other identifiers, keywords or other terms used to attract or divert traffic on the Internet or to secure higher placement within search engine search results; and

2. From representing by any means whatsoever, directly or indirectly, that Memorial Eye, any products or services offered by Memorial Eye, or any activities undertaken by Memorial Eye, are associated with, endorsed by, sponsored by or connected in any way with 1-800 CONTACTS.

C. That Memorial Eye willfully violated 1-800 CONTACTS' rights.

E. That Memorial Eye be required to pay to 1-800 CONTACTS' damages according to proof, together with prejudgment interest thereon, as 1-800 CONTACTS has sustained as a consequence of Memorial Eye's wrongful acts, and to account for and return to 1-800 CONTACTS any monies, profits and advantages wrongfully gained by Memorial Eye.

G. That all damages sustained by Memorial Eye be trebled.

H. That Memorial Eye be required to pay to 1-800 CONTACTS punitive and exemplary damages.

I. That Memorial Eye be required to pay to 1-800 CONTACTS all attorney fees, expenses and costs incurred in this action.

J. That 1-800 CONTACTS deliver up for impoundment during the pendency of this action, and for destruction upon entry of judgment, all products, fixtures, writings, signage, artwork and other materials that infringe 1-800 CONTACTS' rights, falsely designate source or origin, or otherwise facilitate Memorial Eye's unfair competition with 1-800 CONTACTS.

K. That an Order be issued directing Memorial Eye to file with this Court and serve on 1-800 CONTACTS' attorneys, within thirty (30) days after the date of entry of any injunction, a report in writing and under oath setting forth in detail the manner and form in which Memorial Eye has complied with the injunction.

L. That 1-800 CONTACTS be granted such further relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

1-800 CONTACTS hereby demands a trial by jury on all issues and claims so triable.

Respectfully submitted,

Date: December 23, 2008

By: s/Bryan G. Pratt

Bryan G. Pratt (9924)
RADER, FISHMAN & GRAUER, PLLC
10653 South River Parkway, Suite 150
South Jordan, UT 84095
Tel.: (801) 572-0185
Fax: (801) 572-7666
Email: bgp@raderfishman.com

Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained here in neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

1-800 CONTACTS, INC.

(b) County of Residence of First Listed Plaintiff Salt Lake (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Bryan G. Pratt, Esq., Rader Fishman & Grauer, PLLC 10653 South River Parkway, Suite 150, South Jordan, UT 84095

DEFENDANTS

MEMORIAL EYE, P.A. d/b/a Shipmycontacts.com, Ship-My-Contacts.com, and Iwantcontacts.com

County of Residence of First Listed Defendant Harris (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like Insurance, Real Estate, Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): 15 USC 1121; 28 USC 1331; 1338; 1367(a); 15 USC 1114, Lanham Act; 15 USC 1125(a)

Brief description of cause: Trademark Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE, DOCKET NUMBER

DATE 12/23/2008 SIGNATURE OF ATTORNEY OF RECORD /s/Bryan G. Pratt

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT, APPLYING IFP, JUDGE, MAG. JUDGE

Buttons: Print, Save As..., Export as FDF, Retrieve FDF File, Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below, federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ShipMyContacts.com - FAQ - Windows Internet Explorer
 http://www.shipmycontacts.com/faq.asp#shipping

ShipMyContacts.com - FAQ

FREE SHIPPING ON ALL ORDERS OVER \$79, IN THE U.S.!!

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[Biomedics](#)
[Encore Premium](#)
[Focus](#)

1. When will I receive my contacts?

Your prescription will be verified within 2 business days of your order. If your contact lenses are in stock, your order will ship out upon verification; otherwise, your order will ship out 2-3 business days after verification of your prescription.

Shipping options available to the 48 contiguous United States and the District of Columbia.

| Shipping Method | Shipping Schedule | Sub-Total | Shipping Charge |
|-----------------------|---------------------------------|------------|-----------------|
| USPS First Class Mail | 5-7 Business Days upon shipping | \$79+ | FREE |
| USPS First Class Mail | 5-7 Business Days upon shipping | under \$79 | \$5.95 |
| USPS Priority Mail | 3-4 Business Days upon shipping | \$79+ | \$6.95 |
| USPS Priority Mail | 3-4 Business Days upon shipping | under \$79 | \$9.95 |
| Expedited Shipping | 1-2 Business Days upon shipping | Any | \$25.95 |

Shipping options available to Alaska, Hawaii, Puerto Rico and other U.S. Territories.

| Shipping Method | Shipping Schedule | Sub-Total | Shipping Charge |
|-----------------------|---------------------------------|------------|-----------------|
| USPS First Class Mail | 5-7 Business Days upon shipping | \$79+ | FREE |
| USPS First Class Mail | 5-7 Business Days upon shipping | under \$79 | \$5.95 |
| USPS Priority Mail | 3-4 Business Days upon shipping | Any | \$9.95 |

2. Do you ship to international addresses?

We currently ship to Canada, Puerto Rico, APOs and FPOs. Orders shipping outside of the United States do not require prescription verification. Please be sure to enter your prescription correctly.

Please note that all prices on the site are reflected in United States dollars. Currency exchanges will be performed by your credit card company. Please direct any questions relating to currency exchange to your credit card company.

Internet 100%

FAQ

- Get Started
- Reorder
- Bookmark Us
- Product Search
- Top Brands
- Acuvue
- Biomedica
- Eyeon Premium
- Focus
- Frequency
- FreeBlock
- G2 Optix
- Proclear
- PureVision
- Softlens
- Vertax
- Categories
- Popular Lenses
- Bifocal Lenses
- Color Lenses
- Daily Disposable
- Disposables
- Toric Lenses
- Other Vist Lenses
- Manufacturers
- Bausch & Lomb
- Ciba Vision
- CooperVision
- Johnson and Johnson
- Ocuster Sciences

1. When will I receive my contacts?

Your prescription will be verified within 2 business days of your order. If your contact lenses are in stock, your order will ship out upon verification. Otherwise, your order will ship out 2-3 business days after verification of your prescription.

Shipping options available to the 48 contiguous United States and the District of Columbia.

| Shipping Method | Shipping Schedule | Sub-Total | Shipping Charge |
|-----------------------|---------------------------------|------------|-----------------|
| USPS First Class Mail | 3-5 Business Days upon shipping | \$77 | FREE |
| USPS First Class Mail | 3-5 Business Days upon shipping | under \$75 | \$3.95 |
| USPS Priority Mail | 3-4 Business Days upon shipping | \$72 | \$9.95 |
| USPS Priority Mail | 3-4 Business Days upon shipping | under \$75 | \$8.95 |
| Express Shipping | 1-2 Business Days upon shipping | Any | \$29.95 |

Shipping options available to Alaska, Hawaii, Puerto Rico and other U.S. Territories.

| Shipping Method | Shipping Schedule | Sub-Total | Shipping Charge |
|-----------------------|---------------------------------|------------|-----------------|
| USPS First Class Mail | 3-7 Business Days upon shipping | \$77 | FREE |
| USPS First Class Mail | 3-7 Business Days upon shipping | under \$75 | \$8.95 |
| USPS Priority Mail | 3-4 Business Days upon shipping | Any | \$9.95 |

2. Do you ship to international addresses?

We currently ship to Canada, Puerto Rico, APFs and FPOs. Orders shipping outside of the United States do not require prescription verification. Please be sure to enter your prescription correctly.

Please note that all prices on the site are reflected in United States dollars. Currency exchanges will be performed by your credit card company. Please direct any questions relating to currency exchange to your credit card company.

MVanContacts is not responsible for any customs delays or customs charges imposed by the destination country. Please note that customs duties and/or taxes are NOT included in the purchase price of your order. It is your responsibility to pay any customs duties and/or sales taxes to your customs department at the point of delivery.

Shipment going to international addresses may deliver between 6 to 10 days from shipment but may be delayed by your customs office.

Shipping options available to Canada

| Shipping Method | Shipping Schedule | Sub-Total | Shipping Charge |
|----------------------------------|----------------------------------|-----------|-----------------|
| USPS Priority Mail International | 6-12 Business Days upon shipping | Any | \$11.95 |

3. Where do I get my mail-in rebate certificate?

If your purchase qualifies for the mail-in rebate, the rebate certificate will be mailed with your contact lens order. Some brands will have a rebate certificate mailed separately, and you should receive it within one week. Please note that rebates are only valid for United States orders.

4. What is a Flexible Spending Account?

A Flexible Spending Account is a savings account that you set up through your employer as a tax-free savings to use towards qualified medical expenses. The money saved within this account is pre-tax money from your paycheck that must be used within the calendar year. Any money left in the account at the end of the year is lost. Once you have made a contact lens purchase, you must submit your receipt to your account administrator for reimbursement.

5. Can I use my Flexible Spending Account towards the purchase of contact lenses?

Yes, contact lens purchases are qualified as a medical expense. You can use your Flexible Spending Account towards the purchase of prescribed, non-colored contact lenses. However, you may not use the Flexible Spending Account towards the purchase of any colored lenses.

6. How can I order my contacts if I didn't see them listed?

Please email us with your contact lens information, and we will contact you with price and availability.

7. If I have vision insurance discounts, can I use them towards my online purchase?

Because of our competitive online prices, we do not offer any additional discounts; however, you may use the invoice provided to file the claim with your insurance.

8. What should I do if I receive a defective lens?

Manufacturer defects are rare, and we want to assure you that we provide the same quality lenses that your optometrist provides. All of our lenses are factory sealed. If you believe a lens is defective, please contact us immediately. If the manufacturer determines that the lenses are defective, we will replace any defective lenses.

9. What should I do if I do not receive what I ordered?

In case we have sent you an order in error, please contact us immediately to resolve the problem.

10. Return Policy

Do you accept returns?

We will accept any unopened and undamaged packages within 30 days of the delivery date for a full refund of the items, including the shipping charges. Any coupons that were applied to the order will be deducted from the refunded amount. Orders are subject to a \$6.95 handling fee. Unfortunately, we may not accept return items that are opened, damaged, or not in their original condition. We are also unable to accept items returned more than 30 days after their delivery date.

How do I return my lenses?

1. Before returning any items, you must first contact us to obtain a return authorization.
2. Once you receive your return authorization, please enclose a copy of your invoice with your order number and a reason for your return. Please explain what you would like us to do with your return.
3. Please ship the lenses via a traceable method. Please ship the contact lenses in a shipping box to prevent damage to them. Do not ship your contact lenses in a padded envelope. Unfortunately, we cannot accept responsibility for lost or damaged packages.
3. Please send your contact lens return to:

MVanContacts.com
2470 Gray Falls Dr. #150
Houston, TX 77071

EXHIBIT B

- Domain Names
- Web Sites & Hosting
- Online Marketing
- All Services
- Designer & Developer Community
- Education Center
- Manage Account

WHOIS Search Results

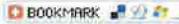
Your WHOIS Search Results



shipmycontacts.com

Make an instant, anonymous offer to the current domain registrant. [Learn More](#)

[Make an offer to buy this domain](#)



The data contained in GoDaddy.com, Inc.'s Whois database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, Inc. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, GoDaddy.com, Inc. is not the registrant of domain names listed in this database.

Registrant:
Memorial Eye, P.A.
2470 Gray Falls Dr. Ste 150
Houston, Texas 77077
United States

Registered through: GoDaddy.com, Inc. (<http://www.godaddy.com>)
Domain Name: SHIPMYCONTACTS.COM
Created on: 29-Sep-04
Expires on: 29-Sep-11
Last Updated on: 20-Feb-07

Administrative Contact:
Sanchez, Elio esanchez@memorialeyecenter.com
Memorial Eye, P.A.
2470 Gray Falls Dr. Ste 150
Houston, Texas 77077
United States
2815565353 Fax --

Technical Contact:
Sanchez, Elio esanchez@memorialeyecenter.com
Memorial Eye, P.A.
2470 Gray Falls Dr. Ste 150
Houston, Texas 77077
United States
2815565353 Fax --

Domain servers in listed order:
NS1 SHIPMYCONTACTS.COM
NS2 SHIPMYCONTACTS.COM

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GET THE ULTIMATE UPGRADE IN WEB HOSTING SOLUTIONS. 10 GB FREE PEACE OF MIND. 10 GB FREE STORAGE. ULTIMATE VERSATILITY.

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SEARCH AGAIN

Enter a search term:

e.g. networksolutions.com

Search by:

- Domain Name
- IP Address

[Search](#)

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.Internetprivacyadvocate.org.

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of high volume, automated, electronic processes that collect or compile data for any purpose, including mining this data for your own personal or commercial purposes, or

EXHIBIT C-001

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

[Show underlying registry data for this record](#)

Current Registrar: GODADDY.COM, INC.
IP Address: [72.167.162.131](#) (ARIN & RIPE IP search)
IP Location: US(UNITED STATES)
Record Type: Domain Name
Server Type: Apache 2
Lock Status: clientDeleteProhibited
Web Site Status: Active
DMOZ: no listings
Y! Directory: [see listings](#)
Web Site Title: ShipMyContacts.com - Easy - Affordable - Convenient - Contact Lenses
Meta Description: ShipMyContacts offers online contact lenses purchases at a competitive price. The most popular contact lens brands at the lowest prices. Includes Acuvue, Focus lenses, Freshlook, SofLens and more.
Meta Keywords: ship my contacts, shipmycontacts, rebates, contact lenses, online contacts, order contacts, Freshlook, Focus Night & Day, color contacts, contacts, free shipping, popular lenses, bifocal lenses, toric lenses, disposable lenses, daily disposables
Secure: Yes
E-commerce: Yes
Traffic Ranking: 4
Data as of: 22-Apr-2008



Need to get your business online?
 Our professional designers can build a [custom Web site](#) for your business.
 \$11.95/month, plus a \$499.00 design fee



Pay Per Click from Network Solutions
 Create and manage your [pay per click advertising](#) from as low as \$125/month plus \$99 one time set-up fee



EXHIBIT C-002

| | | | |
|---|---|--|--|
| SOLUTIONS TO GET ONLINE SOLUTIONS TO SELL ONLINE | SOLUTIONS TO GET CUSTOMERS PROFESSIONAL BUSINESS SOLUTIONS | SOLUTIONS FOR ONLINE SECURITY LEGAL & POLICY INFO | CORPORATE INFORMATION PROMOTIONS & OFFERS |
| RESOURCES CUSTOMER SUPPORT | | | |

SEARCH FOR A DOMAIN: .com  **Search**  **GET A FREE DOMAIN WITH HOSTING**

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100% Secure Transaction
For your protection, this Web site is secured with the highest level of SSL Certificate encryption.
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EXHIBIT C-003

WHOIS Search Results

Your WHOIS Search Results



ship-my-contacts.com

Make an instant, anonymous offer to the current domain registrant. [Learn More](#)

[Make an offer to buy this domain](#)



The data contained in GoDaddy.com, Inc.'s Whois database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, Inc. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, GoDaddy.com, Inc is not the registrant of domain names listed in this database.

Registrant:
Memorial Eye, P A
2470 Gray Falls Dr. Ste 150
Houston, Texas 77077
United States

Registered through: GoDaddy.com, Inc. (<http://www.godaddy.com>)
Domain Name: SHIP-MY-CONTACTS.COM
Created on: 15-Mar-05
Expires on: 15-Mar-10
Last Updated on: 15-Oct-07

Administrative Contact:
Sanchez, Elio esanchez@memorialeyecenter.com
Memorial Eye, P A
2470 Gray Falls Dr. Ste 150
Houston, Texas 77077
United States
281565353 Fax --

Technical Contact:
Sanchez, Elio esanchez@memorialeyecenter.com
Memorial Eye, P A
2470 Gray Falls Dr. Ste 150
Houston, Texas 77077
United States
281565353 Fax --

Domain servers in listed order:
NS07 DOMAINCONTROL.COM
NS08 DOMAINCONTROL.COM

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.Internetprivacyadvocate.org

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of any unsolicited commercial advertising or collection of data; or (2) direct mail, e-mail, telephone, or

.TEL is HERE
Tell the World How to Find You
Now Open [Learn More](#)

SEARCH AGAIN
Enter a search term:
e.g. networksolutions.com
Search by:
 Domain Name
 IP Address
[Search](#)

EXHIBIT D-001

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness

[Show underlying registry data for this record](#)

| | |
|--------------------|---|
| Current Registrar: | GODADDY.COM, INC. |
| IP Address: | 64.202.189.170 (ARIN & RIPE IP search) |
| IP Location: | US(UNITED STATES)-ARIZONA-SCOTTSDALE |
| Record Type: | Domain Name |
| Server Type: | Other |
| Lock Status: | clientDeleteProhibited |
| Web Site Status: | Active |
| DMOZ | no listings |
| Y! Directory: | see listings |
| Web Site Title: | ShipMyContacts.com - Easy - Affordable - Convenient - Contact Lenses ShipMyContacts offers online contact lenses purchases at a competitive price. |
| Meta Description: | The most popular contact lens brands at the lowest prices. Includes Acuvue, Focus lenses, Freshlook, SofLens and more. |
| Meta Keywords: | ship my contacts, shipmycontacts, rebates, contact lenses, online contacts, order contacts, Freshlook, Focus Night & Day, color contacts, contacts, free shipping, popular lenses, bifocal lenses, toric lenses, disposable lenses, daily disposables |
| Secure: | No |
| E-commerce: | No |
| Traffic Ranking: | Not available |
| Data as of: | 22-Apr-2008 |



Need to get your business online?
Our professional designers can build a [custom Web site](#) for your business.
\$11.95/month, plus a \$499.00 design fee

[Go](#)



Pay Per Click from Network Solutions
Create and manage your [pay per click advertising](#) from as low as \$125/month plus \$99 one time set-up fee

[Go](#)

EXHIBIT D-002

| | | | |
|---|---|--|--|
| SOLUTIONS TO GET ONLINE SOLUTIONS TO SELL ONLINE | SOLUTIONS TO GET CUSTOMERS PROFESSIONAL BUSINESS SOLUTIONS | SOLUTIONS FOR ONLINE SECURITY LEGAL & POLICY INFO | CORPORATE INFORMATION PROMOTIONS & OFFERS |
|---|---|--|--|

RESOURCES
CUSTOMER SUPPORT

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EXHIBIT D-003

- Domain Names
- Web Sites & Hosting
- Online Marketing
- All Services
- Designer & Developer Community
- Education Center
- Manage Account

Site Search

WHOIS Search Results

Your WHOIS Search Results



iwantcontacts.com

Make an instant, anonymous offer to the current domain registrant. [Learn More](#)

[Make an offer to buy this domain](#)



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10x GREATER DISK STORAGE **10x BETTER DATA TRANSFER**

GET THE ULTIMATE UPGRADE IN WEB HOSTING SOLUTIONS. ULTIMATE PEACE OF MIND. ULTIMATE STORAGE. ULTIMATE VERSATILITY.

[Learn More](#)

SEARCH AGAIN

Enter a search term:

e.g. networksolutions.com

Search by:

- Domain Name
- IP Address

[Search](#)

The data contained in GoDaddy.com, Inc.'s Whois database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, Inc. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, GoDaddy.com, Inc. is not the registrant of domain names listed in this database.

Registrant

Memorial Eye, P A
2470 Gray Falls #150
Houston, Texas 77077
United States

Registered through GoDaddy.com, Inc. (<http://www.godaddy.com>)

Domain Name: IWANTCONTACTS.COM

Created on 22-Jun-07

Expires on 22-Jun-10

Last Updated on 29-Mar-08

Administrative Contact

Sanchez, Elio esanchez@memorialeyecenter.com
Memorial Eye, P A
2470 Gray Falls #150
Houston, Texas 77077
United States
(281) 556-5353 Fax --

Technical Contact:

Sanchez, Elio esanchez@memorialeyecenter.com
Memorial Eye, P A
2470 Gray Falls #150
Houston, Texas 77077
United States
(281) 556-5353 Fax --

Domain servers in listed order:

NS1 IWANTCONTACTS.COM
NS2 IWANTCONTACTS.COM

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the reproduction of spam, (2) create automated systems, (3) collect or compile data for any purpose, (4) mine, (5) sell, (6) transfer, (7) rent, (8) lease, (9) license, (10) distribute, (11) disseminate, (12) sublicense, (13) create derivative works, (14) create a new database, (15) create a new website, (16) create a new application, (17) create a new service, (18) create a new product, (19) create a new business, (20) create a new company, (21) create a new organization, (22) create a new entity, (23) create a new person, (24) create a new legal entity, (25) create a new legal person, (26) create a new legal entity, (27) create a new legal person, (28) create a new legal entity, (29) create a new legal person, (30) create a new legal entity, (31) create a new legal person, (32) create a new legal entity, (33) create a new legal person, (34) create a new legal entity, (35) create a new legal person, (36) create a new legal entity, (37) create a new legal person, (38) create a new legal entity, (39) create a new legal person, (40) create a new legal entity, (41) create a new legal person, (42) create a new legal entity, (43) create a new legal person, (44) create a new legal entity, (45) create a new legal person, (46) create a new legal entity, (47) create a new legal person, (48) create a new legal entity, (49) create a new legal person, (50) create a new legal entity, (51) create a new legal person, (52) create a new legal entity, (53) create a new legal person, (54) create a new legal entity, (55) create a new legal person, (56) create a new legal entity, (57) create a new legal person, (58) create a new legal entity, (59) create a new legal person, (60) create a new legal entity, (61) create a new legal person, (62) create a new legal entity, (63) create a new legal person, (64) create a new legal entity, (65) create a new legal person, (66) create a new legal entity, (67) create a new legal person, (68) create a new legal entity, (69) create a new legal person, (70) create a new legal entity, (71) create a new legal person, (72) create a new legal entity, (73) create a new legal person, (74) create a new legal entity, (75) create a new legal person, (76) create a new legal entity, (77) create a new legal person, (78) create a new legal entity, (79) create a new legal person, (80) create a new legal entity, (81) create a new legal person, (82) create a new legal entity, (83) create a new legal person, (84) create a new legal entity, (85) create a new legal person, (86) create a new legal entity, (87) create a new legal person, (88) create a new legal entity, (89) create a new legal person, (90) create a new legal entity, (91) create a new legal person, (92) create a new legal entity, (93) create a new legal person, (94) create a new legal entity, (95) create a new legal person, (96) create a new legal entity, (97) create a new legal person, (98) create a new legal entity, (99) create a new legal person, (100) create a new legal entity.

EXHIBIT E-001

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

[Show underlying registry data for this record](#)

Current Registrar: GODADDY.COM, INC.
IP Address: [72.167.162.130](#) (ARIN & RIPE IP search)
IP Location: US(UNITED STATES)
Record Type: Domain Name
Server Type: Apache 2
Lock Status: clientDeleteProhibited
Web Site Status: Active
DMOZ: no listings
Y! Directory: [see listings](#)
Web Site Title: IWantContacts.com - The Doctors' Choice - Contact Lenses
Meta Description: Iwantcontacts offers online contact lenses purchases at a competitive price. We always have the best prices. Includes Acuvue contacts, Focus lenses, Freshlook, SofLens and more.
Meta Keywords: iwantcontacts, contact lenses, online contacts, order contacts, Acuvue, Freshlook, Focus Night & Day, color contacts, contacts, bifocal lenses, toric lenses, disposable lenses, daily disposables
Secure: Yes
E-commerce: Yes
Traffic Ranking: 3
Data as of: 22-Apr-2008



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Create and manage your [pay per click advertising](#) from as low as \$125/month plus \$99 one time set-up fee



EXHIBIT E-002

| | | | |
|---|---|--|--|
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| | RESOURCES CUSTOMER SUPPORT | | |

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AWARD WINS





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EXHIBIT E-003

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,731,114

United States Patent and Trademark Office

Registered July 1, 2003

**SERVICE MARK
PRINCIPAL REGISTER**

1 800 CONTACTS

1-800 CONTACTS, INC. (DELAWARE CORPORATION)
66 EAST WADSWORTH PARK DRIVE
3RD FLOOR
DRAPER, UT 84020

FOR: MAIL ORDER AND TELEPHONE ORDER SERVICES IN THE FIELD OF CONTACT LENSES AND RELATED PRODUCTS, AND ELECTRONIC RETAILING SERVICES VIA COMPUTER FEATURING CONTACT LENSES AND RELATED PRODUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 7-13-1998; IN COMMERCE 7-13-1998.

APPLICANT CLAIMS THE COLORS YELLOW, BLUE AND WHITE AS PART OF THE MARK. THE BOX BEHIND THE WORD "CONTACTS" IS YELLOW. THE BORDER AROUND THE YELLOW BOX BEHIND THE WORD "CONTACTS" IS BLUE. THE BOX BEHIND THE TERM "800" IS BLUE. THE NUMBER ONE AND THE WORD "CONTACTS" ARE WRITTEN IN BLUE. THE TERM "800" IS WRITTEN IN WHITE.

SEC. 2(F) AS TO 1800 CONTACTS

SER. NO. 76-138,625, FILED 10-2-2000.

RONALD MCMORROW, EXAMINING ATTORNEY

EXHIBIT F-001

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,675,866

Registered Jan. 21, 2003

**SERVICE MARK
PRINCIPAL REGISTER**

1800CONTACTS

1-800 CONTACTS, INC. (DELAWARE CORPORATION)
66 EAST WADSWORTH PARK DRIVE, 3RD FLOOR
DRAPER, UT 84020

FOR: MAIL ORDER AND TELEPHONE ORDER
SERVICES IN THE FIELD OF CONTACT LENSES
AND RELATED PRODUCTS, AND ELECTRONIC
RETAILING SERVICES VIA COMPUTER FEATUR-
ING CONTACT LENSES AND RELATED PRO-
DUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102)

FIRST USE 7-0-1995; IN COMMERCE 7-0-1995

SEC. 2(F)

SER. NO. 75-746,706, FILED 7-8-1999

RONALD MCMORROW, EXAMINING ATTORNEY

EXHIBIT F-002

September 13, 2005

Memorial Eye, P.A.
2470 Gray Falls #120
Houston, Texas 77077

Re: Trademark Infringement of 1800 CONTACTS Trademark in Sponsored Advertisements at Google and Related Search Engines.

To Whom It May Concern:

My name is David Zeidner, and I am Legal Counsel for 1800 CONTACTS, INC.

As you know, 1800 CONTACTS is one of the nation's leading distributors of contact lenses. To protect its reputation and good will among consumers, 1800 CONTACTS aggressively polices the use of its copyrights and trademarks.

Recently it has come to my attention that you are engaged in a targeted scheme to infringe upon the 1800 CONTACTS trademark in that you have purchased sponsored advertisements at Google, and possibly at other search engines, for the 1800 CONTACTS trademark to trigger a link to your directly competitive www.shipmycontacts.com website, via a search through AOL. At least one of these advertisements has been purchased through Google's AdWords Program. I have attached a screen shot of the infringing action by your company, for your reference.

Your advertisement is triggered upon a search for "1800 CONTACTS" and thus, uses the 1800 CONTACTS trademark as a triggering keyword to advertise for your directly competitive goods and services. This is willful and blatant trademark infringement that is damaging to 1800 CONTACTS and its established rights in its 1800 CONTACTS trademark. You have no legitimate right to use the 1800 CONTACTS trademark in this manner, and it is readily apparent that such usage is a deliberate and willful attempt to trade off the goodwill established by 1800 CONTACTS in its famous 1800 CONTACTS trademark by diverting web users legitimately looking for 1800 CONTACTS products/services to your www.shipmycontacts.com web page.

1800 CONTACTS is very concerned about this unauthorized and illegal use of its valuable 1800 CONTACTS trademark and is prepared to take whatever legal steps necessary to protect the value and integrity of this trademark. 1800 CONTACTS is intent upon stopping this trademark infringement and hereby demands:

1. that you immediately cease and desist from any and all infringing activities with respect to the 1800 CONTACTS trademark, and
2. that you immediately removal ALL sponsored advertisements you have purchased through Google, Yahoo Search, and any and other search engines which are triggered by the 1800 CONTACTS trademark.

Further, I request that you confirm in writing within three (3) business days of your receipt of this letter that you and all persons or entities associated with you will comply with our demands. If I do not hear from you or your attorney within three (3) business days of your receipt of this letter, I will assume that you intend to ignore our demands, and 1800 CONTACTS will take all further legal action necessary to resolve this matter.

Be aware that under the Lanham Trademark Act a trademark owner proving trademark infringement may be entitled to 1) injunctive relief; 2) the infringer's profits; 3) any damages sustained by the trademark owner; and/or 4) litigation costs. Further, infringement of a registered trademark under the Lanham Act could subject you, as a willful infringer, to treble damages.

I look forward to hearing from you within the three (3) business days as requested. I can be reached by telephone at 801-924-9800 or at the mailing address provided on the bottom of the first page of this letter, or by email at dzeidner@contacts.com.

Sincerely,



David Zeidner
Legal Counsel
1800 CONTACTS, INC.

EXHIBIT G-002

Search Term: 1800contacts.com

Search Results Page:

<http://search.aol.com/aolcom/search?invocationType=topsearchbox.search&query=1800contacts.com>

- 1) www.shipmycontacts.com

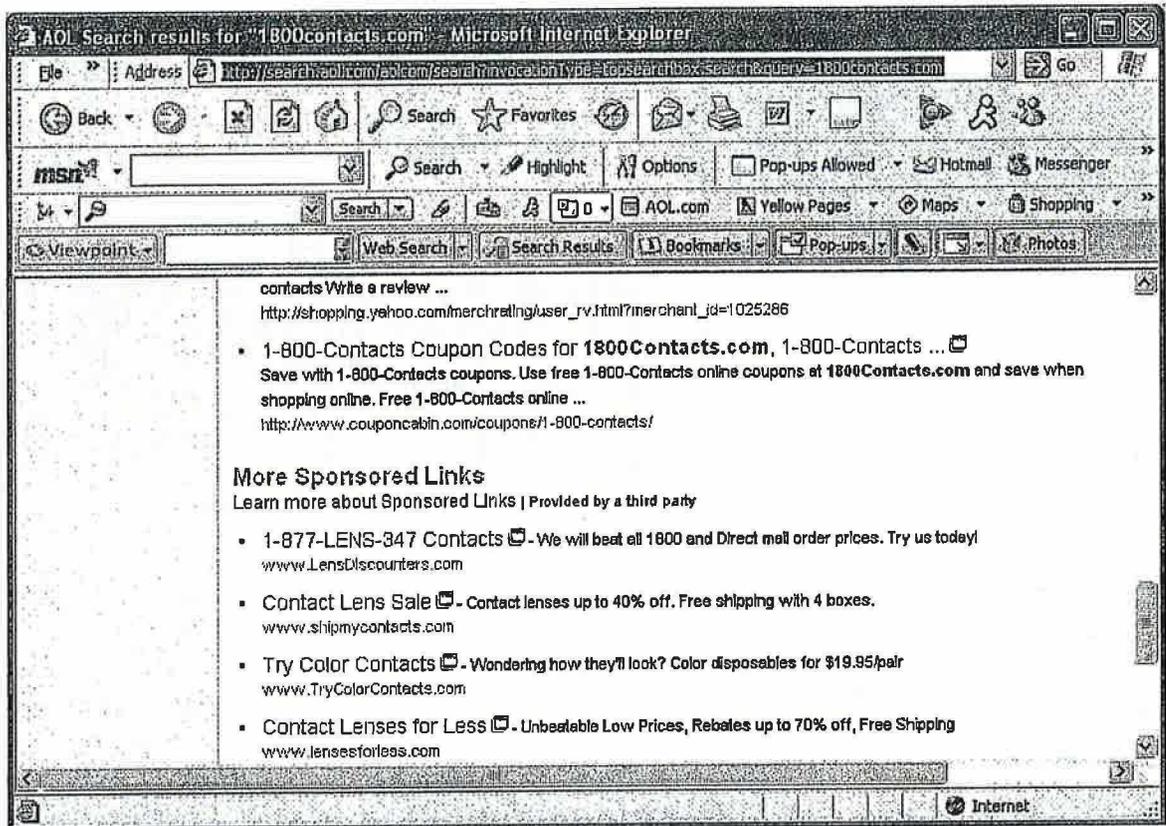


EXHIBIT G-003

From: Origin ID: (801)924-9834
SAMANTHA BLAIR
1-800 CONTACTS, INC
66 EAST WADSWORTH PARK DRIVE

DRAPER, UT 84020



CLS96120508/19

Ship Date: 16SEP05
Actual Wgt: 1 LB
System#: 6041440/INET2200
Account#: S *****

REF:



Delivery Address Bar Code

SHIP TO: (281)556-5353 **BILL SENDER**
Beverly Cline
Memorial Eye, P.A.
2470 Gray Falls, #120

Houston, TX 77077



PRIORITY OVERNIGHT

MON

TRK# 7925 2919 0839

FORM 0201

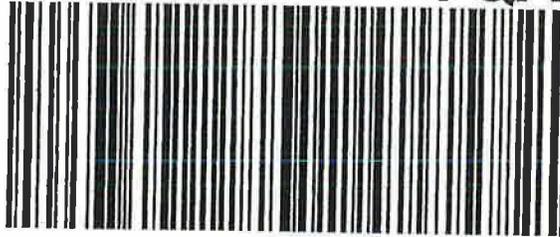
Deliver By:
19SEP05

IAH

A2

77077 -TX-US

XH JGQA



Shipping Label: Your shipment is complete

1. Use the 'Print' feature from your browser to send this page to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

EXHIBIT G-004

https://www.fedex.com/cgi-bin/ship_it/unity/7BhRz2CcWr8AfZs0AfRr7AaQz7DaSs4DcRq4CfRz0GgWw... 9/16/2005

CONFIDENTIAL – FTC Docket No. 9372

1-800F_00082056

RX0072-0034

10/12/2005 07:42 7135226940

R LUCKEY

PAGE 01

RANDALL D. LUCKEY*Attorney at Law*3 Riverway, Suite 1800
Houston, Texas 77056-----
(713) 622-4079
(713) 622-6940 (Fax)

October 13, 2005

Mr. David Zeidner
Legal Counsel
1800 Contacts
66 East Wadsworth Park
3rd Floor
Draper, Utah 84020Certified Mail, R.R.R.
and Facsimile (801) 924-9905

Re: Alleged Trademark Infringement of "1800 Contacts" Trademark in Sponsored Advertisements at Google and Related Search Engines

Dear Mr. Zeidner:

I represent Memorial Eye, P.A. ("Memorial Eye"- "www.shipmycontacts") in connection with the allegations made in your letter dated September 13, 2005.

In that letter you have alleged, among other things, that Memorial Eye has "engaged in a targeted scheme to infringe upon 1800 Contacts Trademark". You have, mistakenly and groundlessly, assumed and charged that Memorial Eye has used your Company's trademark as a triggering keyword for its sponsored advertisements with Google and other search engines.

Memorial Eye has never used, or even considered using, your Company's trademark in its sponsored advertisements, or even as a search phrase trigger. The fact that your Company's "mark" includes the generic word "contacts" will obviously result in a search triggering a multitude of other contact lens sites, including legitimate sponsored advertisements.

Memorial Eye's "sponsored link" in the "search shot" sent with your September 13th letter makes absolutely no reference to your Company's mark. The heading for the sponsored advertisements clearly indicates the ads are third party sponsored advertisements.

EXHIBIT H-001

10/12/2005 07:42 7135226940

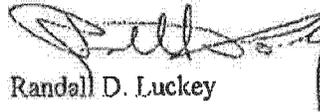
R LUCKEY

PAGE 02

Page 2

If you have any further comments or questions regarding this response to your letter please contact the undersigned.

Yours very truly



Randall D. Luckey

cc: Mr. Eric Holbrook
Memorial Eye, P.A.

EXHIBIT H-002

November 3, 2005

Randall D. Luckey
3 Riverway, Suite 1800
Houston, Texas 77056

Re: www.shipmycontacts.com

Dear Mr. Luckey:

I am in receipt of your letter dated October 13, concerning the infringement of the 1800 CONTACTS trademark by your client Memorial Eye.

In your letter you indicated that the screen shot sent with my original letter makes absolutely no reference to the 1800 CONTACTS trademark. This is in fact not correct. You will note that the search term used to trigger a link to your client's website is in fact 1800CONTACTS.COM. I have attached another screen shot for your reference showing your client's infringement of the 1800 CONTACTS trademark. Please note at the bottom of the page the term 1800contacts.com is the term used in the search box.

Therefore, your client is in fact using the 1800 CONTACTS trademark as a triggering keyword to advertise for their directly competitive goods and services. 1800 CONTACTS does not allow third parties to use any of their trademarks in "third party sponsored advertisements," as you have indicated in your letter.

This is willful and blatant trademark infringement that is damaging to 1800 CONTACTS and its established rights in its 1800 CONTACTS trademark. Your client has no legitimate right to use the 1800 CONTACTS trademark in this manner, and it is readily apparent that such usage is a deliberate and willful attempt to trade off the goodwill established by 1800 CONTACTS in its famous 1800 CONTACTS trademark by diverting web users legitimately looking for 1800 CONTACTS products/services to your client's web page found at www.shipmycontacts.com. 1800 CONTACTS is very concerned about this unauthorized and illegal use of its valuable 1800 CONTACTS trademark and is prepared to take whatever legal steps necessary to protect the value and integrity of this trademark. 1800 CONTACTS is intent upon stopping this trademark infringement and hereby demands:

1. That you immediately cease and desist from any and all infringing activities with respect to the 1800 CONTACTS trademark, and
2. That you immediately removal ALL sponsored advertisements you have purchased through Google, Yahoo Search, and any and other search engines which are triggered by the 1800 CONTACTS trademark.

Below are the steps that you need to follow to ensure that your ads are not displayed for 1800 CONTACTS trademarked keywords.

1. Ensure that none of our trademarked keywords are in your paid-search campaigns.
2. Add the following negative keywords to any campaigns containing search terms related to contact lenses.

1800contact
1800contacts
1800 contact
1800 contacts
1-800-contact
1-800-contacts
1-800 contact
1-800 contacts
1800contacts.com
1 800 contact
1 800 contacts
800 contact
800 contacts
800contact
800contacts
www.1800contact
www.1800contacts
contacts.com
lens express
lenses express

These terms can be added directly in the Google and Yahoo interfaces or the Client Services teams from each network should be able to help you the advertiser get these key words added. In Google the above terms need to be added as "negative keywords" and in Yahoo they will be called "excluded terms".

Further, I request that you confirm in writing within three (3) business days of your receipt of this letter that you and all persons or entities associated with you will comply with our demands. If I do not hear from you or your attorney within three (3) business

EXHIBIT I-002

days of your receipt of this letter, I will assume that you intend to ignore our demands, and 1800 CONTACTS will take all further legal action necessary to resolve this matter.

Be aware that under the Lanham Trademark Act a trademark owner proving trademark infringement may be entitled to 1) injunctive relief; 2) the infringer's profits; 3) any damages sustained by the trademark owner; and/or 4) litigation costs. Further, infringement of a registered trademark under the Lanham Act could subject you, as a willful infringer, to treble damages.

I look forward to hearing from you within the three (3) business days as requested. I can be reached by telephone at 801-924-9800 or at the mailing address provided on the bottom of the first page of this letter. You may also email me at dzeidner@contacts.com.

Sincerely,



David Zeidner
Legal Counsel
1800 CONTACTS, INC.

EXHIBIT I-003

AOL Search results for "1800contacts.com" - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Address: http://search.aol.com/aolcom/search?kwlocationType=topsearch&query=1800contacts.com

Google Search

16 blocked

AutoLink

Options

http://www.edealinfo.com/Coupons/1800contacts.shtml

Looking for contact lens ? You can find contact lens here !
 1800CONTACTS.com. Back to School Free Shipping. 1800CONTACTS.com - We make it ...
 1800CONTACTS.com - Contact Lenses. Your exact prescription and brand of ...
 http://search.w.km.ua/contact-lens.html

CPY Document
 1800contacts.com/email/legal/Started_04.gif. Dear Jacqueline. Last year, Congress passed the Fairness to
 Contact Lens Consumers Act of 2003. ...
 http://www.ftc.gov/oss/comments/contactlensrule04-02235-0401.pdf

lens - Find, Compare, and Buy lens at Shopping.com
 1800CONTACTS.com World's largest contact lens store. We make it simple. www.1800contacts.com - Nikon
 Camera Zoom Lenses Accessories you need for Digital or ...
 http://www.shopping.com/KGS-lens

1 2 3 4 5 6 7 8 9 10 next

sponsored links

Try Color Contacts
 Wondering how they'll look? Color disposables for \$19.95/pair
 www.TryColorContacts.com

Cheap Contacts
 Find Contact Deals And Information Fast And Easy!
 Contact-1.net

Contact Lens Sale
 Contact lenses up to 40% off. Free shipping with 4 boxes.
 www.shipmycontacts.com

Contact Lenses for Less
 Unbeatable Low Prices, Rebates up to 70% off, Free Shipping
 www.lensesforless.com

keep searching web for:

1800contacts.com

AOL

Home & discover City Guide Government Guide MapQuest Moviefone Pinnpoint Shopping Mobile Search
 White Pages Yellow Pages AOL.com Pinnpoint Travel Link to us Legal Web directory

AOL International AOL Inc. Download AOL Accessibility Policy GetNetUse Terms of Use
 Revised Member Privacy Policy Trademarks AOL Unsolicited Bulk Email Policy
 Advertise With Us Feedback Help

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EXHIBIT I-004

CONFIDENTIAL - FTC Docket No. 9372

1-800F_00082062

Received

10653 S. River Front Pkwy., Suite 150
South Jordan, UT 84095
Tel: (801) 572-0185
Fax: (801) 572-7666

RADER,

FISHMAN

& GRAUER

PLLC

VIA FEDERAL EXPRESS

Bryan G. Pratt
(801) 572-0185
bgp@raderfishman.com

September 12, 2007

Elio Sanchez
Memorial Eye, P.A.
2470 Gray Falls Dr. Ste 150
Houston, Texas 77077
United States

Re: Unauthorized Use of the 1800CONTACTS and 1800 CONTACTS
Trademarks; Use of 1800 CONTACTS, INC.'s Trademarks in Sponsored
Advertisements at Google and Related Search Engines
Our Ref: 40302-00012

Dear Mr. Sanchez:

We act as outside intellectual property counsel for 1800 CONTACTS, INC. We have been asked by our client to advise you of 1800 CONTACTS, INC.'s rights to the trademarks 1800CONTACTS and 1800 CONTACTS. It has come to our attention that you are engaged in a targeted scheme to infringe upon the 1800 CONTACTS and 1800CONTACTS trademarks. More specifically, you have purchased sponsored advertisements at Google, and possibly other search engines, for at least one of the 1800 CONTACTS or 1800CONTACTS trademarks, or a confusingly similar variation thereof, to trigger a link to your directly competitive www.shipmycontacts.com website.

As you are undoubtedly aware, our client is extensively engaged in the business of marketing and distributing contact lenses and contact lens care products. 1800 CONTACTS, INC. has been engaged in these activities for over a decade, and our client has distributed contact lenses throughout the United States under its federally registered 1800 CONTACTS and 1800CONTACTS marks. Additionally, our client has applied for and been granted numerous trademark registrations for its 1800 CONTACTS mark and variations thereof. Our client has received the following U.S. registrations related to its 1800 CONTACTS mark:

EXHIBIT J-001

*Worldwide Intellectual Property Matters • Patents • Trademarks • Litigation • Copyrights • U.S. and Foreign Portfolio Management
Computer and Internet Law • Trade Secrets • Unfair Competition*

Bloomfield Hills

Washington, D.C.

Salt Lake City

Tokyo

Elio Sanchez
 Memorial Eye, P.A.
 September 12, 2007
 Page 2

RADER,
FISHMAN
& GRAUER
 PLLC

| MARK | NUMBER | DATE |
|---------------|-----------|------------|
| 1800 CONTACTS | 2,731,114 | 10/02/2000 |
| 1800CONTACTS | 2,675,866 | 07/08/1999 |

Our client's contact lens distribution services, as well as the products provided by our client in connection therewith, are well-known and highly regarded by consumers and competitors alike. In addition, our client has expended considerable resources in promoting its contact lens distribution services and eye care products under these marks through various media, including newspapers, magazines, other print advertisements, radio and television advertisements, and the World Wide Web. As a result, the public has come to recognize these marks as a symbol of our client, its quality services, and its goodwill.

In the face of our client's valuable prior rights, we are concerned that you have continually purchased sponsored advertisements at Google, and possibly other search engines, that are triggered upon a search for "1800 CONTACTS," or a confusingly similar variation thereof. Your use of the 1800 CONTACTS trademark as a triggering keyword to advertise for your directly competitive goods and services is an obvious attempt to trade off the goodwill established by 1800 CONTACTS, INC. in its famous 1800 CONTACTS trademark. The use of the mark 1800 CONTACTS and/or any confusingly similar variation of the mark as a keyword in the United States may constitute trademark infringement under state and federal law in that it is likely to cause initial interest confusion, or likely to cause the public to mistakenly assume that your business activities originate from, are sponsored by, or are in some way associated with 1800 CONTACTS, INC. For the same reasons, such use may constitute unfair competition and false advertising under state law and similarly may violate Section 43(a) of the Trademark Act, 15 U.S.C. §1125(a), as a "false designation of origin." Your activities may also violate the Federal Dilution Act of 1995, 15 U.S.C. §1125(c).

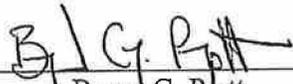
Under the circumstances, we request that you cease and desist from further use of the mark 1800 CONTACTS, and confusingly similar variations thereof in the United States. Further, we request that you immediately remove ALL sponsored advertisements that you have purchased through Google, Yahoo Search, and any other search engines which are triggered by the 1800 CONTACTS trademark or a confusingly similar variation thereof. Additionally, we demand that you incorporate the attached list of negative keywords in any continued sponsored advertisement campaigns. Moreover, we request that you confirm in writing that you will comply with our requests. Failing to hear from you within the next three (3) days, we will assume that you intend to ignore our requests, and we will take appropriate action as authorized by our client.

EXHIBIT J-002

Elio Sanchez
Memorial Eye, P.A.
September 12, 2007
Page 3

RADER,
FISHMAN
& GRAUER
PLLC

Very truly yours,
RADER, FISHMAN & GRAUER PLLC



Bryan G. Pratt

BGP/clj

cc: David Zeidner
Brandon Dansie

EXHIBIT J-003

RANDALL D. LUCKEY

Attorney at Law
3 Riverway, Suite 1800
Houston, Texas 77056

(713) 622-4079
(713) 622-6940 (Fax)

March 17, 2008

Mr. Bryan G. Pratt
Rader, Fishman & Grauer PLLC
10653 S. River Front Pkwy.
Suite 150
South Jordan, Utah 84095

Certified Mail, R.R.R.

Re: Alleged Unauthorized Use of "1800Contacts " and "1800 Contacts" Trademarks in Sponsored Advertisements at Google and Related Search Engines

Dear Mr. Pratt:

I represent Memorial Eye, P.A. ("Memorial Eye"- "www.shipmycontacts") in connection with the allegations made in your letter dated February 27, 2008.

In that letter you have alleged , among other things, that Memorial Eye has "engaged in a targeted scheme to infringe upon the 1800 Contacts or 1800Contacts Trademarks".

As indicated in my previous letter dated October 13, 2005 to Mr. David Zeidner of 1800 Contacts, Inc. [which was in response to an almost identical letter from Mr. Zeidner dated September 13, 2005], you have again, mistakenly and groundlessly, assumed and charged that Memorial Eye has used 1800 Contacts, Inc.'s trademarks as triggering keywords for its sponsored advertisements with Google and other search engines.

Memorial Eye has never used, or even considered using, 1800 Contacts, Inc.'s trademarks in its sponsored advertisements, or even as a search phrase trigger. The fact that 1800 Contacts, Inc.'s "marks" include the generic word "contacts" will obviously result in a search triggering a multitude of other contact lens sites, including legitimate sponsored advertisements.

Memorial Eye's "sponsored link" in the "search shot" sent with your February 27th letter makes absolutely no reference to 1800 Contacts, Inc.'s mark. The heading for the sponsored advertisements clearly indicates the ads are third party sponsored advertisements.

EXHIBIT K-001

Page 2

If you have any further comments or questions regarding this response to your letter please contact the undersigned.

Yours very truly



Randall D. Luckey

cc: Mr. Eric Holbrook
Memorial Eye, P.A.

EXHIBIT K-002

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

| | |
|---|--|
| <p>1-800 CONTACTS, INC., a Delaware corporation</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>LENSWORLD.COM, INC., a New Jersey corporation,</p> <p style="text-align: right;">Defendant.</p> | <p style="text-align: center;">ORDER OF DEFAULT JUDGMENT</p> <p style="text-align: center;">Civil No. 2:08-cv-015-SA</p> <p style="text-align: center;">Judge Dale A. Kimball</p> |
|---|--|

ORDER

WHEREAS this Court has jurisdiction of the parties hereto and of the subject matter hereof, and venue is proper in this Court; and

WHEREAS Defendants have failed to plead or otherwise defend as provided by these rules; and

WHEREAS Defendants are neither an infant nor an incompetent person;

The Court, having considered the Motion for Default Judgment of Plaintiff 1-800 Contacts, Inc., along with the memoranda, exhibits, and arguments presented by the parties, hereby Orders as follows:

1. An Entry of Default is granted to Plaintiff.
2. Defendant shall not purchase Plaintiff's federally registered trademarks, or confusingly similar variations of Plaintiff's federally registered trademarks, as keywords for any search engine advertising program.

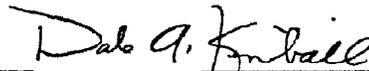
1

A968

3. Defendant shall incorporate terms and conditions that prevent their affiliates from purchasing Plaintiff's federally registered trademarks, or confusingly similar variations of Plaintiff's federally registered trademarks, as keywords for any search engine advertising program.
4. Defendant shall implement the negative keywords attached hereto as Exhibit A in any search engine advertising program campaign, where possible, for so long as any one of Plaintiff's federally registered trademarks remain active.
5. Defendant shall incorporate terms and conditions requiring their affiliates to implement the negative keywords attached hereto as Exhibit A in any search engine advertising program campaign performed for the benefit of Defendant, where possible, for so long as any one of Plaintiff's federally registered trademarks remain active.
6. Defendant shall expire any affiliate that does not comply with implementing the negative keywords attached hereto as Exhibit A.
7. Defendant shall provide a signed declaration to the court 30 days after the signing of this Order, declaring that this Order has been fully complied with.
8. Defendant shall pay Plaintiff's reasonable expenses incurred in filing this suit, including attorney's fees, as approved by this Court.

BY THE COURT:

Dated: September 9, 2008



Honorable Dale A. Kimball
U.S. District Judge

Exhibit A

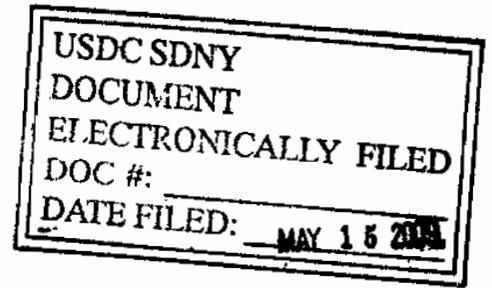
Negative Key Word List of 1-800 Contacts, Inc.:

1 800 contact
1 800 contacts
1800 contacts
1-800 contacts
1800.contacts
1800contact
1800contacts
1-800-contacts
1800contacts.com
800 contacts
800.contacts
800contacts
lens express
Lensexpress
Aquasoft
Aquasoft Complete Vision System
Evision
The World's Largest Contact Lens Store
Exact Same Contact Lenses, Delivered to Your
Door, for Less Than You're Paying Now
We Make it Simple
We Deliver You Save
www.1800contacts.com
www.1800contacts.net
www.1800contacts.org
www.1800contacts.com
www.1800contacts.net
www.1-800contacts.com
www.1-800contacts.net
www.800contacts.com
www.800contacts.net
www.contacts.com
www.lens1st.com
www.lensfirst.com
www.lensexpress.com
www.lensexpress.net

A970

EXHIBIT 3

DANIELS, S.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

1-800 CONTACTS, INC.,)
)
 Plaintiff,)
)
 -vs.-)
)
 VISION DIRECT, INC.,)
)
 Defendant.)
 -----)
 VISION DIRECT, INC.,)
)
 Counterclaim-Plaintiff,)
)
 -vs.-)
)
 1-800 CONTACTS, INC.,)
)
 Counterclaim-Defendant.)

Civil Case No.: 08-cv-01949 (GBD)

ECF Case

ORDER OF PERMANENT
INJUNCTION

WHEREAS, 1-800 Contacts, Inc. commenced the above-captioned action on or about February 27, 2008 (the "Action");

WHEREAS, without any admission of liability, 1-800 Contacts, Inc. and Vision Direct, Inc. (collectively the "Parties") and drugstore.com, inc. have reached agreement for the settlement and dismissal of the Action, the full terms and conditions of which are set forth in a document entitled Settlement Agreement and Mutual Release effective May 8, 2009 (the "May 8, 2009 Settlement Agreement");

WHEREAS, the May 8, 2009 Settlement Agreement is conditioned upon entry by the Court of a permanent injunction on the terms and conditions set forth herein;

WHEREAS, the Parties stipulate and agree that this Court has jurisdiction to enter a permanent injunction on the following terms and conditions, in order to protect the Parties' legitimate interests in protecting their respective trademarks, and that the Court shall have continuing jurisdiction for purposes of enforcing the Injunction; and

WHEREAS, the Court finds good cause for entry of a permanent injunction on the terms and conditions set forth below in order to protect the Parties' rights in their respective trademarks;

IT IS HEREBY ORDERED AS FOLLOWS:

1. **The Parties shall implement negative keywords in accordance with paragraphs 2, 3, and 4 of this Permanent Injunction for the purpose of preventing a Party's Internet advertising from appearing in response to a search for another Party's (1) trademarks, (2) any identical or confusingly similar variation of the Party's trademarks, (3) domain names containing the Party's trademarks, (4) domain names containing any identical or confusingly similar variation of the Party's trademarks, (5) URLs containing the Party's trademarks, or (6) URLs containing any identical or confusingly similar variation of the Party's trademarks.**
2. **In order to comply with the terms of this Permanent Injunction, Vision Direct, Inc. and drugstore.com, inc. shall implement the negative keywords set forth on Exhibit A hereto on or in connection with Internet keyword advertising for the sale of contact lenses.**
3. **In order to comply with the terms of this Permanent Injunction, 1-800 Contacts, Inc. shall implement the negative keywords set forth on Exhibit B hereto on or in connection with Internet keyword advertising for the sale of contact lenses.**
4. **The Parties may, between themselves, supplement or modify the list of negative keywords set forth on Exhibits A or B pursuant to the procedure set forth in the May 8, 2009 Settlement Agreement. Any such supplementation or modification of the list of negative keywords set forth in Exhibits A or B shall have the same force and effect as if appended to this Permanent Injunction. Unless necessary to enforce the terms of this Permanent Injunction, any such supplementation or modification of the list of negative keywords set forth in Exhibit A or B shall not be submitted to the Court.**
5. **Absent a further order by this Court, this Injunction shall expire and be of no further force and effect upon the submission to the Court by the Parties of a Joint Stipulation to Dissolve Injunction.**
6. **This Permanent Injunction shall be effective without the posting of any bond or undertaking by any Party.**

7. The entry of this Permanent Injunction shall be the final adjudication of this Action, which is otherwise dismissed with prejudice. Each Party shall bear its own costs and fees. This Court shall retain continuing jurisdiction over this matter for purposes of enforcing, implementing or construing this Order of Permanent Injunction.

IT IS SO ORDERED:

DATED: May 14 2009

MAY 15 2009



HON. GEORGE B. DANIELS
HON. GEORGE B. DANIELS

EXHIBIT A

| | |
|--------------------|----------------------|
| 1 800 CONTACTS | WWW.1800CONTACTS.COM |
| 1-800 CONTACT | 1 800 CONTACT |
| 1-800 CONTACTS | 1 800 CONTACT.COM |
| 1-800-CONTACT | 1 800 CONTACTS.COM |
| 1-800-CONTACT.COM | 1 800CONTACT |
| 1-800-CONTACTS | 1 800CONTACTS |
| 1-800-CONTACTS.COM | 1800 CONTACTS.COM |
| 1-800CONTACT | 1800 CONTACT.COM |
| 1800 CONTACT | 1800CONTAC |
| 1800 CONTACTS | 1800CONTACTS |
| 1800.CONTACT | WWW.1800CONTACT |
| 1800.CONTACTS | WWW.1800CONTACTS |
| 1800CONTACT | 1800 CONTACTS.COM |
| 1800CONTACT.COM | 1-800CONTACTS |
| 1800CONTACTS | 800CONTACT.COM |
| 1800CONTACTS.COM | 800CONTACTS.COM |
| 800 CONTACT | WWW.1800CONTACT.COM |
| 800 CONTACTS | LENS EXPRESS |
| 800CONTACT | LENSES EXPRESS |
| 800CONTACTS | LENSE EXPRESS |
| | LENSEXPRESS |
| | LENSEXPRESS.COM |

EXHIBIT B

Vision direc
Vision direct
Vision diret
Visiondirect
Vison direct
Visondirect
Visondirect.com
Visondirec.com
Visiondirect.com
lensmart
lens mart
lenssmart
lensquest
lens quest
lensqwest
lens qwest
lensworld
lens world
lensquest.com
lensmart.com
lensworld.com
www.visiondirect.com
www.visiondirect
www.lensmart.com
www.lensmart
www.lensquest.com
www.lensworld.com
www.lensquest
www.lensworld

EXHIBIT 4

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (“Agreement”) is made and entered into as of June 29, 2010 (the “Effective Date”) by and between 1-800 Contacts, Inc. (“1-800 Contacts”) and Walgreen Co. (“Walgreens”) (1-800 Contacts and Walgreens each a “Party” and collectively the “Parties”).

WHEREAS, on or about June 8, 2010, 1-800 Contacts filed a lawsuit in the United States District Court for the District of Utah (the “Court”) captioned: *1-800-Contacts, Inc. v. Walgreen Co.*, Civil Action No. 2:10-cv-00536-TS, alleging trademark infringement and unfair competition against Walgreens (the “Action”); and

WHEREAS, Walgreens denies the allegations in the Action or any other wrongdoing or liability to 1-800 Contacts or otherwise; and

WHEREAS, the Parties have determined that, in order to avoid the expense, inconvenience, and disruption of pursuing and defending the Action, and without admission of wrongdoing or liability by either of the Parties, it is desirable and in their respective best interests to terminate the Action and settle any claims related thereto;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **RELEASE:** Other than with respect to the obligations contained in this Agreement, and in consideration of the mutual releases and covenants contained herein, the Parties, on behalf of themselves and their officers, directors, agents, shareholders, employees, attorneys, affiliates, subsidiaries, parent entities, successors, heirs and assigns, hereby release and discharge each other and their respective officers, directors, agents,

shareholders, employees, attorneys, affiliates, subsidiaries, parent entities, successors, heirs and assigns, from any and all liability, claims, counterclaims, demands, debts, charges, liens and causes of action of every kind and character, known or unknown, accrued or unaccrued, whether arising out of contract, tort or otherwise, in law or in equity, arising from, or relating to the claims and defenses in the Action.

2. **DISMISSAL OF CLAIMS / COSTS:** Within five (5) business days of its receipt of a copy of this Agreement duly executed on behalf of Walgreens, 1-800 Contacts agrees to execute and cause to be filed with the Court a stipulation in substantially the form attached as Exhibit 1 hereto dismissing the Action with prejudice. The Parties shall cooperate in taking all other necessary action to effectuate this Section. Each Party agrees to bear its own costs and attorneys' fees in connection with the Action and this Agreement. Neither Party shall seek to recover from the other Party the attorneys' fees and expenses that they incurred in this Action or in the negotiation and drafting of this Agreement.

3. **OBLIGATIONS AND PROHIBITED ACTS:** From the Effective Date of this Agreement, each Party, its parent, subsidiaries, agents, servants, employees, officers, affiliates, and other entities controlled by such Party mutually agree to:

- a. refrain from purchasing or using any of the terms the other Party has listed in Exhibit 2 as triggering keywords in any internet search engine advertising campaign; and
- b. implement all of the terms the other Party has listed in Exhibit 2 as negative keywords in all internet search engine advertising campaigns.

Nothing in this Section shall be construed to prohibit the use or purchase of generic words such as contact, contacts, lenses, contact lenses, or other, similar generic terms as long as the appropriate negative keywords are implemented pursuant to section 3(b).

4. **AGREEMENT IS NOT ADMISSION OR EVIDENCE:** Neither this Agreement, nor any of its recitals, terms or provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement, shall be deemed or construed to be an admission by any Party of any wrongdoing or breach of obligation, nor shall this Agreement be offered as evidence in any pending or future civil, criminal, or administrative action or proceedings, except in a proceeding to enforce this Agreement, or as otherwise required by law.

5. **LITIGATION:** Any litigation in connection with this Agreement, including but not limited to any breach of this Agreement or the interpretation or construction of the terms of this Agreement, shall only be brought in the United States District Court for the District of Utah. The Parties hereby waive any objections to venue or jurisdiction in the United States District Court for the District of Utah. The prevailing Party in any such litigation shall be entitled to recover the reasonable costs of any action brought under this Agreement including, but not limited to, court costs and reasonable attorney fees.

6. **WARRANTY AND CAPACITY TO EXECUTE:** The Parties represent and warrant that they have read and understand this Agreement, that they are duly authorized to execute this Agreement, and that they have executed this Agreement in consultation with their respective attorneys.

7. **NEUTRAL CONSTRUCTION:** This Agreement shall be construed and enforced without regard to which Party is the drafter of the Agreement.

8. **WAIVER:** The waiver of any breach of any term or provision of this Agreement shall not be construed and shall not be a waiver of any other breach of this Agreement.

9. **UTAH LAW:** This Agreement and matters relating to the performance thereof shall be construed, interpreted and enforced in accordance with the laws of the State of Utah, without giving effect to its choice of law principles.

10. **ENTIRE AGREEMENT:** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter herein and merges all prior discussions and communications between them with respect to this Agreement. This Agreement supersedes and replaces all prior representations, statements, promises, commitments, and agreements between the Parties whether oral or written, expressed or implied, and related to any subject matter.

11. **ASSIGNMENT:** No Party may assign its rights, duties or obligations under this Agreement, directly or indirectly, in whole or in part, without the prior written consent of the other Party, except in connection with a merger, reorganization or change in control, or a sale of all or substantially all of a Party's business, equity and/or assets. Any such permitted assignee must agree in writing to assume all of the assigning Party's obligations hereunder, and the assigning Party must guarantee such assignee's performance hereunder. Any purported assignment in contravention of this Section 11 shall be void *ab initio* and of no force or effect. In the event of a permitted assignment, this Agreement shall be binding upon such Party's permitted successors and assigns.

12. **SEVERABILITY:** If for any reason a competent authority finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision or

portion shall be enforced to the maximum extent permissible to effectuate the intent of the Parties, and the remainder of this Agreement shall continue in full force and effect.

13. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one single agreement among the Parties.

14. **NON-DISCLOSURE:** The terms of this Agreement and the Agreement itself shall be held in confidence and not disclosed by any Party to any third party or any other person or entity without the prior express written consent of the other Party; provided that (i) the Agreement shall be admissible in any action to enforce the Agreement; (ii) a Party to this Agreement may disclose the terms of this Agreement to its attorneys or accountants who have a legitimate need to know the terms in order to render professional advice or services; and (iii) this Agreement may be disclosed pursuant to a protective order or other order validly issued by a court of competent jurisdiction, or otherwise required by applicable law or regulations. The Parties agree to provide prompt written notice of any request, demand, subpoena, Order, or any other thing that might require disclosure of the Agreement or any of its terms, such that the other Party shall have as much time as possible to object to or attempt to prevent such disclosure. The Parties shall make no public statements regarding the Agreement or any of its terms. If asked by the media about this Lawsuit, the Parties shall only state that: "The matter has been resolved to the satisfaction of both parties."

[remainder of page intentionally blank – signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed below by their respective duly authorized officers.

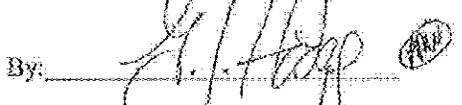
1-800 CONTACTS, INC.

By: 

Title: Legal Counsel

Date: June 29, 2010

WALGREEN CO.

By: 

Title: Divisional Vice President

Date: June 29, 2010

Exhibit 1

Mark A. Miller, 9563

mmiller@hollandhart.com

Bryan G. Pratt, 9924

bgpratt@hollandhart.com

HOLLAND & HART LLP

60 East South Temple, Suite 2000

Salt Lake City, UT 84111-1031

Telephone: (801) 799-5800

Facsimile: (801) 799-5700

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

| | |
|---|---|
| 1-800 CONTACTS, INC. , a Delaware corporation; Plaintiff, vs. WALGREEN CO. , an Illinois corporation Defendant. | STIPULATION OF DISMISSAL WITH PREJUDICE Case No. 2:10-cv-536 Judge Ted Stewart |
|---|---|

Plaintiff, 1-800 Contacts, Inc., and Defendant, Walgreen Co., by and through their respective counsel of record, hereby stipulate to the dismissal of Plaintiff's claims against Defendant *with prejudice* in accordance with Fed. R. Civ. P. 41(a)(1), with all parties to bear their own costs and attorney fees.

Date: _____, 2010

Date: _____, 2010

/s/ Mark A. Miller

/s/

Mark A. Miller (9563)

Bryan G. Pratt (9924)

HOLLAND & HART LLP

Attorneys for Plaintiff

1-800 Contacts, Inc.

Attorneys for Defendant

Walgreen Co.

(signed by filing attorney with permission from Defendant's counsel)

Exhibit 2

| 1-800 Contacts, Inc.'s Trademark Keywords | Walgreens' Trademark Keywords |
|--|--------------------------------------|
| 1 800 contact | Walgreen |
| 1 800 contacts | Walgreens |
| 1800 contacts | There's a Way |
| 1-800 contacts | Happy Harry's |
| 1800.contacts | Take Care Health Clinic |
| 1800contact | Duane Reade |
| 1800contacts | |
| 1-800-contacts | |
| 1800contacts.com | |
| 1800contacs | |
| 1800 contacs | |
| 1800contacts | |
| 1.800 contacts | |
| 1 8000 contacts | |
| 800 contacts | |
| 800.contacts | |
| 800contacts | |
| Aquasoft | |
| Aquasoft Complete Vision System | |
| Evision | |
| The World's Largest Contact Lens Store | |
| Exact Same Contact Lenses, Delivered to Your Door, for Less Than You're Paying Now | |
| We Make it Simple | |
| We Deliver You Save | |

| 1-800 Contacts, Inc.'s Websites/URLs | Defendant's Websites/URLs |
|--|--|
| www.1800contacts.com | www.walgreens.com |
| www.1800contacts.net | www.takccarehealth.com |
| www.1800contacts.org | www.duanereade.com |
| www.1800contacs.com | |
| www.1800contacs.net | |
| www.1-800contacts.com | |
| www.1-800contacts.net | |
| www.800contacts.com | |
| www.800contacts.net | |
| www.contacts.com | |
| www.lens1st.com | |
| www.lensfirst.com | |

EXHIBIT 5

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is made and entered into as of September 3, 2010 (the "Effective Date") by and between 1-800 Contacts, Inc. ("1-800 Contacts" or "Plaintiff") and Web Eye Care, Inc. ("Defendant") (collectively with Plaintiff, the "Parties").

WHEREAS, on or about August 10, 2010, Plaintiff filed a lawsuit in the United States District Court for the District of Utah (the "Court") captioned: *1-800-Contacts, Inc. v. Web Eye Care, Inc.*, Civil Action No. 2:10-cv-770 alleging trademark infringement and unfair competition against Defendant (the "Action");

WHEREAS, the Parties have determined that, in order to avoid the expense, inconvenience, and disruption of pursuing and defending the Action, it is desirable and in their respective best interests to terminate the Action and settle any claims related thereto;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **PAYMENT:** Defendant shall pay 1-800 Contacts two thousand dollars (\$2,000.00) on or before the date on which both parties have executed the Agreement.

1.1 All payments shall be made by certified check made payable to 1-800 Contacts, Inc. and sent to David Zeidner at 66 East Wadsworth Park Drive, Draper, Utah 84020.

1.2 The Release identified below in Section 2 shall become effective upon receipt of the full payment identified in Section 1. The Release identified in Section 2 may be revoked at the election of 1-800 Contacts in the event of Defendant's breach pursuant to Sections 5 or 6.

2. **RELEASE:** Other than with respect to the obligations contained in this Agreement, and in consideration of the mutual releases and covenants contained herein, the Parties, on behalf of themselves and their officers, directors, agents, shareholders, employees, attorneys, affiliates, subsidiaries, parent entities, successors, heirs and assigns, hereby release and discharge each other and their respective officers, directors, agents, shareholders, employees, attorneys, affiliates, subsidiaries, parent entities, successors, heirs and assigns, from any and all liability, claims, counterclaims, demands, debts, charges,

liens and causes of action of every kind and character, known or unknown, accrued or unaccrued, whether arising out of contract, tort or otherwise, in law or in equity, arising from, or relating to the claims and defenses in this Action.

3. **DISMISSAL OF CLAIMS / COSTS:** Within five (5) business days of the Effective Date, Plaintiff 1-800 Contacts agrees to execute and cause to be filed with the Court a stipulation in substantially the form attached as Exhibit 1 hereto dismissing the Action with prejudice. The Parties shall cooperate in taking all other necessary action to effect this Section. Each Party agrees to bear its own costs and attorneys' fees in connection with the Action and this Agreement. Neither Party shall seek to recover from the other Party the attorneys' fees and expenses that they incurred in this Action or in the negotiation and drafting of this Agreement.

4. **OBLIGATIONS AND PROHIBITED ACTS:**

(A) From the Effective Date of this Agreement, each Party, its parent, subsidiaries, agents, servants, employees, officers, affiliates, and other entities controlled by such Party mutually agree to refrain from and not to cause in the future any other entity to engage in any of the following Prohibited Acts.

The Prohibited Acts include:

- a. engaging in internet search engine advertising that causes any website, advertisement, including pop-up advertisements, and/or a sponsored link to any website to be displayed in response to or as a result of any internet search that includes the other Party's trademark keywords or URLs (as listed in Exhibit 2).
- b. using the other Party's trademark keywords or URLs (as listed in Exhibit 2) to target or trigger the appearance or delivery of advertisements or other content to the user;
- c. using generic, non-trademarked words as keywords in any internet search engine advertising campaign that causes any website, advertisement, including pop-up advertisements, and/or a sponsored link to any website to be displayed in response to or as a result of any internet search that includes the other Party's trademark keywords or URLs (as listed in Exhibit 2) without also using negative keywords as set forth in subsection (C) below, unless the particular internet search provider does not permit use of negative keywords.

- d. displaying or causing to be displayed pop-up advertisements, promotional material, or other content on top of, over, underneath, behind, or in connection with a user's viewing or interaction with any of the other Party's websites (as listed in Exhibit 2);
- e. altering or modifying in any way a copy of or the appearance of any one of the other Party's websites (as listed in Exhibit 2);

(B) The Prohibited Acts shall not include (i) use of the other Party's trademarks on the Internet in a manner that would not constitute an infringing use in a non-Internet context, *e.g.*, comparative advertising, parodies, and similar non-Infringing uses; (ii) the use of descriptive words on the Internet such as "contact", "contacts", "contact lens", "lenses", and "lens", and (iii) the purchase by either Party of keywords that are generic, non-trademarked words, such as "contacts," "contact lens," "lenses," and "lens." The Parties acknowledge that any advertisements triggered by such keywords are not prohibited under this agreement as long as the appropriate negative keywords are also being used as set forth in subsection (C) below.

(C) From the Effective Date of this Agreement, each Party, its parent, subsidiaries, agents, servants, employees, officers, affiliates, and other entities controlled by such Party mutually agree to use the other Party's trademark keywords and URLs (as listed in Exhibit 2) as negative keywords in all of their respective keyword advertising campaigns for any internet search provider that allows the use of negative keywords, to the fullest extent allowable by the internet search provider, in order to prevent the display of advertisements and/or internet links in response to or as a result of any internet search that includes the other Party's trademark keywords or URLs (as listed in Exhibit 2). Specifically, for each internet search provider from which a Party purchases keywords to display advertising and/or internet links, the other Party's trademark keywords and URLs listed in Exhibit 2 shall also be provided to such internet search provider as negative keywords, such that advertisements and/or links will not be displayed when the negative keywords are part of a search performed on the internet search provider's website.

(D) The Parties agree to cause any third-party participating in an associate or affiliate program or similar program for any of that Party's websites (an "Affiliate") to also abide by the terms of the Obligations and Prohibited Acts set forth in this Section 4.

(E) The Parties understand and appreciate that new internet advertising techniques and technologies that are unknown as of the Effective Date of this Agreement will likely be developed and employed in the future. It is the intent of the Parties to construe this Section 4 in good faith such that all future internet advertising techniques and advertisement delivery technologies that are substantially similar to the foregoing Obligations and Prohibited Acts shall also be considered Obligations and Prohibited Acts under this Agreement.

(F) The Parties may supplement Exhibit 2 (and as a result, the list of each Party's trademark keywords and URLs) as necessary pursuant to the following parameters.

- a. Each Party may supplement its list of websites/URLs on Exhibit 2 by providing the other Party with written notice of the additional websites and that the additional websites are owned by that Party, its successors, or affiliates of that Party. The other Party shall have fifteen (15) days thereafter to comply with the Obligations and Prohibited Acts under this Section 4 with respect to the additional websites or object to their inclusion; provided that the only basis for objecting to the addition of a website to Exhibit 2 is that the website (i) is not owned by the supplementing Party, its successors, or affiliates of that Party or (ii) does not relate to the supplementing Party's business of offering and selling vision-related products.
- b. Each Party may supplement its list of trademark keywords on Exhibit 2 by providing the other Party with written notice of the additional trademarks (and/or confusingly similar variations thereof) owned by that Party, its successors, or affiliates of that Party and, for each additional trademark, notice that the trademark is either registered in this or any other country or has been adjudicated by a court of competent jurisdiction to qualify as that Party's trademark under common law. The other Party shall have fifteen (15) days thereafter to comply with the Obligations and Prohibited Acts under this Section 4 with respect to the additional trademarks (and/or confusingly similar variations thereof) or object to their inclusion; provided that the only basis for objecting to the addition of a trademark keyword to Exhibit 2 is that the trademark keyword (i) is not owned by the supplementing Party, its successors,

or affiliates of that Party or (ii) is not a confusingly similar variation of a genuine trademark owned by the supplementing Party, its successors, or affiliates of that Party, or (iii) is not either a federally registered trademark on the Principal Register or an adjudicated common-law trademark.

5. **NOTICE OF BREACH:** In the event that a Party (the enforcing Party) believes the Agreement has been breached by the other Party (the breaching Party) through the commission or omission of one or more of the Obligations and Prohibited Acts set forth above in Section 4 of this Agreement, or through a failure to make any payment identified in Section 1, or otherwise, the enforcing Party shall provide written notice of such alleged breach to the breaching Party, who shall have 5 calendar days from the receipt of such notice to respond or remedy the breach. In the event the breaching Party does not respond to or remedy the alleged breach within 5 calendar days, the enforcing Party shall be entitled to enforce this Agreement in accordance with its terms and to seek, without limitation, all available remedies at law or equity.

In the event that one of the Parties breaches this agreement and does not cure within the five (5) days allotted for curing, the enforcing Party shall be entitled to damages of \$1,000 for each day of the breach, beginning on the sixth day after notice, as a reasonable estimate of the minimum damages that would result from a breach of this Agreement.

Any notice provided for under this Agreement shall be in writing and shall be either personally delivered, or mailed by first class mail, return receipt requested, to the recipient at the address below indicated:

Notices to Web Eye Care:

Web Eye Care, Inc.
176 N. Pine St.
Langhorne, PA 19047

Attn: Peter
peter@webeyecare.com

Notices to 1-800 CONTACTS:

1-800 CONTACTS, INC.
66 East Wadsworth Park Drive
Draper, Utah 84020
Attn: Joe Zeidner

copy to: Mark A. Miller
& Bryan G. Pratt
Holland & Hart, LLP
222 South Main Street
Suite 2200
Salt Lake City, Utah 84101

If this Agreement is breached by one Party more than once in any given six-month period, as calculated from a first breaching offense, the non-breaching Party shall be entitled to damages of \$5,000 for each day of the repeat-breach, beginning on and including the date of notice of such a breach to the repeat-breaching Party.

6. **NOTICE OF BREACH BY AN AFFILIATE:** In the event that a Party (the enforcing Party) believes the Agreement has been breached by an Affiliate of the other Party (the breaching Party) through the commission or omission of one or more of the Obligations and Prohibited Acts set forth above in Section 4 of this Agreement, the enforcing Party shall provide written notice of the alleged breach to the breaching Party pursuant to Section 5 of this Agreement. Within five (5) calendar days of receiving such Notice, the breaching Party shall provide the Affiliate a written request to remedy the breach, with a copy of such notice being simultaneously sent to the enforcing Party.

If the Affiliate fails to remedy the alleged breach within ten (10) calendar days of its receipt of the written notice, the breaching Party will immediately terminate the Affiliate's associate or affiliate relationship with the breaching Party, with evidence of said termination provided to the enforcing Party. Should the breaching Party fail to effect such a termination, the enforcing Party shall be entitled to damages of \$1,000 for each day of the breach after the ten (10) calendar days provided for above. Neither Party shall have an affirmative duty to police Affiliate advertising for potential violations of the other Party's intellectual property rights. However, each Party shall have terms and conditions included in their respective Affiliate agreements consistent with the provisions of this Agreement, and particularly to effectuate the Obligations and Prohibited Acts set forth in Section 4 of this Agreement.

7. **LITIGATION:** Any litigation in connection with this Agreement, including but not limited to any breach of this Agreement or the interpretation or construction of the terms of this Agreement, shall only be brought in the United States District Court for the District of Utah. The Parties hereby waive any objections to venue or jurisdiction in the United States District Court for the District of Utah. The prevailing Party shall be entitled to recover the costs of any action brought under this Agreement, including court costs and reasonable attorney fees.

8. **WARRANTY AND CAPACITY TO EXECUTE:** The Parties represent and warrant that they have read and understand this Agreement, that they are duly authorized to execute this Agreement, and that they have executed this Agreement in consultation with their respective attorneys.

9. **NEUTRAL CONSTRUCTION:** This Agreement shall be construed and enforced without regard to which Party is the drafter of the Agreement.

10. **WAIVER:** The waiver of any breach of any term or provision of this Agreement shall not be construed and shall not be a waiver of any other breach of this Agreement.

11. **UTAH LAW:** This Agreement and matters relating to the performance thereof shall be construed, interpreted and enforced in accordance with the laws of the State of Utah, without giving effect to its choice of law principles.

12. **ENTIRE AGREEMENT:** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter herein and merges all prior discussions and communications between them with respect to this Agreement. This Agreement supersedes and replaces all prior representations, statements, promises, commitments, and agreements between the Parties whether oral or written, expressed or implied, and related to any subject matter.

13. **ASSIGNMENT:** No Party may assign its rights, duties or obligations under this Agreement, directly or indirectly, in whole or in part, without the prior written consent of the other Party, except in connection with a merger, reorganization or change in control, or a sale of all or substantially all of a Party's business, equity and/or assets. Any such permitted assignee must agree in writing to assume all of the assigning Party's obligations hereunder, and the assigning Party must guarantee such assignee's performance hereunder. Any purported assignment in contravention of this Section 13 shall be void *ab initio* and of no force or effect. In the event of a permitted assignment, this Agreement shall be binding upon such Party's permitted successors and assigns.

14. **SEVERABILITY:** If for any reason a competent authority finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision or portion shall be enforced to the maximum extent permissible to effect the intent of the Parties, and the remainder of this Agreement shall continue in full force and effect.

15. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one single agreement among the Parties.

16. **NON-DISCLOSURE:** The Parties agree to generally keep this Agreement confidential. The Parties will mutually agree on any press releases and/or public statements regarding this Agreement ("the mutually agreed PR"). Neither Party will deviate from the mutually agreed PR without the prior written consent of the other Party, which consent will not be unreasonably withheld. Neither Party is prevented from disclosing this Agreement in connection with other litigation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed below by their respective duly authorized officers.

1-800 CONTACTS, INC.

WEB EYE CARE, INC.

By: 

By: 

Title: Legal Counsel

Title: CJO

Date: 9-13-2010

Date: 9/2/2010

Exhibit 1

Mark A. Miller, 9563
mmiller@hollandhart.com
Bryan G. Pratt, 9924
bgpratt@hollandhart.com
HOLLAND & HART LLP
222 South Main, Suite 2200
Salt Lake City, UT 84101
Telephone: (801) 799-5800
Facsimile: (801) 799-5700
Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

| | |
|---|---|
| 1-800 CONTACTS, INC. , a Delaware corporation; Plaintiff, vs. WEB EYE CARE, INC. , a Pennsylvania corporation, Defendant. | STIPULATION OF DISMISSAL WITH PREJUDICE Case No. 2:10-cv-770 Judge Dale A. Kimball |
|---|---|

Plaintiff, 1-800 Contacts, Inc., and Defendant Web Eye Care, Inc., by and through their respective counsel of record, hereby stipulate to the dismissal of Plaintiff's claims against Defendant *with prejudice* in accordance with Fed. R. Civ. P. 41(a)(1), with all parties to bear their own costs and attorney fees.

Date: _____, 2010

Date: _____, 2010

/s/ Mark A. Miller
Mark A. Miller (9563)
Bryan G. Pratt (9924)
HOLLAND & HART LLP
Attorneys for Plaintiff

/s/
Attorneys for Defendant
(signed by filing attorney with permission
from Defendant's counsel)

4888611_1.DOC

Exhibit 2

| 1-800 Contacts, Inc.'s Trademark Keywords | Defendant's Trademark Keywords |
|--|---|
| 1 800 contact | |
| 1 800 contacts | |
| 1800 contacts | |
| 1-800 contacts | |
| 1800 contacts | |
| 1800contact | |
| 1800contacts | |
| 1-800-contacts | |
| 1800contacts.com | |
| 1800contact | |
| 1800 contact | |
| 1800contacts | |
| 1,800 contacts | |
| 1 8000 contacts | |
| 800 contacts | |
| 800.contacts | |
| 800contacts | |
| Aquasoft | |
| Aquasoft Complete Vision System | |
| Evision | |
| The World's Largest Contact Lens Store | |
| Exact Same Contact Lenses, Delivered to Your Door, for Less Than You're Paying Now | |
| We Make it Simple | |
| We Deliver You Save | |

| 1-800 Contacts, Inc.'s Websites/URLs | Defendant's Websites/URLs |
|--|--|
| 1800contacts.com | webeyecare.com |
| 1800contacts.net | |
| 1800contacts.org | |
| 1800contacts.com | |
| 1800contacts.net | |
| 1-800contacts.com | |
| 1-800contacts.net | |
| 800contacts.com | |
| 800contacts.net | |
| contacts.com | |
| lens1st.com | |
| lensfirst.com | |

4888611_1.DOC

EXHIBIT 6

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF THE ADMINISTRATIVE LAW JUDGES

In the Matter of)
)
1-800 Contacts, Inc.,)
a corporation.)
) Docket No. 9372
)
)

EXPERT REPORT OF DR. SUSAN ATHEY

February 6th, 2017

CONFIDENTIAL – ATTORNEYS’ EYES ONLY
PURSUANT TO PROTECTIVE ORDER

Exhibit B: 1-800 Contacts' Unbound Competitors

Competitor name

Amazon
America's Best
BJ's
Cheap contacts
Contactforlenses
Contact Direct
Costco
CVS
Discount Lens
ebay
EyeBuyDirect
Eyeconic
Eyedia
Eyemart
Eyemart express
Gotcontactlens.com
JC penney
Lens.com
Lens Direct
Lens discounters
Lens factory
opticontacts
pearlevision
Pricesmart contacts
Samsclub
saveonlens.com
Searsoptical
Target
Visionpros
Visionworks
Walmart

Sources and notes

Unbound Competitors are all competitors in List 1 of Appendix C, who are not Bound Competitors and for which there are observations in the comScore Dataset.

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2018, I filed **RESPONDENT'S COMPILATION OF MATERIALS TO FACILITATE ORAL ARGUMENT PRESENTATION** using the FTC's E-Filing System, which will send notification of such filing to all counsel of record as well as the following:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

DATED: June 19, 2018

By: /s/ Eunice Ikemoto
Eunice Ikemoto

CERTIFICATE FOR ELECTRONIC FILING

I hereby certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

DATED: June 19, 2018

By: /s/ Steven M. Perry
Steven M. Perry
Counsel for Respondent 1-800 Contacts, Inc.

Notice of Electronic Service

I hereby certify that on June 19, 2018, I filed an electronic copy of the foregoing Respondent's Compilation of Materials to Facilitate Oral Argument Presentation, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on June 19, 2018, I served via E-Service an electronic copy of the foregoing Respondent's Compilation of Materials to Facilitate Oral Argument Presentation, upon:

Thomas H. Brock
Attorney
Federal Trade Commission
TBrock@ftc.gov
Complaint

Barbara Blank
Attorney
Federal Trade Commission
bblank@ftc.gov
Complaint

Gustav Chiarello
Attorney
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Complaint

Mark Taylor
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Complaint

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Respondent

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Complaint

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Complaint

Henry Su
Attorney
Federal Trade Commission
hsu@ftc.gov

Complaint

Steven Perry
Attorney