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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 EUREKA DIVISION

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 LAWRENCE L. DUSKIN, individually, and also
22 doing business as HollywoodColorContacts.com,
WorldColorContacts.com, and
23 TopModelContacts.com,

24 Defendant.

Case No. 1:18-cv-7359

**COMPLAINT FOR CIVIL PENALTIES,
PERMANENT INJUNCTION, AND
OTHER EQUITABLE RELIEF**

25
26 Plaintiff, the United States of America, acting upon notification and on behalf of the Federal
27 Trade Commission (“FTC” or “Commission”), for its Complaint alleges that:

28 1. Plaintiff brings this action under Sections 9(a) and 9(b) of the Fairness to Contact Lens

COMPLAINT FOR CIVIL PENALTIES

1 Consumers Act (“FCLCA”), 15 U.S.C. §§ 7608(a) and (b), and Sections 5(a)(1), 5(m)(1)(A), 13(b),
2 16(a)(1), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a)(1),
3 45(m)(1)(A), 53(b), 56(a)(1), and 57b, to obtain monetary civil penalties, a permanent injunction, and
4 other equitable relief for Defendant’s violations of the Contact Lens Rule (“Rule”), 16 C.F.R. Part 315.

5
6 **JURISDICTION AND VENUE**

7 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345,
8 and 1355, and under 15 U.S.C. §§ 45(a) and (m)(1)(A), 53(b), 56(a), and 7608(a).

9 3. Venue is proper in this District under 28 U.S.C. §§ 1391(b), (c) and 1395(a), and 15
10 U.S.C. § 53(b).

11 **INTRADISTRICT ASSIGNMENT**

12 4. The conduct at issue in this action took place in substantial part in Lake County.

13 **DEFINITIONS**

14 5. For purposes of this Complaint, the terms “contact lens,” “contact lens prescription,”
15 “direct communication,” and “prescriber” are defined as those terms are defined in Section 315.2 of the
16 Rule, 16 C.F.R. § 315.2.

17
18 **THE CONTACT LENS RULE**

19 6. Congress enacted the FCLCA, 15 U.S.C. §§ 7601-7610, in 2003. The FCLCA directed
20 the FTC to promulgate a trade regulation rule implementing the FCLCA. The Commission promulgated
21 the Rule, 16 C.F.R. Part 315, on July 2, 2004, pursuant to Section 8 of the FCLCA, 15 U.S.C. § 7607,
22 and Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553. The Rule went into effect on
23 August 2, 2004.

24 7. On November 9, 2005, Congress amended the Federal Food, Drug, and Cosmetic Act, 21
25 U.S.C. §§ 301-399, to state that all contact lenses, including non-corrective, decorative (“plano”) contact
26 lenses, are medical devices that require a prescription. 21 U.S.C. § 360j(n). Consequently, the Rule
27 applies to both corrective and plano contact lenses.
28

1 TopModelContacts.com.

2 15. Defendant has sold plano contact lenses to consumers without obtaining the consumers'
3 contact lens prescriptions or verifying the prescriptions by direct communication with the prescribers.

4 16. Defendant has failed to maintain records of the consumers' contact lens prescriptions,
5 Defendant's verification requests, or Defendant's direct communications from the contact lens
6 prescribers.
7

8 **DEFENDANT'S VIOLATIONS OF THE CONTACT LENS RULE**

9 17. In numerous instances, in connection with the advertising and sale of plano contact
10 lenses, Defendant has sold plano contact lenses to consumers without obtaining the consumers' contact
11 lens prescriptions or verifying the prescriptions by direct communication with the prescribers in
12 violation of Section 315.5(a) of the Contact Lens Rule, 16 C.F.R. § 315.5(a).

13 18. In numerous instances, in connection with the advertising and sale of plano contact
14 lenses, Defendant has failed to maintain records of the consumers' contact lens prescriptions, the
15 Defendant's verification requests, and Defendant's direct communications from the contact lens
16 prescribers in violation of Section 315.5(f) of the Contact Lens Rule, 16 C.F.R. § 315.5(f).

17 **DEFENDANT'S VIOLATIONS OF THE FTC ACT**

18 19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or
19 practices in or affecting commerce."
20

21 20. Pursuant to Section 9(a) of the FCLCA, 15 U.S.C. § 7608(a), and Section 18(d)(3) of the
22 FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes an unfair or deceptive act or practice,
23 in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).
24

25 21. By and through the acts and practices described in Paragraphs 16-17 above, Defendant
26 has violated Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

27 **THE COURT'S POWER TO GRANT RELIEF**

28 22. Defendant has violated the Rule as described above with the knowledge required by

1 Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

2 23. Each sale of plano contact lenses that was completed from January 2014 through the
3 filing of this Complaint, and each failure to maintain records for such sales, that violates the Rule in one
4 or more of the ways described above, constitutes a separate violation for which Plaintiff seeks monetary
5 civil penalties.

6 24. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4
7 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(d)
8 of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorize this Court to award monetary civil
9 penalties of not more than \$41,484 for each such violation of the Rule.
10

11 25. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a
12 permanent injunction against Defendant's violations of the FTC Act, as well as such ancillary relief as
13 may be just and proper.
14

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, pursuant to Sections 5(a)(1), 5(m)(1)(A), 13(b), and 19 of the
17 FTC Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 57b, and the Court's own equitable powers,
18 requests that the Court:

- 19 (1) Enter a permanent injunction to prevent future violations of the FTC Act and the Contact
20 Lens Rule by the Defendant;
21 (2) Award Plaintiff monetary civil penalties from Defendant for each violation of the Rule
22 alleged in this Complaint; and
23 (3) Award Plaintiff the costs of bringing this action, as well as such other and additional
24 relief as the Court may determine to be just and proper.
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1 DATED this 6th day of December, 2018.

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