

WARBY PARKER

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<http://www.ftcpublic.commentworks.com/ftc/ophthalmicruleanprm>

Edith Ramirez, Chairwoman
Office of the Secretary
Federal Trade Commission
Attention: Project No. R51199
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex C)
Washington, DC 20580

Re: Contact Lens Rule, 16 CFR part 315, Project No. R511995

Dear Chairwoman Ramirez:

Warby Parker greatly appreciates the opportunity to comment on the Federal Trade Commission's (FTC's) request for comments regarding the Contact Lens Rule (Project No. R511995). Warby Parker is a vertically-integrated lifestyle brand offering designer eyewear at a fraction of the price of traditional eyewear retailers (starting at \$95, including prescription lenses). Warby Parker sells direct to consumers via its exclusive e-commerce boutique and through company-owned stores.

Although Warby Parker does not sell contact lenses, it does have extensive experience in the vision correction industry and in interacting with eye care professionals (ECPs). ECPs -- collectively ophthalmologists, optometrists and opticians -- not only provide eye care to patients but many are also retailers of prescription vision correction products (e.g., glasses and contact lenses). Unfortunately, in their dual role as prescriber and retailer, unlike most health care service providers, some ECPs are in a position to favor their commercial self-interest.

In 2003, Congress enacted the Fairness to Contact Lens Consumers Act (FCLCA) to enhance consumer choice and competition in the contact lens industry. Subsequently, the FTC issued regulations effectuating Congress's intent. That body of regulations is known as the Contact Lens Rule.¹ Amongst other things, the Contact Lens Rule requires prescribers to provide patients with a copy of their prescription at the end of a contact lens fitting² and verify prescription information within eight business hours of a

¹ See 16 C.F.R. § 315.

² 16 C.F.R. § 315.3(a).

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verification request by a person authorized to act on behalf of the patient.³ If the prescriber fails to verify the prescription within eight business hours, or communicate with the seller that the prescription information is incorrect, the prescription is deemed to be automatically verified.⁴

Warby Parker believes the passive verification requirements of the Contact Lens Rule are effective and the FTC should retain them without change. Passive verification provides prescribers with a reasonable opportunity to verify, address or correct an inaccurate, invalid or expired prescription without imposing an undue burden on the prescriber. Furthermore, it gives the seller a reasonable end-point at which to proceed with the sale. This ensures that prescribers do not thwart patient choice of where to purchase contact lenses by failing to verify a prescription and relegating the patient back to the prescriber for the ultimate purchase. We also believe that eight business hours is a reasonable length of time for passive verification.

Warby Parker also supports FTC's continued acceptance of automated telephone systems as a direct form of communication for the purpose of verification. Automated telephone systems enhance the chance that prescribers will verify or correct misinformation in a contact lens prescription.

Although Warby Parker believes the Contact Lens Rule has engendered great progress in enhancing consumer choice of where to purchase contact lenses, there are several areas for improvement.

First, the FTC should require prescribers to provide patients with a Bill of Rights that informs patients about their rights with regard to contact lens purchases. The Contact Lens Rule requires automatic prescription release at the close of a contact lens fitting. This is a cornerstone of the FCLCA and the FTC's rules. However, many patients are unaware that they have this right. A Bill of Rights will strengthen the Contact Lens Rule and further Congress's initial intent. Information is power. Without information patients are at the mercy of ECPs who have a self-interest in not informing patients of their rights. Providing patients with a Bill of Rights at the time of a contact lens fitting that includes information about, among other things, automatic prescription release, will let patients know that they have the right to receive their contact lens prescription. Furthermore, it will let patients know that their prescriber may not require payment in addition to, or as part of the fee of an eye exam, fitting or evaluation, as a condition of verification of a prescription, and that their prescriber may not require the patient to sign a waiver or release as a condition of verifying a prescription. Most

³ 16 C.F.R. § 315.3(a)(2).

⁴ 16 C.F.R. § 315.5(c)(3).

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importantly, the Bill of Rights would inform the patient that they may purchase their contact lenses, according to their prescription, from the seller of their choosing.

Second, the FTC should strengthen the prescription verification requirements in section 315.3(a)(2) of the Contact Lens Rule to require that, in response to an authorized request for provision of a copy of a prescription, the prescriber is required to send a copy of the prescription to the agent (by facsimile or electronic mail) within eight business hours (as currently defined under the Rule). Additionally, the prescriber should be required to maintain a log recording the date and time a patient's prescription was requested and released to the authorized agent. The log should be required to be maintained for a period of three years and be available for inspection by the FTC, its employees, and its representatives. Warby Parker believes that the additional prescription copy and log requirements will bolster adherence to the current law and regulations. The prescription verification requirement is a huge benefit to consumers -- the issue lies with lack of compliance with the rule. For that reason, the accountability measures suggested here should be included in the Contact Lens Rule.

To that end, the FTC should also include stronger language in the Contact Lens Rule that makes clear that it is a violation of the Rule to: (1) interfere, in any way, with a seller's effort to verify a prescription; (2) respond to a verification request by fraudulently stating that prescription information is incorrect (when in fact it is not); and (3) respond to a verification request by stating that prescription information is inaccurate or invalid without providing the basis for the inaccuracy or invalidity of the prescription.

Additionally, the FTC should amend Section 315.9 to clarify that any violation of the Contact Lens Rule -- either by prescribers or sellers -- constitutes an unfair act or practice in violation of the Federal Trade Commission Act, and is enforceable under the same standards and subject to the same fines and penalties as are any other violations of the Act.

Warby Parker also encourages the FTC to investigate prescriber practices and take enforcement action, where necessary, against prescribers who violate the FCLCA and the Contact Lens Rule. Warby Parker believes that part of the problem with adherence to the law is the lack of enforcement action against prescribers. In the history of the Contact Lens Rule only ten prescribers who violated the rule have received even warning letters from the FTC. In the ten years since the FCLCA was promulgated, the FTC has taken no other public action against prescribers. To assist the FTC in this effort, Warby Parker suggests that the FTC revise its current complaint process and create a more user-friendly online complaint process for consumers. We suggest broadening the type of complaint that may be filed (currently the only question is whether the contact lens prescription was failed to be released).

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Warby Parker greatly appreciates the FTC's consideration of these comments.

Respectfully submitted,



Anjali Kumar
General Counsel