

January 30, 2017

Submitted Electronically Via

<https://ftcpublic.commentworks.com/ftc/contactlensrule/>

Office of the Secretary
Federal Trade Commission
Attention: Project No. R511995
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex C)
Washington, DC 20580

**Re: Notice of Proposed Rulemaking and Request for Public Comments,
Contact Lens Rule, 16 CFR Part 315, FTC Project No. R511995**

Dear Mr. Clark:

Warby Parker appreciates the opportunity to comment on the Contact Lens Rule Notice of Proposed Rulemaking and Request for Public Comments (“NPRM”), Project No. R511995.¹ Warby Parker is a vertically integrated lifestyle brand that offers designer eyewear at a fraction of the typical price by selling directly to consumers via our website and company-owned stores. We submit these comments based on our extensive experience in the optical industry, through which we interact regularly with prescribers and their patients.

Prescribers have an inherent conflict of interest because many of them sell what they prescribe. This creates a strong incentive for prescribers to leverage their control over a prescription to limit consumer choice by driving patients to their own retail channels and raising barriers to competition from alternative retailers. We support the FTC’s proposed amendments that would increase patient awareness, prescription portability, and competition in the vision care industry.

1. Warby Parker Supports Amending the CLR to Mandate a Patient Acknowledgement of Prescription Release

On a daily basis, Warby Parker confronts poor prescriber compliance with the Eyeglass Rule, 16 CFR Part 456, which requires the immediate, automatic release of eyeglass prescriptions. Given our experience in the eyeglasses business, we are not surprised by the FTC’s conclusion that compliance in the contact lens space could be substantially improved. Thus, we support the FTC’s efforts to bolster prescription portability through amendments to the Contact Lens Rule (“CLR”).²

¹ This comment supplements the previous comment submitted by Warby Parker on October 26, 2015, in response to the Commission’s initial request for comments in response to its ten-year review of the CLR. Comments of Warby Parker on the Contact Lens Rule; 16 CFR Part 315 (Project No. R511995), filed Oct. 26, 2015 (“Warby Parker October 2015 comments”), available at <https://www.ftc.gov/policy/public-comments/2015/10/26/comment-00593>.

² 16 CFR Part 315.

A signed patient acknowledgment with a recordkeeping requirement is a simple and effective way to ensure compliance. Prescribers have little incentive to comply with their current obligation to release prescriptions—compliance could result in lost sales and, absent some evidentiary record, an enforcement action is unlikely.

The FTC’s proposed acknowledgment helps fix this problem. It creates a workable enforcement mechanism that incentivizes prescribers to comply with the letter of the law. The costs of implementing the proposed amendment are low and are outweighed by the benefits of enhanced choice and competition. The acknowledgment will keep patients informed of their rights and improve their ability to comparison-shop among contact lens sellers.

2. **Warby Parker Supports a Time Frame for Release of Prescriptions to Authorized Sellers**

Warby Parker also supports the FTC’s clarification that a prescriber is obligated to provide a copy of a patient’s prescription to an authorized seller upon request.³ We offer to retrieve our customers’ prescriptions for them; but our requests are frequently ignored by prescribers. Tracking down a prescription from an uncooperative prescriber delays our fulfillment of products, frustrates our customers, and injects avoidable time and cost into a transaction.

When sellers can efficiently obtain copies of prescriptions, it greatly benefits consumers by allowing for faster delivery of orders and streamlining of future purchases. We urge the FTC to take the next step and impose a reasonable time frame for prescribers to deliver prescriptions to sellers. Absent a time limit, prescribers might not have an incentive to comply with the FTC’s requirement in a timely manner, and the FTC will have limited means to enforce compliance.

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

Respectfully submitted,

Adam Greenberg
Lead Counsel

³ *Id.* at 88536.