



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

THE OFFICE OF THE
CHAIRMAN

To: Donald Clark, Secretary
From: Svetlana Gans and Devon Bacon
Date: June 22, 2017
Re: Proposed Changes to the Contact Lens Rule: Comments to be Placed on the Public Record

On May 24, 2017, representatives of the Vision Coalition (“VC”) met with Acting Chairman Maureen K. Ohlhausen and her staff¹ regarding a Notice of Proposed Rulemaking (“NPRM”) concerning the Contact Lens Rule (“CLR”). Appearing on behalf of the VC were Richard Weisbarth (Alcon); Dr. David Cockrell (American Optometric Association); Dr. Jill Saxon (Bausch + Lomb); Elizabeth A. Maier (Brownstein Hyatt Farber Schreck); Alfred E. Mottur (Brownstein Hyatt Farber Schreck); Dr. Michele Andrews (CooperVision); Clay Arnold (CooperVision); Eddie Correia (Correia & Associates); Dr. Carol Alexander (Johnson & Johnson); Brian T. Kelly (Johnson & Johnson); and Dr. Brian Schwam (Johnson & Johnson).

The NPRM at issue was published in the Federal Register on December 7, 2016, in Volume 81 of the Federal Register at page 88,526. The NPRM announced the FTC’s proposal to amend the CLR to require that prescribers obtain a signed acknowledgment after releasing a contact lens prescription to a patient, and maintain each such acknowledgment for a period of not less than three years; and sought comment on that proposal and several other issues. This memorandum is to be placed on the public record pursuant to 16 C.F.R. § 1.26(b)(5) and the NPRM, under which summaries or transcripts of oral communications respecting the merits of the proposed rulemaking from any outside party to any Commissioner or Commissioner’s advisor are to be placed on the public record.

During the May 24, 2017 meeting, the VC representatives raised concerns about the CLR’s passive verification system, the burden of the signed acknowledgement form, and the lack of enforcement towards retailers. The VC representatives claimed that the use of automated phone calls is ineffective, difficult for doctors to understand, and time consuming because prescribers often do not have the ability to rewind or pause automated voicemails and must listen to long messages repeatedly for full comprehension. The VC representatives stated the requirement to obtain a signed acknowledgement would place a logistical and financial burden on their members’ staffs. The VC representatives further claimed that online sellers are filling expired prescriptions and encouraging unnecessarily large orders shortly before valid prescriptions expire. Additionally, the VC representatives claimed that online retailers are

¹ Also in attendance from the FTC were Acting Chairman Ohlhausen’s Chief of Staff Svetlana Gans, Acting Chairman Ohlhausen’s Paralegal Devon Bacon, and Acting Chairman Ohlhausen’s Legal Interns Dylan Naegele and Taylor Alexander.

incorrectly filling prescriptions and telling customers that they do not need to visit their eye doctor. Lastly, the VC representatives claimed that the stockpiling of contact lenses at the end of a prescription period is leading to an increase in contact lens-related misuse and eye infections.

To address their concerns, the VC representatives proposed that the Commission revise the CLR and declare that automated phone calls are not a valid form of direct communication. The VC representatives suggested that along with direct telephone conversation, email communication might be an easier and more effective form of communication for prescribers. The VC representatives also proposed that the Commission issue an enforcement policy guide or statement and increase enforcement against sellers who excessively or incorrectly dispense contact lenses.