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RECEIVED  
U.S. DISTRICT COURT  
NEWARK, N.J.  
JAN 10 1997

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

\_\_\_\_\_  
UNITED STATES OF AMERICA, )  
 )  
 )  
 ) Plaintiff, )  
 )  
 ) v. ) Civ. No. \_\_\_\_\_  
 )  
 )  
 ) WALSH OPTICAL, INC., )  
 ) a corporation, )  
 )  
 ) and )  
 )  
 ) KEVIN WALSH, individually and as an officer )  
 ) of the corporation, )  
 ) Defendants. )  
\_\_\_\_\_

COMPLAINT FOR CIVIL PENALTIES, PERMANENT  
INJUNCTION, AND OTHER RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 9(a) and 9(b) of the Fairness to Contact Lens Consumers Act ("FCLCA"), 15 U.S.C. §§ 7608(a) and (b), and Sections 5(a)(1), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.

§§ 45(a)(1), 45(m)(1)(A), 53(b), 56(a), and 57b, to obtain monetary civil penalties, a permanent injunction, and other equitable relief for defendants' violations of the Contact Lens Rule ("Rule"), 16 C.F.R. Part 315.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. §§ 45(a)(1) and 7608(a).

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

### **DEFINITIONS**

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

### **DEFENDANTS**

5. Defendant Walsh Optical, Inc. ("Walsh Optical"), is a New Jersey corporation with its principal place of business at 138 Park Avenue, Hoboken, New Jersey 07030. Defendant Walsh Optical has sold contact lenses to consumers, including via telephone and through the [www.contactmania.com](http://www.contactmania.com), [www.lensworld.com](http://www.lensworld.com), and [www.contactlensworld.com](http://www.contactlensworld.com) websites. Walsh Optical resides and transacts business in this District.

6. Defendant Kevin Walsh is the sole owner of Walsh Optical. He resides in Jersey City, New Jersey. His business address is the same as that of Walsh Optical. In connection with the matters alleged herein, defendant Kevin Walsh resides and/or transacts business in this

District.

7. Individually or in concert with others, defendant Kevin Walsh has formulated, directed, and controlled the acts and practices of Walsh Optical, including the various acts and practices set forth herein.

8. The acts and practices of defendants Walsh Optical and Kevin Walsh alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **THE CONTACT LENS RULE**

9. Congress enacted the Fairness to Contact Lens Consumers Act, 15 U.S.C. §§ 7601-7610, in 2003. The Act directed the Federal Trade Commission to promulgate a trade regulation rule implementing the FCLCA. The Commission promulgated the Rule, 16 C.F.R. Part 315, on July 2, 2004, under Section 8 of the FCLCA, 15 U.S.C. § 7607, and Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553. The Rule went into effect on August 2, 2004.

10. In accordance with the FCLCA, the Rule requires that contact lens sellers may sell contact lenses only in accordance with a contact lens prescription for the patient that is either presented to the seller or verified by direct communication with the prescriber. 16 C.F.R. § 315.5(a). The Rule further requires contact lens sellers to maintain records of the contact lens prescriptions presented to the seller, the seller’s verification requests, and direct communications from prescribers. 16 C.F.R. § 315.5(f).

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

## **DEFENDANTS' BUSINESS PRACTICES**

12. Since at least August 2, 2004, defendants have sold contact lenses to consumers. In numerous instances since August 2, 2004, defendants have sold contact lenses without either obtaining the contact lens prescription for the patient or verifying the prescription by direct communication with the prescriber.

### **DEFENDANTS' VIOLATIONS OF THE CONTACT LENS RULE**

13. By and through the acts and practices described in Paragraph 12 above, defendants have violated the Contact Lens Rule, 16 C.F.R. Part 315, by selling contact lenses without either obtaining the contact lens prescription for the patient or verifying the prescription by direct communication with the prescriber, thereby violating 16 C.F.R. § 315.5(a).

### **DEFENDANTS' UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF THE FTC ACT**

14. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that “unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful.”

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

16. By and through the acts and practices described in Paragraph 12 above, defendants have violated Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

### **CIVIL PENALTIES, INJUNCTION, AND OTHER RELIEF**

17. Defendants have violated the Rule as described above with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

18. Each sale of contact lenses that was completed from August 2, 2004 through the filing of this Complaint, in which defendants have violated the Rule in one or more of the ways described above, constitutes a separate violation for which plaintiff seeks monetary civil penalties.

19. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorize this Court to award monetary civil penalties of not more than \$11,000 for each such violation of the Rule.

20. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction against defendants' violation of the FTC Act, as well as such ancillary relief as may be just and proper.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 57b and the Court's own equitable powers, to:

- (1) Enter judgment against defendants and in favor of plaintiff for each violation alleged in this Complaint;
- (2) Award plaintiff monetary civil penalties from defendants for each violation of the Rule alleged in this Complaint;
- (3) Permanently enjoin defendants from violating the Rule; and

- (4) Award plaintiff such additional relief as the Court may deem just, proper, or necessary to redress injury to consumers resulting from defendants' violations of the Rule.

DATED: \_\_\_\_\_

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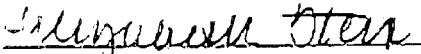
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