

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

UNITED STATES OF AMERICA,

Plaintiff,

v.

PRETTY EYES, LLC, a Colorado Limited
Liability Corporation, and

CHRISTIANNE MCNULTY, individually,
and in her official capacity as the owner of
Pretty Eyes, LLC,

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.

THE CONTACT LENS RULE

5. Congress enacted the FCLCA, 15 U.S.C. §§ 7601-7610, in 2003. The Act directed the FTC to promulgate a trade regulation rule implementing the FCLCA. The Commission promulgated the Rule, 16 C.F.R. Part 315, on July 2, 2004 pursuant to 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.

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

7. Under the Rule, 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).

8. 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).

9. 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

10. Pretty Eyes, LLC, is a Colorado limited liability corporation with its registered place of business as P.O. Box 1780, Arvada, Colorado 80004-1780. Defendant Pretty Eyes has advertised and sold decorative, non-corrective ("plano") contact lenses to consumers through its www.prettyeyes.org website. Pretty Eyes transacts, or has transacted, business in this District.

11. Defendant Christianne McNulty is the owner and sole member of Pretty Eyes. In connection with the matters alleged herein, McNulty resides and transacts business in this District.

12. Individually, or in concert with others, McNulty has formulated, directed, and controlled the acts and practices of Pretty Eyes, including the various acts and practices set forth herein.

13. The acts and practices of defendants Pretty Eyes and McNulty 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.

DEFENDANTS’ COURSE OF CONDUCT

14. Since at least November 2005, defendants have advertised and sold plano contact lenses to consumers on their website, www.prettyeyes.org.

15. Defendants have sold plano contact lenses to consumers without obtaining the consumers’ contact lens prescription or verifying the prescription by direct communication with the prescriber.

16. Defendants have failed to maintain records of the consumers’ contact lens prescriptions, defendants’ verification requests, or defendants’ direct communications from the contact lens prescribers.

DEFENDANTS’ VIOLATIONS OF THE CONTACT LENS RULE

17. In numerous instances, in connection with the advertising and sale of plano contact lenses, defendants have sold plano contact lenses to consumers without obtaining the consumers’ contact lens prescription or verifying the prescription by direct communication with the prescriber. Therefore, defendants have violated Section 315.5(a) of the Contact Lens Rule, 16 C.F.R. § 315.5(a).

18. In numerous instances, in connection with the advertising and sale of plano contact lenses, defendants have failed to maintain records of either the consumers’ contact lens prescriptions, the defendants’ verification requests, or defendants’ direct communications from

the contact lens prescribers. Therefore, defendants have violated Section 315.5(f) of the Contact Lens Rule, 16 C.F.R. § 315.5(f).

DEFENDANTS' VIOLATIONS OF THE FTC ACT

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

20. 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).

21. By and through the acts and practices described in Paragraphs 17 - 18 above, defendants have violated Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

THE COURT'S POWER TO GRANT RELIEF

22. 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).

23. Each sale of plano contact lenses that was completed from November 9, 2005 through the filing of this Complaint, and each failure to maintain records for such sales, which violates the Rule in one or more of the ways described above, constitutes a separate violation for which the plaintiff seeks monetary civil penalties.

24. 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.

25. 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' violations of the FTC Act, as well as such ancillary relief as may be just and proper.

PRAYER FOR RELIEF

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

- (1) Enter a permanent injunction to prevent future violations of the FTC Act and the Contact Lens Rule by the defendants;
- (2) Award the plaintiff monetary civil penalties from defendants for each violation of the Rule alleged in this complaint; and
- (3) Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

//

//

//

Respectfully submitted this 27th day of November, 2007.

FOR THE UNITED STATES OF
AMERICA:

PETER D. KEISLER
Assistant Attorney General
Civil Division
United States Department of Justice

EUGENE M. THIROLF
Director

KENNETH L. JOST
Deputy Director
Office of Consumer Litigation
Civil Division
U.S. Department of Justice
Washington, D.C. 20530
(202) 616-0219 (Phone)
(202) 514-8742 (Facsimile)

TROY A. EID
United States Attorney
District of Colorado

s/ Amanda Rocque
AMANDA ROCQUE
Assistant United States Attorney
1225 Seventeenth Street, Suite 700
Denver, CO 80202
(303) 454-0100 (telephone)
(303) 454-0409 (facsimile)
amanda.rocque@usdoj.gov (email)

FOR THE FEDERAL TRADE
COMMISSION:

KAREN JAGIELSKI
Attorney
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room NJ-3212
Washington, D.C. 20580