



American Optometric Association

1505 Prince Street, Alexandria, VA 22314 • (703) 739-9200
FAX: (703) 739-9497

June 23, 2004

Federal Trade Commission
Office of the Secretary
Room H-159 (Annex L)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Contact Lens Study, Project No V040010

Dear Sir/Madam,

The American Optometric Association (AOA) is pleased to submit comments on the Contact Lens Study in response to the April 22, 2004 notice and request for comment. AOA is the national organization representing some 33,000 doctors of optometry, students and educators.

Our comments will focus on some of the broad areas outlined in the notice. We would note at the outset that the eye wear market in general exhibits all the hallmarks of a very competitive marketplace. Consumers have a broad range of choices for their vision correction needs, spectacles, contact lenses, refractive surgery; all provided by a large and varied base of sellers, at various prices. The contact lens market in particular is a competitive marketplace. A wide range of lens types are available from thousands of sellers, including optometrists, ophthalmologists, opticians, mass merchandisers, chains and the internet. The market is very price competitive; indeed, contrary to the advertising claims of some internet sellers, many doctors, chains and mass merchandisers charge prices quite comparable to the internet sellers, if not lower. For example, data collected in the mid to late 1990's suggests the average prices charged for lenses by eye care practitioners, chains, mass merchandisers and internet sellers are quite similar. Certainly it is reasonable to believe that the market has gotten even more competitive in the last five years. In fact, testimony presented to the Commission's October 2002 e-commerce hearing indicated just that.

Exclusive Relationships

It is our understanding that the incidence of exclusive manufacturer-seller or prescriber relationships is not common. The dominant manufacturers in the market sell to everyone. It is also not at all common for prescribers to agree to prescribe only certain contact lenses. Indeed, virtually all prescribers fit a wide variety of lens types and ultimately prescribe the lens that suits the specific needs of the individual patient. We know of no prescriber who will prescribe only the lenses of a certain manufacturer for any reason. The ready availability and substantial sales

on the internet and by mass merchandisers of lenses from the major manufacturers, whose lenses comprise the vast majority of the market, suggest that doctors are certainly prescribing lenses available from competing sources, and consumers have no trouble obtaining these lenses from these sources. Further, we are not aware of any regulatory restrictions controlling prescribers advertisements with respect to the prescribing of lenses that are available from both sellers and prescribers.

Online/Offline Sellers

As noted earlier, data collected in the 1990's, and testimony presented to the Commission in 2002, indicated that the price differentials between offline and online sellers is minimal. The growth of internet sellers and increase in advertisements of those sellers has, we believe, affected ECP behavior with regard to both pricing and customer service.

While some consumers may believe that ordering online offers them convenience, most consumers have found that private offices, chains and mass merchandisers may be just as, or more, convenient. Most of these sellers offer delivery by mail, and many are located in areas close to the consumer's home or office, or where consumers go for other purposes and stopping for lenses is not an inconvenience.

We do believe, in response to item 12(f), that manufacturers charge different prices to online and offline sellers, with online sellers sometimes receiving lower prices.

Finally, we would like to note one significant difference between online and offline sellers – online sellers have for years sold lenses without appropriately verifying the validity of the prescription. Under these circumstances, some consumers may have found online sellers convenient because there was no effort to verify the prescription and they could continue to receive lenses long after their prescription had expired, thereby avoiding the necessary annual eye examination.

To the extent that some of these consumers are concerned that they may not be able to buy replacement lenses as quickly as they could when sellers were selling lenses without having a valid prescription or without attempting to verify the prescription, these consumers have a simple and effective remedy. The Act requires the prescriber to give the consumer a copy of the prescription at the completion of the fitting process. The consumer can hold onto the prescription and, when he or she wants to purchase lenses from an internet or other seller, provide a copy of the prescription to that seller, who can then retain the copy and use it when the consumer orders additional lenses. In such a situation, the seller will not have to take any time to contact the prescriber to verify the prescription. This is the system that consumers are accustomed to using for pharmacy and mail order purchases of prescription medications, and it has worked successfully for decades.

Prescriptions That Specify Brand Name or Custom Labeling

It is almost universal that the lens being fit by a prescriber will specify a brand name; that is, the name of a specific manufacturer. The incidence of so-called custom label lenses is small, and we would note that the Fairness To Contact Lens Consumers Act requires prescribers to provide, in the case of a private label lens, the name of the manufacturer and trade name of an equivalent

brand name, on the prescription. The primary benefit of prescribing lenses by brand is to assure that the patient receives the lenses best suited for their needs, after assessing the fit of the lens on the eye. We believe that roughly half the states reference that a brand name should be included on a prescription. No state prohibits putting the brand name on a prescription and as a practical matter we believe most doctors do so, again, to assure that the patient receives the lenses that were tested on the eye during the fitting process. As stated previously, we believe the incidence of custom or brand label lenses available only through the prescriber or optical chains is quite low.

Other Issues Related to Competition in the Sale of Prescription Contact Lenses

Ten states to our knowledge have registration, not licensure, requirements for out of state sellers. We do not believe they affect the ability of sellers to compete with in-state sellers or prescribers. The primary purpose of requiring registration is to protect consumers by providing a means of enforcing restrictions against sellers who provide consumers lenses without appropriately verifying the prescription. This has been a common occurrence over the past decade, when these statutes were enacted. As the Commission staff has noted in its March 2002 comments to the Connecticut Board of Examiners for Opticians, contact lens wearers incur health risks if they forego regular eye examinations.

AOA appreciates the opportunity to comment on the competitive nature of the contact lens market. All available evidence points to a highly competitive marketplace – multiple manufacturers with varied products; chains, mass merchandisers, internet sellers and thousands of ECPs each acting independently to meet the demands of more than 30 million consumers; doctors adjusting their pricing behavior to remain competitive; and consumers who are well informed about their vision correction alternatives. We believe any properly structured study of the market will confirm these findings.

Sincerely,



Victor J. Connors, O.D.
President