

Comment #: 6

From: Todd Fleischer
Sent: Monday, June 21, 2004 11:36 AM
To: CONTACTLENSSTUDY
Subject: Comments on Project No. V040010

The following comments are provided on behalf of the Kansas Optometric Association regarding Contact Lens Rule, Project No. V040010. A copy of the word document is also attached.

Thank you.

June 21, 2004

TO: FEDERAL TRADE COMMISSION
FROM: Kansas Optometric Association
RE: CONTACT LENS RULE, PROJECT NO. V040010

The Kansas Optometric Association wishes to provide comments for the "Contact Lens Study," specifically, question 31.

Question 31: "Please provide any other information regarding issues that affect competition in the sale of prescription contact lenses."

There is no question that the increased availability of contact lenses from various sources has increased competition and has allowed consumers the opportunity to purchase lenses from sources that meet their needs for price, convenience, etc. However, some of the tactics used by a few contact lens retailers are undermining the doctor-patient relationship and leading to inappropriate and irresponsible contact lens wear.

In the long run, deliberate misinformation to consumers by the retailers regarding discounts and price differences between lenses sold by eye doctors and other retailers, as well as misleading claims about the eye doctors' willingness to release prescriptions, actually discourages competition. We are also concerned about several anecdotes where an

operator at a contact lens retailer has suggested different wearing schedules than those prescribed — essentially telling the patient to wear fewer lenses longer, thus creating the perception that their price is significantly lower than other retailers. The ultimate result is that optometrists and ophthalmologists will be forced to treat more contact lens complications, which increases the cost of health care.

One contact lens supplier has been airing television ads that imply that it is only necessary to read the numbers off the box to order a new supply of contact lenses. This undermines the ongoing care provided by the eye doctor to ensure proper eye health, and is in direct defiance of the FCLCA.

A Kansas District Court decision provides powerful insights into the issue of competition in the contact lens market. On April 30, 2004, Judge Terry Bullock's decision in the Kansas Board of Examiners in Optometry v. 1-800-CONTACTS upheld the Kansas optometry law and specifically the right of the Kansas State Board of Examiners in Optometry to enjoin violators. The decision noted specifically that the practice of selling contact lenses solely off the information read off a box of contact lenses by a consumer presents irreparable harm to the public interest and violates Kansas Law. Judge Bullock rejected the 1-800 argument that the Fairness to Contact Lens Consumers Act (FCLCA) pre-empted Kansas law requiring a prescription from an optometrist or medical licensee before replacement contact lenses may be dispensed. The SBEO injunction against 1-800-CONTACTS remains in effect.

Motivated by maximum sales, contact lens marketers call the prescribing doctor to ask why the maximum number of lenses weren't prescribed or why the prescription is for a limited time period. The optometrist or ophthalmologist has to explain to the retailer — and sometimes a patient who has become upset about this issue after receiving misinformation from a retailer — that it is a medical decision based on the patient's eye health. In many cases, patients are told they can get an exam by an eye doctor in the contact lens retailer's network to get a new prescription for their lenses.

One contact lens retailer went so far as to publicly blame eye care providers for lower first quarter earnings, reporting that the company had to cancel \$10 million worth of orders because of the verification process. Doesn't this imply that they were selling \$10 million worth of lenses each quarter that were for expired, non-existent or otherwise invalid prescriptions?

Aggressive marketing by contact lens suppliers has convinced consumers to ignore shopping one of the best bargains in the contact lens market ... the eye doctor. Eye doctors have always been competitive and they are even more so since the availability of contact lenses through various sources. Consumers don't always consider comparing the cost of purchasing from their doctors which saves on delivery charges charged by some suppliers. Other benefits unique to eye care providers that include free trial lenses for emergency situations and the ability to get defective lenses easily replaced, along with on-going assessments and progress checks in many offices.

The availability of contact lenses from a variety of sources can have a positive impact on competition in this arena. We are in favor of competition on this level, as it provides patients with an opportunity to make decisions based on their needs. However, this level of competition is negatively affected by misleading information that undermines the doctor-patient relationship and, subsequently, patients' eye health. These inappropriate tactics need to be addressed before true competition can exist.