



Division of  
Advertising Practices

United States of America  
FEDERAL TRADE COMMISSION  
Washington, D.C. 20580

January 27, 2023

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**VIA FED EX**

### **CEASE AND DESIST DEMAND**

To Whom It May Concern:

The staff of the Division of Advertising Practices of the Federal Trade Commission recently received a complaint claiming that your office failed to automatically provide a consumer with a contact lens prescription upon completion of a contact lens fitting, and required the consumer to purchase contact lenses as a condition of releasing the prescription or required the consumer to pay an additional fee to obtain a copy of the consumer's contact lens prescription if the consumer chose to fill the prescription at another business. Such practices violate the Fairness to Contact Lens Consumers Act ("the Act"), 15 U.S.C. § 7601 et seq., and the Contact Lens Rule ("the Rule"), 16 C.F.R. Part 315. The Act and the Rule require prescribers to provide a copy of the contact lens prescription to the patient at the end of the contact lens fitting, *even if the patient does not request it*, prohibit prescribers from requiring patients buy contact lenses as a condition of providing a copy of the prescription, and prohibit requiring payment of additional fees as a condition of providing or verifying a consumer's prescription.<sup>1</sup>

In addition, prescribers cannot require patients to sign a waiver or release, as a condition of releasing or verifying the prescription. 15 U.S.C. § 7601(b); 16 C.F.R. § 315.3.

The Rule also requires a prescriber with a direct or indirect financial interest in the sale of contact lenses to ask patients to confirm that they received their prescription by signing an acknowledgment of receipt, a prescriber-retained copy of a contact lens prescription, or a prescriber-retained copy of the examination receipt. 16 C.F.R. § 315.3(c)(1)(A-C). Both the Act

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<sup>1</sup> 15 U.S.C. § 7601(b); 16 C.F.R. § 315.3. A prescriber may require a patient to pay for the eye exam, fitting, and evaluation before giving the patient a copy of the prescription, but only if the prescriber also requires immediate payment from patients whose exams reveal no need for ophthalmic goods. 15 U.S.C. § 7602; 16 C.F.R. § 315.4.

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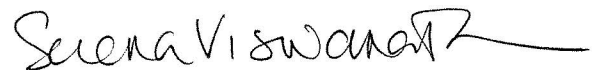
and the Rule impose requirements on contact lens prescribers and sellers that are intended to protect consumers' health while allowing consumers to comparison shop for contact lenses.

You are advised to immediately cease and desist from engaging in any acts or practices that violate the Act and the Rule. Violations of the Rule may result in legal action, including civil penalties of up to \$50,120 per violation.

You should review the Rule and revise your practices as necessary to ensure that they comply with the Rule's requirements. For your reference, you may find copies of two business guidance publications produced by the FTC, "*The Contact Lens Rule: A Guide for Prescribers and Sellers*" and "*Complying with the Contact Lens Rule*," on our web site at <https://www.ftc.gov/tips-advice/business-center/guidance/contact-lens-rule-guide-prescribers-sellers> and <https://www.ftc.gov/tips-advice/business-center/guidance/faqs-complying-contact-lens-rule>.

**Within 5 business days of receipt of this letter**, send a message to Alysa Bernstein and Sarah Botha via electronic mail at [abernstein@ftc.gov](mailto:abernstein@ftc.gov) and [sbotha@ftc.gov](mailto:sbotha@ftc.gov) describing the specific action you plan to take to address the reported violations. For any questions you have, please contact Ms. Bernstein at (202) 326-3289 or Ms. Botha at (202) 326-2036. Thank you for your prompt attention to this matter.

Very truly yours,



Serena Viswanathan  
Associate Director  
Division of Advertising Practices

**COMPLYING WITH THIRD-PARTY SELLER REQUESTS FOR PRESCRIPTIONS:**

[The complaint also indicated that, although your office was willing to place an order for contact lenses for the patient, it subsequently refused to provide the patient's prescription for those lenses to an authorized third-party seller. Such practices violate the Fairness to Contact Lens Consumers Act, 15 U.S.C. § 7601 et seq., and the Contact Lens Rule, 16 C.F.R. Part 315, which require prescribers to provide a copy of the contact lens prescription to the patient at the end of the contact lens fitting, *even if the patient does not request it*, and prohibit prescribers from requiring that patients buy contact lenses as a condition of providing a copy of the prescription. Moreover, if you offer to sell a patient contact lenses, the contact lens fitting is complete and you are not only required to automatically provide the prescription to the patient, but you are also

required to provide the prescription to an authorized third-party seller within forty business hours of receipt of the request.<sup>2]</sup>

**PROOF OF INSURANCE DEEMED TO BE PAYMENT:**

[The complaint also indicated that you required full payment at the time of service, even though the patient provided proof of insurance. Such practices violate the Fairness to Contact Lens Consumers Act, 15 U.S.C. § 7601 et seq., and the Contact Lens Rule, 16 C.F.R. Part 315, which require prescribers to provide a copy of the contact lens prescription to the patient at the end of the contact lens fitting, *even if the patient does not request it*, and prohibit prescribers from requiring that patients buy contact lenses as a condition of providing a copy of the prescription. Further, prescribers cannot require the patient to pay additional fees for releasing a prescription. 15 U.S.C. § 7601(b); 16 C.F.R. § 315.3. A prescriber may require a patient to pay for the eye exam, fitting, and evaluation before giving the patient a copy of the prescription, but only if the prescriber also requires immediate payment from patients whose exams reveal no need for ophthalmic goods. 15 U.S.C. § 7602; 16 C.F.R. § 315.4. However, presentation of proof of insurance coverage for that service is deemed to be payment and thus, you may not refuse to provide the prescription when proof of insurance is presented, without some other basis permitted by the Rule.]

**PRIVATE LABEL CONTACT LENS REQUIREMENTS:**

[The staff of the Division of Advertising Practices of the Federal Trade Commission recently received a complaint claiming that a prescriber at your office wrote a prescription for a private label contact lens brand without providing all of the following: the name of the manufacturer, trade name of the private label brand, and if applicable, trade name of equivalent brand name. Such a complaint alleges violations of the Fairness to Contact Lens Consumers Act, 15 U.S.C. § 7601 et seq., and the Contact Lens Rule, 16 C.F.R. Part 315, which define a contact lens prescription to mean “a prescription, issued in accordance with State and Federal law, that contains sufficient information for the complete and accurate filling of a prescription, including the following: [] In the case of a private label contact lens, name of manufacturer, trade name of private label brand, and, if applicable, trade name of equivalent brand name.”<sup>3</sup> Such a requirement ensures that consumers have the information they need to comparison shop for the prescribed contact lens or one “identical” to the prescribed lens.<sup>4]</sup>

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<sup>2</sup> 16 C.F.R. § 315.3(a)(3). Further, if a seller sends a proper verification request, you must not deny it by indicating it is expired, inaccurate, or otherwise invalid without a legitimate basis. Specifically, if you inform a third-party seller that the contact lens prescription is inaccurate or invalid, you must specify a basis for the inaccuracy or invalidity of the prescription and correct any inaccuracies. 15 U.S.C. § 7603(e); 16 C.F.R. § 315.5(e).

<sup>3</sup> 15 U.S.C. § 7610 (3); 16 C.F.R. § 315.2.

<sup>4</sup> The Rule defines private label contact lenses to mean “contact lenses that are sold under the label of a seller where the contact lenses are identical to lenses made by the same manufacturer but sold under the labels of other sellers.” 16 C.F.R. § 315.2. If a prescription

**DENIAL OF THIRD-PARTY SELLER VERIFICATION REQUESTS:**

[In addition, we received a separate complaint claiming that your office denied a third-party seller's prescription verification request by indicating the information relayed in the verification request was incorrect, but that you failed to correct the information. Such practices violate the Act and the Rule. Specifically, when responding to a verification request that is inaccurate, expired or otherwise invalid, prescribers must specify the basis for the inaccuracy or invalidity of the prescription and further, if the prescription communicated by the seller to the prescriber is inaccurate, prescribers must correct it. 15 U.S.C. § 7603(e); 16 C.F.R. § 315.5(e).]

**PRESCRIPTION EXTENSIONS:**

[The staff of the Division of Advertising Practices of the Federal Trade Commission recently received a complaint indicating that your office is offering patients a courtesy extension of their contact lens prescription and will sell contact lenses to those patients, but will not provide or verify a contact lens prescription for such sales from other retail locations. Such practices violate the Fairness to Contact Lens Consumers Act, 15 U.S.C. § 7601 et seq., and the Contact Lens Rule, 16 C.F.R. Part 315. The Act and the Rule require prescribers to provide a copy of the contact lens prescription to the patient at the end of the contact lens fitting, even if the patient does not request the prescription. The Act and the Rule define "contact lens fitting" to mean the process that begins after an initial eye examination for contact lenses and ends when a successful fit has been achieved or, *in the case of a renewal prescription, ends when the prescriber determines that no change in the existing prescription is required.*<sup>5</sup> If you are willing to sell contact lenses to the patient, you must release a copy of that prescription to the third-party seller authorized by the patient. The staff appreciates the willingness of eye care practitioners to renew their patients' prescriptions, when medically appropriate, during these challenging times. However, such renewals must be made in accordance with the Act and the Rule.]

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specifies private label contact lenses, sellers may substitute such "identical" contact lenses and it is not considered an impermissible alteration of the prescription. 16 C.F.R. § 315.5(f).

<sup>5</sup> 15 U.S.C. § 7610; 16 C.F.R. § 315.2.