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U1.1ited States Attorncy .
. -.- I.,.' A t. , , by: Susan Hand1cr-Menabem - /!

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Ncwark, N9 07 COURT

FOR THE DISTRICT OF NEW JERSEY

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UNITED STATES OF AhIENCA, 1
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Plaintiff, 1
Civ. No.
v. 1
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WALSH OPTICAL, INC., 1
a corporation, 1
1
and
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KEVIN WALSH, indiv~duallyand as a11 officer j of 111e corporation,)
Defendants. 1

COMPLAINT FOR CIVIL PENALTIES, PEFUHANENT IKJUNCTTON, AND OTHER RELIEF

Plaintiff, the Unitcd States of America, acting upon notification and authorization le

Attorney General by the Federal Tradc Commission ("FTC" or "Com~nission"), for its Cc aint

alleges that:

1. Plaintiff brings

Act ("FCLCA"), 15 U.S.C. $5 7608(a) and (b),and Sect~ons5(a)(l),

j(mMl)(A), 13(b), 16fa), and 14 of the Federal Trade Commission Act ("FTC Act'"). 15 L ,.

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. 5 44.

THE CONTACT LENS RULE

9. Congress enacted the Fairness to Contact Lens Consumers Act, 15 U.S.C.
tj4 760 1-76 10, 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. 5 7607, and Section 553 of the Administrative Procedure Act, 5 U.S.C. 5 553. 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.
5 3 15.5(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. 5 315.5(f).
11. Pursuant to Section 9(a) of the FCLCA, 15 U.S.C. 5 7608(a), and Section
18(d)(3) of the FTC Act, 15 U.S.C. 5 57a(d)(3), a violation of the Rule constitutes an unfair or deceptive act or practice, in violation of Section 5(a)(l) of the FTC Act, 15 U.S.C. 5 45(a)(l).

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. 5 3 15.5(a). DEFENDANTS' UNFAIR OR DECEPTIVE ACTS Part 317 .029 0 -2.375 (in�(either)Tj15,)T Cones

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)(l)(A) of the FTC Act, 15 U.S.C. 5 45(m)(l)(A), as modified by
Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990,28 U.S.C. 5 2461, and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. 5 1.98(d), authorize this Court to award monetary civil penalties of not more than $1 1,000 for each such violation of the Rule.
20. Under Section 13(b) of the FTC Act, 15 U.S.C. 5 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. $5 45(a)(l),
45(m)(l)(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