

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THY XUAN HO, a/k/a/ Brandon Lee,
individually, also doing business as
MyCuteLens.com,

Defendant.

CIVIL ACTION NO.

CONSENT DECREE AND ORDER FOR CIVIL PENALTIES.

3. The activities of Defendant are in or affecting commerce as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The Complaint states a claim upon which relief may be granted against Defendant under Sections 9(a) and 9(b) of the Fairness to Contact Lens Consumers Act

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purposes of this definition, includes a dispensing optician who is permitted under State law to issue prescriptions and who is authorized or permitted under State law to perform contact lens fitting services.

INJUNCTION

IT IS ORDERED that:

18. Defendant, his successors and assigns, and his officers, agents, representatives, and employees, and all persons in active concert or ~~pr~~ ~~OR~~ ~~ti~~ ~~a~~ ~~f~~ ~~i~~ ~~s~~ ~~s~~ ~~a~~ ~~e~~ ~~s~~, ~~c~~ ~~o~~ ~~v~~ ~~e~~ ~~n~~ ~~t~~ ~~e~~s, who

- A. For prescriptions presented to Defendant as described in Paragraph 18. A., the prescription itself, or the facsimile version thereof (including an email containing a digital image of the prescription); and
- B. For verification requests made by Defendant as described in Paragraph 18. B.:
 - 1. If the communication occurs via facsimile or email, a copy of the verification request, including the information provided to the prescriber regarding the consumer, and confirmation of the completed transmission thereof, including a record of the date and time the request was made.
 - 2. If the communication occurs via telephone, a log (a) describing the information provided to the prescriber; (b) setting forth the date and time the request was made; (c) indicating how the call was completed; and (d) listing the names of the individuals who participated in the calls.
- C. For communications from the prescriber, including prescription verifications:
 - 1. If the communication occurs via facsimile or email, a copy of the communication and a record of the time and date it was received;

23. In accordance with 31 U.S.C. § 7701, Defendant is hereby required, unless he has already done so, to furnish to the Federal Trade Commission (“FTC” or “Commission”) his taxpayer identifying number (social security number or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of his relationship with the government.

24. Defendant agrees that the facts as alleged in the Complaint filed in this action shall be taken as true, without further proof, in any subsequent civil litigation filed by or on behalf of the Commission to enforce its rights to any payment or money judgment pursuant to this Order.

RIGHT TO REOPEN

25. **IT IS FURTHER ORDERED** that:

- A. The Commission’s agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of the individual financial statements submitted to the Commission by the Defendant and signed and dated February 7, 2011 and March 5, 2011. Defendant stipulates that all of the materials that Defendant submitted are truthful, accurate, and complete. These documents contain material information upon which the Commission relied in negotiating and agreeing to the terms of this Order.

B. If, upon motion by the Commission, a Court determines that Defendant made a material misrepresentation or omitted material informat

perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including, but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
2. having its representatives pose as consumers and suppliers to Defendant, his employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; and

C. Defendant shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§

49 and 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

COMPLIANCE REPORTING

27. **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order be monitored:

A. F

with the business or employment; and

- c. Any changes in Defendant's name or use of any aliases or fictitious names within ten (10) days of such change;

2. Defendant s

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of five (5) years, Defendant shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. Defendant's

4. A copy of each acknowledgment of receipt of this Order and the Compliance Guides entitled, *The Contact Lens Rule: A Guide for Prescribers and Sellers* and *Complying with the Contact Lens Rule* (collectively, the “Compliance Guides”), attached hereto as Attachments B and C, obtained pursuant to the section of this Order entitled “Distribution of Order;”
5. Any other changes required to be reported under Subsection A of the section of this Order entitled “Compliance Reporting;”
6. A statement describing in detail the process for obtaining copies of contact lens prescriptions for orders obtained through all sales channels, including, but not limited to, telephone sales and Internet sales;
7. A statement describing the process for verifying contact lens prescriptions for orders obtained through all sales channels, including, but not limited to, telephone sales and Internet sales;

8. A sample copy of each different type of communication used to request prescription information from consumers, including, but not limited to, any online form, email message, telephone script, web page, or screen;
9. A sample copy of each different type of communication used to submit verification requests to prescribers, including, but not limited to, any fax form, email message, or telephone script;
10. A statement describing Defendant's procedure for maintaining the records required by the Rule, including, but not limited to, contact lens prescriptions directly presented to Defendant, prescription verification requests submitted to prescribers, and direct communications received from prescribers; and
11. A list of persons or employees who are responsible for collecting and maintaining compliance-related information.

C. Defendant shall notify the Commission of the filing of a bankruptcy petition by Defendant within fifteen (15) days of filing.

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly or indirectly, such as through a third party,) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials for contact lenses; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, a sample copy of every different type of communication used to request prescription information from consumers or to submit

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- C. Individual Defendant as employee or non-control person: For any business where Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant shall deliver a copy of this Order and the Compliance Guides to all principals and managers of such business before engaging in such conduct.
- D. Defendant shall secure a signed and dated statement acknowledging receipt of this Order and the Compliance Guides, within thirty (30) days of delivery, from all persons receiving a copy of this Order and the Compliance Guides pursuant to this section, and shall maintain these statements in accordance with the Section of this Order entitled “Recordkeeping.”

**ACKNOWLEDGMENT OF RECEIPT
OF ORDER BY DEFENDANT**

30. IT IS FURTHER ORDERED that Defendant, within five (5) business days of receipt of this Order as entered by the Court, shall submit to the Commission a truthful, sworn statement acknowledging receipt of this Order.

RETENTION OF JURISDICTION

31. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

JUDGMENT IS THEREFORE ENTERED pursuant to all the terms and conditions recited above.

Dated this _____ Day of _____, 2011.

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

TONY WEST

Assistant Attorney General

Civil Division

United States Department of Justice

B. TODD JONES

Federal Trade Commission

§ 315.5

the prescriber requires immediate payment in the case of an examination that reveals no requirement for ophthalmic goods. For purposes of the pre-

tunity for the prescriber to communicate with the seller concerning the verification request.

(d) *Invalid prescription.* If a prescriber

§315.6

16 CFR Ch. I (1-1-11 Edition)

(D) Listing the names of the individ-

(h) *Special rules for prescriptions of less*

Federal Trade Commission

§ 315.10 Severability.

~~The provisions of this part are...~~



