

The Contact Lens Rule and the Evolving Contact Lens Marketplace

Introduction

ALYSA BERNSTEIN: Good morning. My name's Alysa Bernstein and I'm an attorney in the Bureau of Consumer Protection at the Federal Trade Commission. On behalf of my colleagues, I'm very excited to welcome you all to the Contact Lens workshop. We're excited to explore the contact lens marketplace with you today. Before we get to the main event, I need to review a few administrative details, so I hope you've had your coffee already.

Please silence any mobile phones and devices. If you need to use them during the workshop, please be respectful of the speakers and your fellow audience members. Be aware if you leave the Constitution Center building for any reason during the workshop, you're going to have to go through security again. Keep this in mind and plan ahead, especially if you're participating on a panel so that we can do our best to remain on schedule.

The restrooms are just outside the auditorium. The plaza east cafeteria is located inside the building. So you can use it without going through security. The cafeteria is the place to go if you like coffee or tea without having to leave the building. It's open till 11 AM, and then it'll reopen at 11:30, and remain open till 3:00 PM. There's no food or drink other than water permitted in the auditorium.

Most of you received a lanyard with a plastic FTC the event security badge. We reuse these for multiple events, so when you leave for the day, please return your badge to the event staff. If an emergency occurs that requires you to leave the auditorium but remain in the building, follow the instructions provided over the PA system.

If an emergency occurs that requires the evacuation of the building, the alarm will sound, and everyone should leave the building in an orderly manner through the main 7th Street exit. After leaving the building, turn left, and proceed down 7th Street, and across E Street to the FTC emergency assembly area. Remain there until instructed to return to the building. If you notice any suspicious activity, please alert building security.

Be advised this event may be photographed, and it is being webcast, and recorded. By participating, you are agreeing that your image and anything you say or submit may be posted indefinitely at FTC.gov or one of the Commission's publicly available social media sites.

Welcome to those watching via the webcast. We'll make the webcast and all of the workshop materials available online to create a lasting record for everyone who is interested in these issues. For those of you on Twitter, we'll be tweeting today's workshop at #ContactLensFTC. If you'd like to ask a question via Twitter, please tweet your question using that hashtag.

We'll also be accepting questions via paper cards. They look like this, for those who are here in the audience. You may have picked up some of these cards already at check in. Workshop staff

Besides the benefits that consumers quite literally see, contact lenses are a big business. US sales revenue surpassed \$5 billion last year, up from less than \$2 billion in 2002. The variety of lenses and of places to buy them is far more diverse than it once was. Consumers can now choose from online sellers, big box stores, wholesale clubs, retail chains, and of course, from independent eye doctors.

We at the FTC liked to think that the Contact Lens Rule has contributed to the growth and diversity of the contact lens marketplace. The Rule has been in place since 2004, but it's worth reviewing its history and the statute that provides the framework for the Rule. I'm particularly well-suited, as Alysa had mentioned, to discuss the industry because I was one of the FTC staff members who worked on promulgating the original rule in 2004.

Often, what people think of as requirements imposed by the FTC through the Contact Lens Rule are actually requirements spelled out in the statute. Specifically, the Fairness to Contact Lens Consumers Act, or FCLCA, which went into effect in 2004. At the time of the Act's passage, about two thirds of the states already had statutes requiring some form of prescription release to consumers.

Yet despite these laws, Congress determined that many consumers were still not getting copies of their prescriptions, and were having a tough time obtaining lenses from third party sellers due to prescription verification obstacles. Problems with prescription release and verification hampered competition, and limited the ability of consumers to comparison shop. Congress also had concerns that some sellers were selling lenses without requiring a valid prescription.

The Act was intended to remedy these concerns. Foremost is what's known as the automatic prescription release requirement, which mandates that prescribers give consumers a free copy of their prescription at the end of a contact lens fitting, even if the consumer doesn't ask for it. The Act further provides that consumers can take prescription to any seller to be -1(i)-6(b12(pt)-2(i)-2(on t)-24(l)-4(c

requirements would require legislative action. It's not something the Commission has the authority to do by rulemaking.

Today, our focus is primarily on the Contact Lens Rule, which the Commission issued in 2004 to implement the Act. The Rule tracks the statute very closely, with the same requirements that prescribers release and verify prescriptions, and don't charge extra for doing so. The Rule also contains some additional provisions, such as a recordkeeping requirement for sellers, a definition as to what constitutes eight business hours, and a requirement that during the eight hour period, a seller has to provide an opportunity for the prescriber to communicate with them.

