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April 5, 2018

Via E-mail and U.S. Postal Service

Donald S. Clark
Secretary
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, N.W.
Suite CC-5610 (Annex F)
Washington, DC 20580

Re: Contact Lens Rule, 16 CFR part 315, Project No. R511995

Dear Secretary Clark:

I am writing on behalf of the American Optometric Association (“AOA”) to respectfully request careful scrutiny of certain statements made during the March 7, 2018 workshop about “investigations” of compliance by California optometrists with that state’s requirements of signage notifying patients of their right to receive a copy of their contact lens prescriptions. These statements in effect questioned the efficacy of the California signage requirements and implied that FTC signage requirements, if adopted, would fare similarly. For the reasons set forth below, AOA urges the Commission not to rely upon those statements as it considers whether to adopt AOA’s proposal for signage requirements in the Contact Lens Rule which is currently the subject of consideration by the Commission.

In particular, during a panel discussion, Linda Sherry of Consumer Action referred to the purported results of that entity’s “looking around” into signage requirements compliance in San Francisco and San Jose. Shortly thereafter, Elizabeth Delaney of the Division of Advertising Practices referred to “informal testing” by FTC officials of 15 California sites as to whether and how such signs were posted. Ms. Delaney’s remarks seemingly concluded that these checks showed the difficulty of enforcing signage requirements. Consumer Action subsequently issued a press release on March 27, 2018 asserting that it had visited 20 California offices from March 8-15 as part of a spot check.

These statements are directly relevant to key issues before the Commission in connection with its rule-making on the Contact Lens Rule. Specifically, in its comments to the proposed Rule, AOA stated that, if any action has to be taken, “(a) requirement to post a notice of patient rights would...be far less burdensome for patients and prescribers yet still achieve the Commission’s objectives to address any prescriber confusion related to requirements of the Rule, make patients aware of their rights, and improve the Commission’s enforcement ability.” (See p. 5 of AOA

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comment letter of January 30, 2017.) The statements by Ms. Sherry and Ms. Delaney are, of course, inconsistent with the position taken by AOA. For the reasons below, AOA believes these statements should in no way deter the Commission from adopting AOA's suggested approach of requiring signage regarding the right of patients to receive copies of their contact lens prescriptions.

To begin, there are serious questions about the procedure used by Consumer Action. We have no publicly available information about how these spot checks were conducted or reported. Indeed, it is even unclear how many sets of spot checks were conducted by Consumer Action. If the spot checks referred to in the March 27, 2018 Consumer Action press release were the only ones conducted, it is a mystery how Ms. Sherry could describe on March 7 the supposed results of spot checks that were not even begun until March 8. Regardless, no reliance should be placed upon the Consumer Action spot checks unless and until the Commission understands comprehensively and evaluates completely the methodology used by that organization and releases the results for public scrutiny and comment.

Turning to the informal testing referred to by Ms. Delaney, the protocol followed and the corresponding reliability of the results of that process also are unknown. What was the nature of the informal testing? Who conducted that testing? How were the sites selected? What sort of effort was made to view the signage? No weight should be placed upon the informal testing mentioned by Ms. Delaney unless and until the Commission examines thoroughly whether the procedures used in the testing were methodologically sound and releases the results for public scrutiny and comment.

Finally for now, apart from the questions raised above, AOA takes issue with any contention that any supposed shortfall in California signage requirements compliance can be extrapolated to an expected shortfall in FTC signage compliance were the Commission to promulgate such requirements. After all, the Commission has superior tools to enforce signage requirements -- including staff and budgetary resources, sophisticated educational expertise, and the ability to command nationwide media attention in order to foster compliance. In addition, if the Commission were to adopt AOA's signage proposal, AOA would work with the Commission in educating its members about the requirements and urging full compliance. The effect of this compliance initiative can be expected to impressively serve the public interest.

Thank you very much for your consideration of the above.

Respectfully submitted,



Andrew J. Strenio, Jr.