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October 5, 2015

The Federal Trade Commission

Washington, D.C.

Dear Sirs,

The Federal Trade Commission is seeking public comment regarding 16 CFR Part 456, commonly called the Eyeglass Rule, with the intent to explore expanding the scope of the rule to include in all prescriptions the measurements necessary to prepare an order for prescription eyewear. This expansion is completely unnecessary to and of no benefit to any sector of the ophthalmic industry, save one – online prescription eyewear businesses.

The eyewear industry is robust, highly competitive and encompasses the full range of consumer needs and budgets. Online eyewear sites are almost always providers of economy eyewear, achieving a market advantage over others by declining to provide necessary key services found only in a physical location staffed by qualified personnel. They leave it to the consumer to seek out those services elsewhere. Their sites erroneously advise that these services should be obtained gratis or de minimis. The skilled professionals in the eyewear industry have historically been quite generous with their knowledge and time, but the nature of the online business model far exceeds the bounds of that generosity. I accept and welcome competition, but I do object to being compelled to assist the competition in ways and to a degree never expected before in the history of this industry.

As a career ophthalmic professional, I regard the online eyewear concept as deeply and severely flawed. The model is incomplete and parasitic by design, as it needs others to provide essential services required

for the model to be viable. The online sector depends on the degree of willingness of the real world ophthalmic care provider to donate his/her services, both before and after the transaction. As the volume of this sector grows, growing numbers of real world providers are reasonably opting to charge for, or refuse to provide, such requests for service. The true consumer savings achieved by the online model is negligible, because the fees charged by online providers are for only a portion of the costs incurred by the consumer in the course of obtaining and maintaining eyewear.

The simplest of these services is the provision of a pupillary distance measurement. A doctor does not measure it or need it to complete an examination. It is, however, a vital step in preparing an order for eyewear, determined almost always not by a doctor but by an optician or other technician. After a brief inspection of the prescription and a conversation with the patient/consumer, any capable optician can provide an accurate pupillary distance appropriate to the prescribed and desired eyewear. In my long career, I have never called anyone, and no other professional has called me, to ask for a PD. Only the online provider, with the hindrance of never actually seeing the patient, finds this minor task to be so great a hurdle that they seek or need assistance from others to complete an order for eyewear.

Other services, advice and measurements that the professional routinely provides in the course of their work are ignored by the online provider because they are cumbersome and challenging to obtain without a physical encounter with the patient. The public should be made aware of this. Their marketing suggests that they use sophisticated technology, but the professional recognizes their methods as little more than rudimentary guesswork based upon superficial data, unnecessary when one actually sees the patient. It may work in some cases and will fail in others. This proposed rule change starts us on a slippery slope. What other assistance might we be compelled in the future to overcome the innate deficiency of online purchasing of eyewear?

I compare this issue to the logistics of the current Contact Lens Rule. When eye doctors were directed to release Contact Lens prescriptions to patients, the patient cost was divided into 3 parts; examination fee, additional tests to determine CL Rx, and materials. After arranging for the first two, the patient was free

to seek materials at the provider of their choice. The Spectacle Rule should mirror that approach; i.e, separate charges for examination fee, other services and materials.

Brick and mortar optical businesses are spending more time every day being quizzed by patients with the intent to gather information and advice from trained professionals, to be later used online. They do this with varying degrees of openness and acceptance of the associated charges. They will then return later asking for more help when the online eyewear proves deficient in some way, and the far away provider has nothing to offer. This scenario is playing out every day in clinics all across the country. It must be clearly spelled out for all to see that the real world provider has a right to set and charge fees for services they provide as they see fit.

Consumer agencies require fair warning notices on products of all types. Online providers should be required to prominently post the following consumer warning on their sites:

**This site does not provide complete care and service. It may be necessary for you to seek out local assistance for eyewear purchased on this site, both before and after the purchase.**

**You will likely be charged for this assistance when/if a willing provider is available. We do (or do not) compensate you for this assistance.**

The clear intent of the proposed rule change is to reduce the cost of eyewear for the consumer. That is laudable, but the proposed rule change will not accomplish the goal. Those being called upon to fill the gaps in the online eyewear model will find a way to be paid for their services, and consumers will be the ones to make that payment.

The FTC should instead opt to ensure governance that is fair and evenhanded instead of biased and encouraging one segment. It should turn its attention to other matters of true impact on the marketplace where it could make a difference to the consumer.

Sincerely,

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