

November 4, 2005

Mary K. Engle, Associate Director
Federal Trade Commission
Division of Advertising Practices
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: **Response to October 13, 2005 Letter Regarding Alleged Violations of the Fairness to Contact Lens Consumer Act and Contact Lens Rule**

Dear Ms. Engle:

Thank you for your letter dated October 13, 2005 regarding allegations the Federal Trade Commission (FTC) has received concerning prescribers' ability to communicate with 1-800 CONTACTS regarding verification requests in general, and specifically, the availability of our fax system. In its letter, the FTC indicates that these complaints allege that 1-800 CONTACTS' fax system is "often busy," and further that "prescribers are therefore unable to communicate with it regarding verification requests."

We take very seriously our obligation to verify prescriptions in accordance with the Fairness to Contact Lens Consumers Act (FCLCA) and Contact Lens Rule (Rule). In order to facilitate compliance with the statute and rule, our fax system documents all activities in which it engages. This provides us with the capability to investigate each complaint. Unfortunately, without specific time and date information related to each reported fax attempt, we are unable to offer specific answers in response to the allegations.

We are, however, happy to provide the FTC with general information about our system that should mitigate concerns about the integrity of our fax system and our commitment to compliance associated with all areas of the FCLCA and Rule. Rather than simply connect numerous fax machines directly to our phone lines, we have contracted with a fax service provider, whose expertise and excess capacity ensures maximum availability of 1-800 CONTACTS' inbound fax system. The following are some of the general performance measures from our inbound fax system:

- Our fax service provider reports that their fax system is capable of receiving more than a hundred faxes simultaneously.
- Since the beginning of 2005, our fax lines have been accessible during business hours to prescribers 99.96% of the time.
- We have recorded just four separate, albeit brief, interruptions in fax service in 2005. The average length of each interruption was twenty minutes.
- During an interruption of our verification system, shipment of orders is suspended

- We also provide a separate eye care professional service line for prescribers to report any interruption in fax service. This line is constantly monitored during business hours, and messages are checked in the order received, generally within five minutes of receipt.

While we strive for 100% availability of all our systems, a properly designed system assumes that there will be limited downtime and compensates for it. The minor interruptions noted above were caused by our fax service provider and were remedied within a short time due to our monitoring systems (we run tests every few minutes to ensure that all verification operations, including incoming fax lines, are operational). 1-800 CONTACTS initiates approximately two million prescription verification requests each year. Even near perfect availability of 99.96% could result in instances where a small number of prescribers find the fax lines unavailable for a very brief period of time.

However, as noted, 1-800 CONTACTS has designed its systems to properly address these rare periods of downtime. Shipment of orders is suspended during a verification system outage, and 1-800 CONTACTS does not take advantage of system downtime to ship orders without giving Eye Care Providers the required eight business hours to respond. Brief system outages will inevitably occur and FTC may continue to receive complaints from prescribers who incorrectly assume that 1-800 CONTACTS is either intentionally making its systems unavailable or is taking advantage of an outage.

In response to the FTC's letter, we have thoroughly reviewed our procedures and systems, and we are confident that we are in full compliance with the FCLCA and the Rule. We respectfully invite the FTC to test our fax system anytime by calling 1-866-212-5116 to confirm independently that our fax lines are indeed open and compliant.

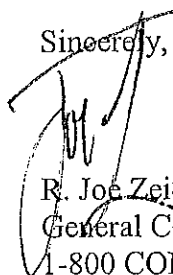
It is accurate that our fax system has had brief outages and has been unavailable 0.04% of the time in 2005. However, we assume FTC is aware that the American Optometric Association (AOA) solicits complaints about 1-800 CONTACTS from its more than 34,000 members. We understand that AOA met with FTC to present these complaints. We also assume that FTC is well aware that in addition to providing eye care and acting as the prescriber, most of AOA's members also sell what they prescribe, are the primary retailers of contact lenses, and own or work for retailers that are in direct competition with 1-800 CONTACTS. Thus, the FTC has been placed in the unenviable position of being asked to resolve a dispute between competitors. We believe if the AOA understood how our systems work and the safeguards that we have implemented to ensure compliance with the FCLCA, the AOA could instead help educate their members and significantly reduce the number of complaints received by the FTC.¹

¹ 1-800 CONTACTS has repeatedly offered to host AOA leadership in Salt Lake City at 1-800 CONTACTS' expense and at AOA's convenience to review our systems first hand. Please find attached copies of letters from our CEO to the president of the AOA dated April 29th, June 2nd, and July 14th. AOA has not accepted any of these invitations. The AOA did offer to meet in Washington, DC on July 28th. Unfortunately, as we note in our reply dated July 14th, July 28th was the date of our quarterly board meeting. We note in our reply that we would accept AOA's invitation to meet in DC on another date other than July 28th. AOA has to date not offered any alternate dates or accepted 1-800 CONTACTS' invitation to visit 1-800 CONTACTS' facilities. 1-800 CONTACTS' offer to AOA still stands for AOA leadership to visit 1-800 CONTACTS' facilities at 1-800 CONTACTS' expense and AOA's convenience. We of course extend the same invitation to the FTC.

Moreover, in evaluating future complaints, please note that many prescribers perceive that 1-800 CONTACTS is the sole or primary online seller of contact lenses. We have encountered numerous situations in which complaints about another company are incorrectly attributed to us. We have had eye care providers call us to complain about improper shipment of lenses only to discover, once the details of the incident were shared, that the order was shipped by another online company and not 1-800 CONTACTS.

Thank you for informing us of the general allegations the Federal Trade Commission has received. Again, we are happy to respond with more specific detail related to each complaint if specific times and dates are made available to us. If we may provide any additional information or clarification, please feel welcome to contact me directly.

Sincerely,



R. Joe Zeidner
General Counsel
1-800 CONTACTS, INC.



RJZ/jcc

April 29th, 2005

Wesley E. Pittman, O.D.
American Optometric Association
1505 Prince Street
Alexandria, VA 22314

Dear Mr. Pittman:

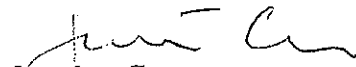
Thank you for your letter; we appreciate your making us aware of the American Optometric Association's concerns regarding 1-800 CONTACTS' process for verifying prescriptions. I should note that although the letter was dated April 6th, it was postmarked April 15th, and received on Monday April 25th when I returned from a trip overseas. I apologize for our delayed response.

We have spent considerable time and effort designing and implementing a verification system that complies with the Fairness to Contact Lens Consumers Act. Nonetheless, we recognize that no system is perfect and are always ready to listen to concerns and suggestions. In fact, a number of the improvements found in the current system were designed in response to comments from eye care providers and other optical retailers.

With this in mind, we would like to meet in person to discuss your concerns. We are also interested in meeting and getting to know AOA leadership so we can build a better working relationship and increase understanding. As we have with many industry opinion leaders, we invite you to visit our facility and discuss our verification system. We will cover the travel expenses of all the members of your leadership team that can attend.

Please contact me directly to discuss possible dates and times. (I have enclosed my business card with my direct phone number.)

Sincerely,



Jonathan Coon
CEO
1-800 CONTACTS, INC.

Mr. Wesley Pittman, President
243 N. Lindbergh Blvd
St. Louis, MO 63141
314-991-4100

VIA FEDERAL EXPRESS

June 2, 2005

Dear Mr. Pittman:

Thank you for your response dated May 25, 2005

We believe the most constructive meeting would be in person and at our facilities. We will be able to literally walk you through the system so that the AOA can see first hand the commitment we have made to complying with the federal law. We again extend the invitation to you and all members of your leadership team that can attend. We will cover all travel expenses.

We would like to accommodate your request to meet before the AOA meeting June 22nd to 26th. Our entire senior management team schedules one vacation week together each year. This year, we will all be out of the office June 12th to 19th. That said, we want to be as flexible as possible and can move things around to meet before the 22nd. We suggest Friday June 10th or Tuesday June 21st.

I have again enclosed my business card with my direct phone number and invite you to call me anytime if you would prefer to respond by phone.

Sincerely,


Jonathan Coon
1-800 CONTACTS, INC.

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July 14th, 2005

Mr. Wesley Pittman, President
American Optometric Association
243 N. Lindbergh Blvd
St. Louis, MO 63141
314-991-4100

Dear Mr. Pittman:

Thank you for your response dated July 7, 2005.

Unfortunately, our board of directors meeting starts the afternoon of July 28. However, if July 27th is a good travel day for you and other members of your leadership team, we would like to again extend an invitation to come to our facilities for a meeting and tour on the morning of July 28th. Our offer to cover all travel expenses still stands.

If, after visiting our facilities, you believe a meeting in Washington would be productive, we would be happy to meet there as well. We are committed to ensuring that the Fairness to Contact Lens Consumers Act serves the interests of consumers, and are open to hearing your suggestions. To be clear, if you prefer not to meet with us first, and instead meet in Washington, we are willing to accommodate this request as well, but cannot meet on the 28th.

I have again enclosed my business card with my direct phone number and invite you to call me anytime.

Sincerely,

Jonathan Coon
1-800 CONTACTS, INC.