

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____ -Civ

UNITED STATES OF AMERICA,

Plaintiff,

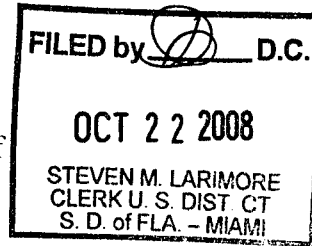
08 - 61713

CIV-ZLOCH

v.

CONTACT LENS HEAVEN, INC., a corporation; and IOANNA XENOU-KAROUMPA, individually, and in her capacity as the sole owner and officer of Contact Lens Heaven, Inc.,

Defendants.



MAGISTRATE JUDGE
SNOW

**COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION
AND OTHER RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 9(a) and 9(b) of the Fairness to Contact Lens Consumers Act (“FCLCA”), 15 U.S.C. §§ 7608(a) and (b), and Sections 5(a)(1), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), 56(a), and 57b, to obtain monetary civil penalties, a permanent injunction, and other equitable relief for Defendants’ violations of the Contact Lens Rule (“Rule”), 16 C.F.R. Part 315.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a),

1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. §§ 45(a)(1) and 7608(a).

3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) - (c) and 1395(a).

DEFINITIONS

4. For purposes of this Complaint, the terms “contact lens,” “contact lens prescription,” “direct communication,” and “prescriber” are defined as those terms are defined in Section 315.2 of the Rule, 16 C.F.R. § 315.2.

THE CONTACT LENS RULE

5. Congress enacted the FCLCA, 15 U.S.C. §§ 7601-7610, in 2003. The FCLCA directed the FTC to promulgate a trade regulation rule implementing the FCLCA. The Commission promulgated the Rule, 16 C.F.R. Part 315, on July 2, 2004 pursuant to Section 8 of the FCLCA, 15 U.S.C. § 7607, and Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553. The Rule went into effect on August 2, 2004.

6. On November 9, 2005, Congress amended the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 - 399 to state that all contact lenses, including non-corrective, decorative, (“plano”) contact lenses are restricted medical devices. 21 U.S.C. § 360j(n). Consequently, the Rule applies to both corrective and plano contact lenses.

7. Under the Rule, contact lens sellers may sell contact lenses only in accordance with a contact lens prescription for the patient that is either presented to the seller or verified by direct communication with the prescriber. 16 C.F.R. § 315.5(a).

8. The Rule further requires contact lens sellers to maintain records of the contact

lens prescriptions presented to the seller, the seller's verification requests, and direct communications from prescribers. 16 C.F.R. § 315.5(f).

9. Pursuant to Section 9(a) of the FCLCA, 15 U.S.C. § 7608(a) and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes an unfair or deceptive act or practice, in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

DEFENDANTS

10. Contact Lens Heaven, Inc. is a Florida corporation with its registered place of business as 10097 Cleary Boulevard #235, Plantation, Florida 33324. Defendant Contact Lens Heaven has advertised and sold plano contact lenses to consumers through its www.contactsland.com and www.contactlensheaven.com websites. Contact Lens Heaven transacts, or has transacted, business in this District.

11. Defendant Ioanna Xenou-Karoumpa is the owner and sole officer of Contact Lens Heaven. In connection with the matters alleged herein, Xenou-Karoumpa resides and transacts business in this District.

12. Individually, or in concert with others, Xenou-Karoumpa has formulated, directed, and controlled the acts and practices of Contact Lens Heaven, including the various acts and practices set forth herein.

13. The acts and practices of Defendants Contact Lens Heaven and Xenou-Karoumpa alleged in this Complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF CONDUCT

14. Since at least November 2005, Defendants have advertised and sold plano contact

lenses to consumers on their websites, www.contactsland.com and www.contactlensheaven.com.

15. Defendants have sold plano contact lenses to consumers without obtaining the consumers' contact lens prescription or verifying the prescription by direct communication with the prescriber.

16. Defendants have failed to maintain records of the consumers' contact lens prescriptions, Defendants' verification requests, or Defendants' direct communications from the contact lens prescribers.

DEFENDANTS' VIOLATIONS OF THE CONTACT LENS RULE

17. In numerous instances, in connection with the advertising and sale of plano contact lenses, Defendants have sold plano contact lenses to consumers without obtaining the consumers' contact lens prescription or verifying the prescription by direct communication with the prescriber. Therefore, Defendants have violated Section 315.5(a) of the Contact Lens Rule, 16 C.F.R. § 315.5(a).

18. In numerous instances, in connection with the advertising and sale of plano contact lenses, Defendants have failed to maintain records of either the consumers' contact lens prescriptions, Defendants' verification requests, or Defendants' direct communications from the contact lens prescribers. Therefore, Defendants have violated Section 315.5(f) of the Contact Lens Rule, 16 C.F.R. § 315.5(f).

DEFENDANTS' VIOLATIONS OF THE FTC ACT

19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

20. Pursuant to Section 9(a) of the FCLCA, 15 U.S.C. § 7608(a), and Section 18(d)(3)

of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes an unfair or deceptive act or practice, in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

21. By and through the acts and practices described in Paragraphs 17 - 18 above, Defendants have violated Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

THE COURT'S POWER TO GRANT RELIEF

22. Defendants have violated the Rule as described above with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

23. Each sale of plano contact lenses that was completed from November 9, 2005 through the filing of this Complaint, and each failure to maintain records for such sales, that violates the Rule in one or more of the ways described above, constitutes a separate violation for which Plaintiff seeks monetary civil penalties.

24. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorize this Court to award monetary civil penalties of not more than \$11,000 for each such violation of the Rule.

25. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction against Defendants' violations of the FTC Act, as well as such ancillary relief as may be just and proper.

PRAYER FOR RELIEF

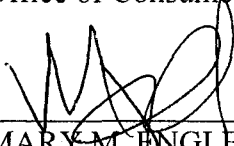
WHEREFORE, Plaintiff United States of America, pursuant to Sections 5(a)(1), 5(m)(1)(A), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 57b, and the Court's own equitable powers, requests that the Court:

- (1) Enter a permanent injunction to prevent future violations of the FTC Act and the Contact Lens Rule by Defendants;
- (2) Award Plaintiff monetary civil penalties from Defendants for each violation of the Rule alleged in this complaint; and
- (3) Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

DATED: 10-22-08

FOR THE UNITED STATES OF
AMERICA:

GREGORY G. KATSAS
Assistant Attorney General
Civil Division
EUGENE M. THIROLF
Director
KENNETH L. JOST
Deputy Director
Office of Consumer Litigation



MARY M. ENGLEHART
Trial Attorney
Office of Consumer Litigation
United States Department of Justice
450 Fifth Street, NW
Suite 6400, South
Washington, DC 20001
(202) 307-0088 (telephone)
(202) 514-8742 (facsimile)

R. ALEXANDER ACOSTA
United States Attorney
Southern District of Florida



KARIN D. WHERRY
Assistant U.S. Attorney
Florida Bar No. 509530
U.S. Attorney's Office
99 NE 4th Street, Suite 300
Miami, Florida 33132
Telephone: 305-961-9016
Facsimile: 305-530-7139
E-Mail: karin.wherry@usdoj.gov

FOR THE FEDERAL TRADE
COMMISSION:

KAREN JAGIELSKI
Attorney
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room NJ-3212
Washington, D.C. 20580

JS 44 (Rev. 2/08)

CIV-ZLOCH CIVIL COVER SHEET 08-61713

The JS 44 civil cover sheet and the information contained herein neither supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the U.S. District Court of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

USA

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Karin D. Wherry, Assistant U.S. Attorney
99 NE 4th Street, Suite 300
Miami, Florida 33132

DEFENDANTS

Contact Lens Heaven, Inc., a corporation; and, Ioanna Xenou-Karoumpa

County of Residence of First Listed Defendant Broward (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED

Attorneys (If Known)

FILED by [Signature] D.C.
OCT 22 2008
STEVEN W. PARTLES
CLERK U.S. DIST. CT.
S. D. OF FLA. MIAMI

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated and Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Re-filed- (see VI below)
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

(See instructions second page):
 a) Re-filed Case YES NO
 b) Related Cases YES NO
 JUDGE _____ DOCKET NUMBER _____

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional states unless diversity):

LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____
 CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

10-22-08 s/Karin D. Wherry, AUSA

Karin D. Wherry

FOR OFFICE USE ONLY

AMOUNT _____ RECEIPT # _____ IFP _____