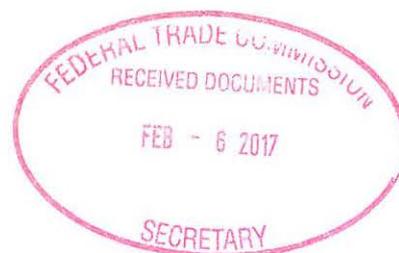


January 31, 2017

Federal Trade Commission
Office of the Secretary
Constitution Center
400 7th Street SW
Fifth Floor Suit 5610 (Annex C)
Washington, DC 20580



Re: Comments of Costco Wholesale Corporation on the Contact Lens Rule; 16 CFR Part 315, Project No. R511995

Costco Wholesale Corporation (“Costco”) respectfully submits these comments in response to the Federal Trade Commission’s (“FTC”) request for comments on its review of the Contact Lens Rule, 16 CFR Part 315 (“Rule”).

Costco is one of the largest sellers of contact lenses in the United States through its warehouse stores and recently through our website Costco.com. We pride ourselves on providing the highest quality service and products at the lowest possible price to our members. We write to express our support of the proposed changes to the Rule.

No Alternation of Prescription Provision

First, Costco supports the clarifying changes to Section 315.5(e) of the Rule regarding private label contact lenses. The change will clarify that sellers are able to substitute their own private label contact lenses for prescribed lenses that are identical to lenses made by the same manufacturer and sold under the manufacturer’s brand.

The FTC’s comments to the Rule (Fed. Reg. Page 88552) recognize that certain sellers may wish to sell, as a substitute, their own private label lenses when a patient presents a contact lens prescription for a brand name product. Costco is one of these sellers. In the fall of 2016 we began selling Kirkland Signature brand daily disposable contact lenses. These lenses are made by a major manufacturer and identical to lenses sold under the manufacturer’s brand. The manufacturer has developed specification and informational materials for the Kirkland Signature lenses and has been distributing them to independent doctors of optometry, including those who lease space in Costco locations (other than Utah, Costco does not employ optometrists located in our warehouses). However, the vast majority of optometrists may have no knowledge of our Kirkland Signature lenses and as such would be unlikely to prescribe them by name.

We believe the current rule allows us to substitute the Kirkland Signature lenses for the manufacturer’s identical lenses when presented with a valid prescription for the manufacturer’s lenses. However, additional clarity in the language of Section 315.5(e) of the Rule will eliminate any doubt.

Bringing a private label lens to market can significantly benefit consumers in terms of lower prices. As with other private label products, the cost to the seller is less than the branded product and sellers are able to pass that along to the consumer. For contact lenses, private label products also may not be subject to manufacturer price protection policies. However, establishing a private label contact lens product imposes risks and costs on the seller. For example, the manufacturer may require a substantial minimum volume commitment. Sellers, particularly those with no relationship with prescribers, would likely be unwilling to invest in a private label lens if

substitution was not allowed or its legality is in question. If a seller cannot substitute their private label for the branded product, there would be no market for the private label product.

The FTC proposed amendment to Section 315.5(e) to strike the qualifier “private label” provides a needed clarification to sellers, consistent with the Act. Costco urges that the change be enacted.

Acknowledgement of Prescription Release

Costco also supports the amendment requiring prescribers to obtain a patient acknowledgement. As stated in the initial comments received by the FTC, despite 12 years of prescribers being obligated to provide prescriptions, many patients still are not aware that they are entitled to their prescription and may fill their prescription at the seller of their choosing. This is despite the obligation on prescribers to provide patients with their prescriptions automatically. We believe that requiring an acknowledgement will improve compliance with the Rule by creating an auditable process and better inform patients of their right to purchase from the seller of their choice. The requirement is similar to the HIPAA acknowledgement that prescribers should already be obtaining and thus should not cause excessive burden.

Additional Mechanisms (Patient Portals)

Costco strongly supports new technologies that may enhance patient access to services. Patient portals are now commonplace among physician practices and could serve to enhance compliance with the Rule, as well as provide better information to sellers. With ready access to the actual prescription, fewer direct verifications would be needed and errors due to patients providing incorrect prescription information would be lowered. However, patient portals should not relieve the obligation to comply with the automatic prescription release and acknowledgement requirements.

Additional Copies; “Direct or by Facsimile”

Finally, Costco supports the FTC’s preliminary determinations regarding additional copies of prescriptions and presentation of prescriptions “directly or by facsimile” for the reasons set forth by the FTC.

Thank you for the opportunity to provide these comments.

Sincerely,

Art Salas
Costco Wholesale Corporation