

Some thoughts and corrections.  
- Coalition for Contact Lens Consumer Choice

Johnson & Johnson VISION CARE, INC

Keep in mind that 32 state AG's accused J&J of colluding with optometrists to prevent the release of prescriptions to consumers and to block sales of lenses by alternative retailers.

# Loopholes in Today's Contact Lens Online Marketplace

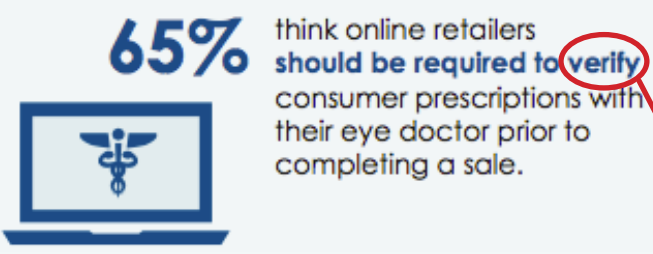
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The contact lens retail marketplace has changed significantly since the enactment of the Fairness to Contact Lens Consumers Act (FCLCA) and Contact Lens Rule over ten years ago. Unfortunately, **loopholes** in today's marketplace have resulted in a system that often side-steps online contact lens consumers', **here is the reality of today's contact lens marketplace:**

The key "loophole" being abused is optometrists repeatedly failing to provide prescriptions to consumers despite the FCLCA requirement. In its recent proposal to update the Contact Lens Rule, the FTC noted that "compliance with the automatic prescription release provision could be substantially improved."

Until 2016, J&J implemented an anti-competitive price fixing policy that resulted in higher prices for consumers. The former President of J&J Vision Care said "This [pricing model] gives the optometrist the ability to improve his or her capture rate in the office. Now the patient has no incentive to shop around."

**Consumers believe it's important to receive the exact lenses they order and rely on the FCLCA's existing safeguards to ensure they receive the lenses prescribed by their eye doctor.**



\*In 2017, J&J settled an anti-trust suit brought by Maryland, agreeing to permanently abandon its price fixing agreements and pay a \$50,000 fine.\*

**Unfortunately, some online retailers sent patients lenses that don't match their prescription or advise them to substitute another brand, without notifying the prescribing doctor.**

Other surveys show almost 100% compliance with consumer brand requests. An SSI survey found only 1% of online consumers reported receiving a different brand, compared to 2% of those who purchased through an optometrist.



consumers reported **receiving a different brand** of contact lenses than they had ordered **without any advance warning.**



reported their online retailer had advised them to **substitute non-prescribed lenses** due to supply issues.

Online retailers are adhering to their legal obligation to seek verification. Unfortunately, optometrists regularly try to thwart the process by hanging up on verification calls or providing false or insufficient information in an effort to block the sale to alternative retailers.

The purchase of lenses with an expired prescription is uncommon and does not vary based on place of purchase. SSI's survey found 9% of online consumers reported purchasing with an expired prescription, compared to 10% of those who purchased through an optometrist. When verifying a prescription for a retailer, it is the optometrist's responsibility to confirm that a prescription has not expired.

J&J pushed for adoption of the same provisions in 2006, more than 10 years ago. There is nothing "modern" about stifling competition and blocking innovations in today's contact lens market.

This is nice sounding rhetoric, but what they are really proposing is to gut the consumer protections in the FCLCA to allow optometrists to capture more sales of contact lenses and to keep prices high for optometrists and manufacturers.

**In fact, some online retailers not only complete sales based on expired or nearly-expired prescriptions, but encourage this practice, despite the health and safety risks.**

**1 in 3**



consumers were able to purchase lenses using an already expired prescription.

**6 in 10**



say they have **received a reminder** from their retailer that their prescription was near-expiration.

**86%**



of those who received a reminder **ordered more** contact lenses as a result.

**It's time to modernize, strengthen, and enforce the FCLCA and Contact Lens Rule's existing safeguards in order to better protect patients' vision health and safety and maintain consumer access to retail options in today's marketplace.**

From September 24 - October 2, 2015 APCO Insight conducted an online quantitative survey among 500 U.S. consumers who have purchased contacts online in the last six months, on behalf of Johnson & Johnson Vision Care.

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Both optometrists and alternative retailers, when the information is provided, notify consumers that prescriptions are near expiration. This is a common practice and helps ensure consumers have a supply of clean, fresh lenses, which is the most important factor contributing to good eye health.

SSI's survey found 26% of online consumers reported purchasing lenses as a result of a notification, compared to 28% of those purchasing through an optometrist. In rejecting a ban on this practice, the FTC noted that "it may be in the patient's best interest to receive a reminder to reorder lenses."

Learn the truth at [www.keepcontactlenschoice.org](http://www.keepcontactlenschoice.org)