



POLICY & ACTION FROM CONSUMER REPORTS

April 9, 2015

The Honorable Floyd Prozanski  
Chairman, Judiciary Committee  
Oregon Senate  
900 Court Street, NE  
Suite S-409  
Salem, OR 97301

**Support for Legislation to Restore  
Contact Lens Retail Price Discounting Freedom**

Dear Chairman Prozanski:

Consumers Union, the public policy and advocacy division of Consumer Reports, writes in support of the bill SB 933. This legislation will restore a fair opportunity for consumers to shop for contact lenses at more affordable prices.

For many consumers, corrective eyewear can be a major budget item. Modern-day contact lenses are made to be disposed and replaced regularly, and the cost can really add up. Being able to get meaningful savings on each replacement makes a big difference.

For many years, consumers did not have a meaningful right to shop for a good deal on contact lenses. They had no choice other than to get their contact lenses from their eye doctor, because eye doctors simply refused to give their patients a written prescription. Consumers Union, among others, fought to help secure the right for patients to get that prescription, and Congress ultimately agreed, enacting the Fairness to Contact Lens Consumers Act in 2003. This finally allowed consumers to separate out the product purchase from the medical care, so they could shop around for a better price.

Unfortunately, the right of consumers to shop for a better price is once again being blocked. Contact lens manufacturers, with at least tacit encouragement from eye doctors, are instituting what they are calling “unilateral pricing policies” that prohibit retail discounting to consumers.

Claims that these new restrictive pricing policies somehow bring retail prices *down* are laughable. In fact, the exact opposite is true – by their very terms, these policies set a *floor* that retail prices *can't go below*.

Claims that restricting retail discounting somehow helps promote safety are also utterly without basis. Consumers Union and Consumer Reports have, for many decades, strongly supported efforts to ensure that consumers receive safe and effective medical care. We take a back seat to no one on the importance of safe medical products – including contact lenses. But this is not a safety issue; that's just a smoke screen for price fixing. We want consumers to have the meaningful choice in purchasing that competition can give them if it is allowed to work without interference. Giving consumers that choice does not compromise safety in any way. Eye doctors can give their patients the best medical advice and care without any need to restrict where patients can purchase the contact lenses they've been prescribed, or any need to dictate how much they have to pay.

In short, there's no justification for the provision of professional eye care services and the sale of contact lenses to be tied together against the consumer's wishes and interests. Technically, under the 2003 law, they are not tied together. But the new "unilateral" pricing restrictions result in much the same tying effect. If these restrictions are allowed to stay in place, sure, consumers can "shop around" – but they can no longer hope to save money by doing so.

Contact lens manufacturers are calling these restrictive pricing policies "unilateral" in an extra effort to fly under the radar of antitrust law, which prohibits price fixing schemes but allows a manufacture to make its own independent, or "unilateral," decision to set the retail price for its own products. We find it tellingly curious that virtually all contact lens manufacturers decided to adopt these new restrictive policies at around the same time, and are each willingly giving up the increased sales that discounting could bring them. Retail discounting, after all, has no effect on the wholesale price the manufacturer charges. Those additional sales, and profits, would ordinarily be a strong motivator for contact lens manufacturers – that is, if they were truly engaged in healthy competition.

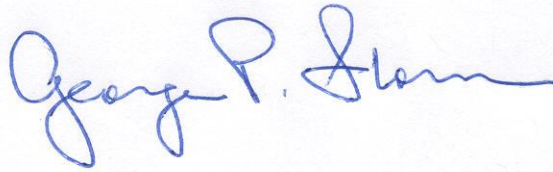
And even worse, a 2007 Supreme Court decision has muddied the law even as to clear price-fixing agreements that block retail discounting. The Supreme Court declared that these agreements can sometimes be lawful – overturning a fundamental principle that had been settled in the law for a century, and making it far more difficult and costly to challenge these anti-consumer agreements under antitrust law.

Consumers Union is very concerned about the harmful impact the Supreme Court's ruling is having on consumers every day in the marketplace. We have urged the courts, and the federal antitrust enforcement agencies, and Congress to take action to address this by re-clarifying the law – or by changing it – so that it works once again in the interests of consumers.

SB 933 is a good place to start in fixing this problem. The new restrictive pricing policies for contact lenses are a fresh and ongoing assault on consumer choice, and the harm to consumer pocketbooks – and to retailers who want to offer better deals – is abundantly clear. Contact lens wearers in Oregon will benefit significantly by enactment of SB 933.

We urge the Committee and the Legislature to act promptly on this important consumer legislation.

Sincerely,

A handwritten signature in blue ink that reads "George P. Slover". The signature is fluid and cursive, with the first name "George" being the most prominent.

George P. Slover  
Senior Policy Counsel  
Consumers Union

cc:

Hon. Jeff Kruse  
Hon. Ginny Burdick  
Hon. Sara Gelser  
Hon. Kim Thatcher