
**IN THE UNITED STATES COURT OF APPEAL
FOR THE SECOND CIRCUIT**

1-800 CONTACTS, INC.,

Petitioner,

v.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION FOR REVIEW

1-800 Contacts, Inc., Petitioner, hereby petitions the Court for review of the Opinion and Order of the Federal Trade Commission, Respondent, dated November 7, 2018, and served on November 26, 2018, finding that certain activities by Petitioner violated Section 5 of the Federal Trade Commission Act.

The Federal Trade Commission's Order is attached to this Petition for Review as Exhibit A. The Federal Trade Commission's Opinion is attached as Exhibit B. The Concurring Opinion of Commissioner Rebecca Slaughter is attached as Exhibit C. The Dissenting Statement of Commissioner Noah Phillips is attached as Exhibit D. Administrative Law Judge Chappell's Initial Decision is attached as Exhibit E. The Federal Trade Commission's partial

summary decision rejecting two of Petitioner's affirmative defenses is attached as Exhibit F.¹

Petitioner is a corporation that carries on its business in states within this Circuit, and at least one of the trademark settlement agreements that are the subject of this case was enforced via injunction in the U.S. District Court for the Southern District of New York. This injunction is attached as Exhibit G. Petitioner files this Petition for Review before this Court pursuant to 15 U.S.C. § 45(c), seeking reversal of the Federal Trade Commission's Order.

Dated: December 28, 2018

Respectfully submitted,

/s/ Stephen Fishbein

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599 Lexington Avenue
New York, NY 10022
Tel: (212) 848-4424
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*Attorneys for Petitioner 1-800
Contacts, Inc.*

¹ The Federal Trade Commission's Opinion, Commissioner Phillip's Dissent, and Administrative Law Judge Chappell's Initial Decision, attached hereto as Exhibits B, D, and E, respectively, are the publicly available redacted versions. Respondent will file non-redacted versions of these exhibits under seal after this case is docketed.

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 15(c) and Local Rule 25.1(h), I hereby certify that on December 28, 2018, a true and correct copy of the foregoing was served on the following persons via Federal Express and email:

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
dclark@ftc.gov

Barbara Blank
Thomas H. Brock
Daniel J. Matheson
Gustav P. Chiarello
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400 7th Street, SW
Washington, DC 20024
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gchiarello@ftc.gov

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, Petitioner discloses that its parent corporations are CNT Holdings I Corp., a Delaware corporation, CNT Holdings II Corp., a Delaware corporation, and CNT Holdings III Corp., a Delaware corporation. Petitioner is wholly owned by CNT Holdings III Corp., which is in turn wholly owned by CNT Holdings II Corp., which is in turn wholly owned by CNT Holdings I Corp. None of these parent corporations is publicly held and no publicly held corporation has more than a ten percent interest in CNT Holdings I Corp.

Dated: December 28, 2018

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FEDERAL TRADE COMMISSION,

Respondent.

SERVICE INSTRUCTIONS

Pursuant to Fed. R. App. P. 15(c), the Circuit Clerk must serve a copy of
the Petition for Review on the following:

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Barbara Blank
Thomas H. Brock
Daniel J. Matheson
Gustav P. Chiarello
Federal Trade Commission
400 7th Street, SW
Washington, DC 20024

Dated: December 28, 2018

Respectfully submitted,

/s/ Stephen Fishbein

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CERTIFICATE OF SERVICE

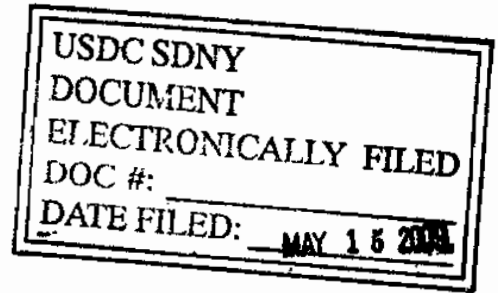
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DANIELS, S.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

1-800 CONTACTS, INC.,)
)
 Plaintiff,)
)
 -vs.-)
)
 VISION DIRECT, INC.,)
)
 Defendant.)
 -----)
 VISION DIRECT, INC.,)
)
 Counterclaim-Plaintiff,)
)
 -vs.-)
)
 1-800 CONTACTS, INC.,)
)
 Counterclaim-Defendant.)

Civil Case No.: 08-cv-01949 (GBD)
ECF Case
ORDER OF PERMANENT INJUNCTION

WHEREAS, 1-800 Contacts, Inc. commenced the above-captioned action on or about February 27, 2008 (the "Action");

WHEREAS, without any admission of liability, 1-800 Contacts, Inc. and Vision Direct, Inc. (collectively the "Parties") and drugstore.com, inc. have reached agreement for the settlement and dismissal of the Action, the full terms and conditions of which are set forth in a document entitled Settlement Agreement and Mutual Release effective May 8, 2009 (the "May 8, 2009 Settlement Agreement");

WHEREAS, the May 8, 2009 Settlement Agreement is conditioned upon entry by the Court of a permanent injunction on the terms and conditions set forth herein;

WHEREAS, the Parties stipulate and agree that this Court has jurisdiction to enter a permanent injunction on the following terms and conditions, in order to protect the Parties' legitimate interests in protecting their respective trademarks, and that the Court shall have continuing jurisdiction for purposes of enforcing the Injunction; and

WHEREAS, the Court finds good cause for entry of a permanent injunction on the terms and conditions set forth below in order to protect the Parties' rights in their respective trademarks;

IT IS HEREBY ORDERED AS FOLLOWS:

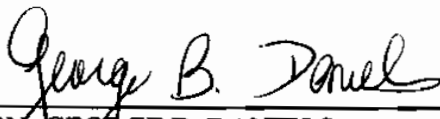
1. The Parties shall implement negative keywords in accordance with paragraphs 2, 3, and 4 of this Permanent Injunction for the purpose of preventing a Party's Internet advertising from appearing in response to a search for another Party's (1) trademarks, (2) any identical or confusingly similar variation of the Party's trademarks, (3) domain names containing the Party's trademarks, (4) domain names containing any identical or confusingly similar variation of the Party's trademarks, (5) URLs containing the Party's trademarks, or (6) URLs containing any identical or confusingly similar variation of the Party's trademarks.
2. In order to comply with the terms of this Permanent Injunction, Vision Direct, Inc. and drugstore.com, inc. shall implement the negative keywords set forth on Exhibit A hereto on or in connection with Internet keyword advertising for the sale of contact lenses.
3. In order to comply with the terms of this Permanent Injunction, 1-800 Contacts, Inc. shall implement the negative keywords set forth on Exhibit B hereto on or in connection with Internet keyword advertising for the sale of contact lenses.
4. The Parties may, between themselves, supplement or modify the list of negative keywords set forth on Exhibits A or B pursuant to the procedure set forth in the May 8, 2009 Settlement Agreement. Any such supplementation or modification of the list of negative keywords set forth in Exhibits A or B shall have the same force and effect as if appended to this Permanent Injunction. Unless necessary to enforce the terms of this Permanent Injunction, any such supplementation or modification of the list of negative keywords set forth in Exhibit A or B shall not be submitted to the Court.
5. Absent a further order by this Court, this Injunction shall expire and be of no further force and effect upon the submission to the Court by the Parties of a Joint Stipulation to Dissolve Injunction.
6. This Permanent Injunction shall be effective without the posting of any bond or undertaking by any Party.

7. The entry of this Permanent Injunction shall be the final adjudication of this Action, which is otherwise dismissed with prejudice. Each Party shall bear its own costs and fees. This Court shall retain continuing jurisdiction over this matter for purposes of enforcing, implementing or construing this Order of Permanent Injunction.

IT IS SO ORDERED:

DATED: May 14 2009

MAY 15 2009



HON. GEORGE B. DANIELS
HON. GEORGE B. DANIELS

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EXHIBIT A

1 800 CONTACTS	WWW.1800CONTACTS.COM
1-800 CONTACT	1 800 CONTACT
1-800 CONTACTS	1 800 CONTACT.COM
1-800-CONTACT	1 800 CONTACTS.COM
1-800-CONTACT.COM	1 800CONTACT
1-800-CONTACTS	1 800CONTACTS
1-800-CONTACTS.COM	1800 CONTACTS.COM
1-800CONTACT	1800 CONTACT.COM
1800 CONTACT	1800CONTAC
1800 CONTACTS	1800CONTACTS
1800.CONTACT	WWW.1800CONTACT
1800.CONTACTS	WWW.1800CONTACTS
1800CONTACT	1800 CONTACTS.COM
1800CONTACT.COM	1-800CONTACTS
1800CONTACTS	800CONTACT.COM
1800CONTACTS.COM	800CONTACTS.COM
800 CONTACT	WWW.1800CONTACT.COM
800 CONTACTS	LENS EXPRESS
800CONTACT	LENSES EXPRESS
800CONTACTS	LENSE EXPRESS
	LENSEXPRESS
	LENSEXPRESS.COM

EXHIBIT B

Vision direc
Vision direct
Vision diret
Visiondirect
Vison direct
Visondirect
Visondirect.com
Visondirec.com
Visiondirect.com
lensmart
lens mart
lenssmart
lensquest
lens quest
lensqwest
lens qwest
lensworld
lens world
lensquest.com
lensmart.com
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www.visiondirect.com
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