

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel. THOMAS J. MILLER, ATTORNEY GENERAL OF IOWA,

Plaintiff,

v.

VISION IMPROVEMENT TECHNOLOGIES, an Iowa corporation; CLIFF ROSE, in his individual and corporate capacities; DAVID E. SYKES, in his individual and corporate capacities; DAVID W. MURIS, in his individual and corporate capacities; GARY KORF, in his individual and corporate capacities,

Defendants.

Case No. CE 51687

STIPULATED TEMPORARY INJUNCTION

FILED
POLK COUNTY, IA.
2006 FEB 22 AM 8:23
CLERK DISTRICT COURT

Plaintiff State of Iowa ex. rel. Thomas J. Miller (“Plaintiff”) and Defendants Vision Improvement Technologies, Cliff Rose, David Sykes, David W. Muris, and Gary Korf (collectively “Defendants”) hereby stipulate to the entry of the following temporary injunction. The parties agree that this stipulated temporary injunction shall not be deemed an admission of any liability nor used to establish the existence of any fact or violation of law, or constitute a waiver or compromise of any position that might be asserted on the ultimate resolution of this action.

For purposes of this injunction:

- A. The “See Clearly Method” (“SCM”) includes any substantially similar product.
- B. All required disclosures shall be made clearly and conspicuously.
- C. “Prior to any sale” means prior to the point at which a consumer is presented with the option to accept the SCM on a trial basis.

IT IS THEREFORE ORDERED pursuant to Iowa R. Civ. P. 1.1501 *et seq.* and the Iowa Consumer Fraud Act, Iowa Code § 714.16, that Defendant Vision Improvement Technologies (“VIT”) and VIT’s directors, officers, principals, partners, employees, agents, servants, representatives, subsidiaries, affiliates, successors, assigns, parent or controlling entities, and all other persons, corporations and other entities acting in concert or participating with VIT who have actual or constructive notice of the Court’s injunction are restrained and enjoined during the pendency of this litigation from engaging in the following conduct with respect to the SCM:

1. Failing to disclose prior to any sale that for best results the developers of the SCM recommend devoting a minimum of 30 minutes a day to the exercises. Provided, however, that nothing herein shall prevent VIT from accompanying such disclosure with truthful disclosures of benefits a user may receive from less than 30 minutes a day of use, so long as such disclosures do not undermine the clarity of the disclosure required by the previous sentence.

2. Failing to disclose to purchasers the date by which a return merchandise authorization (“RMA”) must be requested and the merchandise returned in order to receive a refund of, or avoid being charged, the purchase price. Without limiting the foregoing, VIT shall make such disclosure either (a) on the outermost surface of the shipping package or (b) in a notice that is immediately apparent when the shipping package is opened. If the disclosure is made in a notice within the shipping package, the outermost surface of the shipping package must effectively direct the consumer’s attention to the notice and disclose that the notice contains important deadline information and should be opened immediately (e.g., **IMPORTANT DEADLINE NOTICE WITHIN: OPEN IMMEDIATELY**).

3. Failing to disclose prior to any sale the total dollar price a consumer will be charged if he or she does not return the program within the trial period.

4. Failing to disclose prior to any sale that a consumer wishing to return the program and avoid charges beyond shipping and handling must do so at the consumer's own expense.

5. Failing to make reasonable efforts to ensure that a consumer wishing to obtain an RMA and return the SCM can do so easily. Without limiting the foregoing, VIT shall implement the following practices effective immediately:

a. A consumer calling for an RMA and/or expressing a desire to return the SCM during regular business hours shall have his or her call picked up within four rings.

b. Once the consumer's call is picked up, the consumer must be connected within two minutes to a live person who will attend to the consumer without further delay (e.g., without placing the consumer back on hold); otherwise the following requirements apply:

i) At or before the passage of the two minutes, the consumer must be invited to leave his or her name and phone number at that time, so that VIT may return the consumer's call, and must be informed both that VIT will return the call within two business days and that the consumer's call will be logged as having been received that day ("today") for purposes of determining compliance with the trial period deadline.

ii) VIT shall return the consumer's call within two business days.

iii) If the consumer leaves a message within the thirty day trial period requesting an RMA and provides a phone number where his or her phone call can be returned, then the requirements of subparagraph (c) shall apply to VIT's return call to the consumer. Provided, further, that if VIT is unable to reach the consumer personally within one business day, and the consumer has an answering machine (or its functional equivalent) and has provided sufficient

identifying information (e.g., a name), VIT shall immediately, and in any event no later than the second business day, provide the consumer with the RMA on the consumer's answering machine and inform the consumer of the period within which the SCM must be returned.

c. If a consumer speaks to a VIT representative and requests an RMA or expresses a desire to return the SCM, then the consumer shall be told that an RMA will be provided, and an RMA shall be provided before the conclusion of the call. However, VIT may make a reasonable, good faith attempt to persuade the consumer to reconsider the decision to return the SCM, by offering a price reduction, a trial period extension, or otherwise, provided that a consumer who has received an RMA from VIT shall always retain the option of using that RMA to return the SCM within the trial period (as extended, if applicable), without being required to make further contact with VIT before doing so.

d. A consumer eligible to return the SCM shall not be provided an alternative means of contacting VIT (including without limitation a VIT representative's extension number) if any such means would entail any disadvantage to the consumer.

e. If, in spite of VIT's instructions that a consumer is to obtain an RMA before returning the SCM to VIT, a consumer returns the SCM within the trial period without first obtaining an RMA, VIT shall accept the return for all purposes, as if an RMA had been obtained. VIT may require the consumer to provide reasonable proof of date of shipment when there is a bona fide question whether the consumer's return was timely.

f. When providing an RMA, VIT shall disclose to the consumer the time limit within which the return must be made. In each instance in which VIT provides an RMA and then receives back the SCM within 25 days of providing the RMA, VIT shall accept the return for all purposes. Provided, however, that VIT may advise consumers of a time limit for

returning the SCM after receiving the RMA that is less than 25 days (but not less than 14 days) in order to insure that the return is actually received by VIT within 25 days. Provided further that nothing herein shall operate to shorten the 30 day period or any extension that has been accorded a consumer.

6. Failing to make a disclosure prior to any sale that some users of the See Clearly Method may experience headaches as a result of the eye exercises. Provided, however, that such disclosure may be accompanied by truthful explanations of means by which consumers can seek to alleviate such headaches through consultation of the manual or consultation with a consumer service representative, as long as such explanations do not undermine the clarity of the disclosure.

7. If the SCM materials that a consumer will receive state or imply that a person should not use the SCM without first consulting with an optometrist or ophthalmologist, failing to make a disclosure of this prior to any sale. Provided, however, VIT may sell its existing stock of SCM materials through March 31, 2006 without being in violation of this paragraph, as long as the materials contain a disclosure that informs consumers who will receive such materials of the inconsistency and VIT's true position regarding such consultations.

8. In connection with any characterization of the value or nature of consumer response to the SCM, failing to disclose information sufficient to provide the consumer with a balanced and accurate depiction of such response.

9. Failing to omit all references to the 1999 clinical evaluation from advertisements and telemarketing interactions with consumers, and from the SCM.

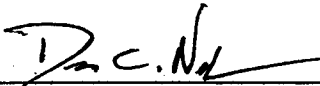
Nothing herein shall prevent VIT from adopting measures or standards that relate to returning the SCM and/or obtaining a refund, and that vary from those contained herein, if (and

only if) such measures facilitate the ability of one or more consumers to return the SCM and/or obtain a refund and clearly work to the advantage of the affected consumer(s). Without limiting the foregoing, nothing herein shall prevent VIT from granting consumers hardship exceptions to its policies regarding returning the SCM and/or obtaining refunds.

VIT shall maintain such records as are necessary to demonstrate compliance with the terms of this Stipulated Temporary Injunction, and retain such records until the litigation is concluded and any applicable appeal period has expired. VIT shall respond promptly to reasonable requests from Plaintiff for information demonstrating compliance with the terms of this Stipulated Temporary Injunction.

Compliance with each requirement herein shall be effected as soon as circumstances reasonably permit, but in any event compliance with all requirements herein shall be effected no later than March 24, 2006.

Entered this 22nd day of February, 2006.



Don C. Nickerson
Iowa District Court Judge

APPROVED AS TO FORM AND CONTENT:


ATTORNEY GENERAL OF IOWA

By 
Steve St. Clair PK2715271

Assistant Attorney General
Hoover Building, Second Floor
Des Moines, IA 50319
Telephone: (515) 281-5926
Telecopier: (515) 281-6771

ATTORNEYS FOR PLAINTIFF

BELIN LAMSON McCORMICK ZUMBACH
FLYNN, A Professional Corporation

By 
Mark E. Weinhardt PK0009830
Edward M. Mansfield PK0015317
Matthew C. McDermott PK000018277

666 Walnut Street Suite 2000
Des Moines, IA 50309-3989
Telephone: (515) 243-7100
Telecopier: (515) 243-1408
mweinhardt@belinlaw.com
emmansfield@belinlaw.com
mmcdermott@belinlaw.com

ATTORNEYS FOR DEFENDANTS