

Complaint

IN THE MATTER OF

LCA-VISION, INC. d/b/a LASIKPLUS

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 AND SEC. 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4083; File No. 0223098
Complaint, July 8, 2003--Decision, July 8, 2003

This consent order, among other things, prohibits Respondent LCA-Vision, Inc., doing business as LasikPlus, from representing that LASIK (laser assisted *in situ* keratomileusis) or any other refractive surgery services – that is, any surgical procedure designed to improve the focusing power of the eye by permanently changing the shape of the cornea (the clear covering of the front of the eye) – (1) eliminate the need for glasses and contacts for life; (2) pose significantly less risk to patients' eye health than wearing glasses or contacts; or (3) eliminate the risk of glare and haloing, unless the claims are substantiated by competent and reliable scientific evidence. The order also requires the respondents to possess and rely on competent and reliable scientific evidence to support any future claims about the benefits, performance, efficacy, or safety of any refractive surgery service.

Participants

For the Commission: *Matthew Daynard, Mary K. Engle and Carolyn Cox.*

For the Respondent: *J. Beckwith Burr, Wilmer, Cutler & Pickering.*

COMPLAINT

The Federal Trade Commission, having reason to believe that LCA-Vision, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent LCA-Vision, Inc. ("LCA") is a Delaware corporation with its principal office or place of business at 7840

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Montgomery Road, Cincinnati, Ohio 45236. LCA provides refractive surgery services under the brand name *LasikPlus*.

2. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
3. Respondent has advertised, offered for sale, and sold directly to the public refractive surgery services designed to improve the focusing power of the eye by permanently changing the shape of the cornea (the clear covering of the front of the eye), thereby reducing patients' dependence on eyeglasses and contact lenses. These surgery services include, among others, LASIK (laser assisted *in situ* keratomileusis). In LASIK, a computer-assisted surgical knife, called a microkeratome, is used to cut a flap in the cornea. A hinge is left at one end of the flap. The flap is folded back revealing the stroma, the middle section of the cornea. Pulses from a computer-controlled excimer laser then vaporize a portion of the stroma and the flap is replaced. Excimer lasers and microkeratomes are "devices" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, and refractive surgery services are "services" within the meaning of Section 12 of the Federal Trade Commission Act.
4. Respondent has disseminated or has caused to be disseminated advertisements through various broadcast, print, and outdoor display media, public seminars, and direct mail, including but not necessarily limited to the attached Exhibits A - E. These advertisements contain the following statements:

Television

ANNCR: But now there's a way you could be free from your glasses or contacts forever...[Graphic: LasikPlus logo plus super: A LIFETIME OF BETTER SIGHT...IN JUST MINUTES!] Voice-over: You could enjoy a lifetime of better sight in just minutes with *LasikPlus*. . . . [Exhibit A]

Complaint

Print (Newspapers)

20/20 Vision for \$649! per eye... Now you can afford to get rid of your glasses and contacts for life! So many former eyeglass and contact lens wearers are celebrating the fact that Laser Vision Correction has improved their lives and released them from the on-going hassle and expense of glasses and contacts. . . .[Exhibit B]

Outdoor/Airport

20/20 Vision for \$649* per eye Limited Time Only!
Now you can afford to get rid of your corrective lenses for life! [Exhibit C]

Direct Mail

Fed up with the ongoing expense and hassle of contacts?
LasikPlus lets you throw away your lenses for life!
With LasikPlus laser vision correction, you could have a lifetime of better sight without lenses!. . . . [Exhibit D]

Magazines

Sports Illustrated (Dec. 3, 2001), *U.S. News & World Report* (Dec. 3, 2001), *Time* (Dec. 2001) *Newsweek* (Dec. 2001):

America Abandons Glasses & Contacts
Laser Vision Correction Myths Exposed

Leading Eye Doctors Deal With The Widespread Media Disinformation About Our Nation's Most Popular Elective Surgery. The media have greatly exaggerated and in some cases, completely misrepresented the few problems that can occur with laser vision correction. As with any surgical procedure there are risks. But compared with those associated with contacts and glasses, they are minimal. . . .

Complaint

Over 2 Million People Now Enjoy the Wonders of
Excellent Vision Without the Use of Contacts or
Glasses.

MYTH #1**Laser Vision Correction is Risky**

FACTS: Risky? People who wear contact lenses face many more risks from infections or corneal damage. In fact, laser vision correction can eliminate risks often associated with wearing contacts or glasses.

Any problems that may have occurred have usually been the result of people being approved for the procedure when they shouldn't have been. . . .

MYTH #2**Laser Vision Correction Causes Glare & Halos**

FACTS: Glare and halos at night are caused when the treatment area does not cover the total area of the dilated pupil. This may create a starburst effect around lights at night. Those providers who offer a choice of the latest FDA approved laser technology can customize the treatment area to accommodate almost any pupil size. This virtually eliminates the risk of glare or haloing.

MYTH #3**Laser Vision Correction Can Cause Blindness**

FACTS: Not true...laser vision correction uses a cool beam laser that does not harm tissue. On the other hand, broken lenses from glasses have caused blindness. Contacts have also led to loss of sight from infections or corneal damage. . . .

LasikPlus Vision Center Doctors Believe Your Greatest Safety Assurance Is Knowing All the Facts. . . . If you are

Complaint

interested in enjoying the wonders of 20/20 vision or better without the hassle and expense of contacts or glasses, call LasikPlus. [Exhibit E]

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that LCA's refractive surgery services:

- A. Eliminate the need for glasses and contacts for life.
- B. Pose significantly less risk to patients' eye health than wearing glasses or contacts.
- C. Eliminate the risk of glare and haloint, a starburst effect around lights at night, that can be caused by the LASIK procedure.

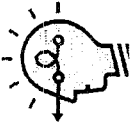
6. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

8. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this eighth day of July, 2003, has issued this complaint against respondent.

By the Commission.



RESPOND 2

LasikPlus :120 spot
Fourth Draft v.1 & v.2
Draft Date: 11/12/01

MUSIC UP: "STRESSFUL" THEME
OPEN ON GRAPHIC PAGE: [SHOULD BE BREAKDOWN FROM CLIENT]
GLASSES OR CONTACTS WILL COST OVER \$10,000 OVER 10 YEAR
PERIOD. (DISCLAIMER: AVERAGE COST)

ANNOUNCER

(voice-over)

Did you know you could spend over
\$10,000 on glasses and contacts over
the next 10 years?

DISSOLVE TO MONTAGE SEQUENCE OF DOUG/KIM PUTTING ON
GLASSES/TAKING OUT CONTACTS.

ANNOUNCER

(voice-over)

Not to mention all the time, hassle and
discomfort.

MUSIC: CHANGE TO UPBEAT THEME
DISSOLVE TO NEW GRAPHIC PAGE WITH EYE AND ROTATING "SCOPE"
ELEMENT W/SUPER: BE FREE [FROM YOUR GLASSES AND CONTACTS /
FOREVER]

ANNOUNCER

(voice over)

But now there's a way you could be free
from your glasses or contacts forever.

correction provider! Our plusses make the difference.

GRAPHIC: GRAPHIC PAGE WITH "THE LASIKPLUS DIFFERENCE" AS A HEADER AND A ROW OF "PLUSSES" DOWN THE LEFT SIDE. A SUPER COMES IN NEXT TO PLUS #1 - "RESULTS." DISSOLVE TO LIFESTYLE SHOTS (GOLF/WATERSKIING/COMPUTER)

ANNOUNCER

(voice-over)

With LasikPlus, you could enjoy up to 20/20 vision or better! Imagine crisp, clear vision without glasses or contacts!

GRAPHIC: REPRIS GRAPHIC PAGE. ADD SUPER TO PLUS #2 - "EXPERIENCE." DISSOLVE TO NEW GRAPHIC - "DECADE OF EXPERIENCE." ADD SUPER OVER VIDEO - "OVER 150,000 SUCCESSFUL PROCEDURES WORLDWIDE."

ANNOUNCER

With over a decade of experience, LasikPlus has performed over 150,000 successful procedures worldwide.

DISSOLVE TO DOUG DURING PROCEDURE. USE CUT TO DOCTOR AND NURSE DURING PROCEDURE.

ANNOUNCER

Each highly trained Master Lasik surgeon has performed an average of 4,000 procedures.

GRAPHIC: REPRIS GRAPHIC PAGE. ADD SUPER TO PLUS #3 - "CONTINUUM OF CARE." DISSOLVE TO CALENDAR GRAPHIC THAT SHOWS CONSULTATION, OPERATION, POST-OP CHECK UP AND FOLLOW UP STAGES. END SCENE WITH SHOT OF KIM AND DOCTOR SHAKING HANDS.

ANNOUNCER

LasikPlus is safe, incredibly fast, virtually painless, and patients have described it as a life changing experience.

TESTIMONIALS

REPRISE LIFESTYLE FOOTAGE.

ANNOUNCER

Think about all the things you could do without the hassles of glasses or contacts.

GRAPHIC: REPRISE GRAPHIC PAGE. ADD SUPER TO PLUS #4 -
"VALUE."

GRAPHIC: REPRISE PRICE COMPARISON.

ANNOUNCER

Now think about what you could save. Over the next ten years, you could spend over ten thousand dollars on prescriptions, refills, cleaners, cases and solutions.

GRAPHIC:

ANNOUNCER

But LasikPlus offers you state-of-the-art technology, experience and superior care...and your procedure will be performed by a highly-trained Master Lasik surgeon... all for up to 80% less than what you'd spend on glasses and contacts, and up to 50% less than other Laser Vision Correction providers!

VERSION #1 ENDING

0% FINANCING

ANNOUNCER

And here's another plus: we offer 0% financing, and absolutely no deposit is required.

DISSOLVE BACK TO MAIN PRICE POINT/OFFER CONFIGURATION
SUPERS ON CTA PLATE. CONTINUE TO END.

ANNOUNCER

Find out if laser vision correction is right for you. Call 1-800-123-4567 today to schedule your free consultation. That's 1-800-123-4567. There's no obligation. Set your sights on a lifetime of better vision. Call now!

End

VERSION #2 ENDING

500 CALLERS

ANNOUNCER

Absolutely no deposit is required. And if you're one of our first 500 callers, you can automatically qualify for 0% financing, so call now!

DISSOLVE BACK TO MAIN PRICE POINT/OFFER CONFIGURATION
SUPERS ON CTA PLATE. CONTINUE TO END.

ANNOUNCER

Find out if laser vision correction is right for you. Call 1-800-123-4567 today to schedule your free consultation. That's 1-800-123-4567.

LasikPlus
— VISION CENTER —

**NOW
OPEN IN
RICHMOND!**

**20/20 Vision*
for \$649! per eye**

**Now you can afford
to get rid of your
glasses and
contacts for life!**

So many former eyeglass and contact lens wearers are celebrating the fact that Laser Vision Correction has improved their lives and released them from the on-going hassle and expense of glasses and contacts. The only thing that has deterred others from having the procedure is the cost.

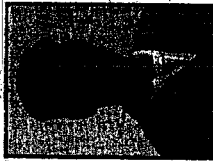
*Richmond
Print*

Insertion Dates:

*7/28, 7/29, 8/5
2001*

LasikPlus® Vision Centers have helped thousands of people enjoy lens-free 20/20 vision* or better. Now you can enjoy the benefits of the most advanced technology combined with the expertise of America's leading Ophthalmologists for **thousands less than other leading providers.**

LasikPlus® is proud to be associated with Jason Kaplan, M.D. A board-certified ophthalmologist, Dr. Kaplan has performed over 6,500 Lasik procedures.



Jason Kaplan, M.D.

Call Now to Schedule Your
FREE Vision Evaluation

1-888-529-2020

www.lasikplus.com

CONFIDENTIAL

10571 Telegraph Road
Suite 100 • Glen Allen
(Behind Virginia Center Commons)

LCAV B3 0065

Next 500 Patients \$649*
per eye
Limited Time Offer

+ LasikPlus.

Our Plususes Make All The Difference

LOCATIONS: CALIFORNIA • FLORIDA • GEORGIA • ILLINOIS • MARYLAND • MINNESOTA • NEW JERSEY • NEW YORK • NORTH CAROLINA • OHIO • PENNSYLVANIA • VIRGINIA
*not all patients may qualify. The majority achieve at least 20/40 vision. Results may vary by patient. Additional charge for severe nearsighted prescriptions, all farsighted prescriptions and for contact and lens laser treatment. Price quoted is for LASIK treatment only. Call for details. Price subject to change without notice.

**20/20
Vision
for \$649***

*per eye
Limited Time Only!*

**Now you can
afford to get rid
of your corrective
lenses for life!**



**Free!
5 Minute
Vision
Evaluation**

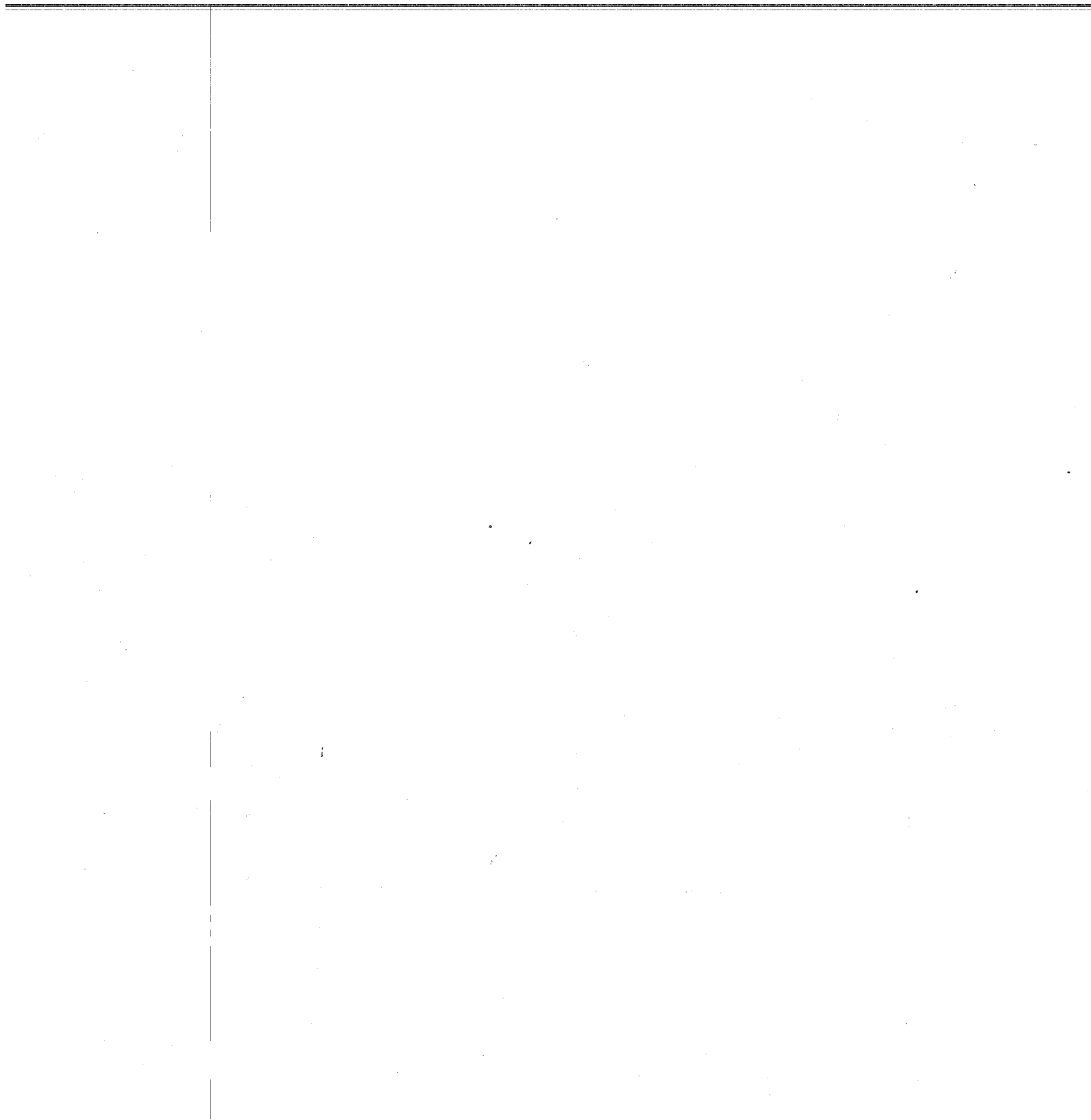
LasikPlus
— VISION + CENTER —



Table Top

Exhibi

CONFIDEN





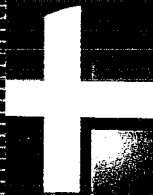
Get up with the
ongoing expense and
hassle of contacts?

LasikPlus lets you
throw away your
lenses for life!

First there was the miracle
of Laser Vision Correction,
now there's

LasikPlus

— VISION 4 CENTER —



**Lowest Price
Guarantee**

We believe everyone should be able to
afford all the plusses of LasikPlus Laser
Vision Correction.



Exhibit D

featuring the *Ultra 20/20* System

- Outstanding Doctors
- Advanced Technology
- Advanced Lasers
- Advanced Computerized Diagnostics and more!

price, anytime – absolutely guaranteed!

Call now for price information

1-888-529-2020

With LasikPlus laser vision correction, you could have a lifetime of better sight without lenses!

Call Now

CONFIDENTIAL

1-888-529-2020

www.lasikplus.com

to schedule your

**FREE VISION
EVALUATION!**

LasikPlusSM
— VISION CENTER —

You Deserve A Lifetime of Better Sight

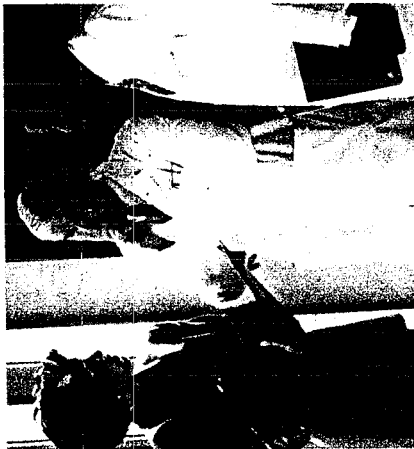
Present this
card to receive a
**FREE Informational
Laser Vision Correction Video**
during your visit.

LCAV B3 0186

THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION OR TREATMENT.

Laser Vision Correction Myths Exposed

Leading Eye Doctors Deal With The Widespread Media Disinformation About Our Nation's Most Popular Elective Surgery.



The media have greatly exaggerated and in some cases, completely misrepresented the few problems that can occur with laser vision correction. As with any surgical procedure there are risks. But compared with those associated with contacts and glasses, they are minimal. That's why a panel of experienced eye doctors have felt it is necessary to deal with the myths that have been created by the media.

Over 2 Million People Now Enjoy the Wonders of Excellent Vision Without the Use of Contacts or Glasses.

MYTH #1

Laser Vision Correction is Risky

FACTS:

Risky? People who wear contact lenses face many more risks from infections or corneal damage. In fact, laser vision correction can eliminate risks often associated with wearing contacts or glasses.

Any problems that may have occurred have usually been the result of people being approved for the procedure when they shouldn't have been.

Reputable laser vision correction providers typically turn away about 20% of people who they evaluate because they are not ideal candidates.

when the treatment area does not cover the total area of the dilated pupil. This may create a starburst effect around lights at night. Those providers who offer a choice of the latest FDA approved laser technology can customize the treatment area to accommodate almost any pupil size. This virtually eliminates the risk of glare or haloing.

MYTH #3

Laser Vision Correction Can Cause Blindness

FACTS:

Not true...laser vision correction uses a cool beam laser that does not harm tissue. On the other hand, broken lenses from glasses have caused blindness. Contacts have

also led to loss of sight from infections or corneal damage.

MYTH #4

The More You Pay, the Better the Treatment

FACTS:

All laser vision providers have board certified doctors and are governed by the FDA so there is no good reason for inflated pricing. Yet many who charge thousands more, do not even offer a choice of advanced lasers (see glare and halos). In spite of their high prices, they are often unable to match the experience and results of doctors charging thousands less.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received from an interested party pursuant to section 2.34 of its Rules, now in further conformity with the procedure prescribed in section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent LCA-Vision, Inc. ("LCA"), is a Delaware corporation with its principal office or place of business at 7840

Decision and Order

Montgomery Road, Cincinnati, Ohio 45236. LCA provides refractive surgery services under the name *LasikPlus*.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. Unless otherwise specified, "respondent" shall mean LCA-Vision, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
2. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
3. "Refractive surgery services" shall mean any surgical procedure designed to improve the focusing power of the eye by permanently changing the shape of the cornea.
4. "Device," shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.
5. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Decision and Order

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of LASIK surgery services or any other refractive surgery services, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that such services:

- A. Eliminate the need for glasses and contacts for life;
- B. Pose significantly less risk to patients' eye health than wearing glasses or contacts; or
- C. Eliminate the risk of glare and haloming,

unless, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale, of any LASIK surgery services or any other refractive surgery services, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, efficacy, or safety of any such services, unless, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

Nothing in this order shall prohibit respondent from making any representation for any device that is permitted in labeling for

Decision and Order

such device under any new medical device application approved by the Food and Drug Administration.

IV.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

V.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, managers, employees, agents, and representatives having responsibilities for developing, contracting for, and/or approving marketing campaigns, marketing materials, advertisements, or claims, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

Decision and Order

VI.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VIII.

This order will terminate on July 8, 2023, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

Decision and Order

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from LCA-Vision, Inc. d/b/a *LasikPlus* (“LCA”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves allegedly misleading representations about LASIK (laser assisted *in situ* keratomileusis) refractive surgery services designed to improve the focusing power of the eye by permanently changing the shape of the cornea (the clear covering of the front of the eye), thereby reducing patients' dependence on eyeglasses and contact lenses.

According to the FTC complaint, LCA failed to have substantiation for the claims that its LASIK surgery services: (1) eliminate the need for glasses and contacts for life; and (2) pose significantly less risk to patients' eye health than wearing glasses or contacts. Among other reasons, LASIK surgery does not eliminate most peoples' need for reading glasses, and the relative risks of LASIK surgery and wearing contact lenses over time are not readily comparable. The complaint further alleges that LCA did not have substantiation for its claim that its LASIK surgery services eliminate the risk of glare and haloing, a starburst effect around lights at night, that can be caused by the LASIK procedure.

The proposed consent order contains provisions designed to prevent LCA from engaging in similar acts and practices in the future.

Analysis

Part I of the order prohibits claims that LASIK surgery services or any other refractive surgery services: (1) eliminate the need for glasses and contacts for life; (2) pose significantly less risk to patients' eye health than wearing glasses or contacts; or (3) eliminate the risk of glare and haloming, unless the claims are substantiated by competent and reliable scientific evidence. "Refractive surgery services" are defined as any surgical procedure designed to improve the focusing power of the eye by permanently changing the shape of the cornea.

Part II of the order requires that future claims about the benefits, performance, efficacy, or safety of any refractive surgery service be substantiated by competent and reliable scientific evidence.

Part III of the order permits device claims approved by the FDA under any new medical device application.

Parts IV, V, VI, and VII of the order require LCA to keep copies of relevant advertisements and materials substantiating claims made in the advertisements, to provide copies of the order to certain of its personnel, to notify the Commission of changes in corporate structure, and to file compliance reports with the Commission. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

**GROSSMONT ANESTHESIA SERVICES MEDICAL
GROUP, INC.**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-4086; File No. 0210006
Complaint, July 11, 2003--Decision, July 11, 2003*

This consent order, among other things, prohibits Respondent Grossmont Anesthesia Services Medical Group, Inc. – a group of approximately 10 anesthesiologists in San Diego County, California, who are also members of the medical staff of Grossmont Hospital in La Mesa, California – from entering into or facilitating agreements between or among medical practices (1) to negotiate, to fix, or to establish any fee, stipend, or any other term of reimbursement for the provision of anesthesia services; (2) to deal, to refuse to deal, or to threaten to refuse to deal with any payor of anesthesia services; or (3) to reduce, or to threaten to reduce, the quantity of anesthesia services provided to any purchaser of anesthesia services. The order also prohibits the respondent from attempting to engage in – or from encouraging, pressuring, or attempting to induce any person to engage in – any action prohibited by the order.

Participants

For the Commission: *John Wiegand, Kerry O'Brien, Lisa D. Rosenthal, Gwen Fanger, Erika Wodinsky, Jeffrey Klurfeld, D. Bruce Hoffman, Louis Silvia, Mary T. Coleman, and Randi Boorstein.*

For the Respondent: *David Diehl, MD., pro se.*

COMPLAINT

The Federal Trade Commission (“Commission”), having reason to believe that Grossmont Anesthesia Services Medical Group, Inc., a California corporation, (“Respondent” or “GAS”) has violated Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, and it appearing to the Commission that this proceeding is in the public interest, alleges: