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NEWS RELEASE

AG Frosh: Illegal Price-setting Agreement in Contact Lens Market Raises Customer Costs

Pricing of Acuvue lenses violates Maryland law, according to complaint

Baltimore, MD (March 4, 2016) --The nation's largest maker of contact lenses is being accused of violating Maryland's antitrust law by conspiring with retailers to set a higher minimum price for their products, Attorney General Brian E. Frosh announced today.

Attorney General Frosh said that the Office of the Attorney General Antitrust Division has filed a civil complaint charging Florida-based Johnson & Johnson Vision Care Inc., the makers of Acuvue lenses, with violations of the Maryland Antitrust Act. The complaint seeks civil penalties and an end to the anti-competitive pricing policy.

According to documents obtained during an investigation, customers are paying 35 percent more for a monthly supply of Acuvue lenses based on a pricing strategy imposed on club membership discount stores.

"We live in a world where we expect competition to flourish," Attorney General Frosh said. "It is deeply disturbing that so many Marylanders are paying artificially high prices for a product they need for their daily lives."

The complaint brings into focus the hazy and unique world of contact lens pricing.

As lens wearers know, there is no such thing as a generic or substitute product. Optometrists perform eye examinations and fittings for lenses, then write a prescription for a specific brand. The optometrists also sell the product, a source of revenue for them. However, patients are allowed under federal law to use the prescription wherever they desire.

According to the Attorney General complain, optometrists complained to Johnson & Johnson that discount stores such as Costco were undercutting their prices. The company responded in 2014 by establishing a Resale Price Maintenance Policy, which set minimum prices for all sellers, including discounters.

Costco objected, and said they would stop selling Acuvue lenses. Johnson & Johnson tried to keep Costco as a seller, but also threatened to pull Acuvue products from the stores and

not allow them to be sold unless Costco agreed to the minimum price.

According to documents obtained by the Office of the Attorney General during an investigation, Johnson & Johnson struck a deal with Costco: The club store agreed to abide by the minimum price, but the manufacturer agreed that Costco could provide a \$50 in-store cash card - to be used only on other products but not contact lenses - to customers who purchased a monthly supply.

That type of agreement, where both provider and seller agree on price, is a violation of the Maryland Antitrust Act, the Attorney General complaint alleges.

After reaching the agreement, the price of a 30-day supply of Acuvue Moist lenses rose from \$21.99 to \$33.00 on August 1, 2014, an increase of 35 percent. A document from Costco referred to the pricing as "mandated price increases."

The Attorney General's complaint is seeking a halt to implementing or enforcing a resale price agreement, the maximum civil penalty of \$100,000 and other relief as awarded by a judge.

The Attorney General's complaint, with exhibit documents, can be found [here](#).

