

NO. 2022CI09972

IN THE MATTER OF	§	IN THE DISTRICT COURT
	§	
THE STATE OF TEXAS,	§	
Petitioner,	§	____ JUDICIAL DISTRICT
	§	
AND	§	Bexar County - 224th District Court
	§	
VISION PATH, INC.,	§	
Respondent.	§	BEXAR COUNTY, TEXAS

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (“Assurance”) is made and entered into by and between Petitioner, Texas Attorney General Ken Paxton (“Attorney General”) acting in the name of the State of Texas (“State”), and Respondent, Vision Path, Inc., specifically its Hubble contact lens business (“Respondent”), pursuant to § 17.58 of the Deceptive Trade Practices Act, Tex. Bus. & Com. Code (DTPA).

STIPULATIONS AND DEFINITIONS

1. **Stipulations.** By their duly authorized signatures, the Parties stipulate to the Court the following:
 - a. The Parties are fully authorized to sign and enter into this Assurance;
 - b. The Parties have read and understand the terms of this Assurance;
 - c. The Parties agree to the terms of this Assurance;
 - d. This Assurance is being entered into by the Parties for the sole purpose of compromising disputed claims without the necessity for protracted and expensive litigation, and this Assurance does not constitute an admission by Respondent of wrongdoing or any violation of law or regulation or of any allegation contained in this Assurance;
 - e. The Parties actively participated in the negotiations leading up to this Assurance;

- f. The Parties are aware of the duties placed upon them by this Assurance and are desirous and capable of carrying out those duties in full; and
 - g. The Parties acknowledge receipt of copies of this Assurance and have full and actual notice of the terms of this Assurance.
2. **Definitions.** Hereinafter, the following definitions apply:
- a. **“State”** means the State of Texas, acting by and through the Attorney General of Texas;
 - b. **“Respondent”** means Vision Path, Inc., specifically its Hubble contact lens business;
 - c. **“Parties”** means the State and Respondent, and **“Party”** means the State or Respondent, as applicable;
 - d. **“Clear and Conspicuous”** means a statement or communication, written or oral, presented in such font size, color, location, audibility, and contrast against the background in which it appears, compared to the other matter with which it is presented, so it is easily noticed and readily understood. If such statement or communication modifies, explains, or clarifies other information with which it is presented, it must be presented in close proximity to such other information and in the same manner (audible or visual) so it is easily noticed and readily understood; and
 - e. **“Slow and Deliberate Manner”** means at a rate that renders the message intelligible to the receiving audience.

FACTUAL BACKGROUND

3. Respondent is an online retailer that sells contact lenses under its “Hubble” brand. Hubble advertises that it was founded to offer consumers “high quality” and affordable lenses. Consumers are offered a “free” two-week supply of contacts, where the only cost incurred by consumers is a shipping fee of \$1 (formerly \$3). After the two-week introductory period, consumers pay \$36 (formerly \$33) a month plus a shipping fee for lenses. Hubble advertises that the consumer is in control and can “easily cancel or modify” their subscription. Hubble’s lenses

all have the same size and shape, and Hubble does not currently offer toric contact lenses (used to correct astigmatism) or multifocal contact lenses, which some consumers require.

4. Hubble lenses are made from methafilcon A hydrogel material, which is a technology that has been around for 20 years. Hubble is marketing this material as “high quality.”

5. The Attorney General’s Consumer Protection Division has been made aware of complaints against Hubble from consumers and optometrists. Some consumers allege they returned shipments they had received in accordance with Hubble policy, but Hubble failed to issue the corresponding refunds.

6. Some consumers have complained about the comfort and fit of Hubble lenses.

7. Other consumers have complained that Hubble filled orders placed by consumers who were prescribed toric lenses even though Hubble did not carry toric lenses. When these consumers complained that Respondent mailed lenses that they could not use, Respondent pointed out that prescribers are obligated to reject verification requests for non-prescribed contact lenses.

8. Although Hubble maintains that its prescription verification requests comply with applicable requirements, certain optometrists have complained about the comprehensibility of Hubble’s recorded prescription verification requests.

VIOLATIONS OF TEXAS DECEPTIVE TRADE PRACTICES ACT

9. The State contends that such alleged conduct, if proven, would violate § 17.46 of the DTPA as follows:

- a. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services in violation of (b)(2);
- b. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have in violation of (b)(5);

- c. Representing that goods or services are of a particular standard, quality or grade in violation of (b)(7); and
- d. Failing to disclose information concerning goods or services which was known at the time of the transaction to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of (b)(24).

RESPONDENT'S ASSURANCES

10. Respondent, Respondent's officers, agents, servants, employees, and any other person in active concert or participation with Respondent, hereby agree and voluntarily assure the State that, effective from the date of the entry of this AVC, Respondent shall permanently refrain from:

- a. Advertising contact lenses as "high quality" without sufficient evidence substantiating such claim;
- b. Failing to refund consumers' payments when those consumers follow Respondent's return policies;
- c. Failing to advertise a return policy in a manner that is Clear and Conspicuous and easily accessible by the consumer;
- d. Failing to keep verification logs on file for a period of two years;
- e. Failing to make verification attempts via telephone in a Slow and Deliberate Manner and at a reasonably understandable volume;
- f. Failing to leave easily comprehensible instructions for prescribers when making verification attempts via telephone;
- g. Failing to advertise in a Clear and Conspicuous manner that Respondent's Hubble contact lenses are only one size;
- h. Failing to allow consumers the capability to present an electronic copy of a prescription in connection with the ordering process; and
- i. When seeking verification of a contact lens prescription, failing to provide the prescriber: (1) the patient's full name and address; (2) the contact lens power, manufacturer, base curve or appropriate designation and diameter; (3) quantity of the lenses order; (4) the date of which the patient requests

lenses to be dispensed; (5) the date and time of the verification request; and (6) the name, telephone number, the facsimile number of a person at the contact lens dispenser's company with whom to discuss the verification.

MONETARY PROVISIONS

11. Respondent agrees to pay to the State a civil penalty pursuant to DTPA § 17.47(c) in the amount of Three Hundred Thousand Dollars (\$300,000.00) for alleged violations and Seventy Thousand Dollars (\$70,000.00) for attorneys' fees. Payment is to be made by certified check or wire transfer payable to the "State of Texas," bearing the **AG Number: CX4254409313**. If not by wire transfer, payment is to be mailed to the Office of the Attorney General, ATTN: Accounting Division, PO Box 12548, MC-003, Austin, Texas 78711. Payment shall be made within ten (10) business days of entry of the Order on this Assurance.

REFUNDS TO CONSUMERS

12. Respondent agrees to pay restitution in the total amount of \$2,095.67 to twenty-four (24) Texas consumers. The State has information concerning the identity of these consumers as well as how much restitution they will each be receiving from the Respondent.

13. For any of the 24 consumers who have not already been provided their restitution payment by the Respondent, within 60 days following the execution of this Assurance, Respondent shall provide refund checks or electronic refunds to the Texas consumers. If any of the refunds are returned to Respondent, or are otherwise undeliverable, Respondent shall consult with the State, and if the State provides Respondent with an alternative mailing address or if Respondent, on its own, identifies an alternative mailing address, Respondent will thereafter make a second attempt to provide such remaining consumers with their refunds. The second refund payment attempt shall be by mail and shall be made within 120 days following the date the first attempt is made.

14. Checks returned to Respondent after the second payment attempt, or after the first attempt, if an alternative address is not located, shall be treated by Respondent in accordance with the unclaimed property laws of the State of Texas.

15. Within 90 days following the second payment attempt, Respondent will provide a final report to the State in affidavit form which will identify whether consumers have cashed their checks or whether the refund payments have been treated in accordance with the Texas unclaimed property laws.

GENERAL PROVISIONS

16. Respondent and the State agree that they will submit this Assurance to a district court of competent jurisdiction in Bexar County and request that the court approve this Assurance, pursuant to the terms set forth herein and the DTPA § 17.58.

17. Nothing in this Assurance shall create any private rights, causes of action or remedies against Respondent and nothing in the Assurance shall be construed as a waiver of any private rights, causes of action, or remedies of any person against Respondent with respect to the alleged practices or conduct described herein. This Assurance does not constitute a finding or conclusion that Respondent has violated any law. Nothing in this Assurance affects or limits Respondent's right to take any legal or factual position in any other litigation or proceeding.

18. This Assurance is governed by § 17.58 of the DTPA. The Parties agree that, should any clause, provision, or section of this Assurance, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Assurance, and this Assurance shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section or provision had not been contained herein.

19. This Assurance sets forth the entire agreement between the Parties. Respondent represents that it has fully read and understands this Assurance, accepts the legal consequences involved in signing this Assurance, and that there are no other representations or agreements between the Parties not stated in writing herein.

20. It is also understood by Respondent that the subsequent failure to comply with the terms of this Assurance is *prima facie* evidence of a violation of the DTPA.

EXECUTED this 31st day of May, 2022.

AGREED AS TO FORM AND SUBSTANCE:

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN E. COWLES
Deputy Attorney General for Civil Litigation

STEVEN ROBINSON
Division Chief, Consumer Protection Division

/s/ *Karyn A. Meinke*
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**ATTORNEYS FOR PETITIONER
STATE OF TEXAS**

Steve Druckman

Steve Druckman (May 17, 2022 22:40 CDT)

Steve Druckman,
Chief Executive Officer
on behalf of Vision Path, Inc.



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ATTORNEYS FOR RESPONDENT

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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Status as of 5/31/2022 11:33 AM CST

Case Contacts

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