

**Summary of Oral Testimony of
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drugstore.com

**Before the
Federal Trade Commission Public Workshop on
Possible Anticompetitive Efforts to Restrict Competition on the Internet**

October 9, 2002

Introduction

drugstore.com is pleased to provide testimony and applauds the Federal Trade Commission's focus on regulations and business practices that could potentially impede e-commerce. Moreover, we commend the FTC for the recent launch of the Internet Security Initiative.

Consumers are increasingly using the Internet for their pharmacy and other healthcare needs. They are attracted to online pharmacies, such as drugstore.com, because of the convenience of around-the-clock ordering, "click and mortar" approaches; access to prescription drugs that, on average, cost the consumer less than what traditional pharmacies charge, and the availability of an abundance of information and personalized services in the privacy of their homes. drugstore.com has used technologies and good pharmacy practice to serve more than 2.8 million customers effectively, safely and personally. We have filled over 1.3 million prescriptions since beginning our operations in February 1999. In addition to our broad selection of products and competitive prices, drugstore.com has been successful because of its dedication to providing customers with a convenient, private, safe, secure and informative shopping experience for their health care needs.

In my testimony, I will explain to you how drugstore.com operates, and provide examples of our dedication to offering high-quality prescription services through our licensed pharmacy. Most importantly, I will present to you our company's call for greater government involvement in protecting consumers against the dangers presented by so-called "rogue" pharmacies, while also identifying for you our concern with certain state "consumer protection" laws that mask an unwarranted bias against legitimate Internet pharmacies.

I. drugstore.com's Consumer Safe Pharmacy Practices

Educating the public about the safety, efficiency and economic benefits of online pharmacies was part of our mission when we launched drugstore.com. In fact, drugstore.com testified at several Congressional hearings beginning in 1999 focusing on benefits of Internet pharmacies and consumer safety. Most of the early online pharmacies have consolidated, changed their business strategies or disappeared. The landscape is now dominated by a small number of surviving online pharmacies allied with brick-and-mortar pharmacies, including drugstore.com, and by pharmacy benefit management (PBM) companies or health plans that have adapted the mail-order pharmacy model to the Internet.

Filling prescriptions at drugstore.com works the same way as a community pharmacy and mail service pharmacy. We focus on dispensing medications used by consumers on a repeat basis for chronic conditions. For acute care needs, we recommend that customers pick up their prescriptions from a local pharmacy. Filling a prescription at drugstore.com involves the same three steps as at any community or mail service pharmacy.

First, we are provided with a valid prescription from our customer's physician, or our customer's current pharmacy. The physician calls in or faxes (where permitted by law) the prescription order to us at 1-800-drugstore. The customer may also mail us their original prescription order, or request a transfer of their prescription from their current pharmacy. If a customer attempts to purchase a prescription drug without providing a valid prescription, or tries to fax or e-mail a prescription to us directly, the customer will be notified promptly that drugstore.com cannot fill the order until we are given a valid prescription by an appropriately licensed health care provider. We do not provide prescription medications without a prescription, nor do we prescribe medications. We also verify prescription orders for those controlled substances that we dispense. We do not dispense Schedule II controlled substances due to their high potential for abuse.

Second, before we will fill a prescription, we require each customer to complete an individual patient profile of drug allergies, current medications, medical conditions, and preference regarding generic substitution. We then enter the prescription order into a computer and perform all of the same checks for drug interactions that you would expect from a local pharmacist. And third, once we have received and verified a new prescription, and cross-checked that prescription for interactions, we will then fill and mail the prescription. We always send drug-specific patient information with each prescription. The shipping method is based on consumer choice and the type of drug. We ship prescription products to every state in the United States from our own state-of-the-art distribution facility in New Jersey. Our partnership with Rite Aid enables customers to order refills of their existing Rite Aid prescriptions on our site, and pick them up at a local Rite Aid store, or receive them through drugstore.com's mail service. To purchase a prescription, the customer provides us with a credit card number for the cash price or co-payment and insurance information.

We believe our prescription drug service saves consumers time. Our vast information on drugs, including drug prices, enables customers to save money and to make more informed decisions. We are committed to giving customers real value. drugstore.com's cash prices are on average lower than those of the national drug chains. We are leveraging the lower cost structure of the Internet to lower the costs of drugs to consumers.

Hallmarks of our pharmacy services are the patient counseling and customer support that we provide to help our customers use medications safely and effectively. Our popular "Ask Your Pharmacist" feature is staffed by clinical pharmacists. It allows customers to ask questions online and receive personalized responses from our pharmacists. Our pharmacists have responded to over 60,000 questions from consumers since we opened our online pharmacy. Customers use this free service to ask about medications, over-the-counter drugs and herbals and their proper use, benefits, side effects, and precautions. An example of innovation is the development and publishing of standard responses to frequently asked questions, or FAQs, so consumers and visitors alike can get immediate responses to their questions. Our pharmacy FAQ feature is used by hundreds of consumers daily. drugstore.com also provides patients with a toll-free number to access a licensed pharmacist 24 hours a day, 7 days a week. Customers can always access their secure, individual medication profile online, which contains a history of their prescription purchases at drugstore.com. In addition, customers receive refill reminders via e-mail, notifying them when they need to place a refill order for their prescription drugs. This e-mail reminder service, which is, in essence, an extension of patient treatment, enables a whole new concept of customer care by allowing pharmacists to better promote their patients' compliance with a doctor-prescribed drug regimen. We believe that this added pharmacy service will benefit patient health in general and reduce the incidence of adverse patient events due to the well-documented problem of inconsistent compliance with prescription medications. Other examples of Web-based pharmacy services provided by drugstore.com are eMedAlert, a consumer drug interaction checker, and our Generic Drug Awareness Program. These programs are designed to enhance the safety or affordability of prescription drugs and are briefly described below.

drugstore.com innovated the eMedAlert program to alert our customers to critical and timely information regarding prescription and over-the-counter product warnings, updates, and recalls. Through this program, drugstore.com rapidly communicates such warnings to customers in a private and secure manner. The program has been activated over twenty-six times, informing over 20,000 customers to-date about prescription and over-the-counter product warnings and recalls. This technology has no counterpart in the brick and mortar world, where retailers have no process in place to efficiently identify and contact individuals who purchased specific over-the-counter drugs and other products. Our consumer drug interaction tool translates one of the medical community's most respected drug information resources into consumer-friendly language. Through this feature, consumers can search for potential interactions between drugs, herbal and dietary supplements, food, alcohol and tobacco. Thousands of persons weekly use our drug interaction checker. Recently, drugstore.com initiated a Generic Awareness Program to help customers understand when new generically equivalent products are entering the marketplace. Consumers can opt-into this service. In addition, our Web site prominently identifies opportunities for consumers to save even more by selecting generic drugs, where appropriate.

II. The Problem of "Rogue" Pharmacies

While legitimate, fully licensed online pharmacies are an emerging market that provides numerous advantages to the consumer, hundreds of disreputable Web sites have also emerged selling prescription drugs without a valid prescription order, in some cases selling controlled substances, and operating without proper licenses. Quite simply, such disreputable Web sites use the Internet to evade the licensing and state and federal regulatory system. A consumer can log on to those Web sites and ask for a particular drug. Some sites blatantly advertise that no prescription is required. In other cases, the consumer is told to respond to a brief questionnaire and then a "doctor" provides a prescription for the requested drug which is then mailed to the consumer. Some of these sites make false and misleading claims about the drugs. The illegal Web pharmacies bypass not only regulatory safeguards, but the safeguards that are inherent in a legitimate doctor-patient relationship. Consumers obtaining medications from so-called "rogue" pharmacies place their health at risk.

Foreign Web sites pose added problems. They often advertise that they can deliver the same prescription drug the consumer buys in the U.S., but at a lower price. In reality, many of these drugs may be counterfeit, contaminated, and subpotent medications. The illegal importation of drugs violates U.S. law because such drugs are generally unapproved, labeled incorrectly and/or dispensed without a valid prescription. While the Food and Drug Administration (FDA) has implemented a personal importation policy allowing consumers to import small quantities of specific medications, unrestricted personal importation is illegal and can be dangerous.

Some have suggested the need for new laws to address this pernicious problem. In a 1999 hearing before the House Commerce Subcommittee on Oversight and Investigations, this Commission proposed that Congress consider whether legislative requirements, such as a prominent disclosure on the Web site of certain information identifying the operator and the prescribing physician, should be enacted. State attorneys general said that such disclosure would assist their efforts in investigating and prosecuting online offenders. Legislation was introduced in the Congress in 2000 requiring the disclosure of such information on the Web site, as well as providing a state with authority to stop the offenders from operating not just in their own state, but in other states as well (S. 3208). A bill mandating similar disclosure requirements, without the expanded enforcement authority, was reported from the House Energy and Commerce Committee in June (H.R. 4990). None of these requirements have been enacted.

drugstore.com supported that legislation. In fact, we have stated in our Congressional testimony that we comply with all applicable federal and state laws and regulations governing the provision of drugstore products over the Internet, and, will comply with any future laws which the states or Congress see fit to

enact. We stand by that promise. However, state and federal agencies have an obligation to enforce current laws.

The FDA and other governmental agencies have investigated many illegal pharmaceutical Web sites and have attempted to use existing laws and available technologies to bring action against rogue Internet pharmacies. This Commission has monitored the practices of online pharmacy sites and worked with the Interagency Working Group (formed in 1999) comprised of FDA, FTC, the Department of Justice and the Drug Enforcement Agency, among other agencies, to stop unlawful conduct on the Internet. While some argue that there are significant barriers, enforcement efforts must be strengthened and they must be persistent. It has been suggested that Web portals and credit card companies have a role to play in curtailing rogue sites, appealing perhaps to their sense of corporate responsibility rather than to any legal obligation, because they facilitate transactions between consumers and rogue sites. However, it seems that the determination to combat this problem, expressed by the agencies that participated in the Working Group, has faded. Yet the problem persists.

As a result, consumer education has become of paramount importance. In an effort to help consumers avoid fraud when buying prescription drugs and medical products over the Internet, the FDA has established a Web site that includes such information. It advises consumers on what to look for in legitimate sites, and actions FDA and other agencies can take against illegal activities.

The most practical approach in differentiating the legitimate and illegitimate pharmacies is by educating consumers and providing them the tools and means, such as what the VIPPS program achieves, to identify the safe, legitimate online pharmacies. The Verified Internet Pharmacy Practice Sites program is a voluntary certification program of the National Association of Boards of Pharmacy and verifies compliance with state licensure and other requirements by allowing the Internet pharmacies that have passed their rigorous tests to display the VIPPS seal on their sites. The reliance on a program like VIPPS, in conjunction with existing state regulatory agencies, by legitimate Web sites results from the realization that the Internet does benefit consumers as long as they are provided with a means of making intelligent choices. We believe that such efforts will be the most valuable to consumers in the long-run.

III. Anticompetitive State Regulations

Our business is subject to extensive federal and state regulations, many of which are specific to pharmacies and the sale of over-the-counter drugs. Our pharmacy operations are subject to the state licensing and registration requirements of the jurisdiction in which our pharmacy is located (i.e., New Jersey) as well as the jurisdiction in which the drug is to be dispensed and shipped to the consumer (i.e., all 50 states). Generally, states exercise control over the licensure and regulation of the pharmacy, whereas federal law primarily focuses on the drug. Consequently, there are numerous examples of pharmacy and prescribing practices which are lawful in one state and either unlawful or unaddressed in other states. I would like to mention one such practice that differs among states and has had the consequence of adversely affecting online pharmacy, specifically the electronic transmission of prescription drug orders from doctors' offices to pharmacies.

While fewer than 3% of the 3 billion prescriptions written annually in the U.S. are paperless, this practice is becoming more commonplace with the potential benefits of time and labor savings, reduction of errors from poor handwriting, and increased consumer satisfaction by saving time. With regard to this issue, not all state boards of pharmacy recognize the electronic transmission of prescription drug orders. Those states which do not accept such prescriptions justify their actions as necessary to protect consumer safety. These differences in laws and regulations between states have precluded drugstore.com from accepting prescription orders transmitted electronically from doctors' offices at the present time. While a state such as Washington has the requisite law and regulations recognizing this practice, the State of New Jersey

where the processing of our prescription orders takes place, does not yet have regulations in place, although proposed regulations are in the public comments period. We eagerly await the opportunity to provide the benefits of electronic transmission of prescription drug orders to our customers.

Conclusion

drugstore.com pharmacy has many of the attributes of the traditional corner drugstore and the well-established mail service pharmacy, but brings many added consumer benefits, such as information, convenience, broad product selection and privacy. Our mission is to help consumers manage their health and well-being by effectively using the advantages of the World Wide Web combined with good, lawful pharmacy practice. We seek to educate and inform consumers, while also helping them to save time and money. Prescription drug information can be readily accessed; prescription orders can be received, verified and conveniently dispensed and shipped; and online pharmacies can use their cost-efficiencies to pass along savings to consumers. Partnerships between Internet and brick-and-mortar drugstores combine the convenience of online services with the option of pick up from a local pharmacy. Indeed, legitimate online pharmacies are an emerging market that provides an exciting prospect for improving public health by providing convenient access to health products and relevant information.

We believe the Internet can educate and empower consumers, but unlawful conduct must not be allowed to permeate this medium. Government must provide the legal authority and technology tools to combat this problem, and do so in a way that minimizes the risk, and does not pose an anticompetitive disadvantage, to e-commerce.