

DOJ Asks Court to Dismiss FTC-Xlear Lawsuit

Dismissal Calls into Question FTC's Authority to Require Clinical Studies for Non-Pharmaceutical Health Products

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AMERICAN FORK, Utah--([BUSINESS WIRE](#))--Today, the Department of Justice asked the United States District Court, Utah, to dismiss the Federal Trade Commission's lawsuit against Xlear, Inc. and Xlear CEO Nathan Jones. (At DOJ's request Xlear joined the stipulation to dismiss.)

"We applaud the Department of Justice's commonsense decision to drop this case—a case that had no merit and should never have been brought. This case has been a waste of taxpayer resources, and it has, in effect, cost American lives."

Five big takeaways:

1. Dismissal reinforces Xlear's argument that the FTC lacks statutory authority to require clinical data from nonpharmaceutical health products. This impacts a massive portion of the US economy—ranging from supplements to sleep apps.
2. Dismissal rebuffs the false perception that the only way to safeguard health is through Big Pharma drugs.
3. Dismissal is a vindication of science and the public's right to know.
4. Dismissal underscores the often-overlooked importance of hygiene in disease prevention and individual and public health.
5. Dismissal reflects the commonsense shift now underway in public health to increase the emphasis on health freedoms, disease prevention and health and welfare.

Background: In October 2021, the FTC filed a lawsuit against Xlear and Jones alleging that the company's statements that Xlear nasal spray could serve an effective, additional layer of protection against SARS-CoV-2 (COVID-19) violated the FTC Act and the COVID-19 Consumer Protection Act. Today, the Justice Department (with Xlear's agreement) asked the Federal Court to dismiss that lawsuit with prejudice.

In the lawsuit, the FTC alleged Xlear's statements violated the law because the Agency alleged Xlear lacked enough clinical data. Xlear countered that the FTC lacked statutory authority to require clinical data under the Supreme Court decision in *Loper Bright Enters. v. Raimondo*.

As the stipulation to dismiss states, Xlear paid no fees, penalties, fines, or other monies, nor did Xlear agree to any other conditions as part of this dismissal.

Reacting to the dismissal, Nathan Jones, CEO of Xlear, Inc. issued this statement:

"We applaud the Department of Justice's commonsense decision to drop this case – a case that had no merit and should never have been brought. This case has been a waste of taxpayer resources, and it has, in effect, cost American lives.

This lawsuit was part of a much wider effort by the Government to censor science, in particular science that supports alternatives to "Big Pharma".

During the pandemic, the Government shuttered the marketplace of ideas – and the American people, our economy, and our sense of community suffered. Xlear refused to stand by silent, electing instead to defend science and the people's right to know.

For going on four years, we have vigorously denied the FTC's allegations – we steadfastly maintained that our statements about COVID were accurate and science-based.

We provided the FTC scores of studies, both clinical and in vitro, that together demonstrated that the use of oral/nasal hygiene products, like Xlear nasal spray, helped to both prevent COVID infections when used by healthy people and reduce the duration and severity of sickness when used by those already infected with the virus.

Defending this case has cost Xlear over \$3 million dollars – money that should have been invested in helping Americans stay healthy and growing the economy.

Our belief in the science supporting Xlear is so strong that I was initially inclined to decline the DOJ's request to dismiss the case – we wanted our day in court. However, after near four years of censorship

and legal harassment by the FTC, it is time for Xlear to fully focus on the business of helping people get and stay healthy.”

As the FTC moves to drop this case, Xlear had pending before the Court a motion under the Supreme Court decision in *Loper*. Had this Court heard and granted our motion, the ongoing efforts of the FTC to censor science and blatantly violate the law and Constitution would have been greatly curtailed.

The FTC’s move to dismiss this case is, therefore, not surprising. While we applaud the Government’s dismissal, that fight, which Xlear intends to remain engaged in, continues.”

The studies supporting the science of hygiene and Xlear can be found via <https://xlearprofessional.com/scientific-studies/>

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