

IN THE MATTER OF
PAY'N PAK STORES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2780. Complaint, Jan. 16, 1976—Decision, Jan. 16, 1976

Consent order requiring a Kent, Wash., general merchandise retail chain, among other things to cease misrepresenting the availability of goods. Further, respondent is required to prominently display the location and price of items advertised below the regular price; and to issue rainchecks for any advertised items temporarily out of stock.

Appearances

For the Commission: *Sarah J. Hughes* and *W. Lee Buck*.

For the respondent: *William N. Moloney, Davis, Wright, Todd, Riese & Jones*, Seattle, Wash.

COMPLAINT

The Federal Trade Commission, having reason to believe that Pay'n Pak Stores, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated and is now violating Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Pay'n Pak Stores, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1209 So. Central, Kent, Washington.

PAR. 2. All allegations made in the present tense include the past tense.

PAR. 3. Respondent owns and operates retail hardware, plumbing and general merchandise stores in Washington, Idaho, Oregon, Montana, Alaska and other States in the United States. In the operation of its retail stores, respondent offers and promotes for sale and sells to its customers an extensive line of products, all of which are referred to hereafter as "items." Respondent's sales for the year ending February 28, 1974 exceeded 50 million dollars.

PAR. 4. In the course and conduct of its business, respondent causes the shipment and distribution of various items from warehouses and sellers located in various States to its retail stores located in various other States. Respondent transmits contracts, business correspondence, monies and other documents among and between its stores,

offices and divisions located in various States. Respondent disseminates advertisements in newspapers of interstate circulation. Respondent maintains and at all times mentioned herein has maintained a substantial course of trade in the distribution, advertising, offering for sale and sale of the aforesaid items in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of its business, as aforesaid, respondent disseminates and causes to be disseminated certain advertisements concerning the aforesaid items by various means including but not limited to, advertisements in newspapers of general and interstate circulation and other advertising media, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said items from respondent. Many of the said advertisements list, describe or depict various items and also contain statements and representations concerning the prices, terms or conditions under which said items would be offered for sale and sold to the public.

PAR. 6. By disseminating the aforesaid advertisements, respondent represents directly or by implication that in those stores covered by those advertisements, the items listed or depicted in such advertisements would be or are:

- A. Readily available for sale;
- B. readily available for sale at or below the advertised prices; and
- C. sold to customers at or below the advertised price.

PAR. 7. In truth and in fact, in a number of respondent's stores in the State of Washington covered by the aforesaid advertisements, in the two or three day period following the date of the dissemination of the advertised offers, a substantial number of items listed or depicted in the said advertisements are:

- A. Not readily available for sale;
- B. not readily available for sale at or below the advertised prices; or
- C. sold to customers at prices higher than the advertised prices.

The statements and representations as referred to herein are false, misleading and deceptive and respondent's sale of items to customers at prices higher than the advertised prices as described above is unfair. Therefore, respondent is engaged in deceptive and unfair acts and practices.

PAR. 8. The use by respondent of the aforesaid false, misleading, unfair and deceptive statements, representations, acts and practices has the capacity and tendency to mislead the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce such persons to patronize respondent's stores

and to purchase from respondent items other than the advertised items and the advertised items at prices in excess of those advertised.

PAR. 9. By disseminating advertisements which announce a "store wide clearance," "more January clearance buys," a "pre-inventory sale," and similar phrases, and by failing to segregate and identify in the advertisements those items which are not offered at reduced prices, respondent represents that all items listed and depicted are offered at reduced prices.

PAR. 10. In truth and in fact, a substantial number of the items listed and depicted in said advertisements are not offered at reduced prices.

PAR. 11. The use by respondent of the aforesaid false, misleading, unfair and deceptive statements, representations, acts and practices as described in Paragraphs Nine and Ten has the capacity and tendency to cause the purchasing public to believe that every item is at a reduced price. Therefore, respondent is engaged in unfair and deceptive acts and practices.

PAR. 12. In a substantial number of instances, respondent places more than one sign at the location where an advertised item is displayed in respondent's retail stores. Such signs show different prices for the advertised item such as the manufacturer's suggested price, the regular price, the advertised price or a clearance price, or all of said prices.

PAR. 13. The use by respondent of more than one sign at the location where an advertised item is displayed has the capacity and tendency to confuse the purchasing public about the price at which the advertised item will be sold, and constitutes an unfair or deceptive act or practice.

PAR. 14. In the course and conduct of its business, respondent is in substantial competition in commerce with corporations, partnerships, firms and individuals in the retail hardware, plumbing, electrical and auto repair supply and sporting goods businesses.

PAR. 15. The acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 Seattle Regional Office 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 and counsel for the 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, 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 sixty days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) 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:

A. Respondent Pay'n Pak Stores, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1209 So. Central, Kent, Washington.

B. 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

I

It is ordered, That Pay'n Pak Stores, Inc., a corporation, its successors and assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of hardware, plumbing, electrical and auto repair supply, sporting goods, or other products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from representing orally, in writing, visually or in any other manner, directly or by implication, that any item is available for sale to the public at its stores at any price unless:

A. Each advertised item is readily available for sale to customers in

the public area of the store, or if not readily available there, a clear and conspicuous notice is posted where the item is regularly displayed which states that the item is in stock and may be obtained upon request, and said item is made available upon request; and

B. At each location where an advertised item is displayed for sale, there is one, and only one sign or other conspicuous marking which clearly discloses that the item is "as advertised" or "on sale" or words of similar import and meaning and the advertised price and, in addition, there may be only one other sign which states respondent's regular price; and

C. If items comparable in function, type and kind, but not necessarily in price, to the advertised item(s) are displayed and are readily available on a self-service basis, the advertised item(s) must also be displayed at the same location and when appropriate in a comparable range of sizes, colors and styles; and

D. Each advertised item, excluding items which by their nature are too small to be individually marked and items which are listed on Attachment I as not being individually marked with a price in the normal course of respondent's business, is individually and clearly marked with the advertised price; and

E. Each advertised item is sold to customers at or below the advertised price;

Provided, That it shall not be deemed a violation of the above subparagraphs A, D, or E, if respondent is complying with a specific exception, limitation or restriction with respect to store, item, or price which is clearly and conspicuously disclosed in all advertisements, or if merchandise must be prepared according to the customer's specifications;

Provided, further, That it shall constitute a defense to a charge of unavailability under subparagraph A. if respondent maintains and furnishes or makes available for inspection and copying upon the request of the Federal Trade Commission, such records and affidavits as will show that (a) the advertised items were ordered in adequate time for delivery and were delivered to its stores in quantities sufficient to meet reasonably anticipated demands, or (b) ordered items were not delivered due to circumstances beyond respondent's control, and respondent, upon notice or knowledge of such nondelivery acted immediately to contact the media to correct the advertisement or proposed advertisement to reflect the limited availability or unavailability of each advertised item, and (c) respondent immediately offered to customers on inquiry a "raincheck" entitling them at respondent's option to purchase the item in the near future at the advertised price or a similar item of equal or better quality at the advertised price, if

available. If a "raincheck" is issued and the item does not become available in the next 30 days, respondent will then allow the customer to purchase a similar item of equal or better quality at the advertised price, if available.

II

It is further ordered, That Pay'n Pak Stores, Inc., a corporation, its successors and assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, shall, in any advertisement which offers both reduced price and regular price items:

A. Clearly and conspicuously segregate and identify those items which are not offered at reduced prices; and

B. Clearly and conspicuously qualify the "sale" or reduction representation by a statement in immediate conjunction thereto in the advertisement which indicates that all items advertised are not offered at reduced prices.

III

It is further ordered, That respondent cease and desist from disseminating, or causing the dissemination of any advertisement by any means which offers any items for sale at a stated price, unless the advertisement contains a statement that: "Each of the advertised items is required to be readily available for sale at or below the advertised price in each Pay'n Pak store, except as specifically noted in this ad," and a statement of the specific period during which the items will be available at the advertised prices.

IV

It is further ordered, That from the date this order becomes final, respondent shall place notices during the effective period of each printed advertisement which represents that any product is available at respondent's stores (a) at or near each door offering entrance to the public in each retail stores; and (b) at or near each cash register or place where customers pay for merchandise. The notice shall contain the following information:

"NOTICE"

A. A copy of the advertisement.

B. A statement that: "All items listed in the above advertisement are required to be readily available for sale at or below the advertised price, except as specifically noted in the above advertisement."

C. A statement that: "If any advertised item that you wish to purchase is unavailable, you will be entitled to a 'raincheck' which will enable you to purchase the item at the advertised price in the near future, or if the item does not become available in the next 30 days, then a similar item of equal or better quality at the advertised price, if available."

D. A statement that: "If you have any questions, please speak to the manager, department head or assistant manager."

v

It is further ordered, That:

A. Respondent shall forthwith deliver a copy of this order to each of its operating divisions and to each of its present and future officers and other personnel in its organization down to the level of and including assistant store managers who, directly or indirectly, have any supervisory responsibilities with respect to individual retail stores of respondent, or who are engaged in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person;

B. Respondent shall institute and maintain a program of continuing surveillance adequate to reveal whether the business practices of each of its retail stores conform to this order, and shall confer with any duly authorized representative of the Commission pertaining to such program when requested to do so by a duly authorized representative of the Commission;

C. Respondent shall, for a period of two (2) years subsequent to the date of service of the order:

1. Maintain business records which show the efforts taken to insure continuing compliance with the terms and provisions of this order, including but not limited to duplicates of all rainchecks issued;

2. Grant any duly authorized representative of the Federal Trade Commission access to all such business records;

3. Furnish to the Federal Trade Commission copies of such records which are requested by any of its duly authorized representatives.

D. Respondent shall, all other provisions of this order notwithstanding, on or before each of the first two (2) anniversary dates of service of the order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order in the preceding year.

VI

It is further ordered, That respondent shall notify the Commission at

