

IN THE MATTER OF
PAY'N SAVE CORPORATION

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

Docket C-2526. Complaint, Aug. 6, 1974—Decision, Aug. 6, 1974

Consent order requiring a Seattle, Wash., owner and operator of retail drug, general merchandise, department and hardware stores, among other things to cease failing to have advertised specials readily available for sale at or below the advertised prices. Further, respondent is required to hire an independent testing company to check on its compliance with the order for a period of two years.

Appearances

For the Commission: *David A. Middaugh.*

For the respondent: *Michael Rayton, Ryan, Bush, Swanson and Hendel, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Pay'N Save Corporation, 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 Save Corporation, 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 1511 Sixth Ave., Seattle, Wash.

PAR. 2. Respondent owns and operates retail drug and general merchandise stores in the States of Washington, Oregon, Alaska and California and in Canada. Respondent also owns and operates retail department stores and hardware stores.

PAR. 3. In the course and conduct of its business, respondent ships and distributes and causes the shipment and distribution of various articles of merchandise from warehouses and sellers located in various states to its retail stores located in various other states and in Canada, and then from its retail stores to consumers. In the further course and conduct of its business respondent transmits contracts, business correspondence, monies and other documents from its stores, offices, and divisions located in various states to others of its stores, offices and

divisions located in other states and in Canada. In the further course and conduct of its business respondent disseminates advertisements in newspapers of interstate circulation and in broadcast media, which broadcasts are received in states other than those of origination. Respondent maintains and at all times mentioned herein has maintained substantial business in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondent disseminates and causes to be disseminated certain advertisements. In said advertisements respondent makes certain statements and representations with respect to the terms and conditions under which various items of merchandise will be sold to members of the public. The terms and conditions include descriptions or depictions of items of merchandise, their prices, time periods and geographical areas.

PAR. 5. By disseminating advertisements which offer items of merchandise for sale at certain prices during certain times at certain stores, and by failing to have, during the effective period of such advertisements:

1. Each advertised item clearly and conspicuously available for sale to the public;
 2. At each location where an advertised item is displayed for sale, a sign or other marking clearly disclosing that the item is as "advertised" or "on sale"; and
 3. Each advertised item individually and clearly marked with a price which is at or below the advertised price;
- respondent is engaged in unfair acts and practices.

PAR. 6. Respondent is in substantial competition in commerce with other drug and general merchandise businesses.

PAR. 7. The use of the respondent of the aforesaid false, misleading, unfair and deceptive statements, representations, acts and practices, has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce such persons to go to respondent's stores and to purchase from respondent items other than the advertised items and the advertised products at prices in excess of those advertised.

PAR. 8. The aforesaid 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 in commerce and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

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 (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Pay'N Save Corporation, 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 1511 Sixth Avenue, Seattle, Wash.

2. 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

It is ordered, That Pay'N Save Corporation, a corporation, its successors and assigns, its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from representing orally, in writing, visually or in any other manner, directly or by implication, that any product is available for sale to the public at its stores at any price unless:

1. Each advertised item is clearly and conspicuously available for sale to the public at or below the advertised price in each store covered by the advertisement;
2. At each location where an advertised item is displayed for sale, there is a sign or other conspicuous marking clearly disclosing that the item is "as advertised" or "on sale" or words of similar import and meaning; and
3. Each advertised item, which is individually marked with a price, is individually and clearly marked with a price which is at or below the advertised price;

Provided however,

1. A product shall be deemed clearly and conspicuously available if a clear and conspicuous notice is displayed stating that said product is in stock and may be obtained upon request, and such product is furnished immediately upon request.
2. A product shall not be deemed unavailable if respondent maintains such records as will clearly and convincingly disclose (a) that the advertised products were ordered in adequate time for delivery and were delivered to its stores in quantities sufficient to meet reasonably anticipated demands; or (b) that ordered items were not delivered due to circumstances beyond respondent's control; and (c) furthermore, respondent offers a rain check to customers which allows them to purchase the product in the near future at or below the advertised price or respondent immediately offers a similar product of equal or better quality at or below the advertised price.
3. If an advertisement includes two or more stores, a product shall not be deemed unavailable or mispriced if such advertisement contains a specific exemption or limitation with respect to each product and each store in which the product is unavailable.
4. If an advertised item is placed for sale in a large stack, pyramid or other special display containing a great number of such items, all of the items need not be individually marked at or below the advertised price, if the items not marked individually at or below the advertised price are so situated that it would be difficult or impossible for a customer to select that unmarked item.

It is further ordered, That for a period of two (2) years from the date this order becomes final respondent shall place notices during the effective period of each 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 store; and (b) at or near each cash register or place where customers pay for merchandise. The notice shall contain the following information:

"NOTICE"

1. A copy of the advertisement.
2. A statement that: "All items listed in the above advertisement are required to be readily available for sale at or below the advertised price."
3. If any advertised item that you wish to purchase is unavailable either (a) you will be given a rain check which will enable you to purchase the item at or below the advertised price in the near future; or (b) you will be allowed to immediately purchase a similar product of equal or better quality at or below the advertised price.
4. A statement that: "If you have any questions, please speak to the store manager."

It is further ordered, That for a period of two (2) years from the date this order becomes final, in each advertisement which represents that products are available at any of its stores, respondent shall place the following statement: "Each of these advertised products are required to be readily available for sale at or below the advertised price in each _____ (name of store) store, except as specifically noted in this ad."

It is further ordered, That:

1. Respondent shall deliver a copy of the complaint and this order 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 as to individual retail stores of respondent.
2. Respondent shall institute a program of continuing surveillance adequate to reveal whether the business practices of each of its retail stores conform with this order; and
3. Respondent shall hire under written contract an independent testing company, to be approved by authorized representatives of the Federal Trade Commission. Such contract shall provide that the testing company shall randomly select four of respondent's retail stores every four months for a period of two years from the date this order becomes final, and survey such stores for compliance with this order; that respondent shall not receive prior notification of which stores will be surveyed or when the stores will be surveyed; that the testing company shall submit its proposed testing procedure for approval by authorized representatives of the Federal Trade Commission prior to testing; that the Federal Trade Commission reserves the right to require changes in the testing procedure during the course of the testing program; and that upon

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completion of each survey the testing company shall send the survey results to the Federal Trade Commission and to respondent.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respondent which may affect compliance obligations arising out of this order.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.

IN THE MATTER OF

PASTIME INDUSTRIES, INC., ET AL.