

Complaint

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Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

BAZA'R, INC.

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

*Docket C-2751. Complaint, Oct. 28, 1975-Decision, Oct. 28, 1975*

Consent order requiring a Portland, Oreg., supermarket chain, among other things to cease not having advertised items readily available for sale at or below the advertised price. Further, respondent is required to use shelf signs to indicate the location of items advertised below regular shelf price; to mark customarily price-marked items with the advertised prices; to post at store entrances and check-out counters notices (1) containing a copy of the ad, (2) listing any advertised items unavailable, and (3) announcing that rainchecks will be issued for them; and to maintain a program of continuing surveillance to insure that their stores comply with the order.

*Appearances*

For the Commission: *W. Lee Buck.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Baza'r, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

COUNT I

Alleging violation of Sections 5 and 12 of the Federal Trade Commission Act.

PARAGRAPH 1. Respondent Baza'r, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon with its office and principal place of business located at 1845 S.E. Third Ave., Portland, Oreg.

PAR. 2. Respondent is engaged in the operation of a chain of retail

food stores. Respondent operates retail food stores and food departments in Oregon, Washington and other States in the United States. Its volume of business is substantial. In the operation of its retail food stores, respondent offers and presents for sale to its customers, and sells to its customers, an extensive line of products, including food, as that term is defined in the Federal Trade Commission Act, groceries and other merchandise, all of which are sometimes referred to hereafter as "items." Many of said items are purchased from numerous suppliers located throughout the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent now causes, and for some time last past has caused, directly or indirectly, the aforesaid items to be shipped and distributed from manufacturing and processing plants or from other sources of supply to its warehouses, distribution centers, or retail food stores located in various States other than the State of origination, distribution or storage of said items. 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 commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, as aforesaid, and for some time last past respondent has been and is now disseminating, and causing the dissemination of, certain advertisements concerning the aforesaid items by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements in newspapers of general and interstate circulation and other advertising media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of said items from respondent; and respondent has been and is now disseminating, and causing the dissemination of, advertisements concerning said items by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase from respondent of the said items in commerce, as "commerce" is defined in the Federal Trade Commission Act. Many of the said advertisements list or depict the aforesaid items and also contain statements and representations concerning the price or terms at which said items would be offered for sale. Many of the aforesaid advertisements contain further direct and express statements and representations concerning the time periods during which the offers would be in effect and the locations of respondent's food stores at which the offers would be made.

PAR. 5. Through the use of such advertisements disseminated and now being disseminated in various areas of the United States served by

respondent's retail food stores, respondent has represented and is now representing directly or by implication that in those stores covered by such advertisements, throughout the effective periods of the advertised offers, the items listed or depicted in such advertisements would be or are:

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

PAR. 6. In truth and in fact, in a number of respondent's retail food stores located in the Portland, Oreg. metropolitan area in which the aforesaid advertisements were disseminated, in stores covered by such advertisements, during the effective periods of the advertised offers, a substantial number of items listed or depicted in the said advertisements were or 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 a price higher than the advertised price.

Therefore, the statements and representations as referred to herein, were and are false, misleading and deceptive, and each of such advertisements was and is misleading in material respects and constituted, and now constitutes a "false advertisement," as that term is defined in the Federal Trade Commission Act.

PAR. 7. By disseminating or causing the dissemination of advertisements which offer or present for sale items as aforesaid, and by failing to have in each of its stores covered by such advertisements, throughout the effective periods of the advertised offers, in quantities sufficient to meet reasonably anticipated demands, the advertised items:

- A. Readily available for sale to customers; or
  - B. Readily available for sale at or below the advertised prices;
- respondent has been and now is engaged in unfair acts and practices.

PAR. 8. By disseminating or causing the dissemination of advertisements which offer or present for sale items at specific prices, as aforesaid, and during the effective periods of such advertised offers at certain stores covered by said advertisements, by selling said items or other merchandise to customers at prices higher than the advertised prices, respondent has been and now is engaged in unfair acts and practices.

PAR. 9. In the course and conduct of its business, and at all times referred to herein, respondent has been and now is in substantial competition in commerce, with corporations, partnerships, firms and individuals in the retail food and grocery business.

PAR. 10. The use by respondent of the aforesaid unfair and false, misleading and deceptive statements, representations, acts and practices, including the dissemination of the aforesaid "false advertisements," has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the said statements and representations were and are true, and to induce such persons to go to respondent's stores and to purchase from respondent substantial quantities of the advertised items at prices in excess of the advertised prices and substantial quantities of items other than the advertised items.

PAR. 11. The acts and practices as aforesaid, and the dissemination by respondent of the false advertisements, as aforesaid, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

#### COUNT II

Alleging violation of the Federal Trade Commission trade regulation rule concerning retail food store advertising and marketing practices (16 CFR 424), the allegations of Paragraphs One, Two, Three, Four and Nine, respectively, of Count I hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 12. The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended 15 U.S.C. §41, *et seq.*, and the provisions of Subpart B, Part 1, of the Commission's Procedures and Rules of Practice, 16 CFR §1.11, *et seq.*, conducted a proceeding for the promulgation of a trade regulation rule regarding retail food store advertising and marketing practices. Notice of this proceeding, including a proposed rule was published in the Federal Register on Nov. 14, 1969 (34 F.R. 18252). Thereafter on May 31, 1971 the Commission duly promulgated a trade regulation rule concerning retail food store advertising and marketing practices effective July 12, 1971, 16 C.F.R. §424.1 (1973).

PAR. 13. Respondent is a member of the retail food store industry, and its acts and practices in connection with the sale and offering for sale of food and grocery products or other merchandise are subject to the jurisdiction of Sections 5 and 12 of the Federal Trade Commission Act and are within the intent and meaning of, and are subject to, the provisions of the aforesaid trade regulation rule.

PAR. 14. In connection with its aforesaid advertisements, respondent, in a substantial number of instances, has failed to comply with the

aforesaid trade regulation rule by offering food and grocery products or other merchandise for sale at a stated price by means of advertisements disseminated in areas served by certain of its stores which were covered by the advertisement but which did not have such products in stock and readily available for sale to customers during the effective period of the advertisement.

PAR. 15. In connection with its advertisements disseminated as aforesaid, respondent, in a substantial number of instances, has failed to comply with the aforesaid trade regulation rule by failing to make certain of the advertised items conspicuously and readily available for sale at or below the advertised prices.

PAR. 16. Respondent's aforesaid violations of the trade regulation rule concerning retail food store advertising and marketing practices constitute violations of Sections 5 and 12 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 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:

A. Baza'r, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon with its

office and principal place of business located at 1845 S.E. Third Ave., Portland, Oreg.

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 respondent Baza'r, Inc., a corporation, its successors or 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 food or grocery products or other merchandise, hereafter sometimes referred to as items, offered or sold in its retail stores, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

A. Disseminating, or causing the dissemination of any advertisement by any means which offers any items for sale at a stated price, unless throughout the effective period of the advertised offer at each retail store covered by the advertisement:

1. 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 furnished on request;

2. There is a sign or other conspicuous marking at the place where an item advertised below regular shelf price is displayed for sale clearly disclosing that the item is "as advertised" or "on sale" or words of similar import as appropriate, and disclosing on such sign or marking, the advertised price;

3. Each advertised item, which is usually and customarily individually marked with a price, is individually, clearly, and conspicuously marked with the advertised price;

4. 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.1., A.2., A.3., or A.4., if respondent is complying with a specific exemption, limitation or restriction with respect to store, item or price which is clearly and conspicuously disclosed in all advertisements.

*Provided, further,* It shall constitute a defense to a charge of

unavailability under subparagraph I.A.1. 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 delivered to its stores in quantities sufficient to meet reasonably anticipated demand, or (b) the advertised items were ordered but not delivered due to circumstances beyond respondent's control, and that 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 "rain check" for each unavailable item which entitled the holder to purchase the item in the near future at or below the advertised price.

In determining compliance with section I of this order, the Commission will consider the circumstances surrounding failure to make advertised items conspicuously and readily available for sale at or below the advertised prices due to circumstances beyond respondent's control.

## II

*It is further ordered,* That respondent Baza'r, Inc., a corporation, its successors or 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 food or drugs, as those terms are defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated, by United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of any such product, any advertisement which contains any of the offers prohibited by section I of this order;

B. Disseminating or causing to be disseminated by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the offers prohibited by Section I of this order.

## III

*It is further ordered,* That throughout each advertised sale period in each of its retail stores covered by an advertisement, respondent shall

post conspicuously (1) at or near each doorway affording entrance to the public, and (2) at or near the place where customers pay for merchandise, notices which contain the following:

A. A copy of the advertisement.

B. A statement that:

All items advertised are readily available for sale at or below advertised price except the following items:

Rain checks will be gladly issued for these items, that will enable you to purchase these items at or below the advertised price in the near future. If you have any questions, the store director will be glad to assist you.

#### IV

*It is further ordered, That respondent shall cause the following statement to be clearly and conspicuously set forth in each advertisement which represents that items are available for sale at a stated price at any of its stores: "Each of these advertised items is required to be readily available for sale at or below the advertised price in each \_\_\_\_\_ (store name) \_\_\_\_\_ store, except as specifically noted in this ad."*

#### 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 directors who, directly or indirectly, have any supervisory responsibilities as to individual retail stores of respondent, or who are engaged in any aspect of preparation, creation, or placing of advertising, and that respondent shall 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 three (3) years subsequent to the date of this order:

1. Maintain business records which show the efforts taken to insure continuing compliance with the terms and provisions of this order;
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;

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D. Respondent shall, all other provisions of this order notwithstanding, on or before each of the first three (3) anniversary dates of this 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.

*It is further ordered,* That respondent shall notify the Commission at least thirty days prior to any proposed change in the corporate 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 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.

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