

August 23, 2011



Federal Trade Commission
Office Of The Secretary
Room H-113 (Annex N)
600 Pennsylvania Ave., NW
Washington, DC 20580
16 CFR Part 424 – Retail Food Store Advertising Rule, Project No. P104203

Sir or Madam:

In recent years, I've noticed a significant resurgence of "bait and switch" marketing. In today's newspaper, I read that the Federal Trade Commission is reviewing its Unavailability Rule. I strongly urge you to not only keep this rule, but to strengthen it as much as possible.

It's not only the unavailability swindle that is used. In grocery stores, I'll see that in an advertised sale for a certain type of produce, the sale items will be available sure enough, but they'll be placed directly next to non-sale items, with the sale sign between them. The actual item on sale is only visible on close inspection of the sign. For example, I went to a grocery store to purchase some avocados that were advertised at a very attractive price. I found both the Haas avocados that I like and the less desirable Florida variety in the same bin, with the sale sign in front of it. It was only after I got to the register that I saw that the Haas I was going to buy were not on sale; only the Floridas. Had I not kept track of the scanner display, I would have fallen for what the store wanted me to fall for, which is assuming that the bin marked "Sale" contained only sale items, and that I would not notice that I was being charged non-sale prices.


I'll also give you what I consider a particularly egregious variation on the classic unavailability scam. In the weekly ad for an "upscale" grocery chain, 16 oz. packages of a certain brand of mozzarella cheese were advertised two for the price of one. I went to the store specifically to take advantage of this sale. When I got there, the morning of the day the sale was announced, mind you, I found no 16 oz. packages at all, only 8 oz. ones made by the same manufacturer. To make matters worse, the sign announcing the sale was, according to a clerk, "mistakenly" placed in front of the 8 oz. packages. When I asked him if he could get me two of the 16 oz. packages as advertised, he explained that "our truck didn't come in," (don't get me started on that excuse) and there were none, but I was welcome to get a rain check. In other words, to take advantage of the sale, after noticing the switcheroo on the package sizes, I'd have to make another trip to the store to get what they should have had plenty of on my first trip.

As far as electronics big boxes, a flyer from a national office supply chain advertised a certain type of blank CD on sale. I went to buy some, saw the sign, and saw no CD's. I asked a clerk about them, and she pointed to adjacent CD's. I explained that I didn't want those, but wanted the ones on sale. She said they "might" be available at the other store, which is miles away across town, but not available at the store I was in. I asked for a rain check for when they became available there. She looked at me as if I'd just stepped out of an interstellar transport, and curtly informed me that "We don't do rain checks here."

I know you've seen and heard it all before, and I also know that someone could say "Since he's so hip to deceitful business practices, why is he bothering the FTC?" I'm bothering you because, to my mind, deception averted is deception just the same. Plus, no matter how savvy a consumer is, it's inevitable that he or she is going to get ripped off, and probably for a good deal more than a piece of mozzarella.

So, again, I ask you not to weaken the Availability Rule, and God knows not eliminate it, but rather make it stronger and more rigorously enforced. As consumers, we're barraged by nefarious marketing practices enough as it is.

Thanks for your time.

Sincerely,


Jeff Sinex

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2011 AUG 30 AM 11:04
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