

The Unavailability Rule sets minimum levels of forthrightness and fairness in retail food store advertising, and gives consumers an immediate solution to understocked advertised items that greatly exceeds any court remedy in its ease, immediacy, and attention to small harms.

While many people in this country reside near a grocery store or two, the forces of competition cannot ensure fairness in advertising to many communities. A repeal of the Unavailability Rule would most directly affect our most vulnerable populations: rural Americans, people with mobility difficulties, people who rely on public transportation or caregiver grocery shopping, those living on limited incomes for whom the difference in food price or the cost of multiple trips to the grocery store smakes a real difference in the monthly budget, and communities living in “food deserts”.

The Unavailability Rule was a good idea at a time when more families were headed by two parents, only one of whom worked outside the home. Today, when more and more families have all available adults in the work force or seeking work or additional training, families simply should not bear the burden of running from grocery store to grocery store to figure out which one keeps its advertised items in stock.

The Unavailability Rule ensures fairness in small, repeated, consumer transactions for a basic necessity of life: food. An expansion of the Rule to encompass other life necessities that consumers purchase routinely would protect consumers from stores unscrupulously engaging in unfair advertising practices in a way in that most effectively enforces fair advertising practices: set standards, and immediate remediation through rain-check or offering a comparable product at the advertised price. These other necessities could, for example, include over-the-counter pharmacy items and health and hygiene supplies (bath tissue, sanitary pads, diapers, incontinence supplies, pain reliever, etc.). Like food, these items are consumable, repeatedly purchased, and needed immediately or soon.

To address changes in the retail industry, the Rule can be expanded to the food and health/hygiene departments of multi-industry retailers like Walgreens, WalMart, Target, and other stores offering food and healthy/hygiene products.

In sum, the Unavailability Rule continues to play an important function for consumers and provides clear expectations for retailers. As the Commission reviews the Rule, I urge it to retain the Rule’s important protections and to expand them to mixed-product retailers who are not solely or primarily grocers, and also to the other retail sectors subject to repeated purchase as consumable life necessities.

Respectfully,

Cora Rose