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WAL-MART ACCUSED OF UNFAIR LOW PRICES COMPETITORS' COMPLAINTS PROMPT STATE TO TAKE ACTION; [All Edition]

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Abstract (Document Summary)

Wal-Mart's [Bill Wertz] said the chain has improved its record-keeping system to ensure compliance in the future, but added that the retailer is concerned by the state's prosecution efforts. The state's action is under the jurisdiction of an administrative law judge also employed by the Department of Agriculture, Trade and Consumer Protection.

The chain's pricing difficulties already extend beyond Wisconsin's borders. Among the documents gathered by the state during its investigation is a letter to Wisconsin trade auditor Dani Grunewald from Wal-Mart's Kelly Merritt.

With fiscal 2000 sales of \$165.01 billion, Wal-Mart operates 4,000 stores worldwide. In Wisconsin, the chain employs 17,350 people at 55 Wal-Mart stores, four Super Centers and 11 Sam's Club stores.

Full Text (811 words)

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State consumer officials accused Wal-Mart Stores of violating Wisconsin's predatory pricing laws in a complaint filed with an administrative law judge Monday.

Meanwhile, in a letter written to Wisconsin consumer regulators, Wal-Mart officials acknowledged the chain has a nationwide policy of selling certain items below cost. The retailer also is facing scrutiny by German antitrust authorities for starting price wars there.

The complaint filed Monday accuses the company of selling items such as milk, paper towels, toilet paper and cigarettes below cost. The violations took place at Wal-Mart stores in Beloit, West Bend, Tomah, Oshkosh and Racine, said Bill Oemichen, state trade and consumer protection administrator.

Under Wisconsin law, a store may sell items below cost only to match another store's price, said Karl Marquardt, an attorney with the state Department of Agriculture, Trade and Consumer Protection. And it is the store's responsibility to keep records proving the other retailer lowered prices first.

"If you're going to raise 'meeting the competition' as a defense, you have to prove it," said Oemichen. "We had warned Wal-Mart that they needed to have documentation."

"We have many other stores and industries where the players are able to show the documentation. That's what the law requires," he said.

Bill Wertz, a spokesman for Wal-Mart in Bentonville, Ark., said the retailer is concerned it is being singled out for

enforcement because of its size and the fact that it makes an easy target for competitor complaints.

"We submitted . . . a box of material that we believe demonstrates others in the state even advertise items below cost," Wertz said. "It's a broader issue than just one store."

Among the competitors filing complaints against Wal-Mart are Woodman's Food Markets, Janesville; Roundy's, Wauwatosa; and Prescott's Supermarkets, Cigarette Outlet and Pharmaceutical Services, all of West Bend.

Phil Woodman, president of Woodman's Food Markets agreed that other competitors also advertise and sell some items below cost to bring traffic into their stores. (Woodman said his stores use a strategy emphasizing "every day low prices" and never sells below cost.)

"If you read the advertising inserts in the Sunday paper, the leading items in most of those ads are below cost," he said.

However, said Woodman, consumers recognize that stores using this type of "high-low" promotional strategy charge more for other items. And, while some state grocery chains may sell an item below cost for a few days, Wal-Mart's low prices are prolonged to drive out competition.

"They try to go into a market and they try to kill off the little operators so they can raise their prices," Woodman said. So, "how do you differentiate between a 'high-low' operator and those that are harming competitors by predatory pricing? . . . The difference is the whole crux of the matter" for state regulators.

Consumer protection administrator Oemichen said the state aims to enforce its pricing laws in an evenhanded way, but now has the most complaints against Wal-Mart.

In the action filed Monday, the retailer is accused of selling items below cost on 352 occasions during 1998 and 1999.

Violations, counted as the sale of one of each item in each store per day, can bring fines of up to \$500 for a first violation. Under the law, a store's cost is considered to be the invoice cost, less any trade discounts, plus the cost of transportation.

Wal-Mart's Wertz said the chain has improved its record-keeping system to ensure compliance in the future, but added that the retailer is concerned by the state's prosecution efforts. The state's action is under the jurisdiction of an administrative law judge also employed by the Department of Agriculture, Trade and Consumer Protection.

"While we are setting up this system that we think will be an excellent one, there still will be the possibility of error on both sides," Wertz said. "In the event that the state is in error, we don't want to pay a penalty that isn't called for."

No date has yet been set for a hearing on the state's action against Wal-Mart.

The chain's pricing difficulties already extend beyond Wisconsin's borders. Among the documents gathered by the state during its investigation is a letter to Wisconsin trade auditor Dani Grunewald from Wal-Mart's Kelly Merritt.

According to the letter, dated Nov. 9, 1998, Wal-Mart officials said, "We currently sell two items nationally below cost to our customers. They are Clorox Bleach and Parkay Margarine. We sell these items below cost as an every day low price."

Also, in Germany, the retailer may face penalties of up to \$443,900 for its pricing practices, according to The Wall Street Journal.

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[Illustration]

Caption: WSJ Graphic Source: Wisconsin Department of Agriculture, Trade and Consumer Protection complaint Prices below cost, complaint maintains

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