

Original URL: <http://www.jsonline.com/bym/news/sep00/walmart26092500a.asp>

Wal-Mart faces state charges of illegally cutting prices

Below-cost sales came after other stores dropped their prices, company says

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Last Updated: Sept. 25, 2000

Wal-Mart Stores Inc. - which has used its trademark low prices to become the world's largest retailer - was charged Monday with cutting prices at five Wisconsin stores to illegally take business from competitors.

Wal-Mart sold milk, butter, cigarettes, laundry detergent and other items below cost at stores in West Bend, Racine, Beloit, Tomah and Oshkosh, says the complaint filed by the state Division of Trade and Consumer Protection.

State law prohibits below-cost sale prices if they're done to unfairly take business away from competitors.

The law is designed to prevent retailers from running their competitors out of business by selling certain items below cost. Supporters of such laws - which are found in many states - say they're needed to prevent large retailers from becoming monopolies.

A Wal-Mart spokesman said the company set its below-cost prices in response to price cuts by competing retailers. That practice is allowed under state law. A retailer may not initiate below-cost prices.

Wal-Mart did a poor job of keeping records that would back its defense, said company spokesman William Wertz.

"We did not take the initiative to lowering prices below cost,"

Price Problems



Photo/Karen Sherlock

Shoppers visit the Wal-Mart on Monday on Highway 164 in Waukesha. Wal-Mart Stores Inc. was charged with illegally cutting prices.

SUMMARY

State officials on Monday charged that Wal-Mart Stores Inc. illegally cut prices at five Wisconsin stores to take business from competitors.

A state Department of Agriculture, Trade and Consumer Protection official said legal action was taken against Wal-Mart only after the company failed to stop the practice -

Wertz said. "We acknowledge our record-keeping needs to improve."

Wertz said Wal-Mart has changed its computer program so it can better document below-cost prices. He said documentation remains a difficult task.

"You've got to realize that we're selling hundreds of thousands of items," Wertz said, "and price changes are frequent."

Wertz also said Wal-Mart has gathered evidence that shows that other Wisconsin retailers have violated the state law prohibiting below-cost selling. He said state officials should investigate those retailers as well.

Bill Oemichen, state trade and consumer protection administrator, said his division will review the evidence provided by Wal-Mart.

But Oemichen said the state has received more below-cost selling complaints about Wal-Mart than any other retailer.

He also said state officials charged Wal-Mart only after the company failed to stop the practice - despite receiving four warning letters from the division dating to 1993.

Wal-Mart, in addition to not documenting its claim that others initiated the illegal price cuts, also faces evidence gathered by state officials that shows the company did initiate below-cost selling, Oemichen said.

The complaint carries a total of 350 violations - one for each day that each item was illegally sold below cost, said Karl Marquardt, assistant counsel for the state Department of Agriculture, Trade and Consumer Protection.

State officials could seek fines of up to \$500 for each violation - totaling \$175,000, Marquardt said.

Meanwhile, the department is seeking an injunction that would prohibit Wal-Mart from illegally selling items below cost. If that injunction is granted, each future violation of the law would carry a maximum penalty of \$5,000, Marquardt said.

despite receiving four warning letters from the division dating to 1993.

A Wal-Mart spokesman said the company did not violate any laws and set its below-cost prices in response to price cuts by competitors. The practice is allowed by state law, but it must be a reaction to a competitor.

Retailers may not initiate below-cost prices.

Wal-Mart Stores Inc., the world's largest retailer, was charged Monday with violating a state law that prohibits retailers from selling items below cost in an attempt to unfairly take business away from their competitors. Wal-Mart, however, says it lowered its prices in response to price cuts initiated by competing stores - which is allowed under state law. Here are some of the specific prices - which were posted at five Wisconsin Wal-Marts in 1998 and 1999 - that make up the state's charges:

| Item | Sale price | Cost to Wal-Mart |
|----------------------------------|-------------------|------------------|
| Beloit store | | |
| Great Value Butter | \$1.49 per pound | \$2.44 per pound |
| Liquid Tide, 100-ounce container | \$4.54 and \$4.88 | \$6.51 |

A department administrative law judge will review the charges and recommend further action to Ben Brancel, department secretary. Wal-Mart can appeal Brancel's decision to a circuit court judge.

Oemichen said the state investigated Wal-Mart in 1998 and 1999 after receiving complaints from five rivals, including City of Pewaukee-based Roundy's Inc., a supermarket wholesaler and operator of Pick 'n Save supermarkets, and Janesville-based Woodman's Food Markets Inc., a supermarket operator.

The other retailers that complained are all based in West Bend: Prescott Supermarkets Inc., a Pick 'n Save operator; Cigarette Outlet; and Pharmaceutical Services.

Todd Robert Murphy, a public relations specialist representing Roundy's and Prescott, said the complaints spoke for themselves.

Oemichen said state investigators also examined complaints about Wal-Mart stores in Black River Falls, Baraboo and Richland Center but didn't find any violations. Wal-Mart has 69 stores in Wisconsin, including its combined discount store-supermarkets, known as supercenters, and its Sam's Club warehouse-style stores.

The below-cost prices occurred as Wal-Mart was beginning to expand into the grocery business in Wisconsin. Wal-Mart, which dominates the discount department store niche, is now rapidly entering the supermarket business worldwide.

In Wisconsin, Wal-Mart since 1997 has opened supercenters or has supercenters under development in Beloit, West Bend, Racine, Neenah, Viroqua, Marshfield, Wisconsin Rapids, Prairie du Chien and Antigo. More are expected.

News of the Wisconsin charges came the same day Michigan consumer protection officials announced that Wal-Mart and office supply retailer OfficeMax Inc. settled charges that the two companies violated state law by failing to place price tags on items within their stores. Michigan's investigation found item pricing discrepancy practices at 10 Wal-Mart stores in that state, said state Attorney General Jennifer Granholm.

Wal-Mart will pay a \$250,000 civil penalty, with half of that amount to be waived if state investigators determine that the firm's stores fully comply with the item pricing act. Wal-Mart will pay Michigan \$25,000 for the costs of

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| Floral Scented Clorox Bleach, 128-ounce container | 88 cents | \$1.39 |
| Charmin Double Roll Toilet Paper, 12-pack | \$5.29 | \$6.46 |
| West Bend store | | |
| Kraft Miracle Whip, 32-ounce jar | \$1.83 | \$2.17 |
| Salem Cigarettes | \$27.26 per carton | \$27.68 |
| Great Value 2% Milk | \$1.94 per gallon | \$2.13 |
| Dean's 2% Milk | \$2.06 per gallon | \$2.28 |
| Racine store | | |
| Great Value Whole Milk | \$1.85 per gallon | \$2.33 |
| Great Value 1% Milk | \$1.65 per gallon | \$1.97 |
| Tomah store | | |
| Liquid Tide, 100-ounce container | \$5.18 | \$6.51 |
| Oshkosh store | | |
| Liquid Tide, 100-ounce container | \$4.88 | \$6.51 |

Source: State Division of Trade and Consumer Protection

the investigation.

Appeared in the Milwaukee Journal Sentinel on Sept. 26, 2000.