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Crest sues Wal-Mart over Edmond store's pricing

Gregory Potts, Business Writer

Wal-Mart is known for its competitive prices, but an Oklahoma City grocer claims the retail titan has taken a good thing too far.

Crest Food claims that the Edmond Wal-Mart Supercenter has engaged in "predatory pricing" to drive the Edmond Crest Foods store out of business. As a result, Crest filed a lawsuit Tuesday in federal court in Oklahoma City against the Bentonville, Ark., retailer seeking millions of dollars in damages.

But it's about more than competition, said Kent Meyers and Tony Rupert, the Crowe and Dunlevy attorneys who are arguing the case. They claim Wal-Mart has a vendetta against Crest.

"It's not the typical story of the mom-and-pop store getting underpriced by Wal-Mart and complaining," Rupert said.

Bill Wertz, a Wal-Mart spokesman, denied Crest's accusations.

"We engage in fair competition and try to give our customers the best value," Wertz said. "That's how we built out business. This is an unfortunate attempt to generate publicity."

According to the lawsuit, David Glass, the former president and chief executive officer of Wal-Mart, along with several other Wal-Mart personnel, visited Crest Foods on May 23, just six days after the opening of the Edmond Wal-Mart Supercenter. Crest alleges that the group was using a hand-held scanning device to record Crest's prices of various items. The lawsuit says that a Crest assistant manager asked the people to leave, suspecting that they were snooping for Wal-Mart, but that a senior manager told them they could stay if they wished.

"Crest was later informed that Mr. Glass was personally offended that he was 'kicked out' of Crest (even though he was subsequently invited to stay), and that Mr. Glass ordered the Edmond Supercenter

to obtain revenge by dropping its prices even below cost if necessary to drive Crest out of business," the lawsuit alleges.

The lawsuit does not reveal the source of its allegation concerning Glass.

Glass, who succeeded Wal-Mart founder Sam Walton, stepped down as president and CEO in January but remains chairman of Wal-Mart's executive committee of directors.

Meyers and Rupert have obtained a Wal-Mart employee handbook that instructs managers to kick out competitors who enter Wal-Mart stores to record their prices.

"The Store Manager or other responsible Wal-Mart Management shall request that any employee of a competitor who is recording (price) data inside our store immediately stop the recording or leave our premises," the handbook says.

"With respect to the comments about David Glass, this is a completely fabricated assertion," Wertz said. "Anybody in the retail industry who knows David Glass knows him to be a very conservative and even-tempered executive."

In addition, Wertz said that such comparison shopping is a standard retail practice long used by Wal-Mart and its competitors, but he also said it would not be a big deal to be asked to leave while comparison shopping.

"We deny very strongly that our pricing was intended to drive this supermarket or any other competitor out of business," Wertz said.

Oklahoma law prohibits selling products below cost if the intent is to injure a competitor or prevent fair competition.

Crest's executives said that according to their June 9 price survey, French's mustard sold for 88 cents at the Wal-Mart Supercenters in Moore and Norman and 97 cents at two Oklahoma City Wal-Mart Supercenters. Crest was selling the product for 88 cents. But the Edmond Wal-Mart Supercenter was selling the mustard for 50 cents.

In all, Crest checked prices on 35 items that day and found that Crest beat or met prices at four "other" Wal-Mart Supercenters in 22 out of 35 items. Conversely, though, the Edmond Supercenter beat

Crest on 25 items and beat the other Wal-Mart Supercenters on 28 items.

Rupert said that Wal-Mart's pricing has dropped Crest's sales by about 20 percent.

Wertz denied any wrongdoing. He said that prices for individual items typically vary from one Wal-Mart store to another, often depending on local competition.

The lawsuit makes three claims: It alleges a violation of the Oklahoma Unfair Sales Act, a violation of the Oklahoma Antitrust Reform Act and attempted monopolization.

Rupert said he estimates Crest's actual damages at about \$ 3 million. Under anti-trust laws, actual damages are tripled. So Wal-Mart's exposure could run to \$ 9 million.