

December 1, 2009

The Honorable Christine Varney
Assistant Attorney General
Antitrust Division
Department of Justice
950 Pennsylvania Avenue, NW, Suite 3109
Washington, DC 20530

Molly Boast, Esquire
Deputy Assistant Attorney General for Civil Matters
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Room 3210
Washington, DC 20530

Dear Ms. Varney and Ms. Boast,

We are writing to request the Department of Justice to investigate Amazon.com, Wal-Mart, and Target because of what we see as illegal, predatory pricing that is damaging to the entire book industry and harmful to consumers.

Amazon.com, WalMart.com, and Target.com have engaged in a price war in the pre-sale of new hardcover bestsellers and with digital formats. Hardcover books typically retail between \$25 and \$35. The three mentioned competitors have sold and are selling these and other titles for between \$8.98 and \$9.00.

Because list prices are printed on jacket covers, and because books are sold at discount off retail price (not net pricing typically seen in other segments), these practices effectively create a monopoly for new-release best-sellers for these retailers selling at or below wholesale costs.

Typically, books are sold at wholesale at 45%-50% off the suggested list price. Stephen King's *Under the Dome*, priced at \$35, costs a retailer \$17.50 or more. Publishers claim they don't offer special terms to big-box retailers, and that these retailers are selling these books far below cost. (That means these predatory retailers are losing as much as \$8.50 on Mr. King's book.) Amazon.com, Wal-Mart, and Target are using predatory pricing practices in what appears to be an attempt to control the market for hardcover bestsellers. These practices also have been seen in selling new-release titles from Christian publishing houses for authors such as Joel Osteen, Karen Kingsbury, and Jerry B. Jenkins. This also is a common practice for Wal-Mart, which was sued by the German government and lost for selling products at less than cost in that country.

By selling titles below the cost these retailers actually pay to publishers, and at the same price as each other, and at the same price as all other titles in these pricing schemes, Amazon.com, Wal-Mart, and Target are devaluing an entire industry and engaging in an unsustainable practice that ultimately will destroy the entire industry. Authors and publishers, and ultimately consumers, stand to lose a great deal if this practice continues or grows — and not just from a business perspective.

By taking the publishing industry's most important and expensive products — mega bestsellers — and using them as loss leaders to attract customers to buy other, more profitable merchandise, the entire book industry suffers. We have already seen in other retail segments dominated by a few companies that consumer choice is severely limited in product quality, style, and availability based on the profit requirements of these singular companies, not true consumer demand. Enabling this type of dominance in publishing will mean fewer voices will be heard, fewer ideas expressed, and potential commercial censorship of titles, authors, or ideas.

Predatory pricing in any marketplace is concerning. However, in the marketplace for books it is totally destructive. Predatory pricing policies will devastate not only the book business, but also will lead to a society controlled only by commercial interests, not ideas. Ironically, this practice ultimately will increase prices, not reduce them, as books will only be available through select channels.

According to Rick Christian, president of the Colorado Springs-based literary agency Alive Communications, “The predatory pricing of Amazon, Target, and Wal-Mart threatens the entire publishing industry. Retail channels of distribution are narrow enough that if these few outlets sell top titles for less than half their normal retail price, consumers will expect similar discounts across the board. These retailers can sell hyper-reduced books as ‘loss leaders’ for a time, but it’s an unsustainable model that, without intervention, will shutter hundreds of book stores, force many publishers out of business, gut trade associations, and significantly reduce the number of self-sustaining authors.

“In the short term, consumers will get too-good-to-be-true deals. However, the broad river of titles now available to readers will ultimately be reduced to a trickle, and the vast publishing industry we know will become a relative wasteland. It’s a scenario in which everybody loses in the long run, unless decisive action is taken immediately.” Christian said. He and his agency have represented very popular authors and titles, such as the *Left Behind* series (65 million unit sales), *The Message Bible* (10 million sales), and Karen Kingsbury novels (15 million sales).

Further altering publishing, Amazon.com also released digital editions of new hardcover books simultaneously using predatory-pricing strategies, retailing many of those titles for \$9.99. CBA believes the loss-leader pricing of digital content also should be scrutinized.

CBA represents a locally owned network of independent member bookstores that are suffering from the devastating impact of predatory pricing. Many independent bookstores have and will continue to close down with a concentration of buying power in very few hands. This also will mean that the broader selection of titles and the ability of new authors to create innovative works or to find new audiences will be severely devastated.

We urge that the DOJ investigate these predatory practices. We will be happy to discuss store closures and other impacts our industry has suffered when mega-retailers sell products at below wholesale costs.

Sincerely,

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