



TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Wal-Mart Stores, Inc.,	)	Opposition No. 91/150,278
	)	Opposition No. 91/154,632
v.	)	
	)	
Franklin Loufrani	)	
	)	
Franklin Loufrani,	)	
	)	
v.	)	Opposition No. 91/152,145
	)	
Wal-Mart Stores, Inc.	)	

NOTICE OF RELIANCE

Wal-Mart Stores, Inc., by and through its counsel, hereby submits this Notice of Reliance.

**PRINTED PUBLICATIONS**

Pursuant to 37 C.F.R. § 2.122(e), the following is a list of printed publications that are in general circulation among members of the public. Copies of the publications, in the format listed below, are attached hereto.

**LEXIS-NEXIS OR DIALOG PRINTOUTS**

“Face it! Smiley Face is back – and now it’s saying more than just ‘have a nice day.” *Chicago Tribune*, February 15, 1989, Style Section, Page 18. Bates No. WM/LOUFNI0000067-70.

“Smiley Face Comes Back in Different Mood,” *Detroit Free Press*, September 30, 1993, Section WWL, Page 1D. Bates No. WM/LOUFNI0000072-73.

“Smiley Face Becoming Totally Awesome,” *Charlotte Observer*, February 27, 1989, Living Section, Page 4D. Bates No. WM/LOUFNI0000079-80.

“Smiley Face: The Rebirth (And Re-Death?) of a Pop Trend,” *Sun Sentinel*, Features Lifestyle section, Page 7E. Bates No. WM/LOUFNI0000081-84.

"Where That Grin Is Still In," *The Washington Post*, October 10, 1992, Style Section, Page D01. Bates No. WM/LOUFNI0000091-92.

"The Man of 1000 Faces: Smiley-Face Collector Admits He's As Tacky As They Are," *San Francisco Chronicle*, People Section, Page B3. Bates No. WM/LOUFNI0000095-97.

"Kmart Flips on Blue Light," *The Detroit News*, January 27, 2005, Business Section, page 1E. Bates No. WM/LOUFNI 0000507-508.

"Won't You Be My Roommate," *Chicago Tribune*, January 6, 2005, page 2. Bates No. WM/LOUFNI509-510.

"Tough Times Ahead for Home Textiles; Low-Wage Rivals, Retailer Demands Will Push More Work Abroad," *The Charlotte Observer*, December 12, 2004, Business Section, page 1D. Bates No. WM/LOUFNI 0000511-514.

"Editorial/Kmart/Sears Odd Marriage One of Necessity?," *Philadelphia Inquirer*, November 21, 2004, Currents Section, page C06. Bates No. WM/LOUFNI515.

"Real Estate; Zone C; The Suburbs," *The Detroit News*, November 14, 2004, Real Estate Section, page 7D. Bates No. WM/LOUFNI 0000516-517.

"Dozens of Pupils Dress Pumpkins," *The Montgomery Advertiser*, November 3, 2004, Section B, page 2. Bates No. WM/LOUFNI0000518.

"Trotwood Wal-Mart to Hold Safety Event; Retailer Partners with Police Department," *Dayton Daily News*, October 28, 2004, Northwest Section, page Z6-3. Bates No. WM/LOUFNI 0000519-520.

"By Brody Mullins ROLL CALL STAFF," *Roll Call*, October 4, 2004, Business Section K Street. Bates No. WM/LOUFNI 0000521-522.

"Class Consciousness-Raising," *Fulton County Daily Report*, September 20, 2004, News Section, Vol. 9; No. 20. Bates No. WM/LOUFNI 0000523-528.

"Big Welcome for Wal-Mart in East San Jose," *San Jose Mercury News*, August 26, 2004. Bates No. WM/LOUFNI 0000529-530.

"Intel Overhaul; Global Giant; War Record; Who Dunit?," *The NewsHour with Jim Lehrer*, August 23, 2004. Bates No. WM/LOUFNI 0000531-542.

"Lakeland Electric Finds It Painful To Pass 100," *The Ledger*, August 8, 2004, News Section, page A23. Bates No. WM/LOUFNI 0000545-546.

"Rezoning Approved for Paris Wal-Mart; Community Plan Being Challenged in Court," *Lexington Herald Leader*, July 30, 2004, City & Region Section, page B1. Bates No. WM/LOUFNI0000547-548.

"Gary Pettus," *The Clarion-Ledger*, July 29, 2004, Southern Style Section, page 1E. Bates No. WM/LOUFNI0000549-550.

"Kmart Scraps Slogan, Tweaks Logo; Retailer Drops "Right Here. Right Now Ad Campaign In Effort To Pump Up Sliding Sales," *The Detroit News*, July 22, 2004, Business Section, page 1C. Bates No. WM/LOUFNI0000551-552.

"What Washington Needs is Reality – Wal-Mart Style," *Deseret Morning News*, July 19, 2004. Bates No. WM/LOUFNI0000553-554.

"Upfront 2004 – The Advertisers: Apparel," *Adweek*, April 26, 2004, Feature Section. Bates No. WM/LOUFNI0000555-556.

Ad Watch, *The Kansas City Star*, December 28, 2003, Section H; Brief, page 3. Bates No. WM/LOUFNI0000562.

"Wal-Mart's Mascot Stars as 'Rollback Man'," *adweek.com*, December 26, 2003, News Section; Midwest. Bates No. WM/LOUFNI0000563.

"The Sleepless Executive: What Keeps CEOs Awake and Why You Should Care," *Executive Speeches*, December 1, 2003, Section No. 3, Vol. 18; page 14; ISSN: 0888-4110. Bates No. WM/LOUFNI0000564-569.

"Illegals Aren't Bad People But They Disrespect Rule of Law," *Pasadena Star-News*, October 28, 2003, Opinion Section. Bates No. WM/LOUFNI0000570-571.

"Creative Director Returns to NKH&W After Stint in Denver," *The Kansas City Star*, October 6, 2003. Bates No. WM/LOUFNI0000572-573.

"Greeter Made Happiness The Daily Special At Wal-Mart," *The Virginia-Pilot*, May 11, 2003, Local Section, page B7 POST SCRIP. Bates No. WM/LOUFNI0000574-575.

"Wal-Mart Uses Stars In Stores, Not On TV," *Arkansas Democrat-Gazette*, April 20, 2003, Business Section, page 63. Bates No. WM/LOUFNI0000577-578.

"West Ashley Super Wal-Mart Will Be More Than A Big Box," *The Post and Courier*, April 11, 2003, Local/State Section, page 1B. Bates No. WM/LOUFNI0000579-580.

"Sawmill Saws Away In Search Of An Idea," *National Post's Financial Post & FP Investing*, November 25, 2002, Marketing Section; Ad Review; page FP7. Bates No. WM/LOUFNI0000581-582.

"First Things First," *Business And Management Practices*, May 2002, Section Vol. 8, No. 5; page 4(1); ISSN: 1085-5009. Bates No. WM/LOUFNI0000587-588.

"And The Winner Is Kmart!," *Capital Times*, March 14, 2002, Section: Savvy; The Savvy Shopper, page 1F. Bates No. WM/LOUFNI0000591-592.

"Wal-Mart vs. Reedley," *Fresno Bee*, December 28, 2001, Section: South Valley Bee, page 13; Opinion. Bates No. WM/LOUFNI0000593-594.

"Small Shops Resent Wal-Mart," *Albuquerque Journal*, November 22, 2001, Section: page 2. Bates No. WM/LOUFNI0000595-596.

"Insight Communications Pushing Cable-System Upgrades," *The State Journal-Register*, June 17, 2001, Marketplace Section, page 37. Bates No. WM/LOUFNI0000597-598.

"Chain Confronts Its Opposition Wal-Mart Supercenters Entrench For Battle," *The Arizona Republic*, August 16, 2000, Section: Chandler Community, page 1. Bates No. WM/LOUFNI0000599-600.

"Resource Marketing Study Reveals Discount Giants Wal-Mart and K-Mart Score Zero Online," *PR NEWSWIRE*, August 3, 2000. Bates No. WM/LOUFNI0000601-602.

"Megastore Opens Doors Massillon Wal-Mart Greets Hundreds," *Akron Beacon Journal*, July 20, 2000, Metro Section, page A1. Bates No. WM/LOUFNI0000603-604.

"What's In A Dame," *Arkansas Democrats-Gazette*, January 28, 2000, Features Section, page E1. Bates No. WM/LOUFNI0000607-608.

"Residents To Wal-Mart: No Way; Store Officials Get A Negative Earful," *Hartford Courant*, December 21, 1999, Town News Section, page B1. Bates No. WM/LOUFNI0000611-612.

"BUSINESS WORLD; Selling to Argentina," *The New York Times*, December 5, 1999, Section 3, page 7. Bates No. WM/LOUFNI0000613-615.

Target Aiming For Brand ID Discounter Plays Up 'Hip' Image," *The Denver Post*, November 14, 1999, Business Section, page K-07. Bates No. WM/LOUFNI0000620-621.

"Simple Marketing Hits The Mark," *Business and Industry: Discount Store News Wal Mart Commemorative Issue*, October 1999, Section page 111; ISSN: 0012-3587. Bates No. WM/LOUFNI0000622-623.

"Converging In Bentonville," *Promo*, August 1999, Section: CHANNEL SURFING; ISSN: 1047-1707. Bates No. WM/LOUFNI0000624-625.



"The First Great East Greenwich Scavenger Hunt: Elvis, Fuzzy Dice," *Providence Journal-Bulletin*, May 17, 1999, News Section, page 1C. Bates No. WM/LOUFNI0000626-627.

"Cherokee In The New Millennium; Folksy Store's Era Over," *The Atlanta Journal and Constitution*, May 13, 1999, Section: Cherokee Extra, page 6JQ. Bates No. WM/LOUFNI0000628-629.

"Arkansas Democrat-Gazette/JEREMY SCOTT," *Arkansas Democrat-Gazette*, May 9, 1999, Business Matters Section, page BM6. Bates No. WM/LOUFNI0000630.

"Author Details Wal-Mart Practices Book Takes Look At Marred Image Of Giant Retailer," *The Arizona Republic*, February 3, 1999, Section: MESA/APACHE JUNCTION COMMUNITY, page 1E. Bates No. WM/LOUFNI0000631-632.

"Wal-Mart Comes To Espanola," *Albuquerque Journal*, January 28, 1999, Section, page 1. Bates No. WM/LOUFNI0000633-635.

"A Little Bit Country, A Little Bit Shania Twain," *The Pantagraph*, September 7, 1998, News Section, page A3. Bates No. WM/LOUFNI0000636-637.

"20ish Century: Target Hits A Bull's Eye In Bargain Shoppers Showdown," *Arkansas Democrat-Gazette*, August 23, 1998, Features Section, page E6. Bates No. WM/LOUFNI0000638-639.

"Wal-Mart Gets A Green Light," *Charlotte Observer*, July 22, 1998, Metro Section, page 1C. Bates No. WM/LOUFNI0000640-641.

"Wal-Mart Has Something To Smile About," *Arkansas Democrat-Gazette*, May 31, 1998, News Section, page A1. Bates No. WM/LOUFNI0000642-643.

"Camillus Wal-Mart Nearly Ready The Retailer's Store In An Old Caldor Location Is A Little Different From Other Wal-Marts," *The Post-Standard*, July 10, 1997, Business Section. Bates No. WM/LOUFNI0000647-649.

"Wal-Mart Ups The Pace – Retailer Boosts IT Spending, Expands Development Staff In Effort To Get Profits Growing Again," *Information Week*, December 9, 1996, Section: Cover Story, page 37, Inside Look. Bates No. WM/LOUFNI0000650-655.

"Monday Memo: Smiley Face Update," *St. Louis Post-Dispatch*, July 13, 1998, Business Plus Section, Page 18. Bates No. WM/LOUFNI0002424-2426

"Monday Memo: Smiley Face Update," *St. Louis Post-Dispatch*, January 25, 1999, Business Plus Section, Page 5. Bates No. WM/LOUFNI0002427-2428

PHYSICAL COPY

*Smiley*. Running Press, 2004. Philadelphia. Bates No. WM/LOUFNI0002423

RELEVANT EXCERPT

Also attached hereto are samples of print advertising by Wal-Mart Stores, Inc., which has appeared, *inter alia*, as inserts in newspapers throughout the United States. Bates Numbers WM/LOUFNI0000001-4, 6-53.

Discovery Responses

Pursuant to 37 C.F.R. § 2.120(j), the following is a list Franklin Loufrani's Discovery Responses upon which Wal-Mart may rely at final hearing. Copies of the responses are attached hereto.

Applicant's Responses to Opposer's Interrogatory No. 4 to Applicant. June 19, 2002.

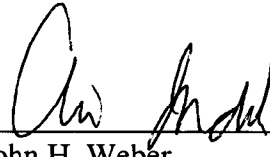
Applicant's Responses to Requests for Admissions From Opposer to Applicant. June 26, 2002.

Franklin Loufrani's Responses to Wal-Mart Stores, Inc.'s Second Set of Requests for Admission to Franklin Loufrani. October 30, 2003.

Official Records

Also attached, pursuant to 37 C.F.R. § 2.122(e), is a copy of Wal-Mart's Trademark Application No. 76/320,901, which is an official record of the United States Patent and Trademark Office. Bates No. WM/LOUFNI0001517-1524

Respectfully submitted,



---

John H. Weber

Gary J. Rinkerman

Ari S. Indik

**BAKER & HOSTETLER LLP**

Washington Square, Suite 1100

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5304

(202) 861-1500

(202) 861-1783 FAX

Counsel for Wal-Mart Stores, Inc.

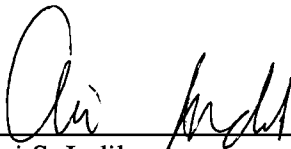
April 27, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Notice of Reliance has been served on Steven L. Baron, counsel for Franklin Loufrani, by mailing said copy on April 27, 2005, via the methods listed below, to:

Steven L. Baron  
Mandell, Menkes & Surdyk, LLC  
333 W. Wacker Drive, Suite 300  
Chicago, Illinois 60606  
sbaron@mms-law.net

UPS Express	<input checked="" type="checkbox"/>
First Class Mail	<input type="checkbox"/>
Facsimile	<input type="checkbox"/>
E-Mail	<input type="checkbox"/>

  
\_\_\_\_\_  
Ari S. Indik

100903041v1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION FOR SERVICE MARK REGISTRATION

Mark: Miscellaneous Design

Class: International 35

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Wal-Mart Stores, Inc., a corporation organized under the laws of the State of Delaware, with its principal place of business at 702 SW 8th Street, Bentonville, Arkansas 72716-8095.

The above-identified Applicant has adopted and is using the SERVICE MARK shown in the accompanying drawing for:

Retail department store services, in International Class 35

and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946.

The mark was first used in connection with the service at least as early as January 31, 1996, was first used in interstate commerce at least as early as January 31, 1996, and is now in use in such commerce.

The service mark consists of a yellow circle with two eyes and a smiling shaped mouth. Color is integral to the mark.

The service mark is used the advertisements, promotional materials, and in others manners customary in the trade. One (1) specimen, per class, showing the mark as actually used is presented herewith.

Applicant hereby appoints Barbara L. Waite, Janet F. Satterthwaite, Mark B. Harrison and William D. Coston of the law firm of Venable, Baetjer, Howard & Civiletti, L.L.P., 1201 New York Avenue, NW, Suite 1000, Washington, D.C. 20005, members of the Bar of the District of Columbia, to prosecute the application to register the service mark described herein, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the Certificate of Registration.

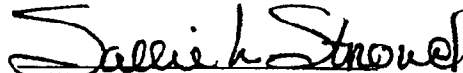
Declaration of the Applicant

I, Sallie L. Stroud, Vice President of the Applicant, declare that I believe that Wal-Mart Stores, Inc. is the owner of the service mark sought to be registered; that to the best of my knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in identical form or in such near resemblance thereto as may be likely, when applied to the services of such other person, to cause confusion, or to cause mistake, or to deceive; that all statements made herein of my own knowledge are true; that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application and any registration resulting therefrom.

Signed at Bentonville, AR, this 26 day of September in the year 2001.

Sen

WAL-MART STORES, INC.

  
Sallie L. Stroud  
Vice President

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION FOR SERVICE MARK REGISTRATION

Mark: Miscellaneous Design  
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TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Wal-Mart Stores, Inc., a corporation organized under the laws of the State of Delaware, with its principal place of business at 702 SW 8th Street, Bentonville, Arkansas 72716-8095.

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The service mark consists of a yellow circle with two eyes and a smiling shaped mouth. Color is integral to the mark.

The service mark is used the advertisements, promotional materials, and in others manners customary in the trade. One (1) specimen, per class, showing the mark as actually used is presented herewith.

Applicant hereby appoints Barbara L. Waite, Janet F. Satterthwaite, Mark B. Harrison and William D. Coston of the law firm of Venable, Baetjer, Howard & Civiletti, L.L.P., 1201 New York Avenue, NW, Suite 1000, Washington, D.C. 20005, members of the Bar of the District of Columbia, to prosecute the application to register the service mark described herein, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the Certificate of Registration.

PRINT

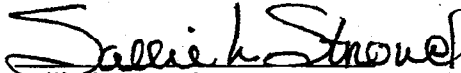
Declaration of the Applicant

I, Sallie L. Stroud, Vice President of the Applicant, declare that I believe that Wal-Mart Stores, Inc. is the owner of the service mark sought to be registered; that to the best of my knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in identical form or in such near resemblance thereto as may be likely, when applied to the services of such other person, to cause confusion, or to cause mistake, or to deceive; that all statements made herein of my own knowledge are true; that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application and any registration resulting therefrom.

Signed at Bentonville, AR, this 26 day of September in the year 2001.

Ben

WAL-MART STORES, INC.

  
Sallie L. Stroud  
Vice President



10-03-2001

U.S. Patent & TMO/TM Mail Rpt Dt: 13'

**DRAWING PAGE**

**Applicant:**  
**Address:**

Wal-Mart Stores, Inc.  
702 SW 8th Street  
Bentonville, Arkansas 72716-8095

**First Use Date:**  
**First use in commerce:**  
**Goods/Services:**

At least as early as January 31, 1996  
At least as early as January 31, 1996  
Retail department store services, in International Class 35



PUBLISHED  
03/05/02

76320901

#316906

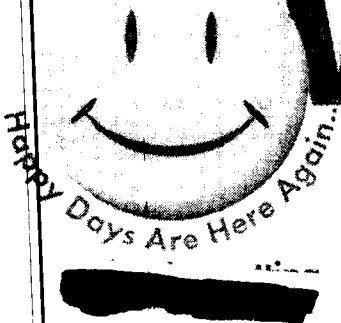
WM/LOUFNI00001521

SPECIMEN OF USE

**Applicant:** Wal-Mart Stores, Inc.  
**Mark:** Miscellaneous Design  
**Int. Class:** 35  
**First Use Date:** at least as early as January 31, 1996  
**First Use in Commerce:**  
at least as early as January 31, 1996

# WAL★MART

Prices Good January 31 - February 6, 1996



10-03-2001

U.S. Patent & TMO/™ Mail Rpt D1 13r



**278**  
Your Choice  
MADE IN THE USA

Hershey's®

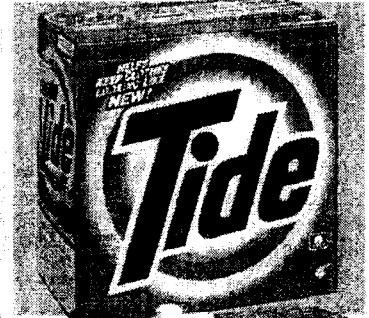
Valentine's Chocolate Family Packs

- 16 7-oz. Hugs or Hugs with Almonds or
- 18-oz. Kisses, Kisses with Almonds, Miniatures, Reese's® Miniatures or York Peppermint Patties
- Festive holiday packages



**BETTER EVERY DAY**  
**10.50**  
Was 13.88

Ultra Tide® Powder Laundry Detergent  
• 85-use regular or 67-use with bleach



200-oz. Ultra Tide® or Ultra Tide® with Bleach liquid, or 85-use Cheer® powder, Your Choice, Special Buy ..... 10.50



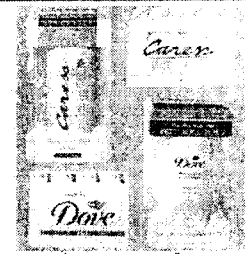
**4.97**  
Your Choice  
Mentadent® Value Pack  
• 5.2-oz. Tartar Control, Fresh-Mint or CoolMint toothpaste plus 5.2-oz. refill  
• 20-oz. mouthwash with toothbrush



**5.97**  
Your Choice  
Was 6.97  
Extra Strength Tylenol® Bonus Pack  
• Gelcaps or tablets  
• 125 for the price of 100



**2 for 3.50**  
Your Choice  
Salon Selectives® Hair Care  
• 22-oz. Shampoo or Conditioner  
• 10.5-oz. Spitz or Extra-Hold Hair Spray



**2 for \$7**  
Your Choice  
Dove® or Caress® Soap  
• Four 4.75-oz. bars of Dove or Caress, Special Buy  
• 10-oz. Caress Moisturizing Body Wash with Bonus Puff, Bonus Buy  
• 10-oz. Dove Moisturizing Body Wash with Bonus Puff, Bonus Buy, Was 3.87

Exciting, New and Only at Wal-Mart! Look Inside for...  
our new McKids® and McBaby® Brands plus a sampling of our new line from the Kathie Lee® Collection for spring 1996!



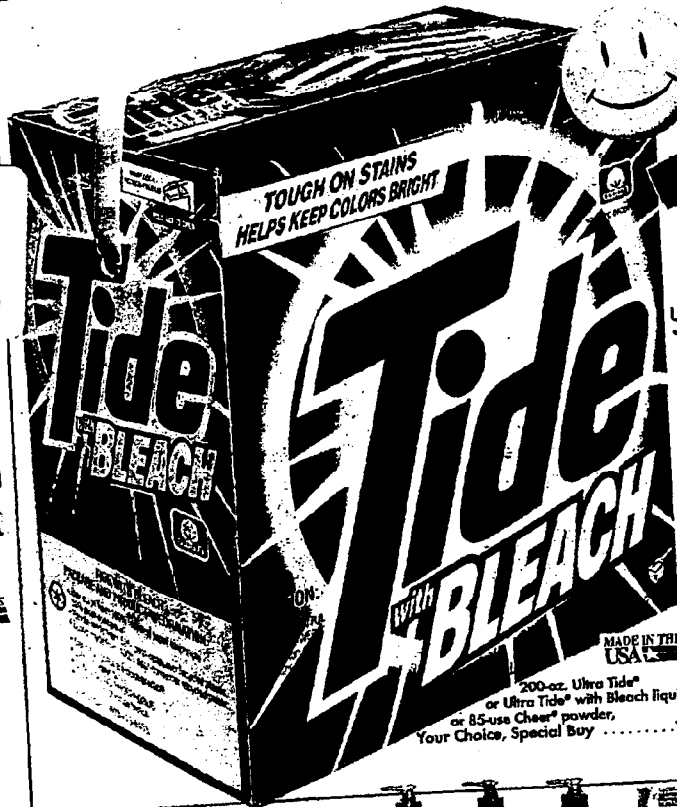
76320901

WM/LOUFN10001523

# WAL★MART

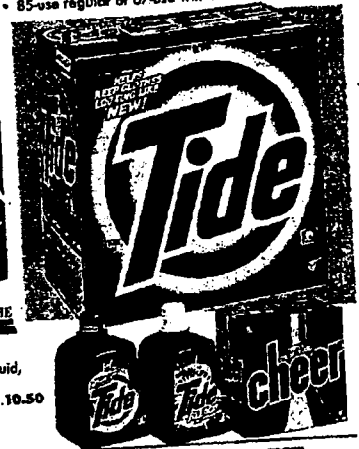
Prices Good January 31 - February 6, 1996

Happy Days Are Here Again.



**BETTER EVERY DAY**  
**10.50**  
Was 13.68

Ultra Tide® Powder Laundry Detergent  
• 85-use regular or 67-use with bleach



10-03-2001

U.S. Patent & TMO/TM Mail Rep'd ©



**2.78**  
Your Choice

MADE IN THE USA

Hershey's® Valentine Chocolate Family Packs  
• 1.7-oz. Hugs or Hugs with Almonds or Kisses, Kisses with Almonds, Miniatures, Reese's® Miniatures or York® Peppermint Patties  
• Five holiday packages

200-oz. Ultra Tide® or Ultra Tide® with Bleach liquid, or 85-use Cheer® powder, Your Choice, Special Buy ..... 10.50



**4.97**  
Your Choice

Mentadent® Value Pack  
• 3.2-oz. Tartar Control, Fresh Mint or Cool Mint Mouthpaste plus 5.2-oz. refill  
• 20-oz. mouthwash with toothbrush



**5.97**  
Your Choice Was 6.97

Extra Strength Tylenol® Bonus Pack  
• Gelcaps or tablets  
• 125 for the price of 100



**2 for 3.50**  
Your Choice

Salon Selectives® Hair Care  
• 22-oz. Shampoo or Conditioner  
• 10.5-oz. Spritz or Extra-Hold Hair Spray



**2 for \$7**  
Your Choice

Dove® or Caress® Soap  
• Four 4.75-oz. bars of Dove or Caress, Special Buy  
• 10-oz. Caress Moisturizing Body Wash with Bonus Pouch, Bonus Buy  
• 10-oz. Dove Moisturizing Body Wash with Bonus Pouch, Bonus Buy, Was 3.87

Exciting, New and Only at Wal-Mart! Look inside for our new **McBobbles** and **McBobbles** Brands plus a sampling of our new line from the **Kathie Lee** collection for spring 1996!



76320901

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of U.S. Application Serial No. 75/977,376  
For: SMILEY and Happy Face Design  
Filed: June 3, 1997  
Date of Publication: May 22, 2001

WAL-MART STORES, INC.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 150,278
	)	
FRANKLIN LOUFRANI	)	
	)	
Applicant.	)	

**APPLICANT'S RESPONSES TO OPPOSER'S FIRST  
SET OF INTERROGATORIES TO APPLICANT**

**General Objections**

Applicant objects to opposer's misleading use of the terms "Smiley" and "Mr. Smiley" in the Definitions. Designs resembling the design element in applicant's Application Serial No. 75/977,376 are commonly known in the U.S. as "Happy Face" designs, whereas the "SMILEY" word element in Serial No. 75/977,376 is a distinctive, registered trademark owned by applicant. Furthermore, on information and belief, the Happy Face design in opposer's Application Serial No. 76/320,901 is known to opposer's customers as "the Rollback symbol," not as

"Mr. Smiley" design in or around 1998, when one of his licensees informed him that Wal-Mart was using a Happy Face design in its advertising.

Respectfully submitted,

FRANKLIN LOUFRANI

Date:

June 19, 2002

By:

Mary Catherine Merz  
Mary Catherine Merz, Esq.  
Bruce Haraguchi, Esq.  
MERZ & ASSOCIATES, P.C.  
1140 Lake Street, Suite 304  
Oak Park, Illinois 60301  
(708) 383-8801 (phone)  
(708) 383-8897 (fax)  
mcmmerz\_law@msn.com (e-mail)

Attorneys For Applicant

"Mr. Smiley." Opposer's use of "Smiley" and "Mr. Smiley" in the Definitions and throughout its interrogatories and document requests creates confusion as to the true nature of the parties' respective marks. Without waiving this objection, applicant answers opposer's First Set of Interrogatories to Applicant as follows.

**INTERROGATORY NO. 1**

Identify Applicant and any other persons in which he has an ownership interest and which have an interest in Smiley, including each division, department, subsidiary, affiliate, predecessor, present or former officers, directors, managing agents, registered agents, and major stockholders and state the relationship of each such person to the Applicant and state the nature of the relationship between the Applicant and that person.

**RESPONSE:**

Applicant objects to this Interrogatory on the ground that it seeks information not relevant to this proceeding. Applicant's mark is "SMILEY and Happy Face Design," and applicant disclaims the exclusive right to use the "Happy Face Design" apart from the mark as a whole in Serial No. 75/977,376. Opposer refers to use of "Smiley," which opposer defines as "the design reflected in Applicant's application for trademark registration,

INTERROGATORY NO. 4

For the first use made by Applicant of Smiley on each different type and/or style of goods:

a. describe the type and/or style of goods on which Smiley was used;

b. state the date of such first use on or in connection with each good;

c. state the number of units of goods sold on the dates of first use;

d. state the number of goods, if any, shipped or performed on the date of first use;

e. identify each person to whom the goods were sold and state any affiliation or connection of each such person with Applicant;

f. identify each location in which the goods were sold or to which they were shipped or provided;

g. state the manner in which Smiley was affixed to the goods;

h. identify each person having knowledge of the first use;

I. identify all documents referring or relating to the first use, including with limitation all labels or other packaging items associated with the goods.



**RESPONSE:**

Applicant objects to this Interrogatory on the ground that it seeks information not relevant to this proceeding.

Applicant's mark is "SMILEY and Happy Face Design," and applicant disclaims the exclusive right to use the "Happy Face Design" apart from the mark as a whole in Serial No. 75/977,376. Opposer refers to use of "Smiley," which opposer defines as "the design reflected in Applicant's application for trademark registration, number 75/977,376." As defined by opposer, applicant's use of "Smiley" is not at issue in this proceeding. Furthermore, to the extent that this Interrogatory seeks information that does not pertain to applicant's U.S. trademark rights, applicant objects to this Interrogatory on the ground that it is not likely to lead to the discovery of information relevant to this opposition proceeding or to information that will be admissible at the trial of this matter, as required by Rule 26 of the Federal Rules of Civil Procedure.

**INTERROGATORY NO. 5**

State the information requested in the preceding interrogatory for the first use by Applicant of Smiley for each different type and/or style of goods.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of U.S. Application Serial No. 75/977,376  
For: SMILEY and Happy Face Design  
Filed: June 3, 1997  
Date of Publication: May 22, 2001

WAL-MART STORES, INC.                    )  
  )  
          Opposer,                            )  
  )  
          v.                                    )        Opposition No. 150,278  
  )  
FRANKLIN LOUFRANI                        )  
  )  
          Applicant.                        )

APPLICANT'S RESPONSES TO  
REQUESTS FOR ADMISSIONS FROM  
OPPOSER TO APPLICANT

Applicant objects to opposer's Requests for Admission to the extent that they request answers "under oath, within twenty days from the date hereof." The Federal Rules of Civil Procedure and the rules of practice governing actions before the Trademark Trial and Appeal Board do not require that requests for admission be answered under oath. Furthermore, Rule 36 of the Federal Rules of Civil Procedure and Section 403.03 of the TBMP specify that responses to requests for admission are due within 30 days after the requests have been served, not 20 days. Without

waiving these objections, applicant responds to opposer's Requests for Admission as follows.

1. That the Notice of Opposition (with its Exhibits) was timely filed in opposition to Opposer's trademark application under Serial No. 76/320,901.

**RESPONSE**: Admitted.

2. That Applicant herein, in paragraph six of the Notice of Opposition, admits that the happy face design element in his trademark application under Serial No. 75/977,376, does not serve any trademark function under Trademark Act Sections 1, 2 and 45, 15 U.S.C. Sections 1051, 1052, and 1127.

**RESPONSE**: Denied; however, applicant admits that the U.S. Patent and Trademark Office has determined that the Happy Face Design element in applicant's Serial No. 75/977,376 does not by itself serve any trademark function under Trademark Act Sections 1, 2 and 45, 15 U.S.C. Sections 1051, 1052, and 1127. Applicant further admits that he does not claim an exclusive right to the

Happy Face Design element in Serial No. 75/977,376 apart from the mark as shown in that application.

Respectfully submitted,

FRANKLIN LOUFRANI

Date:

June 26, 2002

By:

Mary Catherine Merz  
Mary Catherine Merz, Esq.  
Bruce Haraguchi, Esq.  
MERZ & ASSOCIATES, PC  
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1140 Lake Street, Suite 304  
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(708) 383-8801 (phone)  
(708) 383-8897 (fax)  
bhmerz\_law@msn.com (e-mail)

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S RESPONSES TO REQUESTS FOR ADMISSIONS FROM OPPOSER TO APPLICANT was served on the attorney for opposer with sufficient postage as First Class Mail this 26th day of June, 2002, addressed to:

Barbara L. (Pixie) Waite, Esq.  
Venable, Baetjer, Howard & Civiletti, L.L.P.  
1201 New York Avenue, N.W., Suite 1000  
Washington, DC 20005

Tel. (202) 962-4800

Attorney for Opposer

By:

Mary Catherine Merz

10/30/03

Trademarks  
Attorney Docket 21308

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Matter of U.S. Application Serial No. 75/977,376  
Filed: June 3, 1997  
Date of Publication: May 22, 2001  
Mark: "SMILEY and Happy Face Design"

Wal-Mart Stores, Inc.,	)	
	)	
Opposer	)	
	)	
v.	)	Opposition No. 150,278
	)	(Consolidated)
Franklin Loufrani,	)	(Parent)
	)	
Applicant	)	

In re Matter of U.S. Application Serial No. 76/320,901  
Filed: October 3, 2001  
Date of Publication: March 5, 2002  
Mark: "Happy Face Design"

Franklin Loufrani,	)	
	)	
Opposer	)	
	)	
v.	)	Opposition No. 152,145
	)	(Consolidated)
Wal-Mart Stores, Inc.,	)	
	)	
Applicant	)	

In re Matter of U.S. Application Serial NO. 75/302,439  
Filed: June 3, 1997  
Date of Publication: December 10, 2002  
Mark: "SMILEY and Happy Face Design"

Wal-Mart Stores, Inc.,	)	
	)	
Opposer	)	
	)	
v.	)	Opposition No. 154,632
	)	(Consolidated)
Franklin Loufrani,	)	
	)	
Applicant	)	

**FRANKLIN LOUFRANI'S RESPONSES TO  
WAL-MART STORES, INC.'S SECOND SET OF REQUESTS  
FOR ADMISSION TO FRANKLIN LOUFRANI**

Franklin Loufrani, through his undersigned attorneys, hereby responds to WAL-MART STORES, INC.'S SECOND SET OF REQUESTS FOR ADMISSION TO FRANKLIN LOUFRANI as follows.

1. That the design Loufrani refers to as the "Happy Face Design" in his Motion for Summary Judgment is sometimes known as "Smiley" or as a "Smiley Face."

**Answer: Admitted**

2. That the internet printouts attached hereto as Exhibit 1 use the word "Smiley" or the phrase "Smiley Face" to refer to designs identical or similar to the "Happy Face Design" element of Loufrani's Mark.

**Answer:** Denied; however, Mr. Loufrani admits that some of the Internet printouts attached at Exhibit 1 use "Smiley" or "Smiley Face" to refer to designs identical or similar to the "Happy Face Design" element of Mr. Loufrani's mark.

3. That the domain names "Smileylicensing.com and "Smiley-World.com" are owned or maintained by businesses with which Loufrani is either associated or employed.

**Answer:** Admitted

Respectfully submitted,

Date: October 30, 2003

By: Mary Catherine Merz

Mary Catherine Merz, Esq.  
Amy Muran Felton, Esq.  
Merz & Associates, P.C.  
1140 Lake Street, Suite 304  
Oak Park, Illinois 60301-1501  
Attorneys for  
Applicant/Opposer  
(708) 383-8801 (phone)  
(708) 383-8897 (fax)  
mcmmerz\_law@msn.com (e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing FRANKLIN LOUFRANI'S RESPONSES TO WAL-MART STORES, INC.'S SECOND SET OF REQUESTS FOR ADMISSIONS TO FRANKLIN LOUFRANI was served on the OPPOSER by facsimile and First Class Mail this 30th day of October 2003, addressed to:

Renee A. Sekel  
Venable LLP  
575 7<sup>th</sup> Street, NW  
Washington, DC 20004-1601

Date: 10/30/03

By: Mary Catherine Merz

## FACSIMILE COVER SHEET

**MERZ & ASSOCIATES®**

**Date:** October 30, 2003      **Number of pages (including this cover sheet):** 5

**Time:** 4:50 p.m.      **Reference:** 21308

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**To:** Renee A. Sekel, Esq.  
VENABLE LLP  
575 7th Street, NW  
Washington, D.C. 20004-1601

**Office Telephone:** (202)344-4000  
**Facsimile Number:** (202)344-8300

---

**From:** Mary Catherine Merz, Esq.  
MERZ & ASSOCIATES, PC  
Attorneys At Law  
1140 Lake Street, Suite 304  
Oak Park, Illinois 60301-1051  
U.S.A.

**Office Telephone:** (708) 383-8801 ext. 22  
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**E-mail:** mcmmerz\_law@msn.com

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**Message:**

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---



**MERZ & ASSOCIATES** ®

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**DOMESTIC/INTERNATIONAL  
Trademarks, Copyrights  
Unfair Competition and  
Advertising Law**

**VIA FACSIMILE  
CONFIRMATION VIA MAIL**

October 30, 2003

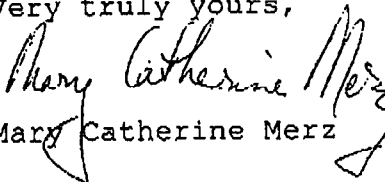
Renee A. Sekel, Esq.  
Venable LLP  
575 7th Street, NW  
Washington, D.C. 20004

**Re: Wal-Mart Stores, Inc. v. Franklin Loufrani  
Franklin Loufrani v. Wal-Mart Stores, Inc.  
Consolidated Oppositions (150,278, 154,632,  
152,145) (Our Ref. 21308)**

Dear Renee:

Enclosed is a service copy of FRANKLIN LOUFRANI'S RESPONSES TO WAL-MART STORES, INC.'S SECOND SET OF REQUESTS FOR ADMISSION TO FRANKLIN LOUFRANI.

Very truly yours,

  
Mary Catherine Merz

MCM/as  
cc: Franklin Loufrani  
w/Enclosure

.....  
DIALOG(R)File 632:Chicago Tribune  
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01511760

Face it!; Smiley Face is back - and now it's saying more than just 'have a nice day.'

- February 15, 1989

By: Libby Morse

Edition: NORTH SPORTS FINAL Section: STYLE Page: 18

Word Count: 1,149

MEMO:

This story is a composite of the versions published in the various zones.

TEXT:

America, 1971: It was, as George Bush would say just 17 years later, Tension City. Vietnam was dragging on, the Manson Family was convicted, Juan Corona was arrested, Jim Morrison OD'd and somebody knocked off 500 bald eagles. There was Attica, and the Pentagon Papers, and Bangladesh and China in the UN. And if that weren't bad enough, Led Zeppelin came out with "Stairway to Heaven."

It wasn't surprising, then, that Americans started looking around for something to prove they were still a friendly bunch of folks. They found it in a yellow face with two dots for eyes and a curved line for a smile. It wasn't a new symbol-Smiley Face buttons had been around for about two years-but in 1971, it was a symbol whose time had come.

Now, that Have-A-Nice-Day hobgoblin of the '70s is back. And he's having the last laugh.

"I saw so many Smiley Faces in the past four days, I'm ARGH . . .," said Leslie Gersten, co-owner of the two Sugar Magnolia stores, after returning from a recent New York buying trip. Still, Smiley Face overload isn't keeping Gersten from stocking up on T-shirts and other articles carrying the symbol, because anything she puts on the selling floor is being snapped up.

Meanwhile, further north at the dance club Medusa, the interior was recently decorated with Smiley Faces that are so mangled and bloody, they look like they got caught in the crossfire of a gang war.

What's going on here? Is Smiley Face making a comeback as the emblem of a kinder, gentler nation? Or is its resurgence with bullet holes and knife wounds just another expression of '80s cynicism?

The answer is: There really isn't one answer. Like any social phenomenon, the factors leading to the return of Smiley Face are complex and often contradictory, with roots as far-flung as the Costa del Sol and Chicago itself. Perhaps it's best to go back to the beginning.

Sneering at Smileys

When his popularity waned along with the '70s, Smiley Face became an object of derision. We expunged from our homes all mugs and wall plaques and T-shirts

bearing his likeness. We sneered at the idea of America desperately trying to be nice to itself.

But Smiley Face was not willing to go grinning gently into that good night. He went underground. And waited.

Then, 1986: The British underground comic "Watchmen" features a recurring image of a blood-spattered Smiley Face button-first seen on a murder victim-as a symbol of hearts and minds betrayed. The comic attracts an enthusiastic cult audience in England and America, which adopts the altered Smiley Face as its mascot.

In 1987: Seeking to rejuvenate a London club scene that had been flagging ever since the demise of punk, a group of British disc jockeys on holiday in Ibiza hit on an idea. They will take the irresistible sound of "Acid House"-the relentless beat of Chicago House music mixed with anything ranging from electronic beepers to Cyndi Lauper-and add to it a "look." Basically, that look consists of what they wear while making the rounds of the Ibiza discos: Day-Glo colors, bandanna-wrapped foreheads, oversized tennis shoes and Smiley Face T-shirts picked up at tacky souvenir stands.

#### Endless vacation

1988: The idea of being perpetually dressed for vacation has immense appeal to London's largely unemployed-albeit mostly middle-class-clubgoing youth. Because the look conveniently dovetails into the growing psychedelic revival, and because the atmosphere inside the throbbing, strobe-lit Acid House clubs is reminiscent of 1967, the Acid House scene at its height is dubbed "the Summer of Love." Nothing symbolizes the endless "don't worry be happy" mentality more succinctly than Smiley Face, who starts appearing everywhere.

At the same time, the non-stop grin (which had never completely disappeared from the paraphernalia of the drug culture), becomes explicitly linked to the use of the now-popular club drug Ecstasy. The effects of Ecstasy (a combination of synthetic mescaline and an amphetamine) are vividly portrayed in a number of Acid House-Ecstasy T-shirts, some of which show Smiley Face with the top of his head blown off.

The unabashed and pervasive use of Ecstasy in Acid House clubs and parties leads to a Smiley Face backlash. The British tabloid press runs Smiley Faces alongside articles detailing the perils of Ecstasy use, making the cheerful little fellow seem almost gleefully Satanic. "Just Say No to Ecstasy" T-shirts start popping up, featuring frowning faces, or Smiley Faces with "no" slashes through them. By winter, the Acid House scene is on its last legs, although how much is due to the "Stop Ecstasy" movement or how much to fickleness of youth is unclear.

#### A social menace?

Chicago, 1989: As Smiley Face begins a full-fledged assault on the American mainstream, the question is invariably: Fashion Threat or Social Menace?

If it seems like we've been down this road before, we have. It isn't the first time America has created an innovative sound that is embraced and altered by

TTAB Opp. # 91/150,278  
WM/LOUFNI000068

the British, who export it back to us complete with a drug-related wardrobe.

And just as it is true that not everyone sporting paisley in the late '60s was on hallucinogens, it is also safe to assume that most American consumers buying Smiley gear this spring will have no desire to try Ecstasy, or listen to Acid House for that matter.

Says Mick Levine of the 99th Floor streetwear store, "People will think it's a 'gee, have a nice day,' retro kind of thing, and they'll have no idea of the origin of the symbol."

Just 'be happy'

Which is probably just fine with the fashion powers-that-be, who are touting Smiley Face in all its permutations not as Acid House wear, but as part of a benign reinterpretation of the '60s and early '70s. "We're also seeing a lot of peace symbols on things," says Leslie Gersten. "It's just, 'be happy, have fun.'"

Indeed, even Bloomingdale's christened a "Don't Worry Be Happy" shop last week on the first floor of its Michigan Avenue store. Its contents include everything from T-shirts to shoes to bicycle shorts—all emblazoned with the familiar Smiley Face.

Meanwhile, at Medusa's, owner Dave Shelton says his dead Smiley Face decor was actually a protest against Acid House (although he admits some of the music sneaks in during the club's Sunday House Nights). The fact that the very same bloody symbol appeared on the record sleeve of one of the earliest British Acid House hits just goes to show that nowadays, a Smiley Face is whatever you want it to be.

Still confused? No one ever said fashion was easy.

Let's just be grateful somebody didn't decide to bring back big sideburns and Ultrasuede, too. -

#### CAPTION:

Photo (color): Cover photo by John Dziekan. Model: Ron Laxamana in jacket of his own design. Photographed at Medusa's. Set designed by Tom Hemingway.

Photo (color): On model: "Wounded" smiley T-shirt, \$16, from Sugar Magnolia, 110 E. Oak St. and 2130 N. Halsted St.; Joe Boxer smiley boxer shorts, \$12.50, from Clean Socks & Underwear, 3748 N. Broadway; E.G. Smith's smiley/sad face socks, \$8.50, available March 1 at Marshall Field & Co. Hanging: Grey Organisation's oversized T-shirt with single smiley, \$22, from Sugar Magnolia; smiley T-shirt with "Don't Worry Be Happy" bandanna, \$16, from Carson Pirie Scott & Co.; T-shirt with four mini faces, \$12.50, and pin, \$1.25, from Nonpareil, 2300 N. Clark St. Darts courtesy of Sportmart. Model: Ron Laxamana. Photostyling: Johnny Miller-Cleaves. Photo by Bob Fila.

Photo (color): Yellow knit gloves by Funny Farm come in two sizes, adult, \$10.50, and children's, \$8.75, at Glove Me Tender, 900 N. Michigan Ave. and 1007 Greenbay Rd., Winnetka. Photo by Bob Fila.

Photo (color): Sugar cookies with frowns or smiles, 59 cents and 79 cents, from Maier Bakery & Pastry Shoppe, 706 Main St., Evanston. Photo by Bob Fila.

Photo (color): Metal smiley necklace (above left), \$1, and pink plastic smiley

necklace (above right), 50 cents, at Goodies, 3631 N. Halsted St. Photo by Bob Fila.

Photo (color): An original ('70s) smiley mug, from a private collection. Photo by Bob Fila.

Photo (color): Gumby's smiley sibling, Bendy, \$3.50, at Nonpareil. Photo by Bob Fila.

Photo (color): E.G. Smith's smiley socks in a variety of colors, \$8.50, at Marshall Field's. Photo by Bob Fila.

Photo (color): "Don't Worry, Be Happy" earrings, \$5 a pair, and smaller smiley earrings (right), \$4 a pair (both in silver or gold-tone styles), from Carsons.

Photo by Bob Fila.

Photo: Reuters photo. Smiley Face fashions were all over the runways in London last fall.

Photo: A few frames from the British underground comic "Watchmen" featuring a blood-spattered Smiley Face.

DESCRIPTORS: FASHION; HISTORY; PROFILE; REACTION; MUSIC; DRUG

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TTAB Opp. # 91/150,278  
WM/LOUFNI0000070

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07035195

SMILEY FACE COMES BACK IN DIFFERENT MOOD

Detroit Free Press (FP) - THURSDAY September 30, 1993

By: CAROL TEEGARDIN Free Press Staff Writer

Edition: METRO FINAL Section: WWL Page: 1D

Word Count: 733

TEXT:

What goes around comes around, and we're sad to report the happy face phenomenon is going full circle.

If you wore bell-bottom pants and platform shoes, you've got to remember that '70s icon that usually went along with the saying: "Have A Nice Day." It's that smiling yellow sphere that peered down from water towers or showed up on buttons worn by cashiers.

As if we didn't see enough of it during the '70s, the happy face is making a mega comeback, appearing on earrings, T-shirts, place mats and underwear. It even serves as hoopla for the upcoming Gramercy Films release "Dazed and Confused," about the stoned-out experience of several high school seniors during the '70s.

But there's a difference. The original happy face beamed out with a pretty straight-laced smile. The comeback happy face looks stoned.

The "Dazed and Confused" happy face is a sort of doped-out version of the original with that familiar grin but droopy eyes.

"It was the strongest of icons," explains Steve Flynn of Gramercy. "The happy face just made sense to us. There were platforms, peace signs but we picked the happy face and we're really doing well with it. We went on a TV shopping network with it recently and got 269,000 phone calls in a three-hour period. Our happy face is a little off. It's the stoned happy face look that's sort of representative of '70s but it's really taken off -- thank God we made this choice."

Promotions for the movie feature the smiling icon. Gramercy is also selling happy face buttons (\$1), T-shirts (\$20) and baseball caps (\$15). Musicland in Ann Arbor reports the stuff will be available there near the movie's Oct. 15 local release date.

And others are jumping on the happy face bandwagon. Folks at Joe Boxer announced they're coming out with cotton boxer shorts (\$14 for two in a box) that are plastered all over with happy faces. "Happy faces will also be on our briefs and T-shirts and place mats in our housewares line but we're making them as strange as possible," says marketing director Denise Slattery. "We're putting our own Joe Boxer bite on them."

This bite means the happy faces on these items will be grinning ridiculously, winking or licking their lips. Look for them on the counters of your local Hudson's, Saks Fifth Avenue or wherever Joe Boxer is sold.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000072

Jerry Miles, owner of the J. Miles unisex boutique in Ft. Lauderdale, Fla., just bought a line of T-shirts featuring happy faces of different colors representing different races. He believes they'll sell well with the diversity spin.

In the Detroit area, happy faces are available on tie-dyed T-shirts (about \$22) at Changes, a Birmingham boutique.

Hamtramck artist Chris Karwowski is designing happy faces for T-shirts and buttons to be sold at Hamtramck boutiques.

"I wish I had some of my old happy face T-shirts and buttons, but I don't. They're so hot again," says Karwowski.

Did the happy face ever go away?

Gary Arnett, owner of Tasty Wear, a Pleasant Ridge T-shirt company, says no.

"They come and go all the time. I saw crazy smiley face stuff on T-shirts about two years ago and it came out of the house music movement," says Arnett. "You'd see them with bullet holes in their foreheads or wearing bandannas or earrings. It was a rave thing but I wouldn't make them. I'm 30 and I don't care for stuff that I think appeals to an aging hippie culture."

Highland Park artist Lowell Boileau, 48, sees them everywhere too. In fact, he just found an old happy face button at a company he was visiting the other day and grabbed it.

"I was wandering around the offices and saw this happy face button on a table. I asked if I could have it, they said 'yes,' so I pinned it upside down on my shirt because my cat just died."

But Boileau was goofing around. When seriously confronted with happy face hysteria he is disappointed.

"To me the happy face represents everything disgusting about the '70s," he says. "They were leering at us everywhere and served as a terrible oppression to live under. We don't need them back.."

CAPTION:  
DRAWING

The original happy face.

The "Dazed and Confused" face. The original is on Page 2D.

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TTAB Opp. # 91/150,278  
WM/LOUFNI0000073

DIALOG(R)File 642:The Charlotte Observer  
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05013705

SMILEY FACE BECOMING TOTALLY AWESOME

CHARLOTTE OBSERVER (CO) - MONDAY February 27, 1989

By: JAMES HIRSCH, New York Times News Service Observer staff writer Melissa

Wall contributed to this article.

Edition: ONE-SIX Section: LIVING Page: 4D

Word Count: 667

TEXT:

When the "smile" face became a fad in 1970, it was like a lighthearted punctuation mark at the end of a tumultuous decade. Now, after nearly 20 years in eclipse, the happy face is back, its 100-watt smile lighting up T-shirts, canvas tote bags, spandex cycling shorts and other merchandise in newly opened shops at Macy's and Bloomingdale's stores in New York and Chicago.

In Charlotte, Smiley popped up two years ago at the Perris store, where pendants with his mug were sold. Last year, the store carried T-shirts plastered with Smiley. "It's part of that resurgence of the '60s," says the store's buyer, Diana Short.

This year, Smiley goes beyond boutiques and specialty shops.

Look for him on T-shirts, jeans and shorts at Charlotte department stores such as Belk, Thalhimers and Ivey's. The trend will truly hit this spring and summer in junior departments, says Ivey's fashion director Ginny Rupp. "This is a whole new generation attracted to it."

The embrace of the merchandisers seems to reflect the shortage of trends.

"I feel an absolute void in terms of new trends that stem from right now," said Betsey Johnson, a New York designer who has used peace symbols and flowers in her recent creations. "Bloomingdale's and Macy's, they're dying for a quick trend, and their job is to knock off immediately whatever the kids come up with."

As is often the case in retro fashion, historical accuracy is somewhat beside the point. An icon of the '70s, the yellow disk with the line-drawn face is being sold as hippie fashion, stamped on peace-sign necklaces and tie-dyed shirts that say "Feelin' Groovy."

In Macy's happy-face shop in New York, six television screens show the movie "Woodstock."

"No self-respecting hippie would wear a smiley face," said Charlie Alzamora, program director of WMCA, a New York radio station that used a version of the logo in the early 1960s, years before it went national. The hippie-inspired remake of the happy face, he said, "is the confusion of two cultures by marketing experts."

More than marketing experts, however, confused the issue.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000079



In London last year, the smiling logo was the most visible sign of a resurgence of 1960s-style music, colorful clothes and youthful restlessness.

The happy-face symbol became popular with British teenagers after appearing last February on the cover of a record by the rock group Beat the Bass.

Clothing and accessories manufacturers in London churned out the smiling-face motif on T-shirts, bags and belts. When American fashion directors visited the city in October, they found on the streets the trend they were looking for.

"It was just a lot of T-shirts on a lot of people," said Kalman Rutenstein of Bloomingdale's. "You didn't have to be a genius to figure this one out." Trends, he added, "often begin where music and young people are, and our job is to edit those trends."

Department-store fashion directors said that many people associate the image with the good feelings evoked in last year's hit song by Bobby McFerrin, "Don't Worry, Be Happy," and that the smile face appeals to customers' - particularly teenagers' - rose-tinted view of an earlier era.

"Young people are always interested in dressing back in time," said Joan Kaner, fashion director for Macy's. "The '60s and the early '70s had a charisma that connotes peace, happiness, a sense of mellowness."

But the happy face is already fading in some quarters. "When the general public starts buying it, people in the East Village (in New York) stop," said Katsu Yamamoto, the manager of Detente, an East Village store that opened last April, selling goods bearing the happy face.

"Now we must start looking for what's next," Yamamoto said.

Company executives said they hope they have already found it, again in London nightclubs. Next month, Yamamoto said, his store will carry T-shirts with pictures of Jesus and, at the bottom, L-O-V-E.

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TTAB Opp. # 91/150,278  
WM/LOUFNI0000080

05012348

SMILEY FACE: THE REBIRTH (AND RE-DEATH?) OF A POP TREND

SUN SENTINEL (FL) - SUNDAY March 5, 1989

By: JAMES HIRSCH, New York Times News Service

Edition: SUN-SENTINEL Section: FEATURES LIFESTYLE Page: 7E

Word Count: 1,464

MEMO:

Informational box at end of text

TEXT:

When the "smile" face became a fad in 1970, it was like a lighthearted punctuation mark at the end of a tumultuous decade. Now, after nearly 20 years in eclipse, the happy face is back, its 100-watt smile lighting up T-shirts, canvas tote bags, spandex cycling shorts and other merchandise in newly opened shops at Macy's and Bloomingdale's stores.

The embrace of the merchandisers reflects the shortage of trends, even as it provides a glimpse into how fashion movements travel from the cultural fringes into the mainstream.

"I feel an absolute void in terms of new trends that stem from right now," said Betsey Johnson, a New York designer who has used peace symbols and flowers in her recent creations. "Bloomingdale's and Macy's, they're dying for a quick trend, and their job is to knock off immediately whatever the kids come up with."

As is often the case in retro fashion, historical accuracy is somewhat beside the point. An icon of the '70s, the yellow disk with the line-drawn face is being sold as hippie fashion, stamped on peace-sign necklaces and tie-dyed shirts that say "Feelin' Groovy." In Macy's happy-face shop, six TV screens show the movie Woodstock.

"No self-respecting hippie would wear a smiley face," said Charlie Alzamora, program director of WMCA, a New York radio station that used a version of the logo in the early 1960s, years before it went national. The hippie-inspired remake of the happy face, he said, "is the confusion of two cultures by marketing experts."

More than marketing experts, however, confused the issue.

In London last year, the smiling logo was the most visible sign of a resurgence of 1960s-style music, colorful clothes and youthful restlessness. This movement emerged from the underground "acid house" music phenomenon that began in the late '70s, evolved in clubs in New York, Chicago and London, and later merged with retro-hippie fashions in the balmy Balearic Islands off Spain.

The trajectory is familiar. In the past 15 years, disco music, punk fashion, break dancing and rap music started outside the mainstream and were integrated into popular culture.

"Subculture is the eternal source of ideas," said Rudolph, who has learned a few things about subculture as the director of Manhattan nightclubs like Danceteria, the Tunnel and now Mars.

"It's much easier for Bloomie's to capitalize on something after everyone has read about it," said Rudolph, who uses only his first name. Once a trend reaches the public, he asserted, it has lost its cachet among "the cool."

"Nobody is wearing the smiley face today," he said.

There are still enough people to satisfy Bloomingdale's and Macy's, which reported strong sales in the first month for happy-face items.

Department-store fashion directors said many people associate the image with the good feelings evoked in last year's hit song by Bobby McFerrin, Don't Worry, Be Happy, and that the smile face appeals to customers' — particularly teen-agers' — rose-tinted view of an earlier era.

"Young people are always interested in dressing back in time," said Joan Kaner, fashion director for Macy's. "The '60s and the early '70s had a charisma that connotes peace, happiness, a sense of mellowness."

The genesis of the recent happy-face phenomenon — "acid house" music — was anything but mellow.

In the late 1970s and early 1980s, disc jockeys at the Garage, a Manhattan club that has since closed, and the Warehouse in Chicago, engineered a new kind of dance music by playing a relentless, stripped-down bass beat — they called it "bass in your face" — and blending it with discordant vocals and instrumentals from other music tracks.

The music and the clubs' strobe lights, sirens, smoke machines and movie screens were choreographed for a psychedelic experience. Club patrons often wore fluorescent clothes; illegal drugs, particularly LSD, were widespread.

The patrons "would dance all night, drink all kinds of fruit juices, take acid and watch cult films like *The Wizard of Oz*," said Johnny Darnell, a New York disc jockey and recording artist. The name "acid house" comes from Chicago, probably from the Warehouse and the activities of its patrons.

Darnell and other disc jockeys and club patrons said that acid house went abroad, first to underground clubs in London in 1986.

In the summer of 1987, several London disc jockeys took the music to Iviza, one of the Balearics. Known for its nude beaches, thriving art community and freewheeling style, Iviza was where acid-house music met and married with the colorful hippie fashion of summer beach clothes, paisley prints and tie-dyed shirts with peace signs galore.

"The imagery and the music went hand in hand as a happy, free way of life," said Malcolm McLaren, an iconoclastic Englishman who has started a few trends himself, not the least of which was punk rock.

The London disc jockeys then returned home, taking the full-blown hybrid with them. Early last year frenzied acid-house parties started in London, combining music and fashion. Clubs opened across the city, and youths flocked

TTAB Opp. # 91/150,278  
WM/LOUFNI0000082

to places like Shoom, where the psychedelic experience was enhanced by a machine pumping strawberry-smelling red smoke.

The happy-face symbol became part of the uniform of "Thatcher's children," as British teen-agers are often called, after appearing last February on the cover of a record by the rock group Beat the Bass.

Clothing and accessories manufacturers in London, like Pink Soda and Boy London, churned out the smiling-face motif on T-shirts, bags and belts. When fashion directors for Bloomingdale's, Macy's and other American retailers visited the city in October, they found on the streets the trend they were looking for.

"It was just a lot of T-shirts on a lot of people," said Kalman Ruttenstein of Bloomingdale's. "You didn't have to be a genius to figure this one out." Trends, he added, "often begin where music and young people are, and our job is to edit those trends."

By October the acid-house craze in London clubs was waning.

Widespread publicity about rampant use of drugs — particularly "ecstasy," a combination of synthetic mescaline and amphetamine — prompted the police to close most of the clubs. By then the popularity of the clothes and the smile had grown far beyond the club scene and was already beginning to lose steam in London as a mainstream fashion item.

In Manhattan, as in London, the happy face reached the portals of mainstream culture — Bloomingdale's and Macy's — long after it had flourished in the nightclubs.

Acid-house parties, where young people wore T-shirts with happy faces on the front and the word "ecstasy" on the back, began last September. (Ecstasy has been banned in the United States since 1985, and studies at Stanford University have shown that it damages brain cells in animals and may have similar effects on people.)

The parties still take place in some New York night spots, like the Pyramid Club and the World in the East Village, but the happy face no longer pervades the club scene. "When the general public starts buying it, people in the East Village stop," said Katsu Yamamoto, the manager of Detente, an East Village store that opened last April, selling goods bearing the happy face.

#### THE ORIGINS OF SMILEY

By many accounts, the first happy face was deployed in the spirit of competition, not brotherhood, as part of a pitched marketing battle between two New York rock stations.

Charlie Alzamora, program director for WMCA, said the logo was created in 1962 as part of a promotion for the AM station. WMCA's main rival, WABC-AM, had begun calling its disk jockeys "the all-American guys," Alzamora said. So WMCA promoted the virtue of its own DJs with the slogan "the WMCA good guys." The phrase was printed on thousands of mustard-yellow sweatshirts, with a happy face drawn in black, its smile slightly askew.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000083

"People would walk down the street, see the sweatshirt on someone and yell, "Hey, good guy!" Alzamora said.

In 1970 a similar logo – but with an anatomically correct smile – became a national fad and reached its zenith a year later, Alzamora said. He said he did not know who had started the fad, but suspected that it began in California. The logo, he said, "was reserved for the Brady Bunch crowd: a symbol for the silent majority."

In 1971, WMCA changed to a news and talk format. That meant the end of its smile logo. The station offered the logo with the skewed smile on sweatshirts in 1983, hoping that it would win listeners to a different format. But that time, the face flopped.

CAPTION:  
PHOTO (1)

(New York Times photo)Macy's happy-face boutique sells emblazoned novelty items.

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DESCRIPTORS: PROFILE

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Where That Grin Is Still In Have a Nice Day! One Guy's Monument to Smiley Face

The Washington Post, October 10, 1992, FINAL Edition

By: Peter Gilstrap, Special to The Washington Post

Section: STYLE, p. d01

Story Type: News National

Line Count: 63 Word Count: 695

It's round. It's yellow. It's locked in a perpetual grin of enlightened peace, of blissful ignorance, or something.

It is the Smiley Face.

The token that defines in a glance that hedonistic, willy-nilly decade we now refer to as "The '70s." The flaming ocher visage demanded of us only one thing: to "have a nice day." If you lived through that era, the ubiquitous Face is no doubt etched deeply somewhere in your brainpan. But what happened to all those T-shirts, mugs, lunch boxes—all that stuff that the Smiley Face adorned? Where have all the good vibes gone?

To the Smile Face Museum, naturally. At Mark's house. In his basement.

That's Mark Sachs, 46, curator, collector, owner and operator of the collection exhibited in his Silver Spring home. In his spare time he manages a telecommunications company in Washington and is married with two children. They have, presumably, day after happy day. The museum will celebrate its grand opening tomorrow and will be open one Saturday a month thereafter. Admission is free but you must call 301-588-3933 for an appointment.

Sachs wanders among the tables covered in dark cloth, tables strewed with items of all description and material, baubles linked only by the cretinous, sunshiny simper of the Happy Face. He's got more than 350 of these things, gathered over five years. Why, Mark, why? "I always liked smiley faces," says the Baltimore native. "I wanted to collect something, but was intimidated because that usually means spending a lot of money on something like Fiesta Ware. Everything here is probably worth about \$29 total."

He gets the majority of the objets de leer from friends who discover them in locations the world over. "More and more stuff keeps coming, and people send pictures too. Obviously there's a lot of smiley face stuff that won't fit in the mail." And the main reason there's plenty of stuff is simple: The smiling yellow face has never been copyrighted. Anyone anywhere can slap that beaming mug on any product and hope for the best.

You enter the museum and are engulfed by an odd feeling; you're stepping back in time to a simpler, more compassionate decade; you have a strange urge to, well, try to teach the world to sing. In perfect harmony. Caught in the unblinking scrutiny of a million lifeless, black-dot eyes that are silently willing you into happiness, you begin the tour. Here's just a sampling of what you'll find:

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WM/LOUFNI000091

A still-sealed "Talking Toast Imprint" from 1986-with a five-year warranty-that will brand your bread with the Smiley Face (hereafter referred to as SF), though "it only works on white bread," says Sachs. A glow-in-the-dark SF ball; its package reminds you that "It glows, it smiles, it's your friend."

A genuine rawhide dog-chew (it's still brand new and not yellow-yet) in the shape of the S.F. Numerous clocks, some with the "Happy Day" legend. And tying the SF to the religious community, a "Smile-God Loves You" puzzle complemented by a license plate from Heritage USA (ex-estate of the fallen Jim Bakker) that says "A smile is contagious-let's start an epidemic."

Not all the faces are so chipper; there's a large, early '70s candle emblazoned with a face that has a real bummer of an expression. Inscribed beneath is "Sad Is Bad." Right on.

Despite the size of his collection, Sachs still has one major item on his wish list. "The toilet seat. The Smiley Face toilet seat," he says. This time he's not grinning. "I'd kill for a SF toilet seat, and I know they're out there." He's hot on the scent.

It doesn't take long before all this inane smiling becomes a little irritating, but Sachs has the potential fallout sussed. "I keep it all safely away from my everyday existence," he says, grinning. "My wife is supportive and my kids are really excited about the museum, but it can't become an obsession that takes over our lives."

So Mark Sachs's Smile Face Museum is not the result of a lifelong obsession, nor is it a moneymaking operation. "There isn't any deep philosophy behind my collection, I just wanted to collect something fun," he explains. "Times are kind of rough now, and I think maybe the faces are ready for a comeback. When it comes to being happy, I think the time is always right."

Right you are, Mark. And by the way, have a nice day.

CAPTIONS: Smiley Face artifacts from Mark Sachs museum.

NAMED PERSONS: SACHS, MARK

DESCRIPTORS: Collectibles; Montgomery County, MD; Museums

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TTAB Opp. # 91/150,278  
WM/LOUFNI0000092

05031627

THE MAN OF 1,000 FACES SMILEY-FACE COLLECTOR ADMITS HE'S AS TACKY AS THEY ARE  
SAN FRANCISCO CHRONICLE (SF) - TUESDAY April 4, 1989

By: SAM WHITING, CHRONICLE STAFF WRITER

Edition: FINAL Section: PEOPLE Page: B3

Word Count: 1,111

TEXT:

Now we know what became of those sappy smiling yellow faces after they were abused out of circulation in the early 1970s.

They died and found a happy heaven in Bruce Woodbury's bedroom.

Woodbury is a 25-year-old San Mateo native and San Francisco resident who is otherwise in control of his faculties.

But he has a quirky ambition. He wants to be "the man of 1,000 faces." Literally.

He has 750 artifacts of the smile that darkened as many moods as it brightened. He has a smiley-face cookie jar, cat dish, cufflinks, playing cards, coffee pot and cups, coasters, clock and car mat. That is just the C's.

In the B category, he has 300 different smiley-face buttons.

These he displays in his day job as an auto parts salesman. Wearing a smiley-face button is risky in this line of work. It's like keeping a coiffed French poodle around the shop.

"Some people do hate them," Woodbury admits, "but it's really a harmless thing. I get the connotation that people think it's tacky. But that's OK. I have a generally tacky personality."

It takes something major to irritate Woodbury. Like a smiley face with a nose on it. "I draw the line at noses," he says. "The PSA jet was the only smile with a nose that I could deal with. It was unavoidable."

Another annoyance is the desecration of the symbol. Smiley-face T-shirts with bloody bullet holes and blown-out brains he can handle. "But the whole thing got overblown when they started putting smiley faces on toilet brushes," he says. "That was its downfall. People got sick of it."

Woodbury first put on a happy face in 1982, a year after he graduated from Aragon High School. He bought a Vespa motor scooter and fancied himself a "mod," after the British subculture of the early '60s celebrated in The Who's rock film "Quadrophenia."

Moderators were the very antithesis of greasy, leathered bikers. Mods wore three-button, thin-lapelled suits, tab collars with skinny neckties, white socks and wingtips. They rode baby-blue scooters that couldn't push 45 mph. Pee-Wee Herman on a motorcycle. If a Hell's Angel's kid came home as a mod, he'd be



sent to reform school.

In mod lingo, a "face" is someone cool. Thus evolved the Smiley Face Scooter Club. Riding two abreast, they cruised the streets of San Mateo, wearing mod suits highlighted by a yellow smiley button on each narrow lapel. This may have been cool in London, but downtown San Mateo is an entirely different state of mind.

"You get a lot of ribbing from people in four-wheel-drive trucks," he says. "Girls in Camaros aren't too impressed either. So you delve into your group a little more."

The mod motto voiced by Pete Townsend of The Who is "Can You See the Real Me?" Woodbury's friends often have trouble. They walk into his room and offer one word - "Disgusting" - before noticing a smiley button or cup they once owned.

His parents, who operate a SanJose printing shop, have a better understanding.

"Bruce collects things that nobody else wants," says his mother, Janet. "He doesn't mind being 10 or 15 years behind the times."

#### Dad Comments

Frank Woodbury describes his son as "the smiley man."

"It's not something I'd do," he says of the hobby, "but this damn world is so full of young people who look and sound like computers that we're pleased he's doing something different and unusual."

Shortly after founding the Smiley Face Scooter Club, the smiley man decided one button wasn't enough. He needed 100. That came easy, back in 1983. Hell, they were giving them away - a quarter a button at thrift shops, and glad to unload them.

Then he went for 200 buttons, and further into the smiley underworld of night lights and yo-yos, golf balls, key rings, pencil sharpeners, lunch bags, lamp shades and full breakfast sets. He had the market cornered and moved his bed into the dressing room to establish his bedroom as a smiley shrine.

In late 1988, the fad resurfaced. A London nightclub movement called "acid house" adopted the insignia. It embodied the happy disposition of kids stoned to the rafters on the drug ecstasy, trance-dancing till dawn. T-shirts began appearing with the innocent face on the front, and subtle messages on the back, such as "Have a Nice Trip."

Woodbury doesn't mind being thought of as weird, but he would prefer the drug culture stay away from his fetish.

"I like it that the smiley faces are coming back," he says, "but it's sad that people think everyone who has a smiley face now is a drug addict."

#### The '80s Knockoffs

TTAB Opp. # 91/150,278  
WM/LOUFNI0000096

Now the market has tightened. An original smiley water glass has inflated from 50 cents to \$5, and a plastic garbage can is up from 69 cents to \$25.

But smiley knockoffs abound. Club DV8 in SoMa painted smiley faces across the downstairs floor, and smiley gimcracks have reappeared in Haight-Ashbury boutiques.

Oversized pink smiley T-shirts, complete with shoulder pads, are now available in clothing stores at the Stonestown mall. There is a smiley face boutique in Macy's New York, and the design has appeared in at least one backyard satellite dish.

#### SIGNS OF THE '70S

The symbol has attached itself to the '60s fashion revival. San Francisco button maker Mark Rodman produced the first smile button in 1968, but there is no hard evidence that any self-respecting hippie ever wore one before 1970.

"Overall, the '70s were just really boring, and the smiley face will be the most prominent representation of the decade," Woodbury says. "But the fad will die fairly quickly."

This should loosen the market for those final 250 faces. When the collection is complete, he hopes to put it on public display. The Museum of Modern Mythology, in San Francisco, is a possibility.

"We're definitely interested," says program director Robyn Talman. "The smiley face exemplifies the prevailing attitude of the early 1970s. A little bit shallow, a little bit 'Have a Nice Day,' and a little bit of the Me Generation."

A smiley face exhibit would be a fitting follow-up to the current museum display: "100% Polyester: Shirts of Art from the Palette of Science."

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PHOTO CUTLINE: (1) In Britain, smiley faces took on a sinister connotation and a link to the drug culture. / BY REUTERS, (2) Bruce Woodbury - who fancies himself a 'mod,' after the clean-cut British scooter devotees - has no fears of losing face. / BY VINCE MAGGIORA/THE CHRONICLE

CAPTION:  
PHOTO (2)

SEE END OF TEXT

Copyright 1989 The San Francisco Chronicle

DESCRIPTORS: FACES; HOBBIES; ORGANIZATIONS; BRUCE WOODBURY; SMILEY FACE  
SCOOTER CLUB

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The Detroit News

January 27, 2005 Thursday

**SECTION:** BUSINESS; Pg. 1E

**LENGTH:** 895 words

**HEADLINE:** Kmart flips on blue light;  
Retailer temporarily brings back famed promotion, but critics say it's passe.

**BYLINE:** Tenisha Mercer

**BODY:**

Kmart Holding Corp. is switching its famous blue-light special back on -- at least temporarily -- in an effort to spark new sales.

There won't be any flashing blue-lights or excited announcements of "Attention, Kmart shoppers!" but the Troy-based retailer has quietly rolled out signs with blue-light logos to advertise in-store clearance merchandise.

The once-popular promotion won't be a permanent part of the retailer's strategy, said Kmart spokesman Stephen Pagnani. Blue-light signs were posted mid-month, but there aren't any in stores now.

"We may once in a while use it since it is something we know our customers recognize," Pagnani said. "But there is no formal plan right now."

For years, Kmart used blue-light specials to clear out everything from black socks to garbage bags. Created in 1965 by a store manager looking to move slow merchandise, the blue-light special quickly became part of the American lexicon.

The "Attention, Kmart shoppers!" announcement was followed by a flashing light marking specially discounted price to customers -- at least those who could reach it in time.

"It turned out to be the defining moment for Kmart," said Michael Bernacchi, a marketing professor at the University of Detroit Mercy. "It stood for the essence of Kmart: the bargain of bargains. Folks went to Kmart looking for these specials."

Instead of bringing back the blue light, some say Kmart should cut the cord.

The once indelible marketing strategy soon became synonymous with Kmart's missteps: Blue-light specials became fodder for late-night talk show jokes, the ultimate symbol for cheesy merchandise. Kmart retired the promotion in the 1990s without much fanfare, all but banishing it from stores.

"It eventually became stuff you couldn't sell even if you dressed it in a diamond gown," Bernacchi said. "It was stuff no one could sell in a million years."

Kmart shopper Fay Brown, 71, of Birmingham, remembers when Kmart first started using the blue-light, but doesn't think it should be used again.

"You hear jokes about the blue-light special on television," Brown said. "It doesn't appeal to me. It sort of cheapens Kmart."

Now, the retailer is resurrecting the blue-light as it attempts to craft a marketing message that will stick with consumers and distinguish itself from rivals such as Wal-Mart Stores Inc. and Target Corp., which have eroded its customer base.

But the wide-spread discounting at other stores also dims the effects of the blue light, said Jack Trout, president of brand consultants Trout & Partners in Old Greenwich, Conn.

"It's an idea whose time has come and gone," he said. "Wal-Mart's 'Everyday prices' trump blue-light specials. Why they want to try this one again, I have no idea. What Kmart is saying is that we have a few things on sale and Wal-Mart is saying we have a lot of things on sale."

This isn't the first time Kmart has tried to revive the blue-light. Former Kmart Chairman and Chief Executive Chuck C. Conaway relaunched it in 2001 as part of a plan to create a new image for the discounter. Kmart spent millions on a website, billboards and marketing before dumping it in 2002.

Kmart has struggled for years to fashion a successful marketing campaign. It flopped with slogans such as "Blue Light Always" in 2001 and the "Stuff of Life" in 2002. And it has yet to coin a new campaign to replace the "Right Here. Right Now" slogan it dumped last summer.

Trumpeting the blue-light now after Kmart's marketing missteps probably won't bring back customers, said George Whalin, president of Retail Management Consultants in San Marcos, Calif.

"Customers are more sophisticated, they expect more and they want something different -- not the same thing that was done years ago," Whalin said. "The blue-light should be left alone to die."

Still, brand consultant Robert Passikoff believes there is a place for the blue-light special.

Retailers use logos and advertising slogans as a way to distinguish themselves. Target has a red and white bull's-eye. Wal-Mart is known for its yellow smiley faces and the slogan "Always Low Prices."

"The fact is that this is one of the few successful campaigns that Kmart has managed to leverage in the last few years," said Passikoff, president of Brand Keys Inc., a customer research firm in New York. "Kmart hasn't been able to articulate a clear strategy in the marketplace and this may be able to help them do that."

On and off

1965: The blue-light special is invented by a store manager looking to sell slow-moving merchandise.

1991: Kmart tries to replace the blue-light special with an automated coupon-dispensing terminal.

1995: By now, the blue-light is all but banished.

1999: BlueLight.com, an independent Web site, is launched, with Kmart owning 60 percent.

2000: BlueLight.com introduces online-only "BlueLights."

2001: After a 10-year hiatus, the blue-light special returns in April with a multi-million-dollar promotional program. Kmart reportedly spends \$40 million on new blue-light equipment.

2002: The blue light is on the fritz. Kmart reports a drop in holiday sales and some analysts say Kmart's BlueLight brand has been an expensive mistake.

2003: The blue light is unplugged during bankruptcy.

2005: Blue light specials appear as occasional in-store clearance sales, marked by new signs, but no flashing blue lights.

LOAD-DATE: January 28, 2005

Copyright 2005 Chicago Tribune Company  
Chicago Tribune

January 6, 2005 Thursday  
RedEye Edition

**SECTION:** Pg. 2

**LENGTH:** 619 words

**HEADLINE:** Won't you be my roommate?

**BYLINE:** Megan Waitkoff, a RedEye special contributor.

**BODY:**

I'm a female between 19 and 30.

I'm a non-smoker.

Who wouldn't want to live with me?

My friend, who was supposed to move into an apartment with me and had the gall to finish grad school instead, for one. My boyfriend, who said he needed the tax incentive from his house, for another.

Several months ago, I degraded myself in the worst way possible, putting my name and collection of vintage videocassette tapes on the line in the hopes of finding a relationship with no chance of a future, no possibility of sex and with nothing more to say for myself than "straight female, pet-friendly, seeking roommate."

I began the search for a roommate. Five months later and still solo, I'm getting desperate.

I started my journey by filling out a member profile on [www.roommates.com](http://www.roommates.com). It seemed normal enough: rate your level of cleanliness, what's your rent range, etc. Then it asked me to "select an emoticon which conveys my general personality or character." The choice of emoticons (i.e. smiley faces resembling the Wal-Mart mascot with dissociative identity disorder) was not good.

Emoticon holding a wine bottle conveys: I'm an expensive drunk that will regularly sleep on the floor of the bathroom.

Emoticon with enormous red lips conveys: I plan on running a makeshift plastic surgery practice from your apartment and consider injecting collagen a fun weekend activity.

Even after choosing the plain smiley face, I opened my account the next few weeks to find only 10 matches out of 1,695 Chicago listings. One match with the membership nickname of "Phguyil" chose the peace-sign-flashing emoticon and included a picture with his head cut off. Not the best way to sell himself.

I then flipped through the newspaper classifieds. "Deluxe roommates wanted for furnished deluxe penthouse," read one of the ads. I can be deluxe.

"Woman roommate wanted," read another. Hey, I'm a woman!

As I read, I circled every ad except the ones seeking lesbians, gay or straight males, or vegetarians. I was compatible with everyone, and I thought, "This can't be right."

"So many people just pick up the Reader and start calling after reading a two-line ad, and they don't find out that this person drinks every night or has the family visit each weekend," said Jamil Raza, department manager with the Chicago Apartment Finders Roommates & Sublets Service, when I called to find out about their service.

Oops. As I filled out CAF's roommate application, I began thinking back to my situation last year when thin walls led me to vicariously experience my roommate's late-night "study sessions" with her boyfriend.

I remembered the fruit flies that set up camp in her dirty dishes and the nightly marathons of the Backstreet Boys. And I thought, "Am I ready?" Can I get back in the roommate saddle again?

I started sobbing on my boyfriend's shoulder until he finally took pity on me. He decided to rent out his house in Aurora and find a place with me. I still had a few months leeway, so I agreed to wait until he found a suitable renter. After a month or so, he broadened his criteria to any renter.

He didn't get a single response, and naturally, while he waited, I did absolutely nothing to continue my search. Now, with one month left to find a roommate and an apartment, I'm conjuring up the courage to contact CAF again.

Raza assured me that CAF's success rate is well over 90 percent and applicants can be referred to more than 20 people who meet their specific criteria within a few weeks. Most roommates become friends, he said, and one girl even married her roommate.

Thankfully, I'm not looking for marriage ... just an anti-eroticon male or female, 19 to 30, non-smoker, with a thick-walled apartment and an appreciation of reality television.

**LOAD-DATE:** January 7, 2005

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Charlotte Observer (North Carolina)

December 12, 2004 Sunday ONE-THREE EDITION

**SECTION:** BUSINESS; Pg. 1D

**LENGTH:** 1790 words

**HEADLINE:** TOUGH TIMES AHEAD FOR HOME TEXTILES;  
LOW-WAGE RIVALS, RETAILER DEMANDS WILL PUSH MORE WORK ABROAD  
CAROLINAS JOBS: SHEET AND TOWEL MAKERS WILL FACE POWERFUL COMPETITION WHEN IMPORT  
LIMITS EXPIRE JAN. 1

**BYLINE:** STELLA M. HOPKINS, STAFF WRITER

**BODY:**

Textile layoffs have become painfully common in the Carolinas, but a plant-closing announcement this month portends an even bleaker future for workers.

On Dec. 1, Springs Industries Inc. said it will close two S.C. plants - wiping out 540 jobs - because retailers are increasingly turning to lower-cost foreign suppliers for sheets, towels and other home textiles.

That's an old story for our clothing, which is nearly all made overseas. But home furnishings only recently began losing ground to imports. That's about to get a lot worse.

Decades-old import limits, called quotas, expire Jan. 1 on hundreds of textile products, including sheets and towels. That means 40 countries will be free to ship unlimited amounts of home textiles to U.S. stores. That is devastating new competition for business that belonged to the Carolinas for a century. U.S. mills, already struggling, will have to hack prices - or lose sales. In response, they will be far more likely to have goods made in China, India, Pakistan or another low-wage country. And that means more Carolinas mill workers losing jobs.

Springs' Dec. 1 announcement marks the first time the S.C. company blamed the end of quotas for plant closures. Both plants make bedding, one sewing, the other weaving fabric. Springs will shift work to other plants and buy some goods abroad.

"What's happening is that there are more and more products that we can't manufacture competitively here in the United States," Springs chief Crandall Bowles told employees Dec. 1 in a videotaped message announcing the closures and forecasting a difficult year.

China is expected to be the big winner when quotas fall. Chinese mills and their 18 million workers - more than double North Carolina's population - have already demonstrated their strength.

Quotas began ending in 1995, starting a phaseout that ends Jan. 1 when trade barriers fall on goods accounting for more than half of U.S. textile and apparel items.

Blankets were among products that lost import protection in 2002. That year, China's share of U.S. blanket imports jumped to more than one-fourth, up from less than 7 percent the year before.

Through September, China had claimed nearly two-thirds of U.S. blanket imports.

"China is an extremely cost-competitive market due to low labor, raw material and capital costs," said M.L. "Chip" Fontenot, chief executive of WestPoint Stevens, the No. 2 U.S. home textile maker behind Springs. "Our sourcing from China has been growing, and we expect it to continue to grow."

\*

#### Not safe from competition

Competition from low-wage foreign workers has long worried the textile industry, which won quotas in 1957 against Japanese cotton goods. Quotas spread to virtually all textiles and apparel from dozens of countries.

But even five years ago, home textiles - the backbone of the Carolinas industry - were considered fairly safe from foreign competition. The goods are made in giant mills that cost hundreds of millions of dollars to build and equip, so building one is risky. Mills need a lot of clean water and reliable power, often hard to come by in developing countries.

Sheets and towels also aren't nearly as vulnerable as clothing to the lure of low-wage workers because they require far less labor than a blouse or pair of jeans.

To be sure, mill jobs have been vanishing. From 1990 through October, the Carolinas shed 163,000 textile jobs, more than half the industry's work force.

Ten years ago, privately held Springs, started in 1887 by Bowles' family, had more than 15,000 Carolinas workers. With the recent layoffs, the Fort Mill, S.C., company will have cut its Carolinas work force by two-thirds, to about 5,300 people.

WestPoint, which filed for bankruptcy reorganization in 2003, has about 4,600 of its 13,000 workers in the Carolinas. In October, the company said that to prepare for more global competition, it would close a Catawba County bedding plant with 300 workers.

Much of Springs' and the industry's job losses came as mills spent heavily to automate - an effort to stave off low-cost foreign goods. Faster machines meant fewer factory workers. But modernization did nothing to cut office wages or other costs. Imports of low-end merchandise and high-labor goods, such as quilts, began rising in the last few years. As foreign mills improved quality, they won more sales. Early quota expirations encouraged more.

"The big deal that's happening today and the last three, four years is that the home textiles business is migrating quickly," said Mac Ryland, who heads home-textiles consulting at Kurt Salmon Associates' Atlanta headquarters. "On January 1, the door is open."

Foreign competition unfairly took a lot of blame for the 2003 collapse of sheet-and-towel giant Pillowtex. The Kannapolis company staggered under heavy debt, churned through four leaders in less than three years and couldn't recover from a computer meltdown and economic slowdown.

Home textiles, like many industries, also has faced a more insidious cause of job erosion: retailers' profit-pinching demands for lower prices.

World retail leader Wal-Mart has long been the most obdurate price negotiator. Creating the price cuts hyped by Wal-Mart's yellow smiley-face "Rollback Man" means wringing every penny from every deal - or going to another supplier. To compete, other retailers followed suit.

Major retailers have demanded price cuts of 2 to 3 percent a year for about 10 years, said Springs spokesman Ted Matthews. The alternative has been providing a higher-quality, more expensive product without a price increase.

For 2005, retailers have upped price-cut demands as high as 11 percent on certain products, Matthews said. The stores know mills worldwide are hungry for their orders. Without quotas, retailers and importers are free to buy anywhere.

"Our policy is to make things here unless pricing gets so low that we are not competitive," Bowles told workers Dec. 1, according to a statement Springs provided the Observer. "Then, we must look for other ways to supply the product to our customers or we will lose the business."

\*

#### Outlook for Carolinas



Wachovia economist Mark Vitner forecasts slower Carolinas job growth next year because of expected heavy textile losses as quotas end, what he calls the "wild card" for job growth.

"We don't really know the extent of those losses," Vitner said. "It depends on how aggressive companies are at cutting costs."

Vitner estimates the Carolinas will lose about 20 percent of textile and apparel jobs next year. That's 20,000 N.C. jobs and 10,000 in South Carolina.

An industry group has said two-thirds of textile and apparel jobs are at risk. Including related business, such as cotton farming, 650,000 U.S. jobs could disappear within two years, according to the National Council of Textile Organizations. For the Carolinas, that means 103,000 jobs.

Jobs disappear when mills have work done overseas, and they also vanish when retailers bypass U.S. mills and buy direct from foreign factories. The big chains have buyers around the world. They've learned the global textile business during years of importing clothes. They're applying that buying experience to home textiles.

Ryland, WestPoint, Springs and industry experts agree U.S. home-textile manufacturing will decline as imports are freed to grow. But they also are adamant that U.S. factories will remain crucial.

Bedding is sold in extensive sets that include sheets and pillows as well as matching towels, drapes, shower curtains and ceramics. Individual foreign companies often can't fill full orders for giants such as Wal-Mart.

Springs and WestPoint coordinate suppliers, ensuring the full lineup lands in stores. The mills also have well-known brands, marketing savvy, design and product-development expertise, and strong retailer relationships.

Springs Chief Bowles emphasized those abilities in her Dec. 1 message, saying those strengths give her "confidence that our long-term outlook is positive."

"Styling and service will end up being the strength of the U.S. mill," said consultant Ryland.

China's distance also is a disadvantage. Getting across the ocean from China takes 20 to 24 days plus trucking time from the port, said WestPoint's Asian head, Bill Walker. Chinese and U.S. ports already are clogged, increasing the risk of delayed shipments.

"That will allow us to maintain a balance of U.S. production with increased sourcing," WestPoint's Fontenot said in an e-mail.

To ensure timely delivery while lowering costs, companies combine U.S. and foreign production. For example, companies can split production of best-selling towels so there are always some close at hand. They also might buy unfinished sheeting fabric abroad, then dye and finish in U.S. factories based on sales.

"These guys have to have a foot in both buckets," Ryland said.

This summer, Walker opened WestPoint's Shanghai, China, office. He plans offices in India and Pakistan to work with suppliers.

Springs opened its Shanghai office in 2002. In 2001, Springs partnered with Coteminas, Brazil's largest towel maker. The company also has Mexican production.

"Having their lower-cost manufacturing as part of our mix has enabled Springs to take business for products that we couldn't make competitively in the United States," Matthews said.

Addressing employees, Bowles acknowledged their concerns about the future, but she sounded a hopeful note, saying that Springs' game plan "will enable us to emerge from the current challenging industry transition as a strong and growing company."

Stella Hopkins: (704) 358-5173 or shopkins@charlotteobserver.com.

The Rush Overseas

The Jan. 1 phaseout of longtime textile and apparel import protections, called quotas, is the latest front in the global wage battle.

The loss of white-collar jobs to India and elsewhere is a new trend. Bleeding blue-collar jobs is a trauma the Carolinas know well.

In the coming months, we'll further explore the impact of the expiration of quotas on the Carolinas textile industry. We'll also show you how Carolinas cotton farmers are feeding China's hunger for raw materials, and how Carolinas mills are finding new markets among China's 1.3 billion people.

Observer staff writer Stella Hopkins traveled to China on a World Affairs Journalism Fellowship for reporting on the quotas issue. Funding was provided by the John S. and James L. Knight Foundation and the Ethics and Excellence in Journalism Foundation.

Interpreters were used for most interviews.

To read more of the Observer's special report on the end of quotas, visit <http://www.charlotte.com/mld/charlotte/business/special-packages/china/>

**GRAPHIC: GRAPHIC:2 PHOTO:3;**

1. STELLA M. HOPKINS - STAFF PHOTO. U.S. home-textile mills competing with lower-cost imports are increasingly turning to foreign suppliers to cut costs, putting Carolinas mill jobs at risk. At Sunvim Home Textiles in China, a worker irons a Kate Spade pillowcase for Springs Industries during an August factory tour. The high-end bedding, sold at Belk SouthPark, requires detailed hand work that drives up costs.; 2. STELLA M. HOPKINS - STAFF PHOTOS. Two years ago, Sunvim Home Textiles began a \$360 million expansion, which includes a yarn-spinning plant under construction in this August photo. Employee dormitories are rising to the left. The Chinese company expects more U.S. orders after quotas expire Jan. 1.; 3. Bowles

**LOAD-DATE:** December 13, 2004

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Philadelphia Inquirer

November 21, 2004 Sunday CITY-D EDITION

**SECTION:** CURRENTS; Pg. C06

**LENGTH:** 375 words

**HEADLINE:** Editorial / Kmart/Sears Odd marriage one of necessity?

**BODY:**

Will Martha Stewart soon put a pastel finish on Kenmore washers? Will Craftsman do-yourselfers soon be remodeling exclusively in Joe Boxers?

What, exactly, does a merger of Kmart and Sears mean for consumers?

Kmart, just recently out of bankruptcy, announced last week that it would buy Sears for \$11 billion in an effort to keep the two struggling merchants from falling to rivals such as Wal-Mart and Home Depot.

It's an odd marriage at best, but worth the risk. The likely alternative is both historic chains wasting away, leaving a trail of abandoned mall stores and strip shopping centers behind them.

The question is whether the combined company, which will rank third in revenue in U.S. retailing, can create a hybrid that appeals to shoppers who have many other options in a saturated market.

Kmart tried to outdiscount Wal-Mart once, but the yellow smiley face walloped the blue-light special. That's largely why Kmart filed for bankruptcy in 2002. The Sears buyout comes after Kmart's successful restructuring, but long-term survival is no guarantee.

Sears, whose catalog brought consumer democracy to America, has failed to connect with younger or urban buyers. Its stores still anchor suburban malls, while its clientele increasingly prefer big-box complexes.

The combined company plans to convert several hundred free-standing Kmarts into "Sears Grand" stores, which will sell groceries, books, and DVDs, as well as apparel and home appliances. Presumably, brands formerly exclusive to one store or the other would cross over.

Some locations will close or be sold. Towns and malls should be ready to market the empty buildings or risk more "big box blight," remnants of market losers of the past. Too many derelict hulks already dot our region - former Caldors, Bradlees, Hechingers - still awaiting a new tenant.

As retail continues to evolve, planners and developers should stop thinking of shopping centers solely in terms of what they used to be. Creative reuse is possible. A vacant store can become an indoor soccer field, a customer-service center, a remote college campus, a warehouse.

Americans will continue to shop. Whether Kmart/Sears will forge an identity that attracts their dollar remains to be seen.

**LOAD-DATE:** November 21, 2004

TTAB Opp. # 91/150,278  
WM/LOUFNI0000515

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November 14, 2004 Sunday  
Chicago Final Edition

**SECTION:** REAL ESTATE ; ZONE C; THE SUBURBS. ; Pg. 7D

**LENGTH:** 381 words

**HEADLINE:** Amid rancor, plan for store advances

**BYLINE:** By Jody Paige, Special to the Tribune.

**BODY:**

Although many of the more than 200 residents who packed two rooms in City Hall last week oppose a proposed Wal-Mart that would be built near residential developments and Lockport Township High School, Lockport's Plan Commission is recommending the company's concept plan to the City Council.

An overflow crowd filled the council chambers and others watched from television screens in a room on another floor. Police monitored the proceedings and only stepped in to quiet residents or to remind them to keep to the time limit set for public comments.

Wal-Mart officials are proposing a zoning change to construct a 147,491-square-foot building on 22.46 acres at 163rd Street and Farrell Road. The vacant property is bordered by residential development on two sides and is across the street from the high school. Some residents said they are not opposed to Wal-Mart coming to the city but do not support the location.

Robert Gamrath III, an attorney representing the company, said Wal-Mart could apply for permits now to build a store because it is allowed under current zoning. But the company is seeking a zoning change to allow the sale of liquor, a concept that upset many because of the store's proximity to the school.

Resident Dorothy Bertram held up a frowning face on a stick throughout the meeting, a parody of Wal-Mart's smiley face symbol. "Do you belong across the street from the high school selling liquor? Absolutely not," she said.

Residents also said they are displeased with plans to sell ammunition and guns, Wal-Mart's history of paying low wages, not providing health insurance and using non-union laborers.

Designs for the store include an automotive facility, garden center, gas station and a remote pharmacy in the 700-space parking lot.

Resident Peter Schrank said there are 39 residential driveways that exit onto 163rd or 7th Streets. He reminded commissioners about the amount of traffic near the school and said most Wal-Marts are located on four- or six-lane roads.

But several residents spoke in favor of the store, and two petitions with 900 signatures favoring the move were offered.

Janice Colvin, the city finance director, spoke as a resident in support of Wal-Mart, saying she often finds herself in neighboring towns because Lockport is missing a place to shop.

LOAD-DATE: January 24, 2005

TTAB Opp. # 91/150,278  
WM/LOUFNI0000517

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November 3, 2004 Wednesday 01 Edition

**SECTION:** B; Pg. 2

**LENGTH:** 376 words

**HEADLINE:** Dozens of pupils dress pumpkins

**BYLINE:** Erin Mosely PUBLIC SCHOOLS

**BODY:**

I hope everyone voted Tuesday. We all need to make sure we're a part of the democratic process especially those who like to complain when something goes wrong but won't take the time to participate in a solution. There were no problems at Wetumpka Intermediate School last Wednesday as students competed in a pumpkin-decorating contest. The student council sponsored the contest and had more than 40 entries. Sixth-grader Lauren Reburn won the contest with her three-headed cyclops pumpkin. Alexis Stacey, a fourth-grader, came in second. There was a six-way tie for third place. Bryna Wadsworth, Meredith Smith, Whitney Lee, Chelsea Dawkins, Olivia Garnett and Robyn Chambers each placed third. Dallas Hernandez's "scared silly" pumpkin won honorable mention. Ramona King and Tracey Law, representatives from Regions Bank, Wetumpka Intermediate School's major partner in education, judged the event. Andreda Young, student council sponsor, said students paid a \$2 entrance fee and all proceeds went back to the students. Students could decorate their pumpkins any way they wanted, but they could not puncture the pumpkin. Law said she liked Olivia's horse-drawn pumpkin. "I think that was real cute," Law said. "I would have never thought to do that." Olivia's pumpkin had two big, gold wheels attached to the side, candles around the front of the pumpkin where two windows were colored in and gold reins that came from the pony pulling the "carriage." Other notable pumpkins included Meredith Smith's Wetumpka Indian, complete with a feathered headdress and a "W" for Wetumpka. Mackenzie Anthony painted her pumpkin yellow like the Wal-Mart smiley face. Her pumpkin also came with a sign that read "Wal-Mart: Always low savings." Andrea Brewer's pumpkin had a birthday hat and jeweled earrings. Anna Weeks transformed her orange pumpkin into a white-faced and black-haired fanged vampire. The pumpkin looked like the head of Count Dracula. Whitney painted her pumpkin black and stuck four legs on either side of the pumpkin. Very scary Whitney, very scary! Erin E. Mosely, who covers Autauga County for the Montgomery Advertiser, can be reached at (334) 365-6739, by fax at (334) 365-1400 or by e-mail at [emosely@montgomeryadvertiser.com](mailto:emosely@montgomeryadvertiser.com).

**LOAD-DATE:** November 4, 2004

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Dayton Daily News (Ohio)

October 28, 2004 Thursday

**SECTION:** NORTHWEST; Pg. Z6-3

**LENGTH:** 443 words

**HEADLINE:** Trotwood Wal-Mart to hold safety event;  
Retailer partners with police department

**BYLINE:** Stephanie Beasley sbeasley@DaytonDailyNews.com

**BODY:**

**TROTWOOD** Boasts of low prices and bouncing smiley faces are perhaps what Wal-Mart has become best known for, but this month the retail giant is shifting the focus to safety.

October is National Safety Month for Wal-Mart stores across the country, and the Trotwood store at 5331 Salem Ave. will host an event from noon to 4 p.m. Saturday.

The event is being organized by the Wal-Mart Risk Control Team, a group of store associates who function as safety coordinators within the building for fellow associates and customers.

Risk Control team member Shirley Hines said, "We do anything that will help make the store safe for customers and associates, like keeping the floors clean and the aisles clear."

Yet this event will go beyond clearing clutter and mopping up spills.

Featured activities include the Ident-A-Kid free fingerprinting service for children by the Trotwood Police Department. The fingerprints can be used by the police if a child is kidnapped or is missing. McGruff the Crime Fighting Dog, generally a favorite with children, will display one of their cruisers, which is equipped with high-technology computers and radar units.

Hines said the police were invited because of the partnership they have formed over the years with the Trotwood Wal-Mart. Last year, the store raised money to buy a new dog for the Trotwood Police Department's canine program.

In speaking of the department's long relationship with the store, Trotwood Police Sgt. Fred Beck said, "They seem to be one of those businesses that really are a good neighbor."

He especially appreciates the store making the police department more visible to children and young adults.

"It's important to show us in a positive light. Young people always see us in cruisers and in that way we're real cocooned. But they should know that we're here to help before incidents as well as after."

Hines mirrored his statements.

"People should understand that the police are part of the community. They're here to help. We want to make it so that kids won't be afraid of them."

Others attending the event will include a State Farm Insurance agent who will give away free car seats and instruct parents on proper use.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000519

The Oct. 30 event is just one of the events the Trotwood Wal-Mart Risk Control team has organized to promote National Safety Month. They have also hosted events with the Combined Health District of Montgomery County and the Trotwood Fire Department.

"Our goal with these programs is just to make sure that customers know we're concerned about them not just at the store, but at home too," Hines said.

Contact Stephanie Beasley at  
225-2374.

**LOAD-DATE:** November 2, 2004

TTAB Opp. # 91/150,278  
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30 of 596 DOCUMENTS

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Roll Call

October 4, 2004 Monday

**SECTION: K STREET**

**LENGTH: 1004 words**

**BYLINE: By Brody Mullins ROLL CALL STAFF**

**BODY:**

Big Business Spends Big. Lobbying reports for the first six months of the year are just starting to roll in, but already the nation's largest business lobby is likely to rank as the biggest of the big during the period.

The U.S. Chamber of Commerce and its legal reform institute spent a whopping \$30 million to lobby Congress from Jan. 1 to June 30, according to lobbying disclosure forms filed with Congress and compiled by the nonpartisan PoliticalMoneyLine.

That's a 78 percent jump over the \$16.9 million the two organizations spent on lobbying in the first half of 2003 - and a tad more than the combined lobbying expenses reported by Washington heavyweights General Electric, Freddie Mac, Pharmaceutical Research and Manufacturing Association and Altria Corp.

Lobbying reports show the Chamber of Commerce itself spent \$20.1 million to lobby on virtually every major issue on Capitol Hill. Meanwhile, the U.S. Chamber Institute for Legal Reform spent \$10 million on such issues as tort reform legislation, medical malpractice and asbestos legislation.

Lessons for Lobbyists. He's no Lee Iacocca, but outgoing Motion Picture Association of America President Jack Valenti has some advice for making it big in the lobbying business.

"The principles of influencing Congress have not changed," Valenti said in an interview last week after stepping down from the lobbying job that he held for 38 years.

"You build a case that has to have merit," Valenti said. "Then you make sure that it is composed crisply and briefly and uses vivid language that is not full of cliches. You need to be prepared to present that case orally in three or four minutes."

Valenti said he learned from his former boss, President Lyndon Johnson, that you "ought to give the Member what the opposition is going to say."

Finally, "don't play it cute around the turns," Valenti said. In other words, "don't mislead, don't lie - because everything leaks and you'll be found out."

Valenti said those four fundamental principles guided him throughout his career and helped to establish him as a lobbying icon. Valenti added that he enjoyed every second of the four decades he spent at the MPAA.

"How many other association presidents appear on the Academy Awards and get to spend their days with movie stars?" Valenti said. "If I was the head of the asparagus association, I don't think people would care."

Wal-Mart Money. There's more to Wal-Mart's yellow smiley face than just falling prices.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000521

## Roll Call October 4, 2004 Monday

For the third straight year, the company, which has 3,200 stores nationwide, has topped the Fortune 500 list, and members of the Walton family rank high on Forbes magazine's list of the world's richest people.

Now the company finds itself high on another list: donations in state politics.

Together, Wal-Mart stores and the Waltons personally have contributed more than \$2.1 million to state-level political candidates and party committees, according to a recent study by the Institute of Money in State Politics.

In the 1998, 2000 and 2002 election cycles, the five shareholding members of the Walton family donated a total of \$1.56 million to state political parties and candidates for state-level office.

While these donations spanned 16 states, three of them - California, Florida and Texas - received 85 percent of the total amount given.

All in all, only \$56,000 went to Democrats, with Republicans receiving the remaining \$1.4 million.

About two-thirds of the family's contributions went to state-level candidates, three-fourths of whom were running for gubernatorial office.

The Waltons gave 98 percent of their gubernatorial contributions to Republican candidates.

Wal-Mart stores directly contributed \$550,000, or about one-third as much as the Walton family, between 1998 and 2002.

The company gave a higher percentage - though still only 33 percent - to Democrats, while Republicans received the remaining 67 percent of funds.

Unlike its owners, Wal-Mart gave the majority (70 percent) of its total contributions to candidates for state legislature. Of its legislative contributions, Republicans received 54 percent and Democrats 46 percent.

As it turned out, the company chose its recipients well: Wal-Mart gave 82 percent of its donations to winning candidates.

The company has a lot of issues that are apt to be decided by legislatures and governors. In addition to the typical mix of wage and tax concerns that any big employer brings to the table, Wal-Mart has sparked special opposition among several interest groups. Smaller businesses feel they can't compete against the retail giant; environmentalists and land-use planners oppose its allegedly sprawl-inducing "big-box" stores; and organized labor has decried the company's labor policies.

Drinking the Kool-Aid. Hear the story last month about the cafeteria staff at Alexandria Country Day School mistakenly serving margaritas to elementary schoolers, thinking it was limeade?

It turns out that Susan Ruby Paxon, the third-grade daughter of former Reps. Bill Paxon and Susan Molinari, was one of them.

The daughter of the New York Republican Members-turned-lobbyists was sent home with a note saying that she and a few dozen of her classmates mistakenly had been served margaritas that had been left over from a faculty party a few nights earlier.

"The kids took a sip and said it was gross," said Paxon, a lobbyist with Akin Gump Strauss Hauer & Feld LLP.

Paxon, Molinari and other school parents learned about the mixup in a letter from school president Alexander Harvey on the day of the incident, Sept. 10.

"I regret to tell you that your child may have been exposed to alcohol today at lunch," said the letter that was sent home with each of the school's 240 students.

Susan Ruby Paxon first became famous when she was born to a sitting Congresswoman.

Despite the incident, Paxon said the school handled the matter "quickly, candidly and sensitively."

Kara Rowland contributed to this report.

**LOAD-DATE:** October 4, 2004

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Fulton County Daily Report

September 20, 2004, Monday

**SECTION:** NEWS; Vol. 9; No. 20

**LENGTH:** 5880 words

**HEADLINE:** Class Consciousness-Raising

**BYLINE:** n/a

**BODY:**

Wal-Mart's yellow smiley-face icon, known for rolling back prices at the nation's largest retailer, may not be grinning so broadly these days, now that a court has certified a massive gender discrimination class action suit against the Bentonville, Ark.-based chain. The case, *Dukes v. Wal-Mart Stores Inc.*, 222 F.R.D. 137 [N.D. Calif. 2004], involves 1.6 million female employees alleging discrimination in promotions and pay, and the potential threat of a billion-dollar resolution. However the case is resolved, it is likely to have a significant impact on how such class actions are handled in the future. The Daily Report invited a panel of experienced employment attorneys to discuss the potential ramifications of the Wal-Mart suit, and strategies they've used and seen in other large class actions of this type. Led by Charles A. Shanor, a professor at Emory University Law School, the panelists were R. Lawrence Ashe Jr. of Ashe, Rafuse & Hill; Harlan S. Miller III of Miller Billips & Ates; Joshua F. Thorpe of Bondurant, Mixson & Elmore; and C. Geoffrey Weirich of Paul, Hastings, Janofsky & Walker. The group tackled a variety of subjects, including factors affecting settlement dynamics, the utility of mediation and arbitration in resolving large class cases, forum shopping and judge shopping, and the feasibility of paying higher settlements to worthy plaintiffs. The discussion also ventured into the controversial and highly charged topic of the fees plaintiffs' lawyers earn in class action suits. Ashe represented The Coca-Cola Co. in *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685 [N.D. Ga. 2001], which settled for \$192.5 million. He postulated that the effective hourly rate for plaintiffs' counsel was \$1,500 to \$2,000 an hour. Thorpe, who represented the plaintiffs in that case, countered that fees were closer to the \$900 range and noted that big fees are needed to compensate plaintiffs' attorneys for the big risks they run in taking cases on contingency. The discussion has been edited for length and clarity. Janet L. Conley, Assistant Managing Editor

Shanor: The class certification in *Dukes v. Wal-Mart* of 1.6 million female employees alleging gender discrimination in promotions and pay has generated significant public attention due to the employer's renown and the size of the class. The 9th Circuit has granted an immediate appeal from the class certification by the district court, and plaintiffs' counsel recently filed another class action, this one against Costco, making similar allegations. Whatever the final decision in the Wal-Mart case is, it could have important implications for plaintiffs and defendants in class discrimination claims. It also could change employers' compensation and promotion practices and alter corporate cultures. By way of background, the framework which started with the Civil Rights Act of 1964 is that race and sex discrimination cases always have been viewed, in a way, as class discrimination cases because race and gender are class characteristics. Initially, a number of courts certified across-the-board challenges to all employment practices at various places of employment because race or sex discrimination is inherently class-based, regardless of whether the named plaintiffs and class members were similarly situated by job groupings, but eventually the U.S. Supreme Court said no in private Title VII class actions. These actions must meet the class requirements under Federal Rule of Civil Procedure 23. The Supreme Court actually said that in two different cases, the Rodriguez case and later the Falcon case. [*East Texas Motor Freight System Inc. v. Rodriguez*, 431 U.S. 395 [1977], and *General Telephone Co. of the Southwest v. Falcon*, 457 U.S. 147 [1982]]. The usual and noncontroversial class action under Title VII involves an employer that has

a rule or a widespread, articulated practice, an employer that gives a test that had a disparate impact or some other decision made at the top of the corporate hierarchy. More controversial are cases like *Dukes v. Wal-Mart*, in which the company is alleged to have delegated personnel decisions to its stores, leaving it to the subjective discretion of store managers and supervisors to make a variety of personnel decisions. In these cases, plaintiffs attorneys typically with the assistance of expert witnesses aggregate things that happen in the place of employment. For example, in the Wal-Mart case, more than 50 percent of lower-level store employees were females, and a much smaller percentage of store managers and assistant managers were female. The circuits are split at this time as to how Rule 23 applies in these cases. The 5th Circuit in *Allison v. Citgo Petroleum Corp.* [151 F.3d 402 [5th Cir. 1998]] established a fairly high bar for plaintiffs attorneys, while the 2nd Circuit in *Robinson v. Metro North Commuter R.R.* [267 F.3d 147 [2d Cir. 2001]] made certified class actions more easily available. And both of these cases looked at questions under Rule 23[b][2] of whether injunctive relief predominates over monetary relief. Additionally, there are some constitutional questions concerning the operation of the 7th Amendment right to a jury trial in civil cases where compensatory and punitive damages claims are available to plaintiffs as a result of the 1991 amendments to the Civil Rights Act of 1964. Another issue is the commonality and typicality of these claims across groups of employees. And, finally, we have adequacy of representation issues cropping up under Rule 23[a][4], in which conflicts are alleged between plaintiff class members who are female and management females who have, at least to some extent, made it through various promotional processes of the company and are now making promotional decisions involving and affecting class members. Beyond the legal issues today, our intention is to cover aspects of lawyering in these cases. What do plaintiffs do? What do defendants do? What strategies are adopted? Strategies not just legal but factual. Strategies including publicity and management of public relations matters. Let's start with this: What should plaintiffs counsel look at in order to decide whether or not to file a class action of the Wal-Mart sort? Thorpe: The first consideration is to get a handle on the employer's policies. You want to find out how broadly the policies apply. Do they apply in every location or are they specific to certain locations? Within the policies, what kind of subjectivity/discretion is allowed? That obviously is the focus of the Wal-Mart case, and it's also the focus of non-rule-based class action cases. Also, you need to find out whether there is classwide discrimination. Probably the two best ways to do that are to talk to as many potential class members as you can, and look at publicly available documents to the extent that you could get FOIA requests to the Office of Federal Contract Compliance Programs and other government agencies. Shanor: You might also seek government and any available EEO-1 data. Thorpe: Right. And I think in Wal-Mart there's a lot of benchmarking data that one of the plaintiffs experts used. That kind of data can be very helpful. Shanor: Harlan, you've had a lot of experience with a variety of employment discrimination cases. How do the EEOC and its processes fit into a class case of this sort? And secondly, how do you decide where to file a case against an employer that has facilities in many different locations? Miller: I'll answer the second question first. Take the venue issue in the Wal-Mart case. Obviously, the plaintiffs lawyers don't want to try that case in Bentonville, Arkansas, because there would be no chance of a plaintiffs verdict there. Shanor: There was an earlier decision, before the class certification decision, saying that the Wal-Mart case could remain in the Northern District of California rather than being moved to Bentonville. Miller: Right. So the plaintiffs lawyers made a rather calculated, and I'm sure well thought out, decision to try and bring the case within the 9th Circuit Court of Appeals. They probably could have brought it just about anywhere given Wal-Mart's far-flung nature. The most important part of deciding where to file is to look at the recent circuit court decisions to determine whether there's a very conservative trend in a particular court. And, of course, the 9th Circuit has a reputation of being less conservative than other courts. I think it's quite obvious if you look at the decisions in the 11th Circuit that there's a team of conservatives cutting back on the rights of plaintiffs to bring large lawsuits. Shanor: When dealing with a district court like the Northern District of California or the Northern District of Georgia where some judges are viewed as more conservative and others as more liberal, are there any techniques that you can think of for trying to pick the judge you want? Miller: Not that I'm aware of. If you know something that I don't, I sure would like to learn something here today. Shanor: Geoff, have you ever seen a situation in which judges were cherry-picked by plaintiffs lawyers? Weirich: Yes. There has, in fact, been a situation in a court in the South where there's been an intervention by the senior judge over allegations that a particular plaintiffs firm was finding a way to get all of their class action cases before the district judge they perceived as favorable. That investigation led to some changes in the practices in that court. There's also the related case doctrine, which is one that can be legitimately used if there is a truly related case already before the court. Then you can bring a second case that is related in some factual or legal way and get it assigned to the same judge. But that doctrine is one of the ways that plaintiffs lawyers have found to abuse the system from time to time. Shanor: With Wal-Mart, for example, there are over five-thousand cases pending nationwide against the company. Presumably some of those cases involve allegations of sex discrimination by an individual plaintiff with respect to promotion and compensation. So you're saying that if one of those cases lands before a very favorable judge from a plaintiffs perspective, that might well be where the plaintiff would seek to file a nationwide or broad class action,

checking the box on the federal form saying there's a related case. Weirich: We've seen that. We've also seen the plaintiffs move to amend the original case to transform an individual case into a class action. Ashe: Well, it's public record, so I don't mind mentioning what I'm confident Geoff was talking about. It's in the Northern District of Alabama, and there were alleged maneuverings by the plaintiffs bar to get Judge U.W. Clemon, who has a very favorable track record for plaintiffs over the years, and subsequently some case law on employers alleging maneuvering to avoid Judge Clemon by hiring his nephew's law firm to represent them. The allegations have been that plaintiffs attorneys there would file their case individually, see if they got a judge they liked and then immediately, within the 15-day rule, simply amend as of right to add class allegations. And that met with success despite defendants objections on a number of occasions. I think forum shopping is something that is done by both sides, but it's a lot easier for the plaintiff to do it because they can choose where they file the lawsuit. If I were representing a plaintiff in a class case, I certainly would go looking for either the 9th Circuit or the 2nd Circuit. For Harlan to say that the 9th Circuit is less conservative than other circuits is like describing somebody as being less shy than Madonna. The 9th Circuit is the most reversed circuit by a factor of several orders of magnitude. And there's almost a presumption of reversal if it gets to the Supreme Court. Thorpe: The *Desert Palace Inc. v. Costa* case [539 U.S. 90 [2003]] is an interesting exception to that. The 9th Circuit went against, I guess, almost every other circuit and was affirmed 9-0, I think. Ashe: Correct. But their batting average overall is very poor compared to any other circuit. It would seem that the Supreme Court is going to need to take the stark difference of class certification case law between, for instance, the 5th Circuit in *Citgo* and the 4th Circuit and some would even say parts of the 11th Circuit versus the 2nd Circuit and the 9th Circuit and resolve that conflict. The D.C. Circuit on occasion has been somewhat plaintiff-friendly as well. But if you're suing a very large employer and you're patient and careful, the plaintiffs attorney ought to be able to get at least initial jurisdiction most anywhere they want to go. On the other hand, you're going to want to try to choose a plaintiff that potentially is the poster child for your case, and so you've got to combine that with it as well. Shanor: In the Wal-Mart case, following the certification decision, the company took the position that the court's ruling was not a merits-based decision. It's simply class certification. But the plaintiffs lawyers were gleeful at the certification, and many who work in this field say certification in many cases is the most important decision in a class action. Why is that so important in terms of the dynamics of settlement and of further litigation? Miller: Let's talk about the economics of it. The decision on certification is going to make the difference in whether you'll take the case. In a lot of cases, particularly cases that aren't gender discrimination cases but they may be FLSA cases or equal pay cases, the damages for any one particular plaintiff even if you take a dozen or two dozen of them and aggregate them are not going to be adequate to justify the kind of resources that you're going to have to spend as the attorney litigating against a company like Wal-Mart, which in my experience is a company that takes the approach that they're going to spend whatever it takes to fight such a case. So it is a threshold decision on viability from an economic standpoint. Shanor: From the company's perspective, how important is this decision? Weirich: It's obviously the major battle of the case. Historically since the 1991 Civil Rights Act, very, very few class actions that have been certified have gone to trial. Boeing recently tried one in Seattle where both compensatory and punitive damages were at stake. But most employers are very unwilling to risk rolling the dice on a compensatory or punitive damages judgment even if they think they have strong appellate arguments. It's critically important for settlement purposes for the plaintiffs to get certification. Thorpe: Having settlement discussions before certification is ruled on can be helpful because there is the uncertainty that can drive a settlement. Obviously there's a leverage change if the class is certified or certification is denied. Ashe: Certification is a critically important decision in the dynamics of the progress of the case and whether or not it will be settled, and, if so, at what level. For example, if the Wal-Mart trial court class certification decision sticks, my impression from afar and not based on any inside information is that any resolution of it will be north of a couple of billion dollars. It's not a lot of money for any particular individual person, but when you've got a class of 1.6 million, it doesn't take much per capita to reach very large numbers. Weirich: Let me return to the point that Josh made about the dynamics of settlement both before and after certification. For a number of years there were a lot of pre-certification settlements, and, in fact, as Josh pointed out, a good leverage point in the negotiations was while the class certification papers were pending. With the advent of the Supreme Court's decision in *AmChem v. Windsor* [521 U.S. 591 [1997]] that approach has become much more difficult to justify because the Supreme Court ruled in a situation where there was a conflict between two subsets of the class that in order for the class settlement to be approved, you had to satisfy all of the elements required for class certification except manageability. I once settled pre-certification on behalf of a company, and we ended up being asked by the district court judge to brief class certification issues. We had to write a very, very tricky brief not to create a bad record for ourselves in future cases for that employer while at the same time supporting a settlement that we had crafted. It's a very difficult situation for the employer. Shanor: Another factor affecting settlement dynamics is if the company is successful, of course, a huge judgment against it could have a dramatic effect on shareholder value or conceivably even drive a company into the protection of the Bankruptcy Court, and no employer wants that risk. Also, if the company is

profitable, roughly half of the settlement is cost-free to the company because of the corporate taxation rates. Ashe: Frequently whether or not a class case is settled though is driven by how much pressure the plaintiffs are able to apply on a particular employer, often through the media. Some plaintiffs attorneys are superb media relations people and extremely good at sound bites, much better than most defense counsel. For example, Cyrus Mehri, one of the lawyers opposing Coca-Cola, has excellent media skills and relations. Putting that kind of pressure on a company that sells its product to the general public including to groups that are embodied by the class in question is going to put a lot more pressure on the employer to consider settlement than if you're suing a Lockheed Martin. The public probably is not going to affect Lockheed Martin very much by boycotting buying C-130s. Shanor: A final factor that comes into play is the employer's ability, under the terms of the settlement, to steer injunctive and other equitable relief in directions that the employer finds consistent with ongoing business efficiency and profit making. Specifically, I'm talking about the employer's ability to distribute money within the class to employees it believes are more deserving, as opposed to making simply a classwide distribution, which might include people the employer views as deadbeats. I'd like to hear what your experience has been with the mediation processes in class cases. How did they work? Did they work well or poorly? Thorpe: I think they work very well. The Coke case was difficult to mediate, but the mediation was critical to getting that settlement. Weirich: The ethical conflict issues that arise between class counsel and their clients who are generally not present at the bargaining table almost demand that a mediator be there. Thorpe: It circles back to what you were talking about in AmChem because AmChem is very critical of collusive settlements, so having a mediator who can testify that there were arms-length negotiations is really important. Ashe: The advantage of mediation normally is that, to the extent the employer wishes to retain control of its human resources practices, you can negotiate in mediation changes or evolutions that you deem acceptable by definition. Whereas if you've got a federal judge doing it for you, well, if you like the way the public schools have turned out under federal court supervision, you'll probably like the way your company's HR practices will turn out as well. Also, some employers have strong feelings about the deserving plaintiffs getting money and the undeserving ones not. I agree with that, although frequently one's clients don't see a lot of deserving plaintiffs on the other side. Shanor: This is relative, not absolute, Lawrence. Ashe: However, in the dynamics of a settlement, the transaction costs of determining who's deserving and who's not are so high that it is almost always done by some kind of formula approach. Coca-Cola was entirely formulaic. I mean, different amounts for different kinds of people, but it was seniority-driven and level-driven. Even in [*Kraszewski v. State Farm General Ins. Co.*, 912 F.2d 1182 [9th Cir. 1990]], which was an early class case involving their insurance sales agents' gender case, they tried several hundred cases and finally even State Farm got tired after something like \$200 million in attorneys fees. State Farm negotiated a settlement with the rest of the plaintiffs, even though the company was winning over two-thirds of the cases they were taking to trial. The judgments were very high in the ones they were losing, and under the court's decision they were paying both sets of attorneys for all of the cases, winners and losers. Shanor: I wouldn't say that large employers are going to try to drive these settlement amounts to particular members of the class, but rather to members of the class that have characteristics that they think make them more attractive recipients of money. For example, someone who had applied for promotions would be viewed by the company no doubt differently than someone who was in a pool of potential applicants for a promotion. Someone who had indeed gone through certain management processes or management development processes but not been promoted might be viewed as more attractive than someone who had never attempted to do those things, and, as you say, seniority and other factors might be viewed as more attractive. I'd like to let the plaintiffs and defense lawyers address the issue of attorneys fees to successful plaintiffs lawyers through settlement or trial processes. Do these lawyers deserve these big fees? Thorpe: It's very interesting to me that in the employment discrimination context defendants and employers are all up in arms about the attorneys fees, which are generally a lot lower in percentage terms or on a lodestar basis than you'd see in securities class actions where, you know, your individual shareholder is getting 45 cents and the attorneys are getting 30 or 40 million dollars. I think that because of AmChem the federal district courts are much more rigorous in scrutinizing settlements including attorneys fees and I think between the judge and any objectors you've got a process for making sure that the fees are fair. Miller: Not only that, but the fact is that very few of these certification attempts are going to succeed. The plaintiffs lawyers take incredible risks. The plaintiffs lawyers in these positions, the plaintiffs lawyers that are representing the plaintiffs in the Wal-Mart case, are able to do the kind of work that they are because they get rewarded for the risks that they take, and that's only appropriate in my opinion. Ashe: I would respectfully disagree with Josh about whether courts are really taking a rigorous look at the attorneys fees data in reviewing them and in approving settlements. In the Coca-Cola case, it was a common-fund approach. A percentage allocation was made that was based on the evaluation of the case including an evaluation on equitable relief. So it settled for \$192 million, but the cash value was about \$105 million. The court awarded percentages of those numbers and reviewed them to see if the percentages were within the ballpark of percentages that had been awarded in other cases, which indeed they were. That was carefully evaluated. However, there was no scrutiny of individual time entries, tasks performed or potential write-

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offs as that would happen under a lodestar analysis. My estimate of the effective attorney hourly rate achieved by plaintiffs counsel on that case was somewhere between \$1,500 and \$2,000 from the rawest rookie associate up and with no time written off for meetings in which eight and 12 lawyers attended, which no corporate defendant would normally pay for. So you've got a realization rate that's somewhere in the stratosphere. Thorpe: The defense side in Coke and in all of these cases had two times as many defense lawyers as plaintiffs lawyers. When you talk about the effective hourly rate you're recognizing that there's a multiplier, which is what you get for taking the risk. Weirich: Notwithstanding that the Supreme Court has ruled that the risk multiplier is not appropriate. Ashe: Which is part of what's driving this kind of attorneys fee work. Frankly, for the Supreme Court to say that there's no premium ever appropriate for a contingent fee case is blind to the economics of law practice. I mean, no economically sane, sensible lawyer is going to take a case that's contingent when the alternative at the same hourly rate is to send a bill every month and get paid every month. That just makes no sense. Thorpe: My point is you can't complain about the percentage if you're not going to allow a risk multiplier. Miller: You have individual defense lawyers even in Atlanta charging sometimes in excess of \$400 an hour for their time who have a defendant or a client who's going to send a check each month. The comparison is that the plaintiffs lawyer doesn't get to bank on that \$1,500 an hour, and it's going to happen only a few times over a space of a career. Daily Report: Josh, as someone who was involved in the Coke case, do you want to confirm or correct the \$1,500-an-hour estimate? Thorpe: I think Lawrence is way wrong about \$1,500 an hour. I would have to look at the settlement agreement. [After the discussion, in an e-mail message to the Daily Report, Thorpe estimated that the plaintiffs lawyers in the Coke case had an effective hourly rate of less than \$941. This was based on a \$20.7 million fee award, divided by the 22,000 hours logged by his firm and one other firm. However, two more plaintiffs firms also worked on the case, and Thorpe noted that this would further lower the effective hourly rate. He also noted that the fee award was 20 percent of the current cash settlement fund and 13 percent of the value of the settlement as a whole. Ashe responded that the 22,000 hours included thousands of paralegal hours, and that nothing was written off or down. He stood by his original estimate for the lawyers effective rates.] In other class actions, you have lawyers getting 25 percent. And your effective hourly rate when you lose certification is zero. Miller: It's less than zero. Shanor: Assuming that the certification stands and assuming that there's either a large settlement or perhaps a successful trial by the plaintiffs, how is the Wal-Mart case likely to change employment practices? In the certification decision, the district court judge says that Wal-Mart's policies governing compensation and promotion are similar across all stores and build on a common feature with subjectivity. This provides a conduit for gender bias that affects all class members in a similar fashion. There's a lot of controversial stuff in that particular characterization, but I guess my concern would be: Will decisions like this drive employers towards more objective standards, and, if so, is that good or bad? Miller: I think the answer is clearly that the effect of a decision like this is going to be an employer's adoption of mandatory arbitration policies. And I'm sure that everybody is aware that the employer, by sending out a notice in some jurisdictions, does away with any liability or any chance that an employee can even bring a class action. I'm not sure exactly how far back in time this case against Wal-Mart goes. But you have to ask yourself as a defense lawyer, why didn't they send out notices to their employees 10 years ago saying that by continuing to work here or by accepting employment here, you agree to arbitration that does not include any kind of class action mechanism. You know, the discussion that we're having here today, if that continues to be, is going to be moot. Shanor: With one exception, of course, in terms of the EEOC's special status. The EEOC can bring class litigation notwithstanding any particular arbitration provision that employer/employees might have. Miller: One real example I can give from my own experience is this: I settled a large, collective-action, age discrimination case where the employer had not put in place that kind of arbitration policy. But while discussions about settling that case were under way, the notices went out to the existing employees who are now SOL on their ability to have any kind of court action if that arbitration policy sticks. It just writes Rule 23 and all the other collective-action mechanisms out of existence. Ashe: Geoff, I'd be interested in your perspective, but from mine I don't consider arbitration the wonderful panacea for employers in any but a few states. Now, if you're in California, sure I'd like to have mandatory arbitration, but in Georgia I'll deal with the court system. Arbitration, in order to stick, has to have many of the common characteristics: discovery, employer paying for the arbitrator, et cetera. Also, my experience in arbitration is that arbitrators will never grant the equivalent of either a motion to dismiss or summary judgment, and they always seem to only have one or two days of time. And so you keep having sets of hearings after sets of hearings, and you save no money. Weirich: You trade getting rid of class actions for having a much more viable individual action by many employees than they ever would have had in federal court, and very much less opportunity for the employer's lawyers to get summary judgment or a dismissal. Miller: Summary judgment is the one thing that I would agree with. You're going to get that in 75 or 80 percent of your defense cases in federal court in a lot of jurisdictions. But I will trade my ability to be in front of a jury on a sexual harassment case or even in an age discrimination for that to be in front of an arbitrator who's not going to award a million dollars in punitive damages in a typical discrimination case. But the effect of these arbitration policies is to make FLSA collective

actions and a lot of other class actions go away. Weirich: One of the things we haven't mentioned, Charlie, is that in the Wal-Mart case and many others that have been certified, plaintiffs lawyers have waived compensatory damages at the time that they sought class certification. Those cases where class certification has been denied often are ones with lawyers who are not wise enough to do that and sought the whole hog. That raises an interesting question as to whether that causes a right to opt out of the class for the putative class members at the time that the class certification is sought. Can the plaintiffs lawyers just go ahead and waive those remedies on behalf of the class members? Also in Wal-Mart, the punitive damages issues are very complicated, particularly under the 9th Circuit decision in *Beck v. Boeing* [320 F.3d 1021 [9th Cir. 2003]], which held that punitive damages awarded at the liability trial stage are not proper because you have to show individual liability to each class member. Shanor: And if punitive damages become serious problems for class certification, it may well be that punitive damages will also drop out of these claims, and there will be more back pay and equitable remedies. Ashe: I would think that would be more true in a Wal-Mart case where their monetary claim is alleged disparities of pay. If you don't accept the explanations from Wal-Mart, I have read that there is a 6 percent pay disparity. Wal-Mart has an explanation for that, but 6 percent of Wal-Mart's national payroll is a stunning amount of money, and who cares about compensatory or punitive damages if you are able to achieve that? Thorpe: Well, the employer has to be pretty big to make those economics work. Shanor: But there is an economic difference. Congress, I think in 1991, tried to make it worthwhile for plaintiffs attorneys to bring individual cases by adding the compensatory and punitive damages to remedies available under Title VII even though caps were imposed for a large employer of \$300,000 per individual. And in a race case, there's no cap because of *42 U.S.C. ss 1981*, and state law is much more plaintiff-oriented in California than it is here in Georgia, so you can get uncapped damages, too. So, I guess to some extent in a class action context, do you need the class action mechanism as much as you might in say a securities case where for most individuals who've lost some money in the market it's a relatively small, individual amount? Thorpe: Well, two points. You certainly need it for purposes of obtaining injunctive relief. Also, there is a real difference between how plaintiffs lawyers and employers look at the viability of individual employment discrimination claims even with compensatory and punitive damages available. The economics of both are tough because let's assume that you have a case where there are \$30,000 or \$40,000 in actual damages and you have a possibility of getting punitives. Maybe you get two or three times that amount, and so let's say that it's going to be a \$150,000 recovery. To litigate that case for a lot of plaintiffs lawyers, it's going to cost you \$100,000 to \$150,000. So, what you're really litigating for is a chance to get your fees back if you win. You're taking an awful big risk for a payoff that in percentage terms isn't that large. I think in the real world it is very hard for employees to get good, competent attorneys to bring individual cases because of the economics. Miller: Charlie, you asked whether the class action mechanism is essential given the increased remedies started in 1991. I think the answer to that is plainly yes, and Wal-Mart is a perfect example. Only a case like this that is worth upwards of \$50 billion or whatever it is will be noticed by the people in Bentonville. And that's obvious because they can afford to litigate individual discrimination cases that result in, let's say, \$300,000 or \$400,000 verdicts against them all day long. Eighty percent of them are going to get thrown out on summary judgment, and of the ones that go to court, they're going to win some of those, and they can afford to do that all day long. The only way that you're going to change what the plaintiffs allege in this case is historic discrimination is through this kind of litigation. r

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**LENGTH:** 672 words

**HEADLINE:** Big welcome for Wal-Mart in East San Jose

**BYLINE:** By Truong Phuoc Khanh; Mercury News

**BODY:**

Cars were double-parked. Shoppers elbowed each other down jammed aisles. Traffic backed up on Story Road all the way to the freeway ramp. And, of course, there were the labor-union picketers.

Welcome to Wal-Mart.

The planet's largest retailer opened another store Wednesday, this time on San Jose's East Side. It is the city's second location, and to say there was a frenzy is like saying Athens is hosting a few games.

A small army of Wal-Mart employees, trained for weeks for the big day, donned the company's trademark blue vests with giant yellow smiley faces and "How May I Help You?" printed on the back. At the store entrance, a mariachi band serenaded shoppers, while inside, customers snacked on bite-size, freshly grilled cheese quesadillas -- on the house.

For the area's residents, who have to trek far to find a department store, the 8 a.m. opening was the highlight of the week.

The 142,000-square-foot building at 777 Story Road used to be occupied by a Super Kmart, which closed last year as part of that chain's bankruptcy reorganization. Target, the nearest competitor, is several miles away. And while the neighborhood has plenty of small eateries and delis featuring Vietnamese and Mexican cuisine, and hair and nail salons, the only non-mom-and-pop business in the area is a Save Mart, a mid-size grocery business at Story Road and McLaughlin Avenue.

"We believe it's definitely under-served," Nick Sigala, Wal-Mart store manager, said of the neighborhood.

Pia Medeiros, a department manager and seven-year employee of Wal-Mart, was unfazed by the large Wednesday crowd. Come Thanksgiving and the holiday sales, she said, it will be "standing-room only."

What is the draw, exactly?

"They trust the name," Medeiros said. "They know the reputation Wal-Mart has."

But Ron Lind knows of a different reputation.

Wal-Mart pays its workers low wages, is stingy with benefits and violates labor laws, said Lind, secretary-treasurer for United Food and Commercial Workers Union Local 428. Lind showed up Wednesday morning for the grand opening with a couple of dozen other picketers.

"The sad truth is, your average consumer doesn't care how a company treats its employees," Lind said Tuesday. "They care where they get the cheapest prices."

Martha DuBon cares about the plight of workers, but she also very much wanted a certain pillow.

TTAB Opp. # 91/150,278  
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The 56-year-old San Jose woman was among the morning shoppers who came with a specific purchase in mind, only to leave with bags full of discounted merchandise that contribute to Wal-Mart's \$244.5 billion in annual sales.

"It all started with my cheetah pillow. I came here especially for this one pillow," DuBon said, pulling out her prize, tucked under a plastic plant, a frame, a place mat, and other household items. She had bought the same pillow at a Wal-Mart in Tracy and been on the hunt for a second. An hour and \$117 later, DuBon inched her theft-proof shopping cart out to the packed parking lot.

"If it was less crowded," she said, "I probably would have spent more."

Over the summer, more than 4,000 people vied for 500 new positions at the store. The jobs are non-union, but the wages are competitive, Sigala said. Wal-Mart says its average national hourly wage is \$9.96, and for the San Francisco market, \$11.08. The company also offers workers 401(k) retirement plans, as well as profit-sharing contributions, health care coverage and discounted shares of stock.

Councilman Terry Gregory, whose district includes the new Wal-Mart, said he has heard no negative reaction from neighboring businesses.

In other cities, most recently Gilroy, where Wal-Mart has put up "Superstores," neighboring supermarkets have raised a ruckus, saying they can't compete with the grocery operation because Wal-Mart's workers are non-union, making their operating costs lower.

"The good news is they're not putting a Superstore," Gregory said, "so no grocery."

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The NewsHour with Jim Lehrer

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**HEADLINE:** Intel Overhaul; Global Giant; War Record;  
Who Dunit?

**BYLINE:** ANCHOR: JIM LEHRER; GUESTS: SEN. PAT ROBERTS; REP. ANNA ESHOO; DAVID GERGEN;  
KATHLEEN HALL JAMIESON; CORRESPONDENTS: KWAME HOLMAN; RAY SUAREZ; SPENCER  
MICHELS; MARGARET WARNER; GWEN IFILL; TERENCE SMITH; KWAME HOLMAN

**BODY:**

**GWEN IFILL:** Good evening. I'm Gwen Ifill. Jim Lehrer is off. On the NewsHour tonight, our summary of the news. Then, the continuing flap over Sen. John Kerry's Vietnam War record. Paul Solman with the second part of his look at retailing giant Wal-Mart, "The Price of Success." A look at a new Republican proposal to break up the CIA and a Roger Rosenblatt essay on detective stories as summer reading.

**NEWS SUMMARY**

**GWEN IFILL:** President Bush condemned campaign ads by outside groups today, including those attacking John Kerry's war record. A group of former swift boat veterans in Vietnam has claimed Kerry lied about his actions in combat. Today Mr. Bush said Kerry "served admirably" in Vietnam, "and ought to be proud of his record." He said the anti-Kerry ads should stop, along with other ads that attack him. We'll have more on this story right after this News Summary. In Iraq, the battle for Najaf raged on today. U.S. tanks and troops fought gunmen loyal to Muqtada al-Sadr, and moved closer to the holy site they've occupied. After dark, U.S. air strikes bombed targets near the shrine. Some of the militants were seen leaving the city today. Over the weekend, six U.S. servicemen were killed in separate incidents across Iraq. And American journalist Micah Garen was freed ten days after being kidnapped. He said today he hopes to stay in Iraq to complete a documentary. A new plan to overhaul U.S. Intelligence drew cautious reactions today and outright opposition. Republican Sen. Pat Roberts announced the plan yesterday. He chairs the Senate Intelligence Committee. He would split much of the CIA into three organizations, and eliminate the Pentagon's control over three existing agencies. In response, former CIA Director George Tenet said breaking it up would be a "severe mistake." And in Crawford, Texas, President Bush was noncommittal.

**PRESIDENT GEORGE W. BUSH:** We've got, you know, we've got a lot of smart people looking at the best way to fashion intelligence so that the president and his cabinet secretaries have got the ability to make good judgment calls on behalf of the American people. So Sen. Roberts, a good, thoughtful guy, that came up with an idea. We'll look at it. We'll take a look at it and determine, you know, whether or not it works or not. But there's going to be a lot of other ideas but there's going to be a lot of other ideas too as this debate goes forward.

**GWEN IFILL:** Leading Senate Democrats complained they weren't even told about the Roberts plan while the John Kerry presidential campaign welcomed the plan, but said it needed bipartisan support. We'll have more on this story later in the program tonight. New rules on overtime pay for American workers took effect today. The Labor Department said the old rules were confusing and out of date. It said the new standards mean a net gain of more than one million workers who qualify for overtime pay, including anyone earning under about \$24,000 a year. But labor unions and many Democrats insisted six million employees who earn more than that would actually lose overtime pay. On Wall Street today, the Dow Jones Industrial Average lost 37 points to close at 10,073. The NASDAQ rose a little over half a point to close at 1838. Investors took little comfort from falling oil prices because of bad news from Wal-Mart. The

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retailing giant lowered its August sales forecast. We'll have the second of our two reports on the Wal-Mart later in the program. The government of Sudan today rejected a plan for the African union to send 2,000 troops to the Darfur region. The rejection came as Sudan and rebel groups opened peace talks in Nigeria. They are seeking an end to an 18-month conflict in Darfur which has killed at least 30,000 civilians, and displaced more than a million others. Police in Norway searched today for a pair of famous paintings. Edvard Munch's masterpiece "The Scream" was stolen yesterday, along with his painting "Madonna." Masked thieves walked into an open museum in Oslo and snatched the paintings off the walls. Tips poured in today, but the paintings have not been recovered. At the Olympic Games in Athens today, the U.S. Women's softball team beat Australia 5-1 to win the gold medal. And in men's track and field, the U.S. Swept the medals in the 400-meter race. Also today, American women won medals in gymnastics and freestyle wrestling. And a Russian woman was stripped of the gold medal in shot put after she failed a drug test. South Korea formally appealed today over a disputed gold medal in gymnastics. American Paul Hamm was awarded the men's all-around title last week. But on Saturday, the governing body for gymnastics ruled a South Korean should have won. The group blamed a scoring mistake, but refused to switch the gold. It said South Korea waited too late to complain. Today the Koreans appealed to sport's supreme legal court, and the U.S. Olympics Committee suggested it would approve of a duplicate medal. But gymnastics officials said that solution would not work. That's it for the News Summary tonight. Now it's on to the political fallout from the debate over the Kerry war record; examining Wal-Mart's success; overhauling the intelligence agencies; and reading detective stories.

#### FOCUS INTEL OVERHAUL

**GWEN IFILL:** The latest proposal to reform the intelligence community. Margaret Warner has that.

**MARGARET WARNER:** Republican Sen. Pat Roberts, chairman of the Senate Intelligence Committee, issued his bold proposal to split up the CIA on CBS' Face the Nation yesterday.

**SEN. PAT ROBERTS:** We just sort of stepped back from the trees, and instead of worrying about boxes and agencies and turf, just said, what would you put together now that really represents an answer to what the 9/11 Commission has recommended and what our Senate report has indicated?

**MARGARET WARNER:** Roberts' proposal, the 9/11 National Security Protection Act, would give a new national intelligence director, or NID, control over all aspects of intelligence through four new function-based divisions headed by four assistant directors. Under this plan, the CIA's three major divisions-- for clandestine operations, for intelligence analysis, and for science and technology -- would be split up, and each placed under a different assistant director, depending on its function. Democratic Sen. Carl Levin, also on the Intelligence Committee, immediately objected to Roberts' failure to consult with the Democrats.

**SEN. CARL LEVIN:** The eight people who have signed onto this proposal-- and I don't know the details in here-- are the Republican members of the Intelligence Committee. I think it would be better to start on a bipartisan basis with a bipartisan bill.

**MARGARET WARNER:** John Kerry's foreign policy adviser called the proposal "welcome" and "similar to the reforms Kerry has offered," but said it was up to President Bush to "show leadership in this effort." President Bush was noncommittal, however, telling reporters at his Texas ranch today that Roberts' idea would be considered along with others in the current debate over how to reshape U.S. Intelligence. Weighing in forcefully was former CIA Director George Tenet. In a written statement today, he said:

This proposal reflects a dangerous misunderstanding of the business of intelligence. Sen. Roberts' proposal is yet another episode in the mad rush to rearrange wiring diagrams in an attempt to be seen as doing something. It is time for someone to slam the brakes on before the politics of the moment drives the security of the American people off a cliff.

**MARGARET WARNER:** For more on his proposal, we're joined by Senate Intelligence Committee Chairman Pat Roberts, Republican of Kansas, and Congresswoman Anna Eshoo, Democrat of California. She's a member of the House Intelligence Committee. Welcome to you both.

Sen. Roberts, most of the headlines this morning in most of the papers called your proposal a plan to split up the CIA. Is that the guts of your concept here?

**SEN. PAT ROBERTS:** In a word, no. What we plan to do is we said to our staff, step back from the trees, step back from the boxes, step back from the agencies, step back from the turf battles, really try to achieve real reform with a national intelligence director if, in fact, that's the direction that you want to go. Now, no agency is so sacrosanct that it

comes before the national security of the United States. Every member of the CIA that is currently working for the CIA will continue to work in their function, whether they work at Langley behind a desk or whether they're out in the field laying their lives on the line in regards to our country and they've done a darned good job in many instances. In an Armed Services hearing we just had as of last week, I told that to the acting director, John McLaughlin. I said the snapshot of today is better than it was yesterday. But what we have done is we have put them under a different line authority.

We have realigned them so all that they've been asking for down through the years in terms of authority, more budgets, more priorities and to actually execute that authority would be accomplished under this bill. So I'm not trying to demolish the CIA by any means. I'm trying to improve their function by the people who work for the CIA today.

MARGARET WARNER: All right. I'm going to see if I can get you to explain it even further. As I read your proposal, it seemed to me what you were saying is, it doesn't matter where a particular agency or division got its start, whether it's CIA or at DOD, if it does a certain function, like collection, all those collection agencies should be in the same division and the same with analysis and so on. Give us an example of how it would work in the collection agencies. Which agencies-- and I keep using that word-- would be essentially robbed or mined to create this assistant intelligence director for collection?

SEN. PAT ROBERTS: I don't think anybody is being robbed. I think they're being enhanced. I have a chart here which I'm not going to show because it's too small and you just don't want to do that. But we have the National Security Agency, the NSA, and in that regard we already have the general in charge of that saying that he would not mind at all serving under a national intelligence director. We have the National Geospatial Intelligence Agency, and that general has said the same thing. We have the National Clandestine Service or the director of operations under collection. We have the Defense Intelligence Agency, and then we have the FBI counterintelligence and counterterrorism divisions. The FBI would still serve under the Department of Justice, but what I told the staff was, look, step back from the trees and take a look at the threat that we face today in our country, the real national security threat, and try to come up with something that if you have a national intelligence director that would give that director the line authority, the hire/fire authority, the transfer personnel authority and the budget authority to get the job done. Now what are the four components of intelligence? You have first collection and then analysis and then obviously you report that to the policy-maker. Then you have acquisition and research in regards to technology.

Then you have the final step which is the tactical intelligence that you provide the war fighter. I'm an old marine. I'm on the Armed Services Committee and I love John Warner, who is our chairman. And he does a great job. We're not going to do anything to the tactical intelligence that is provided to the Secretary of Defense with the exception we give him a four-star general that at least will be liaison between the Secretary of Defense and the National Intelligence Director.

So basically what we're doing is allowing all these people that you're talking about, about being robbed, we are enhancing their capability in terms of line-item authority so that they can do the job better.

MARGARET WARNER: Congresswoman Eshoo, I gather you couldn't hear the very beginning of his answer. Let me just paraphrase. What is wrong or do you think there is anything wrong or is there something to be said for the concept of taking, let's say, all the various divisions that are involved in the collection of intelligence-- in CIA and DOD and FBI -- and putting them under one assistant national director for intelligence?

REP. ANNA ESHOO: Well, first let me say that it is... it's welcome for Sen. Roberts to have come out with a proposal. I think that we need as many ideas as possible. Having said that, I think that this is a somewhat radical departure from the recommendations of the 9/11 Commission, which is the inspiration from which the Congress is working. Why? Because it really breaks up the entire central intelligence agency.

Secondly, as I understand it, this has not been put before the Democrats on the committee, and I think that what we do in the reform of the intelligence community, both in the Senate and in the House, should reflect the model of the 9/11 Commission. And that is that they were bipartisan. And so I think that those are some early considerations, certainly Sen. Roberts' ideas, he rolled out yesterday, most have not read the details of the proposal. I think that there is real support in the Congress for a national intelligence director, and there is a bipartisan effort going on in the Senate between Senators Collins and Lieberman. We have legislation in the House as well. But there isn't anyone that has come up with the proposal to break up the Central Intelligence Agency.

MARGARET WARNER: And why do you think that's a bad idea, just on its face?

REP. ANNA ESHOO: Well, I am very hesitant about it. I say this because I don't think that there is anything that points to that there should be a total break-up of the agency. What the failures that were documented by the investigation of the 9/11 Commission and then the recommendations they made relative to those failures were, that there was not a sharing of information a jointness that moves across the agencies. It didn't say that the CIA was totally broken down.

Now, my questions are the following: Where is the White House on this? The president said today in his own inimitable way, quote, there is a lot of ideas moving around. And so there is, I think, some confusion also. And I don't think at the end of this process that we went to end up with chaos. We're living under orange alerts now, and we need to, yes, examine all ideas and have constructive criticism which I'm attempting to offer, but I'm very hesitant about what Sen. Roberts has proposed. I have respect for him, but I don't know whether busting up the CIA is a real smart way to go.

MARGARET WARNER: Sen. Roberts, respond to that basic idea-- we've just heard it from George Tenet and others-- that it's just such a radical thing to do when we're in the midst of a war against terrorism and against al-Qaida that the CIA is to some great degree quarterbacking.

SEN. PAT ROBERTS: Every time that I have heard George Tenet-- and I hope he's still a friend of mine. He made very strong statements, and so did Anna, who is also a friend of mine and a very valued member of the House Intelligence Committee, and we served together on the House Senate investigation in regards to what happened with 9/11.

We're not breaking up the CIA We're not really breaking up that old gang of mine. Every time they've come to us before the Senate Intelligence Committee they've asked for more authority. They've had that authority since 1947. We have had, since 1949, 38 attempts to reform the intelligence community. This is number 39. We can't afford to wait any longer with all of the "oh, my God" hearings that we have in the Senate and the House-- "oh, my God, how did this happen?"-- and after 9/11.

This is truly real reform. What we take are the functions of the CIA personnel who still work in those functions, they simply are realigned to a different director who will give them more authority, more budget ale tension, the same kind of authority that George Tenet wanted every time he came before the committee and had since 1947-- not him but every central intelligence agency director. So we are not breaking up the CIA I can also respond to the partisanship in regards to lack of sharing this, in regards to a consensus with Democrats. But in the interest of time I'll let you ask me that again.

MARGARET WARNER: Well, I was going to ask you briefly on that because I want to get back to the congresswoman. Briefly, why didn't you bring in any of the Democrats on your committee, only the Republicans?

SEN. PAT ROBERTS: Well, Number one, I regret that that happened because of the time frame. We only have one more week before the Republican Convention. Then there's going to be eight or nine bills introduced at least on the Senate and the House side. We had eight members on the Republican side who said we ought to go with this bill, plant the intelligence flag at least as a marker. It is not written in stone. If anybody has concerns, they can certainly add or detract.

I talked to Sen. Rockefeller about it. We've been in close contact. He's been in contact with his members in regards to the 9/11 Commission. We're trying to work that out. Basically he had the bill on Friday. We had a disagreement. We had some meaningful dialogue. I thought we ought to introduce the bill as a marker. He did not. I think we can get back and have a consensus project.

MARGARET WARNER: All right. Congresswoman Eshoo, do you think this bill could serve at least as a "marker," a starting point?

REP. ANNA ESHOO: Well, I think that it is... I prefer, Margaret, the bills that are out there that do the following: That we have a national intelligence director. Why? Because there needs to be one person with very clear lines of authority and responsibility, and the budget and personnel authority must ride with that position. Otherwise, the person in that position would be essentially a toothless tiger. So I think that that's a very important starting point.

I also think that the White House should release the report that Brent Scowcroft put together I believe in 2002 for a full examination of the ideas that he had. He's respected on both sides of the aisle, and we need to see and examine that because this is once in a half century opportunity for us. I do think...

MARGARET WARNER: Congresswoman...

REP. ANNA ESHOO: I do think I still think that my friend Sen. Roberts' proposal is a real departure from those bills that are... that have been introduced so far. I also think that when Porter Goss comes before Sen. Roberts' committee for the nomination hearings that it will make for a very, very interesting conversation and debate as director of the CIA between his bill and the bill that Porter Goss introduced on June 16 which gave everything to the CIA director including all budget authority.

MARGARET WARNER: All right, and we are going...

REP. ANNA ESHOO: I'll look forward to that discussion.

MARGARET WARNER: We all will and thank you both very much.

FOCUS WAL-MART GLOBAL GIANT

GWEN IFILL: Now part two of our report on Wal-Mart. On Friday, our business correspondent Paul Solman of WGBH-Boston looked into the reason behind the huge success of Wal-Mart. Tonight he covers the debate over the costs of that success.

PAUL SOLMAN: Wal-Mart. From one northwest Arkansas store in the 1960s it's grown into the largest company in the history of the world. With annual sales larger than the economy of Saudi Arabia, profits greater than Exxon Mobil, productivity so high that Wal-Mart accounts for 10 percent of total U.S. productivity growth, prices so low that some hundred million U.S. customers shop at a Wal-Mart every week of the year. (Cheers and applause) But when you have a company this focused on profits and productivity, says Berkeley economist Harvey Shaiken:

HARLEY SHAIKEN, University of California, Berkeley: What you wind up with is a fierce competitor where suppliers, workers and even communities become the victims of that competitiveness versus its beneficiaries.

PAUL SOLMAN: Recently Wal-Mart supposed victims have gotten a lot of press. This summer, the world's largest company was slapped with the world's largest lawsuit: A class action alleging that Wal-Mart favors men over women-- part of an overall strategy, says lawyer Brad Seligman, to keep wages low.

BRAD SELIGMAN: They want to be the low-cost leader. If you can depress the wages of 70 percent of your work force, you've saved some serious money.

PAUL SOLMAN: Some serious money which Wal-Mart then passes on to its customers. Which is great, right? Or is it? This story looks at the key charge raised by critics: That the company's profits and productivity come at too high a cost -- a cost borne mainly by exploited workers.

HARLEY SHAIKEN: Wal-Mart has a ruthless focus on productivity and an even more ruthless focus on wages. The company's successful, but workers are entering the working poor versus the middle class.

PAUL SOLMAN: Labor economists Harvey Shaiken and others charge that Wal-Mart not only pays its workers poorly, less than \$10 an hour, but provides health care to less than half its 1.3 million U.S. employees. Berkeley researchers Ken Jacobs and Arin Dube say that means Wal-Mart's been shifting the health care costs of its workers to taxpayers.

KEN JACOBS: When jobs don't provide a living wage or don't provide health benefits, someone has to make up the difference. That usually is the taxpayers. It means people are forced to rely on public services, public health care programs to make ends meet.

ARIN DUBE, University of California, Berkeley: We have found that Wal-Mart employees take up 40 percent more in public assistance like food stamps or public health programs than other retail workers in California.

PAUL SOLMAN: Dr. William Walker who runs the county health system in Contra Costa was puzzled at first by the volume of Wal-Mart workers he saw.

DR. WILLIAM WALKER: How could you be employed by a large employer and be coming to our clinic for the uninsured? What's the story here? And they basically said that either in their case they didn't qualify for health benefits or the health benefits were so high that they couldn't afford them, meaning that we take on the obligation of providing care to Wal-Mart employees and we are under our own financial crisis right now.

PAUL SOLMAN: Wal-Mart's response?

MONA WILLIAMS: More than two-thirds of our people are either college students, first jobs, learning to work, they're senior citizens who are supplementing an income that they already have or they are second-income earners for that family meaning that many of our folks are not trying to support a family on wages. They already have health care through another source, either through their family, through a working spouse, through a retirement program or through Medicare, for example. That's who our jobs are designed for. Those are the folks that we recruit.

PAUL SOLMAN: But such recruitment policies worry the likes of Maria Alegria, the former mayor of Pinole, California, which she says is about to be flanked by new Wal-Marts on either side of town.

ARIA ALEGRIA, City Council, Pinole, California: We spent 12 years and over \$20 million of our public money to revitalize this town. What you'll end up seeing is shops closing, people leaving, and we're going to go back to where we started. For example, this bank building that we have rehabilitated, it's a flower shop. But, say, Wal-Mart comes in and they offer all these cheap flowers, what is that going to do to that business?

PAUL SOLMAN: The answer, to paraphrase John Donne, the gong will toll for the flower cart. In business for 40 years, five employees here earn \$15 an hour plus benefits, more than half again the Wal-Mart wage. Owners Roseanne Stevenson and her brother say flanking Wal-Marts would kill their shop. Her brother, Mike Jadryev, says,

ROSANN STEVENSON: It would be gone very shortly.

MIKE JADRYEV: Right.

ROSANN STEVENSON: Very shortly.

MIKE JADRYEV: When they open up it takes the breath away from the small businesses.

REV. PHILIP LAWSON: I think Wal-Mart represents, from my perspective, perhaps the worst of capitalism.

PAUL SOLMAN: Rev. Philip Lawson helped lead a local referendum to help block Wal-Mart from coming to town.

REV. PHILIP LAWSON: Wal-Mart comes in, lowers the standard of living of the working people by the system of low wages and no benefits and pushing people to find outside sources of income in order to match up or take care of their health care. So Wal-Mart lowers everything.

PAUL SOLMAN: But the anti-Wal-Mart referendum failed, which wouldn't surprise Ronald Reagan's former chief economist. To free market enthusiasts like William Niskanen, Wal-Mart is the best of capitalism.

WILLIAM NISKANEN: Without asking for subsidies with no special favors, no tax preferences, no regulatory preferences, that should be regarded as a model of business and not a target for political and legal action. This is a company that has grown from nothing to being the largest private employer in the country. You don't do that by working conditions that are unattractive relative to other places to work.

MONA WILLIAMS: Any time we have a job opening, we open a new store, we have thousands of applicants for a few hundred jobs.

PAUL SOLMAN: And these applicants are the very people who shop at Wal-Mart because it offers goods they couldn't get elsewhere and because its prices are always lower, always being rolled back with such manic bounce by the little smiley icon in its TV ads.

AD: He's the rollback man. He's the rollback man.

PAUL SOLMAN: But to Wal-Mart detractors those low prices are actually working against the folks who supposedly benefit from them. Sociologist Kim Voss.

KIM VOSS: As they buy these cheap goods they are shopping against their own interest as a group.

PAUL SOLMAN: That's because?

KIM VOSS: That's because they are actually only able to buy cheap goods that other workers make for ever-cheaper prices. They then themselves are paid ever more cheaply. So workers are actually shopping against themselves. As they act as consumers, they are undoing their own wages.

PAUL SOLMAN: It's a race to the bottom, says Voss. The world's largest companies muscles suppliers to lower their prices so Wal-Mart can lower its to consumers but in so doing, Wal-Mart's critics charge, it drives its suppliers to



the cheapest and most exploited labor on earth like the Honduran factory in which young girls made Kathie Lee Gifford brand clothing for Wal-Mart in the 1990s. The publicity created a furor and Gifford, a talk show host, broke down on national television.

**KATHIE LEE GIFFORD:** Millions of dollars have gone to help children, and I truly resent this man impugning my integrity.

**PAUL SOLMAN:** "This man" is Charlie Kernaghan, who has become one of Wal-Mart's most prominent critics.

**CHARLES KERNAGHAN:** We say to Wal-Mart, "are you proud of these factories?" They say, "of course we are proud of these factories."

**PAUL SOLMAN:** Kernaghans made a film featuring factories in Bangladesh of which few Americans would be proud. Women who work there say they're paid 17 cents an hour or less. Mahamuda Akter says she had to work 15 straight 19 1/2-hour days in the last month alone.

**MAHAMUDA AKTER, Wal-Mart, Bangladesh (Translated):** We can sleep on the ground in the factory but we have to start working again at 7:30 A.M. If there is any stop in the work, they start yelling. If we do anything, they start beating us a lot - - almost torture. They go too far. I guess that my fate, I have to work hard to eat.

**PAUL SOLMAN:** Akter, now 18, she had been sewing clothes for Wal-Mart for five years which prompted Kernaghan to make the point at the heart of the anti-Wal-Mart case.

**CHARLES KERNAGHAN:** Wal-Mart claims to have a commitment, an advertising commitment, even a rollback prices constantly. Well, what they're doing is they're rolling back human rights standards all around the world. They're rolling back wages and benefits all around the world.

**PAUL SOLMAN:** But, no, says Wal-Mart. It's trying to bring jobs and western standards to emerging economies.

**MONA WILLIAMS:** We have a group of over 100 people that do 15,000 inspections a year. We want to make sure that our suppliers comply with local country codes, with human rights standards, that people are not under age, that they're paid well, that they're living in good dormitories. I was in Shinjen just a couple of weeks ago during part of those tours, doing factory inspections unannounced.

**PAUL SOLMAN:** This is in China.

**MONA WILLIAMS:** Yes, in China, being committed to help those factories to make them better. We're raising the working standards for all of them.

**PAUL SOLMAN:** Mona Williams thinks Wal-Mart is a force for the better, but shareholder activist Conrad Mackerron warns that visitors can be hoodwinked by factory management, that workers often fear telling Wal-Mart inspectors the truth. Mackerron says rivals like the Gap and NIKE have agreed to use independent monitors.

**CONRAD MACKERRON:** They have gone out and actually issued public reports about, in detail, the extent to which their factories are in compliance with their codes of conduct. Yet Wal-Mart seems to be able to get away with outdoing those things.

**PAUL SOLMAN:** How come so little has changed? I mean, ten years ago Wal-Mart was the place where Kathie Lee Gifford had her clothing line.

**CONRAD MACKERRON:** The public is fickle. I mean, people will tell you in a public opinion polls that if they learn that these goods are made in sweat shops they'd be more likely not to shop there. In reality we don't see that being the case.

**PAUL SOLMAN:** That in the end sums up the ambivalence over Wal-Mart: Great prices, productivity and products but at what cost? It's an ambivalence one finds even at Wal-Mart itself.

**PAUL SOLMAN:** Are these your brand new Wal-Mart bikes?

**MAN AND WOMAN:** Yes.

**PAUL SOLMAN:** And you paid how much for it? Can we see here?

Sure.

PAUL SOLMAN: \$266.61 with tax.

WOMAN: With tax, for helmets and two bikes and a lock.

PAUL SOLMAN: \$266 for the whole deal.

WOMAN: Yes.

PAUL SOLMAN: Do you worry that this might have been made by people in china who weren't even making the minimum wage there? The minimum wage in china I found out yesterday, is 31 cents an hour. And there are suppliers, factories where people make 17 cents an hour.

WOMAN: We had that discussion. We said we could go... this is kind of supporting lower-wage, but on the other hand we wanted to save money too. So we've got to make a living.

PAUL SOLMAN: So it was a struggle?

WOMAN: It was a struggle. We did talk about that.

PAUL SOLMAN: You came down on the side of shopping here at Wal-Mart.

WOMAN: We ended up here. We got what we wanted.

PAUL SOLMAN: They got what they wanted. Or if you believe Wal-Mart's critics, maybe in the long run it won't have been what they wanted. But regardless of what you believe, such shoppers are facing a question more and more Americans confront in the age of high technology and globalization: What price productivity? Wal-Mart, because of its size and scope, has become a symbol for that question and so it's America's favorite store that's also America's favorite store to bash.

#### UPDATE WAR RECORD

GWEN IFILL: Now, to the debate consuming the presidential campaign, John Kerry's actions during and after the Vietnam War. We begin with Kwame Holman.

MAN: I served with John Kerry.

MAN: I served with John Kerry.

KWAME HOLMAN: For the past three weeks, a 60-second TV ad, airing in only three states, has been the primary focus of the presidential campaign. The ad, critical of John Kerry's Vietnam combat record, was produced by a group called Swift Boat Veterans for Truth, and partly funded by a top Republican donor in Texas. A second ad begins airing this weekend. Kerry and running mate John Edwards repeatedly have called on President Bush to condemn the ads.

SEN. JOHN EDWARDS: These false attacks are tied directly to President Bush and his friends. The clock is running. The American people deserve to hear directly from the president of the United States that these ads should come off the air.

KWAME HOLMAN: But the president only would say he was against all unregulated political ads. When asked at his ranch in Crawford, Texas, today, the president came as close as he has to rejecting the swift boat ads outright.

PRESIDENT GEORGE W. BUSH: I said this kind of unregulated soft money is wrong for the process. And I asked Sen. Kerry to join me in getting rid of all that kind of soft money, not only on TV, but used for other purposes, as well. I frankly thought we had gotten rid of that when I signed the McCain-Feingold Bill. I thought we were going to once and for all get rid of a system where people could just pour tons of money and not be held to account for the advertising. And so I'm disappointed with all those kinds of ads.

REPORTER: When you say that you want to stop all...

PRESIDENT GEORGE W. BUSH: All of them. That means that ad; every other ad.

KWAME HOLMAN: Meanwhile, John Kerry was set to begin a counter attack today, with ads accusing the Bush campaign of using smear tactics.

SPOKESMAN: American soldiers are fight fighting in Iraq. Families struggle to afford health care. Jobs heading overseas. Instead of solutions, George Bush's campaign supports a front group attacking John Kerry's military record.

KWAME HOLMAN: And over the weekend, there were more developments.

SPOKESMAN: Cutoff limbs, blown up bodies.

SPOKESMAN: That was part of the torture was to sign a statement that you had committed war crimes.

KWAME HOLMAN: Retired Air Force Gen. Ken Cordier, a Vietnam veteran who appears in the second swift boat veterans spot, resigned as a volunteer adviser to the Bush campaign. In yesterday's Chicago Tribune William Rood, the paper's editor, who served as commander of a swift boat alongside Kerry's, gave a 1,700-word personal account of what happened the day Kerry earned one of his five combat medals, the silver star. Rood said: Kerry's critics armed with stories I know to be untrue have charged that the accounts of what happened were overblown. The critics have taken pains to say they're not trying to cast doubts on the merit of what others did, but their version of events has splashed doubt on all of us.

But last night on CNN, former Republican Sen. Bob Dole raised his own doubts about Kerry's commendations.

BOB DOLE: As far as I know, he's never spent one day in the hospital. I don't think he draws any disability pay. He doesn't have any disability and boasting about three purple hearts when you think of some of the people who really got shot up in Vietnam.

KWAME HOLMAN: Despite the limited TV run of the anti-Kerry ads, they've received heavy news coverage, and coincide with a CBS News poll that shows Kerry has lost some support among veterans nationwide.

GWEN IFILL: Joining us now to discuss the political impact of the swift boat controversy are David Gergen, advisor to four presidents and now professor of public service at Harvard's John F. Kennedy School of Government, and Kathleen Hall Jamieson, dean of the Annenberg School for Communication at the University of Pennsylvania.

Dave Gergen, why is this story still a story?

DAVID GERGEN: Well, I think, Gwen, in the beginning many of us were surprised it became such a hot story. The national mainstream media, and in particular the print press took a look at it and said this is not something we believe is true, and therefore they didn't cover it very much.

But it became a major story on cable television. It spread. Annenberg School picked up in their survey, as Kathleen will tell us, I'm sure, that it was widely seen after it became splashed all over cable television shows and became a center of dispute.

And of course there were some people who had an interest in stirring it up. Now that it's taken some toll on Sen. Kerry as that CBS poll shows that he's lost some support among veterans, the Kerry people have no choice but to fight back. They have to put a dagger into this so they can move on in their campaign.

GWEN IFILL: Kathleen Hall Jamieson, tell us more about the poll that the Annenberg School took that showed how many people were paying attention to this.

KATHLEEN HALL JAMIESON: The National Annenberg Election Survey showed that over half of the people in the country by the middle of last week had either seen or heard about the ad despite the fact that the ad aired only in three states and with a very small time buy. What this suggests is that the cable talk, the cable news as well as political talk radio, have managed to increase the likelihood that people have heard and seen an ad that didn't get much buying power behind it.

One of the things that we found was high cable viewers, more likely to have seen and heard about, high political talk radio listeners and political talk radio is largely conservative, much more likely to report seeing or hearing.

We also found what you would predict: That is that political partisans drew the reasonable inference from their own ideology that either the ad was definitely true, the Bush supporters, or definitely false, the Kerry supporters.

But importantly among those reported seeing or hearing the ad there was higher belief in the statement that Kerry hadn't deserved all of his medals than among those who didn't report seeing or hearing about the ad.

GWEN IFILL: So the practical political... let's continue on that for a moment. Obviously dust is swirling and doubt has been raised about John Kerry's war record. What is the practical political effect? Dave Gergen just alluded to the CBS Poll and Kwame did as well in which he lost ground with veterans. Is there a direct connection?

KATHLEEN HALL JAMIESON: We don't know if there's a direct connection because the CBS Poll didn't tie that finding back to seeing or viewing the ad but what we do know from analysis of how communication functions with audiences is that if you have extended discussion about whether or not someone earned something, you're creating doubt.

So, for example, if we say let's have a discussion about whether Kathleen Jamieson is a murderer and David goes on television and says she's definitely not. We have absolutely no proof. The fact that we've had that discussion, let's say repeatedly over cable for a week-and-a-half and political talk radio, might make you more wary the next time you see me with a paring knife.

GWEN IFILL: Well, David Gergen, lets talk about -- not so much about Kathleen Hall Jamieson's character but John Kerry's character. Is that what this debate is really about? Is it about his record or is it about that old character question coming back in a different guise?

DAVID GERGEN: I think it's more about George Bush's character than John Kerry's. Clearly what they're trying to do here is that Kerry's war record was the bright, shining asset in his campaign. And the Republicans are trying to, you know, sow or build a large cloud, a dark cloud over that so it doesn't shine quite so brightly. I think in the short term they have succeeded.

As Kathleen knows, these negative ads often do work. The public says "we hate negative ads. We don't like to see these things," but they then they watch them. Just like the public said we don't want to see anymore O.J. Simpson, we're sick of this on television, and then everybody turned the television sets on to watch it.

There is the tendency with these negative ads for people to see and to hear and to register in the short term, I think in the short term I think the president has gained. But I will tell you, Gwen, in the long term, this may backfire on him. There are some real dangers here for the Republicans in this story.

GWEN IFILL: So when the president says, as he did today, listen, I just think all these ads are bad, that's not arm's length enough?

DAVID GERGEN: No. No. I think that there is a very strong danger here for the White House that a lot of voters will conclude-- because, of course, the evidence is coming out in the print press is there's very little... there isn't anything to support these allegations in this first ad. And that the ad looks more like a smear.

Now the danger for the president is if people conclude this was a below-the-belt tactic that was intended to smear John Kerry and that it plays into a pattern of going after John McCain in 2000 and going after Max Cleland in 2002, that may well backfire on the White House, and that's the danger that they face. Short term they've got a gain. Long term they could pay a price.

GWEN IFILL: Now, Kathleen Hall Jamieson, that word smear is the one that the Kerry folks have been using in Internet advertising and other places. Does that work? Does that punch through with viewers who have been paying attention to these ads? Is there any way to know in the same way that the original accusations do?

KATHLEEN HALL JAMIESON: The interesting thing about this is that during the time that the ad was being aired sometimes full screen on cable talk shows without a rebuttal ad from the other side, the Kerry representatives were coming in to try to rebut the charges, the news paired the two together. But ultimately that's a losing proposition for the Kerry campaign because the ad has repetition behind it, repeatedly aired in cable. It's visual. It's evocative; its got evocative music.

But now the tables are starting to turn. When the Washington Post did the first investigative piece, found evidence that some of those claims aren't true, the New York Times then came into play, journalism, largely print, has been moving forward fairly aggressively to check these claims against the documentary evidence, and Kerry's case has been built substantially as a result. That helps turn the news agenda to benefit Kerry.

The night that the Washington Post piece aired the Kerry people pulled their spokespersons off the air and as a result cable was left with swift boat statement from one person representing a swift boat veterans and on the other side a Washington Post reporter. That suggests a danger for the Bush campaign -- credible news information suggesting that there are problems with that ad in an environment which the Kerry counterattack says this is part of a pattern, linked to previous attacks on McCain and distraction from issues we should be talking about.

The question then becomes: does the public say, "yes, we should be talking about those issues, this is a distraction and yes we grant the pattern?" If so, net damage potentially to President Bush.

GWEN IFILL: Well, David Gergen, so say that they decide that maybe this first round of ads questioning what his behavior was in these particular situations in which medals were won, they set that aside and they turn as they have in the latest ads to questioning whether John Kerry should have been campaigning against the war. His activity was Vietnam Veterans Against the War when he came home. Does that pose the same danger for John Kerry, especially if he takes what it was -- two weeks to respond?

DAVID GERGEN: Well, I do think it does pose some danger for John Kerry. It strikes me that his actions once he came home are subject for legitimate debate about whether it was appropriate or not to go after the war. And he's going to have to take that on too. He's going to make a speech tomorrow apparently that's going to go after this group and make his arguments and he should take on both sides of this.

But let me go back to something which Kathleen also said. The other danger here for the Bush team and for everyone and John Kerry included is that the public is going to very rapidly get fed up with a campaign which is debating something that happened 35 years ago. Nobody wants to debate a war in Vietnam when we should be debating Iraq. If either side is seen as trying to create a long-term diversion in this campaign people are really going to get angry very fast.

GWEN IFILL: You anticipated my very next question, David, which is: are there examples in the past that you can cite in which debating the past backfired?

DAVID GERGEN: Well, you can't find many, I guess, that are... nothing comes to mind in that.

GWEN IFILL: Didn't it work for Michael Dukakis, for instance, when Willie Horton which was part of his past was raised, it hurt him. Hasn't it worked with other candidates before?

DAVID GERGEN: Oh, there's no question that going after someone's past can hurt that candidate if you do it effectively. Michael Dukakis did not answer quickly or effectively at that time.

I think that John Kerry has an opportunity to dig into the past here for some of the people involved in the swift boat thing. For example, John O'Neill who is involved for the Swift Boat Veterans for Truth -- as they call themselves -- was first recruited by Chuck Coalson of the Nixon White House to go after John Kerry way back in the 1970s. We all remember what kind of dirty tricks came out of that office then. There are opportunities both ways.

My sense of where this is going right now is that it's going to play through the end of this week and then the subject is going to change because the Republican Convention is going to switch subjects on to, you know, the president and the Republicans in New York. And this will have become an episode in the past but it will have taken a pint of blood out of John Kerry. The real issue now is can he even the score? Can he get back in there by convincing people that this was essentially a smear? I think that's the challenge he has tomorrow and for the rest of this week.

GWEN IFILL: So, Kathleen Hall Jamieson, you're an average voter trying to decide what to make of this. How do you decide what to believe based on all this conflicting information?

KATHLEEN HALL JAMIESON: Well, the first thing to ask is what matters to me in making a voting decision? What are the issues I care about and how relevant do I consider the biographical detail and the war records or the military service records of these two candidates? If one answers the question by saying "that's the past, they both served honorably end of discussion." I'm interested in the future, one makes a very different kind of decision. Kerry is inviting that move right now.

The problem is, as David notes, he is vulnerable to the move that's being made in the second swift boat ad. If I could go back for a moment to the Willie Horton ad from 1988 produced by National Security Political Action Committee, that worked for two reasons. One, Dukakis didn't rebut. But two, the press didn't investigate to find out what the facts actually were.

In this case, the press appears to be more aggressive in determining what is fact in these circumstances -- as it was when charges were raised about President Bush's military service.

GWEN IFILL: Kathleen Hall Jamieson and David Gergen, thank you both very much.

KATHLEEN HALL JAMIESON: You're welcome.

DAVID GERGEN: Thank you.

ESSAY WHO DUNNIT?

GWEN IFILL: Finally tonight, essayist Roger Rosenblatt speaks of the summertime pleasure of reading detective stories.

ROGER ROSENBLATT: With summer comes the reading of detective stories because there's more free time to give to what is probably our favorite kind of fiction. Yet the oddity of heroic, honorable detectives is that one never sees the real-life models for them. This is not true of noble fictional doctors for whom life offers prototypes or noble soldiers or miraculous to say noble lawyers and journalists. But the real-life detectives are keyhole peepers in divorce messes, not heroic, not honorable and certainly not the protagonists of beloved books. Why then have we created a hero without models solely out of our wishful imaginations? Because, my guess is, the detective is a person assigned to pursue justice. Justice is that damned elusive pimpernel. We glom on to it in fiction because we get so little of it in life.

SPOKESPERSON: We the jury in the above entitled action...

ROGER ROSENBLATT: In life one more often sees justice avoided or justice delayed or compromised so drastically that injustice takes its place. The O.J. Simpson trial left most observers feeling that justice had been cheated. The feeling returned recently when O.J. gave TV interviews on the 10th anniversary of his trial. The Kobe Bryant case. The Scott Peterson case. The case of the domestic diva. How close does one come to satisfactory answers to the question basic to all detective stories: Who done it? Who done what? In the wider view, what sort of justice awaits Saddam Hussein? Was Iraq a just war? Will there be justice for those lost in the Sept. 11 attack? Whatever else it does, the 9/11 Commission eventually is about justice. Helpless as we are in the presence of justice denied in real life, a satisfying power is granted whenever we bury our noses in a good detective story. Moral satisfaction accounts for the success of the genre. Sherlock Holmes, Filo Vance, Lord Peter Wimsey and Nero Wolfe labor at the high end of elegance. Miss Marple, Poirot, Mr. Moto in the middle and at street level or below, Philip Marlowe, Lou Archer and Sam Spade. However different their locales or their accents, all have in common this wonderful and fanciful idea that the bad guy gets caught and the good guy triumphs. What's more, this idea is treated touchingly as rational. Equally satisfying is the chase itself, the hunt for the criminal through a maze constructed to confuse and discourage. How much fun there is in the pursuit at every level of sophistication. On TV no policeman sleuth is more lovable than the disheveled Columbo who asks in our behalf.

COLUMBO: I just have one more question here.

ACTOR: I said no u-turn here.

ACTOR: That's what you said no u- turn here.

ROGER ROSENBLATT: In movies Charlie Chan was ripe for parody but he was immensely popular in spite of the caricatured black chauffeur and his various numbered children assistants because he represented a decent and orderly conclusion to a crummy and untidy problem. This summer detective stories may be more in demand than usual. If one is looking for a time when one feels out of control of one's world or of one's fate, there's no time like our present. Prospects for rational and equitable solutions seem kind of dim but not in these stories, these scary tales we can hold in our hand when the wind kicks up and the moon slips behind clouds and the windows rattle. Then Sam or Sherlock or Miss Marple will look a culprit straight in his guilty eyes and say, "got you." And we will sigh with rare relief. I'm Roger Rosenblatt.

RECAP

GWEN IFILL: Again, the major developments of the day: President Bush condemned campaign ads by outside groups, including those attacking John Kerry's Vietnam War record. U.S. troops in Iraq moved closer to a holy shrine occupied by gunmen in Najaf. And new rules on overtime pay for American workers took effect. A small correction before we go, Kathleen Hall Jamieson is the director not the dean of the Annenberg School of Communication at the University of Pennsylvania. We'll see you online, and again here tomorrow evening. I'm Gwen Ifill. Thank you, and good night.

LOAD-DATE: September 9, 2004

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The Post-Standard (Syracuse, NY)

August 15, 2004 Sunday Final Edition

**SECTION:** LOCAL; THIS WEEK

**LENGTH:** 478 words

**HEADLINE:** LAST DAY TO BID ON STERLING FESTIVAL

**BYLINE:** By Pam Greene Staff writer

**BODY:**

Here's a sample of events expected to make news this week:

Today

Today, we find out how many shillings are in cyberspace.

The auction to sell the Sterling Renaissance Festival on eBay ends, as does this season's festival. As of Friday, 52 people had bid. The highest bid was \$1,199,100.

Gerald and Virginia Young, who started the festival in northern Cayuga County with their uncle in 1977, are ready to retire and want to sell.

Monday

The country's best equestrian jumper, Beezie Madden, of Cazenovia, arrives in Athens for the Olympic Games. Madden is the only Syracuse-area resident to compete in the Olympics. She still has a few days to enjoy souvlaki, though: Her first competition is Aug. 22.

Tuesday

If your children have been oddly quiet and studious over the past few days, they probably haven't undergone a personality shift. They may be cramming for the state Regents exams. Many teenagers will take the dreaded tests Tuesday and Wednesday.

You still have time to catch 10 more Syracuse SkyChiefs home games. The SkyChiefs play Scranton at 7 p.m. at P&C Stadium.

There's also a free Joe Whiting concert at 7 p.m. at the gazebo at North Seneca Street and Erie Drive in Weedsport.

Wednesday

Auburn resident Sean Cator will perform classical piano music at noon at Willard Memorial Chapel in Auburn.

Cator is a senior studying music education at Ithaca College. Donations from the concert will be used to maintain and restore the chapel at 17 Nelson St.

Thursday

The yellow rollback happy face may be the only one smiling as the Salina Planning Board continues its public hearing on a proposed Wal-Mart Super-

**Center.**

Wal-Mart plans to build a 205,000-square-foot store on 35 acres along Route 57 at the Liverpool Bypass. Hundreds of Liverpool, Clay and Salina residents have expressed their opposition.

The hearing continues at 7 p.m. at Salina Town Hall.

**Friday**

One of the largest antique shows in the Northeast returns to Central New York.

The Madison-Bouckville Outdoor Antique Show, on Route 20 in the center of Bouckville, begins Friday with vendors giving eager customers a sneak peak at their merchandise before the show officially begins Saturday. The early bird tickets are \$40 per person or \$75 per couple and include a weekend pass.

The price drops to \$7 for a weekend pass Saturday and Sunday. Day passes are available after 9 a.m. Saturday for \$6.

For more information, call 824-2462.

**Saturday**

The 24th annual Pottery Fair of the Syracuse Ceramic Guild is set for 10 a.m. to 5 p.m. Saturday and Aug. 22 at Stone

Quarry Hill Art Park in Cazenovia.

The event features pottery, sculpture and raku designed by 50 guild artists. There will be demonstrations of pottery techniques, and children may participate in hands-on projects. Admission is \$2. Children 12 and under get in for free.

**LOAD-DATE:** August 17, 2004



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The Ledger (Lakeland, FL)

August 8, 2004, Sunday

**SECTION:** News; Pg. A23

**LENGTH:** 1019 words

**HEADLINE:** LAKELAND ELECTRIC FINDS IT PAINFUL TO PASS 100

**BYLINE:** LONNIE BROWN The Ledger

**BODY:**

The back corner of the Sam 'n' Ella Cafe was about to become a little brighter. The members of the Coffee Guzzlers Club had asked our waitress, S. Lois Molasses, to bring over some kitchen matches to light the 100 candles on the cake.

We were going to celebrate Lakeland Electric's birthday. The city-owned utility is 100 today. (The City Council agreed to buy the utility for \$ 7,500 by a 5-2 vote Aug. 8, 1904.)

Meanwhile, Nevermore, the club's pet raven and mascot, sat beside an icing-covered cupcake. He had a rolled-up \$ 100 bill stuck in its top like a candle, and on top of the bill, he'd glued a shiney penny standing on its edge to serve for the flame.

I could stand it no longer. "All right," I said, "I'll take the bait. What's with the cupcake?"

Quoth the Raven: "You can celebrate 100 years. I'm celebrating the \$ 100.01 mark."

Ah, yes. It was clear now.

In the same year LE turns 100, the utility also crossed another milestone -- one that it has long avoided. City commissioners changed the fuel adjustment this month to reflect higher fuel costs and anticipated increases in the coming year.

The cost of 1,000 kilowatt-hours will now be \$ 100.01 -- the first time that the benchmark amount has reached the \$ 100 level.

The total price wasn't added up when commissioners voted on it, but was listed as the base price for 1,000 kwh and the added \$ 6.50 for fuel. Ledger reporters didn't notice that the total cost had broken into triple digits until our art department put the chart together and the new total became obvious.

It must have been a "Doh!" moment at City Hall and LE offices when someone noticed it there.

Surely if someone had added it up beforehand, the amount requested for commission approval for the fuel adjustment would have been \$ 6.48 -- two cents less than what was approved. That would have brought the total for 1,000 kwh to \$ 99.99.

That would have been a cross between the K-Mart blue-light special and the Wal-Mart Zorro-caped smiley face that rolls back prices.

Its like gasoline prices. You might tell someone you paid \$ 1.89 for gasoline -- when the total for 10 gallons came to \$ 18.99 instead of \$ 18.90 because of the extra nine-tenths of a penny gas companies tack on the end.

Plus the \$ 39.99 pair of sneakers cost less than the \$ 40 ones.

Robert Brenner, a California-based consultant on pricing strategy and tactics, said consumers who are exposed to a continuous flow of prices tend to store only the first few digits of a number. So the \$ 4.99 price tag will be recalled as one of "about \$ 4," or, at the most, \$ 4.90.

Brenner's research found that consumers lop off numbers rather than round them up because of memory-processing time: Rounding up requires a decision -- albeit an obvious one -- of what number to round up to. Storing the first few digits requires no decision making and shortens the brain's processing time.

Stores also use odd-ending prices for other reasons. Kenneth Wisniewski and Robert Blattberg, of the University of Chicago's Center for Research in Marketing, found that when margarine costing 89 cents was reduced to 71 cents, sales increased by 65 percent. But when the price was dropped an additional two cents to make it 69 cents, volume increased by 222 percent.

Tinkering with the fuel adjustment so 1,000 kwh costs \$ 99.99 isn't going to cause consumers to increase their power consumption. But it looks a little less -- oh, heck, why not? -- shocking (you knew it was coming sooner or later, didn't you?) than \$ 100.01.

While we're on the "prices ending in nine" subject: Interestingly, the practice is said to have developed as a way around employee theft before the days when sales tax started creating odd prices. If an item cost \$ 10, the employee could simply take the money from the customer and pocket it when no one was looking. An item priced at \$ 9.99 required opening the cash register, thus recording the sale, and making change.

Scot Morris, author of "The Book of Strange Facts and Useless Information," credited Melville E. Stone, publisher of the Chicago News, with creating the 99-cent ending in 1876. That's when, wrote Morris, Stone "decided that what Chicago needed was a penny newspaper to compete with the nickel papers then on the stands. But there was a problem: with no sales tax, and with most goods priced for convenience at even-dollar figures, there weren't many pennies in general circulation.

"Stone understood the consumer mind, however, and convinced several Chicago merchants to drop their prices -- slightly. Impulse buyers, he explained, would more readily purchase a \$ 3.00 item if it cost only \$ 2.99. Shopkeepers who tried the plan found that it worked, but soon they faced their own penny shortage. Undaunted, Stone journeyed to Philadelphia, bought several barrels of pennies from the mint, and brought them back to the Windy City. Soon Chicagoans had pennies to spare and exchanged them for Stone's new paper."

#### CANDIDATE NAMES SPELL ...

Last week's column on anagrams dealt with rearranging all the letters in the names of candidates to come up with various phrases. Now one candidate's campaign manager -- who's no longer his campaign manager -- is in the news.

Paul David "Bongo" Hamelryck was arrested at the end of the month and charged with grand theft. He confessed to stealing a computer from the Polk County Supervisor of Election's Office to get an advantage over competition, police said.

Hamelryck was managing the campaign of Rusty Marconi, a Republican in a nine-way race to replace retiring Polk County Commissioner Neil Combee. Marconi said he accepted Hamelryck's resignation the next morning.

Asked about Hamelryck's condition at the time of the theft, Marconi told detectives he "hadn't seen him sober for more than a week."

An anagram for Hamelryck's full name and nickname: Charming double-vodka play.

Lonnie Brown, The Ledger's associate editor, is interlocutor of the Coffee Guzzlers Club. The club motto this week is: "A penny for your thoughts -- and \$ 100 more for your 1,000 kilowatt-hours."

**LOAD-DATE:** August 16, 2004

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Lexington Herald Leader (Kentucky)

July 30, 2004 Friday

**SECTION:** CITY & REGION; Pg. B1

**LENGTH:** 398 words

**HEADLINE:** Rezoning approved for Paris Wal-Mart;  
COMMUNITY PLAN BEING CHALLENGED IN COURT

**BYLINE:** By Steve Lannen; CENTRAL KENTUCKY BUREAU

**DATELINE:** PARIS

**BODY:**

The Paris-Bourbon Joint Planning and Zoning Commission voted 11-2 last night to rezone land slated for the construction of a Wal-Mart Supercenter.

The vote came after more than two hours of public testimony from supporters and foes of the proposed super-sized store and the defeat of a motion to postpone a vote until the next meeting.

Winn Hutchcraft, the planning commission member who made the motion last night to rezone the land, said plans for the 35-acre site fit the criteria in the community's comprehensive plan passed earlier this year.

However, that plan is being challenged in Bourbon Circuit Court by Hank Graddy, an attorney representing the Paris First Committee. A hearing is scheduled for Tuesday morning.

Last night, Graddy told commissioners he has asked for an injunction against using the new comprehensive plan and for a judge to rule it invalid. He hinted at more litigation if the commissioners voted last night, which they did.

Although the land is rezoned, the commission must approve a development plan for the site at a future meeting before the construction of a Wal-Mart Supercenter is assured.

In 2002, the Paris-Bourbon Joint Planning and Zoning Commission voted 7-6 to deny a zone change.

Many in the crowd of more than 150 cheered and whistled after the reversed vote this time.

Many Wal-Mart employees or customers wore blue T-shirts and waved signs with yellow smiley faces, a Wal-Mart symbol.

Several supporters testified during the hearing that a Wal-Mart Supercenter would keep shoppers in the city and generate tax revenue.

Virginia Graves, a department manager at the current Paris store, said gas prices were too high for people to drive to Winchester or Mount Sterling, where there are Supercenters.

Opponents argued local businesses and downtown merchants would be affected. Traffic also was a concern of some residents who live near the proposed site.

Ron Carter criticized a traffic study recommending an additional left-turn among other suggestions to accommodate the increased traffic generated by a new Wal-Mart. He pointed out that the traffic study was conducted before the renovated four-lane Paris Pike opened.

He said the additional left-turn lanes already are needed. "What will we need when Wal-Mart comes?" he asked.

Reach Steve Lannen in the Georgetown bureau at (502) 867-1354 or [slannen@herald-leader.com](mailto:slannen@herald-leader.com)

**LOAD-DATE:** July 30, 2004

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The Clarion-Ledger (Jackson, MS)

July 29, 2004 Thursday

**SECTION:** SOUTHERN STYLE; Pettus Gary; Pg. 1E

**LENGTH:** 622 words

**HEADLINE:** Gary Pettus

**BODY:**

Local bubble-blowing champion bursting onto 'Today' show scene

It was a blowout, a breeze: Gerard Manogin of Jackson went to a local Wal-Mart, produced a pink, pizza-sized sphere with his breath and two pieces of Dubble Bubble bubblegum, and now he's going to be on TV.

Cracking wise this Saturday, live from New York, with Lester Holt and Campbell Brown, on NBC's Weekend Today show.

Going North on someone else's dime. Visiting the Empire State building, the Statue of Liberty, Broadway. Eating out in the Big Apple with his mom, who has a new-found love for Dubble Bubble bubblegum.

Says Dyna Manogin: "When I heard we'd be dining in some of the finest restaurants in New York, I told Gerard, 'For blowing a bubble? Let me buy you some more bubblegum.' "

Which she did.

"The other day, he blew one that was so big it was on his forehead and in his hair," Dyna Manogin says.

'He said, 'Mama, you know I'm going to win that \$10,000.' "

As one of six national finalists, Gerard, who turned 13 on Sunday, has airy hopes for the Dubble Bubble National Bubble Blowing Championship's grand prize: a \$10,000 U.S. Savings Bond and a \$5,000 donation to the Children's Miracle Network hospital in his hometown (in this case, the Blair E. Batson Children's Hospital in Jackson).

He's waiting to exhale on NBC against the five other finalists, who will pop into Studio 1A of New York's Rockefeller Plaza, from Salem, Va.; Racine and Sussex, Wis.; Clovis, Calif.; and Conway, Ark.

In the Jackson area, Weekend Today airs on WLBT-Channel 3, 6 a.m. to 8 a.m. Saturdays. On this Saturday's show, you can catch Gerard displaying the mysterious dark art of his super-secret bubble-puffing technique, which he has revealed to me: "Um. It doesn't take a work ethic or nothing.

"You just blow."

Whiz kid of Oz

Gerard, a rising Northwest Middle School eighth-grader and an aspiring actor who once played a Munchkin in his school's production of The Wizard of Oz, is following a Yellow Brick Road paved with Wal-Mart smiley faces.

"I found out on the Internet that Wal-Mart was having the contest," Gerard says. "When I told my mom about it, she thought it was bogus. She wasn't even going to take me."

At the last minute, she relented, and on June 12, Gerard blew into the Pearl Wal-Mart, then blew up. He was one of 1.2 million kids ages 12 and under who did likewise across the country at 2,800 Wal-Marts, which are co-sponsoring his giant carbon dioxide release.

On his day of days, and like anyone else with even half a bubble-blowing brain, Gerard chewed out all the sugar, gripped the gum with his tongue and exhaled. "And don't inhale through your nose," he says, "'cause it will blow back on you and collapse on your face."

Gerard left the competition smarting amid the bubble rubble in Pearl. After measuring his effort with a Dubble Bubble Meter (Gerard doesn't remember the reading), a gum guru took his name and address. Weeks later, he got his summons to New York.

"My mom's happy it wasn't bogus now," Gerard says.

Gum ho

An accomplished gum expander ("sometimes when I blow, people just stop and look," he says), Gerard and his tongue have their work cut out for them. Last year's winner let fly a 14-inch work of rosiny inflation.

Because he's a finalist, Gerard has already won a \$5,000 U.S. Savings Bond, and Batson Children's Hospital will receive a \$1,000 donation in his name.

But he covets the whole ball of wax. "I don't think I'll be nervous on TV," he says. "There will be cameras there, and I want to be an actor."

One thing Gerard isn't planning to blow on Saturday: his chance.

\*Contact Staff Writer Gary Pettus at (601) 961-7037 or e-mail [gpettus@clarionledger.com](mailto:gpettus@clarionledger.com).

**GRAPHIC:** Gerard Manogin of Jackson will be on the Weekend Today show Saturday hoping to win a \$10,000 U.S. Savings Bond, all for blowing a bubble. Special to the Clarion-Ledger

**LOAD-DATE:** August 3, 2004

Copyright 2004 The Detroit News  
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The Detroit News

July 22, 2004 Thursday One dot Edition

**SECTION:** BUSINESS; Pg. 1C

**LENGTH:** 658 words

**HEADLINE:** Kmart scraps slogan, tweaks logo;  
Retailer drops 'Right Here. Right Now.' ad campaign in effort to pump up sliding sales

**BYLINE:** Tenisha Mercer

**BODY:**

TROY -- Kmart Holding Corp. has dumped its slogan -- "Right Here. Right Now." -- and is tweaking its red-block K logo in the retailer's latest attempt to fashion a message that resonates with consumers.

Kmart has struggled for years to coin a successful marketing slogan. It flopped with "Blue Light Always" in 2001 and the "Stuff of Life" in 2002. Now, it is trying to come up with a new approach just days after launching its most ambitious fashion campaign in years -- a revamped back-to-school clothing line that features edgier, trendy fashions.

Kmart has yet to devise a new slogan to replace "Right Here. Right Now." But new TV ads showing the retailer's Thalia Sodi back-to-school wear incorporate the pitch "Get a Look."

As for the logo, Kmart is moving away from the red block K with lowercase "mart" scribbled in white cursive letters. In its place, the logo has a large red block K with the word Kmart underneath it in small block letters.

"It's more reflective of where we are currently at, more lifestyle oriented," spokesman Steve Pagnani told The Detroit News. "We know the red K has good recognition, and no matter what, people do recognize that as Kmart."

The logo changes will officially debut in sales circulars this Sunday, Pagnani said. Store signs will not be changed immediately, but the revamped design will be incorporated in future ads and in-store promotions. The previous design has been used since 1994.

Retailers use logos and advertising slogans as a way to distinguish themselves. Target has a red and white bull's-eye. Wal-Mart is known for its yellow smiley faces and the slogan "Always Low Prices."

"It make sense to freshen their image," said Robert Passikoff, president of Brand Keys Inc., a New York-based brand and customer research firm. "It's like this old, beaten down retailer image that they are trying to emerge from, and you want to do something to (change) that" in customers' minds.

But retail analyst George Whalin questions if a redesigned logo and new advertising pitch will drive customers back to Kmart.

"No customer ever decides to go into a store because of a logo or an (advertising) tagline," said Whalin, president of Retail Management Consultants in San Marcos, Calif. "It's advertising mumbo-jumbo, one of those things that costs a lot of money but doesn't really accomplish a lot."

Kmart shopper Fay Brown, 70, of Birmingham says she's more concerned about customer service and quality products than advertising campaigns.

"I've really never attached the 'Right Here. Right Now' slogan to being a part of Kmart," said Brown, a retired Ford Motor Co. employee.

Instead of a new ad slogan, Brown would rather the company change its name.

"It's something about the letter K," she said. "The name itself cheapens it."

The changes come as Kmart is launching a massive promotion on the youth-oriented WB television network to promote the new fashions aimed at teens and college students.

"This campaign is all refreshed ... and it reflects the new apparel lines," Pagnani said.

Kmart Holding Corp. is counting on apparel to ratchet up sliding sales. The company has turned a profit since coming out of bankruptcy more than a year ago, but it has yet to halt market share losses to Wal-Mart Stores Inc., Target Corp. and other discounters amid falling sales. It has hired a team of designers from the Gap, Banana Republic, Donna Karan and Pacific Sunwear to shore up the company's beleaguered apparel lines. Kmart is redesigning its Jaclyn Smith line this fall and has introduced new brands for infants and children and an active wear line called Athletech.

#### Shifting slogans

A new Kmart logo is among recent changes by the retailer that's also dropping its ad slogan. Kmart slogans in recent years have met mixed results:

- \* April 2001: "Blue Light Always"
- \* February 2002: "The Stuff of Life"
- \* October 2003: "Right Here. Right Now"

Source: Detroit News research

LOAD-DATE: July 28, 2004



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Deseret Morning News (Salt Lake City)

July 19, 2004 Monday

**LENGTH:** 932 words

**HEADLINE:** What Washington needs is reality - Wal-Mart style

**BYLINE:** Marianne M. Jennings

**BODY:**

My children and I were stuck at the Marriott Wardman Park Hotel in the north forty of Washington, D.C. We were stuck there because driving in the District of Columbia is not possible unless you had extensive experience with LSD in the '60s.

This city's traffic flow and design are testaments to what political forces can do. Streets go north, south, east, west, north by northwest, and northeasterly by the South shall rise again. If diagonal streets and no street signs were not enough to make a visiting driver take hostages, the politicians threw in turnabouts, rotaries or whatever, with five streets spinning off them. You circle there until a tarot card reader tells you which street is yours. The street you were traveling will be one-way after the circle. That one way will be the opposite direction you were traveling.

My children and I circled D.C. for three hours before pulling into the Marriott. We kissed the ground, handed the valet the car keys, and explained that he would be driving us to the airport or we would badger him with politically incorrect speech, felonious activity east of the Mississippi.

Stranded in the city of egos in a locale that reeks of liberals, we were forced to take nourishment within walking distance. The \$12.95 Marriott burger in white-wine-spritzer ambiance and my boys in skater shoes were not a fit. The "consirgee" said, "Madam (this brought chortling from my lads because whilst cruising D.C. they realized that their ma was a longshoreman in nature and language), there are 18 restaurants within one block of the hotel."

Three left turns, one circling door (it must be a theme), and out of the hotel we were to find Afghan food, Thai food, Tuscan food, organic Chinese food (is there any other kind?), and a McDonald's with many winos. I stood with my boys watching the yuppies, Gen Xers and other childless, divorced, transgendered souls at sidewalk cafes and blurted out, "You people are in more need of a Wal-Mart than street signs. Reality! Reality! Where is reality?"

You cannot know reality until you know Wal-Mart. Just ask Paris Hilton. There are only two types of people in America: those who shop at Wal-Mart and love it and those who shop at Wal-Mart and want to sue it. Wal-Mart is the most sued company in America.

How can you sue a store that sells mini-cherry pies, two for a buck? Wal-Mart has floor-to-ceiling junk. In fact, Wal-Mart was sued when some of the junk fell from the ceiling (upper shelf) onto a customer. It was a papier-mache reindeer. How could Wal-Mart know decorative reindeer would become aggressive at Christmastime?

When I shop at Wal-Mart, I am one giant smiley face, just like the logo, because you can go to Wal-Mart, spend \$100, net two carts of junk, and still get the gallon bottle of Dial anti-bacterial hand soap you went there in the first place to get.

But Wal-Mart is not just a bargain. More so than the nation's new little guy hero, John Edwards, Wal-Mart is the little guy. The employees, the customers -- they are all humble people who couldn't scrape together the shekels for a spritzer. And they don't care -- they're happy.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000553

Deseret Morning News (Salt Lake City) July 19, 2004 Monday

Look for the blue vests, and you find happy employees. I believe supervisors and managers wear a different color. I leave that to the EEOC and courts to sort out because there may be some color discrimination or discrimination in color on vest classifications. The only other people in vests at work are road crews and flight crews. But their vests are not emblazoned on the back in white block letters, "How may I help you?"

Wal-Mart hires, molds and shapes many employees to whom Wardman Park types would offer a federal program. At my local Wal-Mart, there is an employee with white shoulder-length hair who eats less than Mary Kate and smokes enough to make up for those who have been driven out of restaurants via municipal code. Even in the Pine-Sol aisle, you can smell RJR on his chin-length moustache.

Unless someone is looking for "The Marlboro Man: The Later Years," no immediate employment fit for this cross between a Hell's Angel and Col. Sanders comes to mind. His, "Are you finding everything you need?" carries with it a twinkle.

Despite the media focus on class-action suits, Wal-Mart employees seem annoyingly upbeat. They know just where the Hoover vacuum belts are and can find the Better Homes & Gardens knee pads in a flash. Challenge them on the obscure and they can spout, "Aisle 7, near the middle on the bottom right shelf." Directions! Or, they walk me right to the obscure. Wardman Park valets should give such service; and they expect tips. Wal-Mart is aggressive hospitality, not detached Wardman Park cool.

Wal-Mart reminds me of Mary Rabel's store, a grocery and candy store in my childhood home of Nanty-Glo, Pa. Mary had floor-to-ceiling junk, but her store was about the size of a Wal-Mart beauty shop. Mary had an apron, not a vest, but the spirit was the same. Wal-Mart is small town friendly and service writ large.

Many fault Wal-Mart, its invasion of rural areas, its wages, and even its judgment with the Kathie Lee Gifford clothing line. But, Wal-Mart is "little guy" America. A no-frills place for people who appreciate the simple things in life.

For the folks at Wardman Park, forget the \$14.95 penne pasta. Ditch the \$28.95 veal. Put up a Wal-Mart. Enjoy a bargain with the friendly one-on-one vest people. No airs. Just clean, cheap fun. Also, they know where everything is and can take you there. Marianne M. Jennings is a professor of legal and ethical studies at Arizona State University. Her e-mail address is mmjdiary@aol.com

**LOAD-DATE:** July 20, 2004

TTAB Opp. # 91/150,278  
WM/LOUFNI0000554

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Adweek

April 26, 2004

**SECTION: FEATURE**

**LENGTH:** 785 words

**HEADLINE:** Upfront 2004 - The Advertisers: Apparel

**SOURCE:** Print

**BYLINE:** Sandra O'Loughlin

**BODY:**

For apparel retailers, a colorful spring could give a boost to the fall upfront. Consumers are responding to the new, updated looks they are finding in stores and cash registers are ringing up sales of T-shirts, cargo pants, khakis and casual shoes in fresh pink and green hues. And many shoppers are paying with fat tax refund checks.

According to the latest figures from ShopperTrak, a Chicago-based supplier of information to the retail industry, U.S. retail sales for the week ending March 27 increased by 1.4 percent over the same week in 2003. Consumer confidence levels, however, sank during March, fueled by concerns about job security and local economic conditions.

"Sales are being impacted by numerous crosscurrents," says Michael Niemira, chief economist and director of research for the International Council of Shopping Centers. "While higher gasoline prices hold many consumers back, an influx of tax refund money pushes others out to the stores."

Just how those crosscurrents will translate to the upfront remains to be seen. "One thing is for sure, when times are bad, advertising gets cut back without understanding its effect on sales," says John Engel, retail partner, Accenture Retail Practice. "And in good times, more gets spent. It's just a pattern they fall into."

With few exceptions, most retailers rely on direct mail and in-store advertising to drive sales. The biggest, however, such as giants Wal-Mart, Sears, J.C. Penney, Kohl's and Gap also do national broadcast campaigns, particularly during the key spring, fall and holiday seasons when competition for the consumer dollar is at its hottest.

Wal-Mart's latest TV effort to promote its everyday low prices, via Kansas City-based Bernstein-Rein, has its iconic yellow Smiley Face dressed up as a secret agent who uses spy gadgets to roll back prices. Though some may find him annoying, Smiley Face no doubt played a role in Wal-Mart's increase in sales last year, which were up almost \$12 billion in 2003 over the previous year. So don't look for the company to retire him anytime soon.

Likewise, J.C. Penney's "It's all inside," campaign, via DDB Chicago, will continue. The retailer launched new commercials at this year's Academy Awards that are going forward with seasonal updates throughout the year. "We're trying to highlight fashion and value and the convenience of online shopping," says spokesperson Tim Lyons. "We're calling out the point of differences we have over our competition, and that will continue."

Kmart, via new agency Grey Global, is seeking to connect with consumers and emphasize its exclusive brands in a new campaign that also plays up the Kmart K. The big question for fall is whether Martha Stewart will reappear in ads. Even if she's not, no doubt the retailer will continue its Hispanic messaging.

Adweek April 26, 2004

Gap's Old Navy unit, celebrating its 10th anniversary in 2004 with a reunion spot starring celebs who have appeared in its ads over the years, will soon name a general market creative agency to complement its in-house team. Contenders have been asked to create a back-to-school campaign.--Sandra O'Loughlin

Sandra O'Loughlin is a reporter for Brandweek.

#### Focus

Lee Jeans, a unit of VF Corp., in June will announce its fall campaign for One True Fit, a new style and fit concept based on its popular five-pocket jean. One True Fit launched last fall with TV, print, POP, a new script icon and packaging, and online support around the "Find Your . . ." theme. Fallon, Minneapolis, is Lee's lead agency.

That launch was so successful, TV will definitely be part of the plan once again. "We had a creative execution that could break through the clutter and also tell a story and make an emotional connection with the consumer," explains Liz Cahill, director of advertising and public relations for Lee Jeans. "It was all about finding your voice, finding your soulmate, things that are important to our consumer and her life. It's not just talking about fashion. To really bring it to life, it had to be on broadcast. We went to where our target was watching, relationship shows like TLC and MTV's The Newlyweds, home improvement shows and E! Entertainment's fashion shows."

She says that TV will be part of the plan again because "We feel we've hit on something and haven't tapped its full potential yet. "'Find Your....' can be expressed in so many ways. We will be expanding our targeted media. You can't just run a TV commercial anywhere. You have to understand who your target is, what their trigger points are and what they're watching. Broadcast is no longer just three channels. It's all of cable. You have to really understand it to make it cost-effective."

LOAD-DATE: May 2, 2004

April 19, 2004, Monday

**SECTION:** Pg. 12

**LENGTH:** 1130 words

**HEADLINE:** Packaging makers defining role in retailing

**BYLINE:** Joseph Pryweller

**DATELINE:** ATLANTA

**BODY:**

Decisions, decisions. For packaging producers, the choices of what to do in the future are more ubiquitous than a happy-face sign at a Wal-Mart store.

Several speakers at Packaging Strategies 2004, held March 23-25 in Atlanta, spoke of some of the migraine-forming pressures facing top executives at North American packaging companies. While existing markets - especially for food - are normally a straight line of stability, the decisions facing those executives are not.

"Do you become a niche player or a global cost producer?" Jim Peters asked in a rhetorical aside during the conference's opening session March 23. Peters is president of Oak Park, Ill.-based packaging consulting firm J. Peters Associates.

"Do you work with the big club stores, the retailing giants? Retailing is driving a lot of changes in packaging," he said.

Processors must decide how much business to give to Wal-Mart Stores Inc. without shooing away any hope of profitability. But packaging producers also must cope with a coming industry consolidation, especially in the plastics sector, and the growth of China as a global power.

But first, some good news about the industry. In a March 24 speech that tempered a bit of the concern from others at the conference, Jerry Jasinowski said manufacturing is in good shape and poised for a sharp rebound.

Jasinowski, president of the Washington-based National Association of Manufacturers, said many firms are making comebacks from a difficult economic era. The gross domestic product has grown at an average 6 percent rate for the past two quarters, Jasinowski said. And capital spending, a road sign of confidence in the future, increased 9-10 percent in the same period.

The industry faces some challenge from China and other new markets around the world, Jasinowski said. But many companies have found opportunities there, while curbing costs through Six Sigma and lean standards and innovating both production and process, he said.

While Jasinowski spouted optimism, others spoke of a more winding path to achieve prosperity. Several topics will continue to challenge packaging producers in the next several years.

The most prominent is that of China, especially for makers of flexible packaging. While most speakers agreed that the Asian country will be a force, the duration of its influence was debated. Ken Brooks, senior vice president at Ernst

& Young Corporate Finance Inc. and the firm's global packaging specialist, said the market invariably will go elsewhere after China has its run.

However, the next three to five years should show greater demand from the Asian market, he said. That should lead to more margin pressure on packaging firms and a need to capture business in developing markets, said Brooks, who is based in Montreal.

"(Production) will be generally stable in developed countries, but Asia will have more capability to exceed demand," Brooks said. As a point of fact, two-thirds of packaging production from U.S. companies with operations in China was sold in China, Brooks said, based on figures from November.

Jasinowski also talked about the rising power of China, Singapore and new markets around the world. While he does not espouse protectionism, he said the playing field for trade needs to be leveled. But he, like others, is uncertain of the long-term consequences of Chinese trade.

"There's no rationality in what some people are saying," Jasinowski said. "Our policy is to find out what's what before we decide what to do about it."

How packaging companies respond to global markets will dictate success, Brooks said. The same goes for the trend of consolidation in plastics packaging. Companies using other materials, such as glass and metal, already have gone through major consolidations, said Thomas Blaige, president of Chicago-based investment firm Thomas Blaige & Co. LLC. Blaige said the global plastics packaging market is moving toward that same goal. The number of plastics packaging deals more than doubled last year, from 61 in 2002 to 125 in 2003, he said. Many of them were driven by global activity or by large companies wanting to divest operations.

Of those 125 deals last year, 64 percent involved a foreign buyer or seller. The largest single sector for packaging deals was the film and sheet area, with a commanding 41 percent of the deals last year, Blaige said.

Toledo, Ohio-based Owens-Illinois Inc. plans to sell its large plastics bottle business, a deal that could change the blow molding landscape. And Alcan Inc., a maker of aluminum- and plastics-based packaging, just bought Paris-based Pechiney Group in another market-changing event that affects rigid and flexible packaging.

More-domestic issues also are on the minds of packaging executives. Working with Wal-Mart was a key theme, in an era when the retailing giant has grown to become one of the largest companies in the world. The retailer most resembles an old military post exchange, or PX, where any goods under the sun can be purchased, said Timothy Burns, president of private equity firm Cranial Capital LLC of Solon, Ohio.

Yet, Wal-Mart, with 4,906 stores at last count, is not a beneficent sugar daddy to its many packaging suppliers, Burns said. In fact, a supplier would be better off running far from Wal-Mart than inking a long-term contract with the retail monolith, he said.

The deterioration in a packaging company's pricing far outweighs the initial volume bump that a company gains by working with Wal-Mart, Burns said. Constant cost and price pressures start to eat into profit, competitors sometimes are brought in to audit a supplier's pricing and a supplier is hamstrung from doing business elsewhere, he said.

"There's a realization that Wal-Mart is carrying your baby," Burns said. "'Always Low Prices' (Wal-Mart's slogan) is not a means of wealth creation."

However, Wal-Mart could be peaking. Its stock price has dipped, a sign of less confidence from investors, Burns said. And the retailer has had difficulty opening stores internationally.

A few other trends in packaging also will affect the future of suppliers. They include the advent of radio frequency identification, called RFID. Those small electronic tags placed on shipments include electronic chips with antennae that are encoded with information and allow tracking of products, said Phil Henry, senior technical architect of Intel Corp., based in Santa Ana, Calif.

The chips are being touted by Wal-Mart, Target Stores Inc. and the Department of Defense, among others. But who will pay for the technology? "Wal-Mart certainly isn't going to do that," said Terry Harper, vice president of technology and support for Atlanta-based converter Printpack Inc.

**GRAPHIC:** Brooks

LOAD-DATE: April 21, 2004

TTAB Opp. # 91/150,278  
WM/LOUFNI0000559

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Alameda Times-Star (Alameda, CA)

December 28, 2003 Sunday

**SECTION:** OP-ED

**LENGTH:** 994 words

**HEADLINE:** Patt MORRISON;  
Trip to Wal-Mart nightmarish

**BODY:**

I got to Wal-Mart about an hour after it opened recently, which was fine by me, because I'd heard all about that woman in Florida who said she got trampled at a Wal-Mart last month when the siren sounded at 6 a.m. for the early-bird special, and everybody made a mad rush for the \$29.87 DVD players, stampeding right over her.

It was already plenty crowded at what I believe to be the only Wal-Mart in Los Angeles proper, the one in Crenshaw Plaza. The aisles were freeway-packed with carts, and the carts were packhorse-piled with goods -- some of them, in this season, the kind of pointless ornamentalia that people exchange at the holidays for no other reason than gift-for-gift parity. My grandmother called these fussy dust-catchers "tissy-boos."

I was terrified someone would recognize me. I'd rather be caught at a peep show than shopping at Wal-Mart. The Los Angeles Times' recent series by Abigail Goldman and Nancy Cleeland validated all my worst suspicions, detailing the world's biggest retailer's full-throated race to the bottom -- bottom dollar and bottom line, the corporate nation that runs at the front of the pack in pushing jobs offshore, pushing prices low and wages lower. It's the Wal-Mart limbo dance: Whether it's price or public responsibility, how low can you go?

Sam Walton's autobiography is subtitled "Made in America." Sam's been dead about a dozen years, but I'd still like to take him shopping with me to find out just what there is in Wal-Mart, besides Mr. Sam, that's made in America. The grail of free trade -- Greenbacks Sans Frontieres -- has made it not only old-fashioned to "Buy American," but damned near impossible.

All right, Mr. Sam, just inside the door, Jordache low-rise jeans, \$17.94 -- from the Philippines. That floaty pink rayon blouse on sale for \$9 -- India. Ah, here we go, L'Eggs panty hose, nude, sheer-toe, three pairs for \$5, made in USA -- of imported and domestic fibers. And oh, Sam, oh, Walt -- a Disney Winnie-the-Pooh anniversary clock for \$19.86 ... made in China?

I tell you, who needs an exotic overseas vacation? Let Wal-Mart take you on a tour of the far-flung souks and sweatshops of the world, brought right here to your own hometown:

Little girls' Fruit of the Loom boy-leg briefs, two pairs, pink and blue, \$4.66, made in Egypt. Scooby-Doo men's sleep pants, trademark Cartoon Network, \$11.93, made in Cambodia. A Vassarlette silken heather underwire bra, \$9.66, size 30 - ... no, you don't ... made in Thailand. On the clearance rack, a Kathie Lee jacket from Bangladesh, a White Stag striped shirt from Honduras, a fake-leather-trimmed coat from Korea, another jacket from Guatemala.

Don't I need a visa for this? No, just a Visa.

Faded Glory shirts with the stars-and-stripes label -- "established 1972," and made in China 2003. Vicks Vaporub cream, \$4.32, made in Mexico. A dozen candy canes, made in Brazil. An Austrian crystal choker and earring set, \$6.84, made in China. A Char-Broil Quickset barbecue grill is stamped "made in USA," but the one-liter size of charcoal starter comes from South Africa. And ... et tu, Timex? America's wristwatch, now manufactured in the Philippines.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000560



They say 2004 will be the year of the NASCAR dad vote, so here's a boxed gift set, four NASCAR helmet-mugs and tins filled with cocoa and cookies, made in Singapore and China.

There must still be some kind of cachet to made-in-America labeling, because the front of a Booda dog-chew package reads "handcrafted with USA hides since 1963," but turn it over and it says, "made in Mexico and Paraguay."

Finally, I wandered into a cardboard display of DVDs. "It's a Wonderful Life" was front and center, its packaging "printed in the USA." The holiday classic that proves the difference that one good-hearted little guy can make by standing up to power and wealth.

Yeah, and Wednesday night a fat guy in a red suit shimmied down my chimney to bring me Viggo Mortensen and an aquamarine necklace.

Wal-Mart's mascot is that simpering yellow happy face tricked out in a Robin Hood hat. I guess it's meant to prove that Wal-Mart, whose founders' heirs are five of the 15 richest people in the country, robs from the rich and gives to the poor.

I didn't talk to the shoppers. They were busy, and what's the point? Just as the bus strikes pitted the working class against the working poor, Wal-Mart sucks them all up: foreign workers desperate for jobs, American workers whose real wages have dropped and left them desperate for cheap goods, and Americans who would rather work at Wal-Mart's non-union jobs, with poor benefits and lower wages, than have no work at all. It's a circle of falling dominoes: Because decent-paying working- and middle-class American jobs are harder to come by, shoppers can't afford to go elsewhere, so they buy goods made overseas for pennies an hour, which encourages manufacturers to shut factories here to send work overseas, which means that more decent-paying jobs ... you see where this goes.

This is why the striking grocery workers have held out for 10 weeks, and it's why it's in their interest and the supermarket chains' interest to join forces and hang together or, as Ben Franklin warned, they all hang separately. It's also the reason that in cities such as Inglewood, Bakersfield and Oakland, unions and small shop owners and some homeowner groups and even city officials are standing at the city limits and declaring, "They shall not pass." Otherwise, it'll be Wal-Mart's world, and we'll just live in it.

Sam's American Choice purified drinking water at 25 cents was sold out, so I thought I'd take a chance on Dr. Thunder, the Wal-Mart answer to Dr Pepper, at 35 cents. That was sold out, too.

The machine gave me back my dime, but kept my quarter. I wasn't surprised. Wal-Mart owes me two bits. It's not much, but it's a good start.>

Patt Morrison writes for the Los Angeles Times.

**LOAD-DATE:** December 28, 2003

158 of 596 DOCUMENTS

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The Kansas City Star

December 28, 2003 Sunday 1 EDITION

**SECTION:** H; BRIEF; Pg. 3

**LENGTH:** 81 words

**BODY:**

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**AD WATCH**

Wal-Mart

**The target:** Bargain shoppers

**The message:** Smiley Face to the rescue to save shoppers money

**The scoop:** Kansas City-based Bernstein-Rein Advertising, one of Wal-Mart's main agencies, brings back Smiley Face in a spoof on action movies as the Rollback Man. Set to the music of "Secret Agent Man," the swashbuckling guy zips up in a flashy sports car and goes to work, cutting prices at the world's largest retailer.

**LOAD-DATE:** December 28, 2003

TTAB Opp. # 91/150,278  
WM/LOUFN10000562

162 of 596 DOCUMENTS

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December 26, 2003

**SECTION:** NEWS; Midwest

**LENGTH:** 130 words

**HEADLINE:** Wal-Mart's Mascot Stars as 'Rollback Man'

**SOURCE:** Online

**BYLINE:** Aaron Baar

**BODY:**

**CHICAGO** Wal-Mart's smiley face mascot reappears as a secret agent in a new television spot from Bernstein-Rein.

The 30-second spot, breaking today, shows the familiar icon racing to a Wal-Mart in a roadster before charging into the store and targeting prices with a wristwatch laser, a spinning bow-tie and a lethal karate chop. The spot's soundtrack has Johnny Rivers singing a version of his signature song, "Secret Agent Man," with the lyrics changed to "Rollback Man."

The smiley face icon has appeared as a cowboy, a construction worker, Zorro and Robin Hood in previous spots from the Kansas City, Mo., agency.

The Bentonville, Ark.-based retailer spends more than \$400 million on television advertising annually, according to Nielsen Monitor-Plus.

**LOAD-DATE:** January 22, 2004

TTAB Opp. # 91/150,278  
WM/LOUFNI0000563

174 of 596 DOCUMENTS

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IAC (SM) PROMT (R)  
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Executive Speeches

December 1, 2003

**SECTION:** No. 3, Vol. 18; Pg. 14; ISSN: 0888-4110

**IAC-ACC-NO:** 111733699

**LENGTH:** 2952 words

**HEADLINE:** The sleepless executive: what keeps CEOs awake and why you should care.

**BYLINE:** Ferguson, Brian

**AUTHOR-ABSTRACT:**

**THIS IS THE FULL TEXT:** COPYRIGHT 2003 Executive Speaker Co. Subscription: \$ 60.00 per year. Published bi-monthly. P.O. Box 292437, Dayton, OH 45429.

**BODY:**

Thank you for that introduction. And thank you for asking me to be part of this very special event. I'm honored to be here and honored to be with these graduates on their remarkable day.

And this is a remarkable day: the culmination of a great deal of hard work and sacrifice. I congratulate each of you on your accomplishments.

There's an old saying that's appropriate for occasions like this. It's a saying that's good for bad times--when you fail--as well as good times like this when you succeed.

The saying goes: Always remember why you are, where you are. In other words, remember why you have arrived at this point in your life.

You are here at this graduation exercise, first and foremost, because you want to be here. That by itself sets you apart. It took a lot of energy and diligence on your behalf to get to this point. Never forget or diminish this accomplishment.

Of course, I see a large number of people here besides the graduates. And that tells me there are other reasons why you're here today, too. Mothers and fathers ... spouses and children ... other family members and many friends.

In some way, they all contributed to this day. For some, maybe it was just a bit of time in the hallway as you ran an idea by them. Others--like your spouses and children--sacrificed time for you to study and be away from home. Just like you, they worked harder, they stressed, they sacrificed, and they compromised for you to sit here.

Never forget their commitment--and their contributions--to your success. And let me encourage you, if you haven't already done so, to say 'thank you' to each of them before the day is over.

Now, I want to shift gears just a moment and ask the graduates themselves a question. How many of you--and I want a show of hands here--how many of you had to work into the night at least a couple of times to finish your studies?

TTAB Opp. # 91/150,278  
WM/LOUFNI0000564

## Executive Speeches December 1, 2003

That's what I thought. If there was someone here who didn't raise your hand, by the way, come see me afterwards ... I want to know the secret to your success.

OK, here's another question. How many of you had at least one sleepless night worrying about your work? Looks like everybody again.

No surprises there, I guess. What may surprise you, though, is that those sleepless nights are good training.

Why? Because if you're serious about your work ... if you want to see your company and your career succeed ... if you care about the people you work with ... you'll probably have more sleepless nights in your future.

Sorry to be the spoiler here but that's just the way it is.

There's too much competition--globally and domestically--for business to fall into any comfortable pattern today. The work of your company doesn't stop when the clock says five p.m.

Just when you're thinking of going home, there's someone on the other side of the planet thinking about taking your customers. Our world is changing and changing times cause long workdays.

I've gotten used to this idea. So have my fellow CEOs around the country and the world.

The things that keep us awake, though, might surprise you. Some are predictable. But others may not be.

So as you prepare to leave here as new MBA grads--full of strategy and tactics--I thought it might be appropriate to give you a bit of insight into a few things that keep CEOs awake, and why that matters to you.

This isn't a lecture, of course, so you don't have to take notes. But be aware: there will be a test when you get back to work.

So what's first on the list of things that keeps CEOs awake? Wal-Mart.

Now in fairness, I should say it's not just Wal-Mart that keeps us awake. It's Wal-Mart and all the mega-marketers like them. K-Mart and Target in the U.S. Carrefour in Europe.

In fact, every big, aggregated buyer around the world has a place here, and that includes even the non-retail giants like GE and Microsoft.

Why? Because their tremendous buying power has changed the rules of the game so fast that many traditional companies, especially manufacturers, are struggling to keep up.

People love bargains. And they love that yellow smiley face that flies around slashing prices in those Wal-Mart commercials.

Let me tell you a secret, though: I hate that guy. Every time I see him cutting a price, I know that somewhere, our margins just got sliced again.

Remember this: Wal-Mart and Carrefour aren't reducing their profit on the items they sell--they're just squeezing costs out of their suppliers.

Unfortunately, there's no one for us to share the pain with except ourselves and our employees. The mega-marketers are great for consumers ... but they've been very disruptive for suppliers. If we can't produce at the low price in the world, then someone else can and should.

This isn't any one company's fault, by the way. If Wal-Mart wasn't there, somebody else would be and the pressures would be the same.

But just because it was inevitable doesn't make it any less of a change agent for the economy. Markets move at high speeds. As many of you know, though, companies and people often don't respond as quickly.

This leads me to the second item on my list: Nostalgia also keeps me awake.

I'm originally from Texas but I've lived in many places around the world. And I've found that many people, but Americans and Europeans in particular, are nostalgic.

When it comes to running companies, that can be a problem. In fact, it can be a huge problem.

## Executive Speeches December 1, 2003

A significant part of my job on a daily basis is trying to shake people loose from their nostalgic look at the world. Many employees just want things to be the way they were 15 or 20 years ago.

My work is to make them understand that we are in a new business environment. That the business strategies we had just 10 years ago aren't good enough for today. That trying to run a company by relying on what succeeded yesterday is like trying to drive a car by staring in the rear-view mirror. Sooner or later you're going to end up in the ditch.

I know I'm not the only CEO who has this problem. Some businesses and companies get it and move on to competing in a changing world. Some don't. Those who don't will be the ones who end up as footnotes in the Business History Library.

Why are we like this? Part of it is mass denial. It's a way of dealing with the uncertainty and instability.

If this were TV, many of us would still be watching Fantasy Island. But this isn't Fantasy Island--it's Survivor and Eliminate rolled into one ... maybe with a good dose of Fear Factor thrown in for good measure.

Another reason we're nostalgic is that we simply have older demographics than some of our competitors. Comparing the U.S. and China, for example, shows we have an older working population on average.

Older workers, on average, are often less willing to take risks, or to adopt new technologies. They're more conservative in their personal investments and that shapes the capital markets they live in.

Younger workers, and especially younger workers in developing economies, are hungrier to make their mark in the world. We see that in the building of the world's tallest buildings or in space programs.

Either way, as a businessman, this raises questions about where the capital in the world will flow to in the next 10 years. Will the U.S. and Europe keep up and thrive? Will Asia invest in riskier, long-term technology fields that offer a greater, long-term benefit?

I don't know the answer. But I do see high-tech investment trends in Asia and, in particular, China.

In fact, China is the third item on my list of things that keep me awake.

China has probably been responsible for selling more Somnifex to business leaders in the U.S. than all of the other countries in the world combined.

Of course, this isn't the first time America and Europe have faced foreign business competition. Each of us grew up watching a repeating theme over the past 30 years. There was Japan ... Taiwan ... Korea.

Since the beginning of global commerce, money has gradually flowed to places that offer more economic efficiency. From 1950 to the mid-80s, that flow went to places like Japan, Taiwan and Korea. Now it's flowing to China.

To remain competitive, manufacturing has to chase lower labor costs. China not only has loads of inexpensive labor, it's becoming increasingly adept at using it.

Their goal is to boost their economy by building a large middle class. The difference is that China is so much bigger than anything that has come before.

It has a population of 1.3 billion and is on track to create the biggest middle class on earth. That means it's also on track to create the biggest consumer nation on the planet--and that's good for all of us ... eventually. In the meantime, China will absorb a lot of capital, including a lot of new jobs and manufacturing, very easily.

Many of you are painfully aware that American and European companies are struggling the most in this transition. But here's a good example. How many here have heard of Legend Computer? Ask Michael Dell if he's heard of them and you probably won't hear a "yes"--but a groan.

Legend is China's No. 1 computer maker. In a Chinese computer market that's growing 20 percent a year and projected to soon be the No. 2 computer market in the world, Legend owns nearly 30 percent of the Chinese market.

They have quality, they have good service and they have value. So who do you think Michael Dell's more worried about, HP or Legend?

## Executive Speeches December 1, 2003

For those of you destined for the services sector--don't think this is just a manufacturing issue. Manufacturing follows lower labor costs. Services follow labor cost and technological prowess.

And for better or worse, technology is virtually transparent around the world. So if it can be done somewhere else, then places like China and India will do it.

A few years ago, many American CEOs thought their salvation was in the services sector. So they revamped their business models to emphasize services. China and India weren't even on the radar screen.

But services in China have grown at a 15-20 percent rate over the past two decades. Service sector employment in China used to be just 12 percent of the total--now it's 28 percent and growing. The bottom line is this: countries like China and India are now very adept competitors in both manufacturing and services.

Don't misinterpret this as a knock at our Asian competitors, by the way. The reason they're so successful is because they have good technology, great efficiencies, and a strong work ethic. Their commitment to education, in particular, is creating a big windfall for them.

And this brings me to the fourth--and last--item on my list. As the CEO of a company headquartered in the United States--with a sizable part of my employees and intellectual property located here--this last item is probably the biggest issue of all.

As the ultimate consumer of our education system let me put it as simply as I can. If the United States wants to compete long term with the rest of the world, we must revisit ... revise ... and reaffirm our commitment to education.

Let me give you two particular areas of concern.

First, we are simply not producing enough high school graduates with the right skills for today's work environment. Modern businesses need workers with high-level computer skills. We need employees capable of overseeing sophisticated production systems. We have little use for unskilled labor.

The U.S. Department of Labor recently estimated that by the end of this decade, we'll face a shortage of 12 million qualified workers in this country.

Does this keep me awake at night? Absolutely.

We must create higher expectations for our schools ... and our schools and communities and businesses must step up to meet those expectations.

Secondary education, however, isn't the only place that worries me. It's clear that we're compounding that problem by also not producing enough scientists and engineers at the university level. We're certainly not graduating enough to fuel our high-tech economy or to compete with other countries.

Consider this: Colleges and universities in Asia produce approximately six times as many engineering degrees at the bachelor level than institutions in the U.S. Six times as many. Folks, that's a lot of brainpower to compete against.

In 1999 alone, science and engineering degrees represented 73 percent of the total number of bachelor's degrees earned in China. In the U.S., that number is about 30 percent.

Clearly, we must get kids in this country more excited about math, science and the technical disciplines. If we don't have a strong, smart workforce, we risk losing our place in the world. And that's simply unacceptable.

So there's my list for you: Wal-Mart, nostalgia, China, and education.

But don't let me leave you with the impression that all is hopeless. I may lose sleep ... but I haven't lost heart.

And this is where you come in!

When I look out at the state of the economy, I do find islands of comfort. We do have a big headwind to fight against. But let's not forget that many companies--maybe the companies you work for--are pushing into this headwind right now ... and making money.

Let's not forget that a good deal of their energy, especially in the U.S., is springing from a consistent ability to create unique technology. And the creators of those technologies are people like you and your peers around the country.

Let's not forget that the U.S. has had more Nobel Laureates--more than twice, in fact--than any other country in the world because we nurture creativity in people like you.

Let's not forget that this country continues to attract bright, talented people from around the world. These are people who want to enjoy the same things you do: liberty, openness and opportunity.

The United States has all of those things.

Now, if you asked me if we have everything we need to succeed, I'd say I'm not sure. Do we have all the brains we need to succeed? No--today we're not nurturing enough of them in this country. That's a problem.

Do we have the technology? Yes--but we'll rely on all of you to sustain that advantage over the long term.

Do we have enough smart people to do the work if we show them the way? If this room's any indication, then I feel confident that we do. But it will be difficult, especially over the next decade.

This is where your role is so important. When you go back to work, you have the opportunity to take your MBA status--couple it with what you know about the world economy--and truly help your organizations and communities succeed.

How? First, you can help your companies identify and develop unique competitive advantages in the marketplace where you live today. There are plenty of opportunities to develop regional successes. Help your companies tap into the unmet needs of the consumers and create value.

You can also help them take advantage of this new economy--embracing their own brand of global economics, if you will--and beat the competition at its own game. In other words, embrace globalization--embrace the new efficiencies and competitiveness it's creating--and learn how to survive and prosper.

Perhaps the best value you can create for your company doesn't require your business aptitude, though, it requires your attitude. If you go back with the realization that the world has changed--that it requires new thinking and new strategies--you will make an instant impact on your companies.

That attitude could be the spark that ignites a whole firestorm of opportunities--not just for the company but for you and your career, as well.

By the way, if there's anyone of you who thinks you can escape this wave of change ... forget it. There's no place on the economic horizon where you can run to and hide. As the title of one popular book explains: Hope is not a strategy.

You would also be wrong if you think we can't compete ... that the U.S. doesn't have what it takes. We do and you do.

Despite the challenges I described, I'd be remiss if I didn't point out that you are NOT the most challenged generation. Far from it.

The first Europeans to settle here--who sailed for months on wooden boats to an unknown land--had it tougher. They not only survived but they flourished.

Those who settled the West with nothing more than a wagon full of dreams and determination. They had it tougher.

Those of you whose parents immigrated here to start a new life in a new country ... they had it tougher. And I'd say the generations that guided humanity through two world wars had it tougher.

So you come from good stock. And history has proven that where there is danger, there is also opportunity if you have insight and staying power. The key will be what you do with this combination of heritage and opportunity. What will you do?

Let me leave you with a thought from President John F. Kennedy who once noted that our goal--your goal--shouldn't be to merely observe history being made--but to influence it. If you do that, I have faith--tremendous faith--that you can help lead us through.

You're the beneficiaries of a great education. You've proven your fortitude. Now it's up to you to make a difference.



Executive Speeches December 1, 2003

Again, I offer my congratulations. I wish you the best in your careers. And I wish you a good night's sleep.

Brian Ferguson is chairman and chief executive officer of Eastman Chemical Company. His remarks were presented at Executive MBA Commencement Ceremonies at Duke University's Fuqua School of Business in Durham, North Carolina, on November 2, 2003.

IAC-CREATE-DATE: December 29, 2003

LOAD-DATE: September 01, 2004

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Pasadena Star-News (Pasadena, CA)

October 28, 2003 Tuesday

**SECTION:** OPINION

**LENGTH:** 615 words

**HEADLINE:** Illegals aren't bad people but they disrespect rule of law

**BODY:**

WHO says the feds have no sense of humor? Last week, when U.S. Immigration and Customs Enforcement arrested some 250 illegal immigrant workers at Wal-Mart stores all but 10 of whom worked for independent janitorial contractors and searched a Wal-Mart executive's office, it named the raid "Operation Rollback."

That's a cheeky allusion to Wal-Mart's bouncy yellow smiley-face icon, featured in ads joyously rolling back prices on Wal-Mart wares.

If this was a righteous bust, American shoppers may learn that Wal-Mart was able to "roll back" its prices in part by repeatedly cutting corners and hiring contractors that skirt the law. Let them put a bouncy yellow smiley face on that.

From Mexico City, House Minority Leader Nancy Pelosi, D-Calif., criticized the raids for terrorizing illegal workers. As the Associated Press reported, Pelosi called on business leaders to pressure Washington to ease immigration law because, as employers, they depend "on some people who may not be completely where they need to be legally."

There was a time when Democrats would push for the government to put less of an emphasis on deporting illegal immigrants so, they argued, more emphasis would go toward prosecuting corporations that employ illegal immigrants. Now that the feds are doing just that, you see the pro-illegal immigration corner's real agenda: no enforcement.

"The magnet that draws illegal immigrants to the United States is jobs," noted Mark Krikorian of the Center for Immigration Studies in Washington, D.C. "Until we can turn off the magnet of jobs, all of the border enforcement in the world isn't going to work."

Apparently, Pelosi wants the magnet left on, despite abuses. The New York Times reports that some workers cleaned stores seven days a week; they received no benefits and no overtime.

As Immigration and Customs Enforcement spokesman Garrison Courtney noted, hiring illegal workers is exploitation: "They're hiring people to do work cheaper than everybody else. That's not a fair practice or ethical."

So while Pelosi worries about workers who are, um, legally challenged, she ought to think about law-abiding entrepreneurs who have to compete with big outfits that abuse the law and exploit low-skilled workers. Ditto for California taxpayers, who can choose where they shop but not whether they subsidize the considerable cost of educating and providing health care to the families of illegal workers.

Do I think illegal immigrants are bad people? Of course not. Most are good people and hard workers who want the same opportunity that fate cheaply granted to those of us lucky enough to be born in America.

But they've fostered an unhealthy disrespect for the rule of law. Consider Victor Zavala Jr., one of the Wal-Mart detainees. He told The New York Times his family is "not happy" at the prospect of being deported after he paid a "coyote" \$2,000 to smuggle them into the United States.

In essence, Zavala bet \$2,000 that the federal government wouldn't enforce federal law. His bad luck: He lost.

A Wal-Mart spokesman said of the raids: "We were very surprised. We had no idea they were coming.' Wal-Mart is investigating.

While the spokesman said he was personally "unaware' of this, The New York Times reported that immigration officials raided Wal-Mart in 1998 and 2001.

This latest foray suggests that somebody a Wal-Mart executive or contractor looked at the fines of up to \$10,000 per illegal worker, considered the possibility of being prosecuted for conspiracy to break the law, and figured it was a safe bet to break the law anyway.

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LOAD-DATE: November 13, 2003

TTAB Opp. # 91/150,278  
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198 of 596 DOCUMENTS

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The Kansas City Star

October 6, 2003 Monday

**LENGTH:** 732 words

**HEADLINE:** Creative director returns to NKH&W after stint in Denver

**BYLINE:** By JENNIFER MANN; Columnist

**BODY:**

Creative director returns to agency after Denver stint

It's creative director deja vu for NKH&W with the return of **Jim Radosevic** after an eight-year absence.

Radosevic did his first stint as creative director at the primarily business-to-business agency from 1993 to 1995. Radosevic then left the agency to open and direct a Denver creative services shop, **Altitude Films**.

During his stint at Altitude Films, Radosevic worked with such names as **H&R Block, Pratt & Whitney, Bell/Agusta, Aerospace Co., Ditch Witch, Phillips Petroleum-- now Conoco Phillips--** and several hospitals throughout the United States.

**Pete Kovac**, president and chief executive officer of NKH&W, said Radosevic wasn't replacing anyone, but rather would help fatten the creative ranks at the agency with **Nick Nicholson** continuing in his role as executive creative director.

"We talked him out of the mountains and we're thrilled -- Jim has a very vibrant, creative mind," Kovac said.

Nicholson said the demands on the creative department as the agency had grown -- both organically and through acquisitions -- had increased dramatically in eight years.

"What's so great about Jim is that he understands the culture, and the creative group loves him and the clients love him, too," Nicholson said.

**In memory**

The Sept. 15 edition of Advertising Age had a touching anonymous tribute to **Gary Magee**, a **Bernstein-Rein Advertising** vice president and account group director who worked on the Wal-Mart account since joining the agency in 1980.

Magee died Sept. 3 at the age of 56 after what **Bob Bernstein** said was one of the most courageous battles against cancer he had ever seen.

"Gary worked here for over 20 years and was a guy who was loved by everyone," Bernstein said. "He was a very close member of the Bernstein-Rein family."

The tribute in Ad Age was very apropos for Magee's work at the agency, featuring Smiley, the well-known icon used in much of Wal-Mart's advertising.

The ad was touching in its simplicity, as a now-sad Smiley shed a tear for Magee.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000572

**Photography business launched**

Four partners with almost 75 years of experience, including **Don Wolf** with 45 years, have launched **New Vision Photography**.

Wolf was founder of **Wolf Photography**, one of the largest commercial photography studios in the Midwest, and its president from 1988 to 1999.

Wolf had an interesting start to his career, supervising photographers on the USS Kearsarge, an attack carrier in the Pacific Fleet.

Joining Wolf in the new business are **Pat Malinak**, with more than 20 years of industry experience, **Aaron Bales** and **Brian Puyear**. Malinak's responsibilities for New Vision include business development, stylist and office and production manager.

Bales has more than eight years of experience in commercial and digital photography and is a graduate of the **Brooks Institute of Photography**, as is Puyear.

New Vision is based in the same location as the former Wolf Photography at 3117 Merriam Lane, which has 8,500 square feet of studio, storage, set and office space.

**SPIDERTel gets Thrifty**

**SPIDERTel Inc.**, an Overland Park Web design and marketing firm, has been selected by **Thrifty-Rent-A-Car** to provide search engine marketing to ensure Thrifty's corporate Web site achieves maximum exposure on search engines.

SPIDERTel was founded in 1996 by **Joe Lieberman**, helping local and national clients in their strategic Internet objectives. Other SPIDERTel clients include **Jack Stack Barbecue**, the **Kansas City School District**, **Big Bob's New & Used Carpets**, **Prudential Henry & Burrows Real Estate** and the **University of Pennsylvania**.

**Benefit run and walk**

Oct. 12 marks the inaugural **Head for the Cure 5K** run and walk to benefit the **Chris Anthony Tumor Research Fund at M.D. Anderson Cancer Center**.

The event was founded by **Kirsten Anthony**, widow of Chris Anthony, who died of a brain tumor last year. Chris Anthony is the brother of **Matt Anthony**, the chief executive officer of **VML**, and also was an executive at the ad agency. For more information, visit [www.headforthecure.org](http://www.headforthecure.org)

To reach Jennifer Mann, advertising/marketing columnist, call (816) 234-4453 or send e-mail to [jmann@kcstar.com](mailto:jmann@kcstar.com)

**LOAD-DATE:** October 6, 2003

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The Virginian-Pilot(Norfolk, Va.)

May 11, 2003 Sunday Final Edition

**SECTION:** LOCAL, Pg. B7 POST SCRIPT

**LENGTH:** 358 words

**HEADLINE:** GREETER MADE HAPPINESS THE DAILY SPECIAL AT WAL-MART

**BYLINE:** TONI GUAGENTI THE VIRGINIAN-PILOT

**DATELINE:** CHESAPEAKE

**BODY:**

Born to greet.

That was Charles "Charlie" Gwin. He didn't waste any time after he retired almost a decade ago from driving a delivery truck to hop into another career, one made for him - Wal-Mart greeter.

The gregarious Gwin not only welcomed every customer with a contagious smile, but he'd often also entertain them by dancing to the oldies on a radio he brought to work every day.

Customers and work associates say there's a hospitality void at the Battlefield Boulevard store since the 80-year-old Gwin died April 29 of pancreatic cancer.

"He personified that job," said store co-manager Amy Lee. "He was a real sweetheart."

People have been remembering Gwin's outgoing spirit by signing sympathy cards left on a table near the store entrance. The table is decorated with flowers, pictures of Gwin and a Wal-Mart vest with his name tag on it.

The cards keep coming, said Pat Weaver, a Wal-Mart associate who immediately took to Gwin when she started working there five years ago.

Gwin always looked like Wal-Mart's trademark yellow smiley face, which he wore in abundance on his work vest and his hat du jour.

Not only would he go out of his way for customers, but he would also constantly check with his co-workers.

Cashier Leatrice Wilson said Gwin always asked what she needed, whether it was more carts or just a laugh.

Gwin made people laugh, especially when he'd lip sync to the oldie lyrics with Elvis' flair or Sinatra's smoothness.

He didn't have a favorite, said Linwood Gwin, one of Charlie's seven children.

With 22 grandchildren and great-grandchildren, it was no wonder that Gwin especially loved making the kids who came through Wal-Mart's automatic doors laugh.

He loved sticking those smiley faces on the children.

And if it was raining, he'd take extra time to dry the seats for parents whose kids needed to sit in the carts.

"He was the only one who never complained," Weaver said.

Gwin was a walking Wal-Mart commercial.

"He talked about the store a lot," said Linwood Gwin. "He called them his 'Wal-Mart family.' "

Reach Toni Guagenti at 222-5498 or by e-mail at [postscript\(AT\)pilotonline.com](mailto:postscript(AT)pilotonline.com)

**GRAPHIC:** Photo; Charles "Charlie" Gwin

**LOAD-DATE:** May 13, 2003

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Business Week

April 28, 2003

**SECTION:** UP FRONT; WAL-MART NATION; Number 3830; Pg. 10

**LENGTH:** 226 words

**HEADLINE:** FEWER SMILES IN THE AISLES

**BYLINE:** By Wendy Zellner; Edited by Ira Sager

**BODY:**

In ads, Wal-Mart's "happy face" character is always smiling. Too bad this doesn't hold true for some of the chain's employees. According to consumer research, the world's biggest retailer has seen "a very serious nosedive" during the past five years in how shoppers rate the staff on courtesy and friendliness.

Based on interviews conducted early this year by Service Industry Research Systems, scores at Wal-Mart Stores' discount and supercenter outlets have dropped more than 20% since 1999. They are now slightly below the industry average, which itself has slipped in the same period. The research outfit doesn't know what's to blame for the decline. Wal-Mart disputes the findings, saying that its own data, collected by an outside company, show customers' ranking of store friendliness is "flat or a little improved" from '98 to '02.

A dip in Wal-Mart's scores wouldn't surprise the plaintiffs' lawyers suing over unpaid worker overtime and sex discrimination, or the union organizers who have long contended that there's growing disaffection in the ranks. Wal-Mart still beats rival emporiums when it's rated on total value -- including merchandise selection, prices, and service. In these tight-fisted times, good value seems to matter more to shoppers than anything else.

URL: <http://www.businessweek.com/index.html>

**LOAD-DATE:** April 24, 2003



Copyright 2003 Little Rock Newspapers, Inc.  
Arkansas Democrat-Gazette (Little Rock, AR)

April 20, 2003, Sunday

**SECTION:** BUSINESS; Pg. 63

**LENGTH:** 831 words

**HEADLINE:** Wal-Mart uses stars in stores, not on TV

**BYLINE:** BY ALEX DANIELS ARKANSAS DEMOCRAT-GAZETTE

**BODY:**

Next to its founder, the late Sam M. Walton, the most recognized mug around Wal-Mart Stores Inc. is probably the yellow smiley face the famously stingy Bentonville retail chain uses in its promotions.

"We like Smiley, because Smiley works for free," Wal-Mart treasurer Jay Fitzsimmons told bond market experts at a conference in early April.

Even though Walton's cult of personality has fueled Wal-Mart's growth, the chain has looked to sports and Hollywood luminaries not only to hawk goods, but also to inspire its workers. While the anonymous yellow smiley face might still symbolize Wal-Mart, the company has increasingly attracted a crowd of camerafriendly stars.

In addition to Mary-Kate and Ashley Olsen, the television actress twins who promote their own line of clothing at Wal-Mart, the retail chain has invited dozens of celebrities to make in-store appearances or speak to managers at the company's regular Saturday meetings.

The luminaries range from the white-hot, such as model Cindy Crawford, to the highly respected, such as author Maya Angelou, to the slightly faded, such as Barry Williams, who played Greg Brady in television's 1970s situation come- dy The Brady Bunch.

Working with a celebrity isn't a foolproof selling strategy.

In the 1990s, Wal-Mart's image was hurt by revelations that Kathie Lee Gifford's apparel line was made under sweatshop conditions. And although Kmart's woes were well known when it declared bankruptcy in January 2002, allegations that pitchman Martha Stewart was involved in insider trading certainly didn't help the Troy, Mich., discounter.

Still, celebrities hold sway over many shoppers.

The use of a celebrity can "increase the 'wow' factor with the merchandise," said Wal-Mart spokesman Melissa Berryhill.

Even if it is just a cardboard cutout of a famous person's face, celebrity images are likely to attract shoppers, retail watchers said.

"It draws the customer over to the display," said Suzette Schafer, a marketing vice president with Good Times Entertainment, a New York company that designs advertising campaigns with celebrities. One of Good Times' clients, Richard Simmons, is featured in store aisle displays promoting exercise gear. Schafer declined to discuss terms of Simmons' deal with Wal-Mart.

Using stars to sell goods works, those in the business say.

"Sales can increase 10 percent" if celebrities are part of the promotion, said Dave Samuels, president of public relations company Weston Sports and Entertainment Inc. in Plantation, Fla. "In some cases they can increase more than that."

Three years ago, Samuels helped design a Wal-Mart promotion for Coca-Cola and Nabisco where former baseball greats, including Ozzie Smith, Brooks Robinson and Steve Garvey, played a series of exhibition games throughout the country. During the three-month promotion, Coke and Nabisco sales increased 15 percent, or \$ 10 million, according to Weston Sports.

But famous people aren't just used to sell goods. Often, celebrities including Secretary of State Colin Powell or football great Joe Montana are invited to speak directly to Wal-Mart employees.

"They have to have a compelling story to share," said Melissa Berryhill, a Wal-Mart spokesman.

This March, Cal Ripken Jr., the former Baltimore Orioles shortstop who broke Lou Gehrig's record of consecutive baseball games played, spoke to more than 7,000 employees in Kansas City, Mo., at Wal-Mart's annual managers' meeting.

Ripken wasn't paid by Wal-Mart - he was appearing as a spokesman for Quaker State, which sells products in Wal-Mart stores.

But Ripken didn't just make a sales pitch. He spoke to the assembled managers about what kept him at the top of his game in baseball for more than two decades: perseverance and teamwork.

Ripken, who referred to himself as a rookie in the business world, said speaking engagements "take me out of my comfort zone a bit."

But he said he shopped at Wal-Mart long before he was invited to speak to the company employees.

"I always associate Wal-Mart with spring training," said baseball's "Ironman." Ripken said there was a Wal-Mart store near the Orioles' Fort Lauderdale, Fla., practice facility that he used to frequent as a player.

And like thousands of other shoppers, Ripken has fallen under the spell of the giant retailer. Because of the company's ability to stock thousands of items, shoppers often make spur-of-the-moment purchases.

"You end up coming out with things you didn't realize you needed," he said of shopping at Wal-Mart.

Although celebrities frequent employee meetings and make appearances in stores, it's unlikely Wal-Mart will use stars in its commercials.

Wal-Mart's television spots don't feature famous actors, said Karen Burk, a Wal-Mart spokesman. Instead regular customers are highlighted in the television spots.

"No one can speak better about the shopping experience than shoppers," Burk said.

This story was originally published on Sunday, April 20, 2003.

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The Post and Courier (Charleston, SC)

April 11, 2003 Friday FINAL Edition

**SECTION:** LOCAL/STATE; Pg. 1B

**LENGTH:** 592 words

**HEADLINE:** West Ashley super Wal-Mart will be more than a big box

**BYLINE:** JASON HARDIN Of The Post and Courier Staff

**BODY:**

**PHOTO:** This architect's rendering shows the proposed Wal-Mart Supercenter at Glenn McConnell Parkway and Bees Ferry Road.

There probably won't be a giant yellow smiley face on the front of the Lowcountry's next super Wal-Mart.

That's just one of many ways the city of Charleston wants to make a planned West Ashley Wal-Mart Supercenter look a little -- or perhaps a lot -- different than the typical "big-box" store.

The new store will be at the intersection of the Glenn McConnell Parkway and Bees Ferry Road, smack in the middle of booming suburbs and just a few miles away from an existing Wal-Mart.

On Thursday, Wal-Mart went before the city's Commercial Corridor Design Review Board, which reviews projects on main roads outside of downtown. The project received a mixed reception from the board, which declined to give the design initial approval.

Paul Ansell, broker for the project, said the aim is to create something different. The building would be made of brick, and the lot would include extensive landscaping, he said. The building would not have the customary Wal-Mart color scheme, and the plans even included a rendering without the yellow smiley face.

"We have brought it away from a typical Wal-Mart," he said. "There is not an existing Wal-Mart store like this anywhere."

Board members and city staff praised the use of brick. The design was different, some said. Just not different enough.

City planner Bill Turner made a long list of suggestions, including eliminating a gray stripe at the base of the building, using better trees to line streets, ditching much of the signage and trying to break up the large mass of the building visually.

Board members agreed, voting unanimously to defer approval. Some also complained that the architect was not present at the meeting. Some board members and others took shots at the design of typical Wal-Mart buildings.

City Councilwoman Deb Morinelli asked that the building look as little like other Wal-Marts as possible.

"They're obnoxious looking," she said.

The roughly 200,000-square-foot store is expected to anchor an area that the city sees as having a new look for suburban development.

The intersection of Bees Ferry and the Glenn McConnell will be a large circle that would serve as a kind of main street, said city planner Tim Keane. The street would be fronted by commercial buildings and would be designed to encourage pedestrian activity, he said.

The Wal-Mart would be set back from the southwestern part of the circle, leaving room for smaller buildings to front on the circle.

Ansell said Wal-Mart will work on redesigning the building before bringing it back to the board. "We anticipate trying to accommodate as much as we can," he said.

The super Wal-Mart has been in the works for years. Dozens of residents protested the decision to build the store in 2000. Some said it would overwhelm the already busy area with traffic, would create a vacant shell at the other Wal-Mart a few miles away and would just be ugly. The project ultimately got the green light from the city after Wal-Mart agreed to make improvements to ease traffic flow.

The board didn't specifically vote on the smiley face Thursday, but its future seems in doubt if the discount retailer wants to create a similar expression on the faces of the members of the review board.

Morinelli and others said it needs to go.

"It doesn't work," Turner said.

Jason Hardin covers the city of Charleston. Contact him at 937-5549 or at [jhardin@postandcourier.com](mailto:jhardin@postandcourier.com).

**LOAD-DATE:** April 11, 2003

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National Post's Financial Post & FP Investing (Canada)

November 25, 2002 Monday National Edition

**SECTION:** Financial Post: Marketing; Ad Review; Pg. FP7

**LENGTH:** 698 words

**HEADLINE:** Sawmill saws away in search of an idea

**SOURCE:** Financial Post

**BODY:**

There's no room for little graphics in this intro, so you'll have to imagine a tent, a thing with a clapper in it that you ring and a bowl of steaming liquid. Get it? Camp bell Soup. How about a trash container, a nodding Russian and a sand dune? A little tougher. Can (a) da Dry. A mouth, a large weight and a cup and saucer? Lip ton Tea. All right, we'll stop. But it's this kind of thing that must have inspired the folks at Gee Jeffery and Partners to make a commercial for Sawmill Creek Wines. You're ahead of us. Saw mill Creek. You got it. Three pictures to illustrate the name and introduce the advertisement. Perhaps it will be a good mnemonic. We asked three creative types whether it reminded them of anything.

TONY LEE, CREATIVE GROUP HEAD, LEO BURNETT TORONTO

My partner has accused me of being a wine snob. Yes, I drink wine. I read Wine Spectator on occasion. I even make my own wine. OK, I love wine. But it's a passion I love to share. The world of wine is rich with history and romance. Wine comes in infinite, delicious variations. It has helped advance cultures and civilizations. And as this commercial tries to tell us, it doesn't have to be stuffy or intimidating. Wine is a simple drink. But I digress. This ad is a clumsy and disjointed mess. There's the inane pictorial branding device, repeated ad nauseam. The "wine is like people" metaphor, told with insipid stock photos and unappetizing product shots. There's the Python-esque "make fun of wine snobs" cartoon. The leap of logic into how they craft their wines, illustrated by truly horrendous typography. All within the odd picture-frame structure, which diminishes all the visuals (OK, there's a good thing). Unfortunately, instead of simplifying wine, they've dumbed it down. Instead of just being friendly and approachable, they tell us they are. Instead of charming, they cheapen. And the lack of craft reflects poorly on the product. Now I'll probably be called an ad snob too.

COSMO CAMPBELL, ASSOCIATE CREATIVE DIRECTOR, PALMER JARVIS DDB, VANCOUVER

Ever been in that situation where you can't decide which wine to order? The Merlot or the Chardonnay? OK, that's a bit of a stretch, but I'm sure you get my general idea. Well, here's a thought, why not mix the two and throw in a glass of Champagne for good measure? How come you wouldn't do that with wine, but it's considered all right in a commercial? This seems to be the case with this commercial; it lacks strategic focus right out of the gate. Firstly, it's all about explaining the name, then it's about having a good time with friends, and how wine is like people. And the last idea thrown in to round out the flavour is that this is a wine that's not for snobs. I think the end result would have been a lot more successful if they'd focused on one strategy and stuck to it. The not-for-snobs angle seemed like a fun premise with lots of creative potential, and I liked the little animation of the guy saying "Piss off" to the hot air balloon, but other than that, as they say in the wine industry, this was a real nose holder.

HENRY WONG, PARTNER AND CREATIVE DIRECTOR, CAMPBELL MICHENER & LEE, TORONTO

The spot starts out with promise. It employs pictures of a saw, a mill and a creek to playfully underscore the product name. But then it floats out to nowhere, unable to define its own personality, The spot becomes an advertising castaway, of sorts.

A castaway from Europe -- it's reminiscent of a terrific French campaign for Pernod from a number of years back that utilized Gilliam-inspired animation to playfully underscore the product name. (In France, we drop the "d.") A castaway from radio -- it sounds far too much like an announcer-read radio spot illustrated with visuals. A castaway from a Wal-Mart spot -- it even uses the familiar bright happy face! In the end, one's simply left asking: Where's the idea? I know the budget was limited, but here's a spot that comes from an agency that has created award-winning work on shoestrings. Remember the multi-award-winning commercials from Peoples Jewellers featuring nothing but type and Polaroids? Commercials don't need to have a big budget, just a big idea.

**GRAPHIC:** Black & White Photo: This convenient mnemonic may prove handy the next time you visit your local liquor store. Or then again it may not.; Black & White Photo: Tony Lee; Black & White Photo: (Cosmo) Campbell; Black & White Photo: Henry Wong

**LOAD-DATE:** November 25, 2002

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Lexington Herald Leader (Kentucky)

August 16, 2002 Friday

**SECTION:** CITY & REGION; Pg. B1

**LENGTH:** 426 words

**HEADLINE:** Wal-Mart proposal is rejected;  
Bourbon panel denies supercenter zone change

**BYLINE:** Lance Williams CENTRAL KENTUCKY BUREAU

**DATELINE:** PARIS

**BODY:**

Plans for a Wal-Mart Supercenter in Paris hit a stumbling block last night when the Paris-Bourbon County Planning and Zoning Commission voted 7-6 to deny a zone change that would have opened the door for the 35-acre development.

Despite the vote, the developers still plan to ask the city commission to approve the zone change anyway and allow planning for the supercenter to continue.

"Of course, we're disappointed, but we look forward to taking our plans before the city commission," said Richard C. Presley, attorney for the developer, Horne Industries.

Opponents of the planned 170,000-square-foot store were pleased with last night's decision, but understand that the issue is far from over.

"I think all of the things that are ahead of us are dependent on the developer," said Hank Graddy, attorney for the Paris First Committee, which opposes the new supercenter.

The commission voted to deny the zoning change from agricultural and residential to commercial because of concerns about traffic and other effects of a large development.

The city of 9,000 already has a Wal-Mart that opponents worry will sit empty if a new store opens.

The property, owned by Bill Letton, sits adjacent to the current Wal-Mart, a car dealership and fast-food restaurant and is also bordered by pastures.

Commission Chairman Stan Galbraith stressed that the vote was based purely on a zone change and not just about a new shopping center.

"The issue here is not Wal-Mart, Kroger, Applebee's or anything else," Galbraith said. "It's got nothing to do with Wal-Mart."

But among the standing-room-only crowd that spilled into the hallway, Wal-Mart made its presence felt.

Dozens of residents and employees covered themselves in Wal-Mart stickers, and one person's face was painted with the Wal-Mart happy face.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000583

Supporters say the new store will provide a major economic boost for the county with the slowest growth rate in Central Kentucky.

Opponents, meanwhile, donned red shirts urging commission members to vote against the zoning change. They argue the change would run counter to the 1992 Paris/Bourbon County comprehensive plan, and would hurt downtown businesses.

Both sides had given public testimony for more than four hours last month about the proposed zone change. No public comment was taken last night.

Chairman Galbraith directed one commission member to abstain from the voting because she was absent at last month's meeting.

No time line has been set for when the issue could come before the Paris city commission.

**LOAD-DATE:** August 16, 2002



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The Gazette (Montreal, Quebec)

May 28, 2002 Tuesday Final Edition

**SECTION:** Business; Pg. D1 / BREAK

**LENGTH:** 640 words

**HEADLINE:** Leblanc betting his fortune on JetsGo: He's the sole investor of new low-cost airline

**SOURCE:** The Gazette

**BYLINE:** NICOLAS VAN PRAET

**BODY:**

Former Royal Aviation chief executive Michel Leblanc is funding his new low-cost airline JetsGo entirely with his own personal fortune.

A well-placed source said Leblanc's tightly-knit team had sought investment money from only one institution: The Quebec Federation of Labour's Solidarity Fund.

The fund had dished out \$5 million a decade ago to another fledgling airline of Leblanc's, Intair. This time however, it refused.

Leblanc thus finds himself bankrolling his new project, which he will launch at a press conference in Toronto today, alone. The decision not to pursue other investors was his, according to the source.

Others, however, suggest it is further evidence that investors are still reluctant to sink their money into any new airlines, particularly in Canada, which is dominated by one carrier.

At least one major post-Sept. 11 startup project has already fizzled. In February, Angus Kinnear, the former chief executive of Canada 3000, abandoned his plans to revive the bankrupt carrier, saying investors were scared off by unprecedented airline losses during last year's monster aviation meltdown and the quick expansion of Air Canada's discount Tango brand.

"Investors, at best, are very suspicious at this point," said Tae Oum, an airline specialist at the University of British Columbia.

"Any new start-up has to be prepared to get hurt by Air Canada and have deep pockets to sustain the punches."

JetsGo will launch with three Boeing MD-83 jets. The discount airline, which plans to start service in June, will fly to key Canadian cities and battle Air Canada on the lucrative Montreal-Toronto route.

Advertisements for the new carrier have popped up in Toronto and Winnipeg. JetsGo's logo features a lime-green happy face, perhaps a calculated effort to mimic discount retailer Wal-Mart's yellow, smiley face.

Leblanc planned on modeling his discounter on Calgary-based WestJet Airlines Ltd., a no-frills carrier that has been consistently profitable since its inception.

Like WestJet, JetsGo will start with three jets and use only one type of plane. Like WestJet, the plans call for a fourth aircraft to be added within the first three months of service.

Unlike WestJet, however, Leblanc has no backers. His company filing with the Quebec government lists Michel Leblanc Family Trust as the main shareholder, Leblanc Capital Trust as the second shareholder, and Michel Leblanc as the third.

WestJet started with about \$25 million in start-up capital, said Calgary-based airline analyst Rick Erickson. One of its main investors was the Ontario Teachers' Pension Fund, Erickson said.

Leblanc has been keen to repeat his success at launching an airline during an economic downturn, a feat he accomplished when he started Royal in 1991. He eventually sold Royal to Canada 3000 in an \$84-million stock deal.

Then he attempted to buy it back. When that failed, Leblanc announced he would start another airline with up to 10 jets. JetsGo is the scaled-back result.

Some in Quebec's aviation community have nothing but high praise for Leblanc, saying the industry veteran knows what it takes to succeed.

But his start-up will begin operations amid some controversy. Several former Royal Aviation flight attendants are upset that Leblanc hired many of his new recruits off the street instead of consulting a federally-funded registry for unemployed airline workers. Some pilots too, are critical of Leblanc asking the 30 pilots he hired to finance their own training - a move they say automatically disqualified any pilot not willing to pony up \$30,000 U.S.

The good news for consumers is that Leblanc plans to offer airfares at prices lower than Air Canada and Tango. The question remains how many people will take him up on it.

- nvanpraet@thegazette.southam.ca

**GRAPHIC:** Color Photo: AARON HARRIS, CP; Michel Leblanc: launch today.

**LOAD-DATE:** May 28, 2002

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May 2002

**SECTION:** Vol. 8, No. 5; Pg. 4(1); ISSN: 1085-5009

**RDS-ACC-NO:** 3397254

**LENGTH:** 502 words

**HEADLINE:** First things first. (Editor's Note)

**BODY:**

Shopping is emotional. That's the main finding from a new study by WSL Strategic Retail. The research isolated three factors that determine which store becomes a consumer's favorite: appearance, "browse-ability" and convenience. Price ranked dead last.

Apparently, the American marketplace has met shoppers' basic need for quality merchandise at reasonable prices. Now consumers are upping the ante and demanding a pleasant experience as well.

One retailer that appears to be on top of this trend is Wal-Mart, whose TV ads emphasize how enjoyable it is to shop at Wal-Mart. Everyone -- from retirees selecting toys for grandchildren to teens looking for the ultimate video games -- appears to love shopping at Wal-Mart. Even the ubiquitous smiley face beams.

But does the reality live up to the promise? Yes and no. Wal-Mart's score, according to the WSL report, was mixed. The retailer was named "most favorite" by the highest percentage of respondents (29 percent) but also obtained the largest "least favorite" rating (13 percent). Perhaps the reason for the chain's low ratings is the gap between the happy shoppers on television and the cold reality of the actual store. What retail experience could live up to those impossible images?

Another retailer working the experience angle is McDonald's. Since the campaign's launch nearly two years ago, the fast feeder has been promising a friendlier experience. In fact, it says it "loves to see us smile."

But, according to a December 2001 Wall Street Journal article, the company is hiring a fleet of more than 150,000 mystery shoppers to monitor -- in hopes of improving -- the real-life restaurant experience. A study commissioned by the newspaper found that only 64 percent of McDonald's employees greeted customers with a smile. No mention was made of what percentage of customers smiled.

The job for marketers is not nearly as easy as declaring that your retail brand serves up an appealing customer experience. No amount of ad spending can create that impression with consumers. Only by slowly building up credibility -- through each shopping experience -- can retailers create a positive feeling with shoppers.

In his new book, *A New Brand World*, Scott Bedbury argues that strong brands become that way not by spending marketing dollars, but by offering customers a valuable brand experience. He holds up Starbucks as a company that spends little on advertising but successfully creates a strong brand experience. "Behavior and quality, over time, build trust," he shares. "Advertising, if it is any good, should help to confirm what already is, not what should be."

TTAB Opp. # 91/150,278  
WM/LOUFNI0000587

Promoting a great retail experience through advertising is a sound plan, but retail marketers shouldn't forget the natural order of things -- first create the brand experience, then promote it. Reversing the order places demands on advertising that it can't possibly deliver.

Or, in Bedbury's own words, "That's like putting lipstick on a pig."

Laurie Najjar, Editor

**TYPE:** Journal; Fulltext

**JOURNAL-CODE:** POINPURC

**LOAD-DATE:** November 9, 2004

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Copyright 2002 The Charlotte Observer  
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Charlotte Observer (North Carolina)

March 28, 2002 Thursday TWO EDITION

**SECTION:** UNION; Pg. 3U

**LENGTH:** 722 words

**HEADLINE:** BOARD WON'T HEAR ZONING APPEAL BY WAL-MART SUPERCENTER OPPONENTS;  
EFFORT TO STOP THE PROJECT MISSED DEADLINE, PANEL DECIDES  
COURT IS OPTION

**BYLINE:** SAMANTHA PETERSON, STAFF WRITER

**DATELINE:** MONROE

**BODY:**

Wal-Mart can move forward with plans to build a supercenter in western Union County after the county's Board of Adjustment decided Tuesday night not to hear an appeal by opponents.

The Union County Board of Adjustment ruled that an appeal of a zoning decision that allows the company to build a 206,000-square-foot store near Weddington was not filed within the required 30 days after zoning administrator Donald Keziah made the decision.

That means, four of the five board members voted, that the board could not legally hear the appeal brought by Lisa and Nathan Murphy, residents of the nearby Somerset subdivision who are challenging Keziah's ruling.

"I'm just shocked," Lisa Murphy said after the 75-minute hearing.

Afterward, neighbors and others offered her encouragement and vowed to continue opposing a supercenter at Tom Short and Rea roads.

She and husband Nathan now have 30 days to decide whether to appeal to Superior Court the board's refusal to hear their case, said Anthony Fox, a Charlotte attorney representing the Murphys. The court can rule only on whether the Board of Adjustment had the authority to hear the Murphys' appeal.

Lisa Murphy said they will probably appeal the board's decision.

Dorothy Bryant, a resident of Hunter Oaks subdivision who has helped organize community support against the plans to build a supercenter, called the board's decision unbelievable and ridiculous.

"But I think tonight is going to give us even more support against this, against the county," Bryant said.

Already, the plans have sparked intense opposition from residents in nearby subdivisions. More than 100 people packed the small meeting room at the Union County Courthouse Tuesday night, with even more spilling into the hallway. They booed and hissed at times when the county's attorney and Wal-Mart's attorney made statements they didn't like. Many still carried the signs they had waved during a media conference before the hearing.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000589

Before the hearing, the energetic crowd gathered outside the courthouse, holding signs with such slogans as "Big Box = Big Mistake" on them and chanting "Roll back Wal-Mart." Several held up yellow paper circles with frowning faces on them, playing off Wal-Mart's signature yellow happy face.

Residents are concerned the 24-hour store could lead to crime, traffic and aesthetic difficulties in their quiet neighborhoods.

The land has been zoned B-2, a business designation, since the mid-1990s. Before last year, B-2 had no restrictions on store size. But in May, county commissioners, as part of a county zoning overhaul, capped B-2 shopping centers at 120,000 square feet.

Keziah ruled last year that the cap wouldn't apply to this site. In a Sept. 21 letter last year, Keziah wrote that the site could be grandfathered because the owners had presented a site plan and had helped extend a county water line before the county zoning rules changed.

Tuesday's hearing focused mainly on when Lisa Murphy learned of Keziah's Sept. 21 decision.

Fox argued that Murphy had heard rumors about the letter and had asked county staff for a copy, but that she did not see it until Dec. 31 when a fellow Somerset resident obtained a copy. She then filed an appeal of Keziah's decision by Jan. 9, well within 30 days of learning of the zoning decision, Fox said.

But the county's attorney, Don Perry, argued the 30-day window for filing appeals began when Keziah made the decision, not when Murphy learned of it. The county is not required to notify residents of the decision, he said.

Keziah also testified that he gave Murphy a copy of the letter before Dec. 31.

Murphy disagreed, saying she was told there was no documentation of the plans when she first inquired about the possibility of a supercenter being built directly behind her house.

She began asking around at county offices about such plans when her husband noticed a bulldozer just beyond their backyard fence in November, she said. When he asked what was happening, he was told a Wal-Mart supercenter was going up, she said.

Supercenters feature bakery goods, deli foods, frozen foods, meat and dairy products and produce, and include specialty shops such as vision centers, Tire & Lube Expresses, Radio Grill restaurants, portrait studios, hair salons and employment agencies.

**LOAD-DATE:** March 30, 2002

Copyright 2002 Madison Newspapers, Inc.  
Capital Times (Madison, WI)

March 14, 2002 Thursday, ALL Editions

**SECTION:** SAVVY; THE SAVVY SHOPPER; Pg. 1F

**LENGTH:** 642 words

**HEADLINE:** AND THE WINNER IS KMART!

**BYLINE:** Amy Mertz The Capital Times

**BODY:**

Attention, local Kmart shoppers: Your Blue Light Special has beaten out the Target bull's-eye and the Wal-Mart whistling yellow smiley face.

Nearly 150 readers - many expressing a strong alliance to Kmart - responded to a Savvy survey asking about their favorite discount store, what items they bought most and how often they shopped. The survey was drafted in response to Kmart's announcement that it would be closing many of its stores - possibly the two in Madison and one in Monona.

However, before these survey results suggesting that the Madison area stores are popular could be tallied and sent to Kmart headquarters, the corporation announced it would be closing the stores on Madison's west side and in Monona. The East Washington Avenue store will remain open.

So local shoppers will continue to enjoy Kmart - though they may have to drive or bus farther, and maybe shop less often. Our brief survey showed that Kmart led the discount store pack - barely - receiving 43 of the 141 votes, with Target nipping at its heels (41) and Wal-Mart slightly further behind (36). ShopKo managed to get 18 votes, and three readers cast a vote for "other."

As a couple of observers noted, perhaps Kmart got the most votes because it was under threat to close, and readers may have felt compelled to help save the store.

But this survey is not meant to be of the same caliber as the U.S. Census; rather, it helps us learn more about the habits of local shoppers and what they value about their favorite store.

The most common items bought at discount stores fell into the beauty/health category (40 votes), followed by home improvement/household goods (30) and clothing (23). Housewares - including linens and small kitchen appliances - landed 22 votes, garden had 12 votes and 13 votes were cast for "other" items.

Most readers (63) said they shopped discount stores more than once a month but not quite weekly. Fifty-three said they shopped there weekly, 18 said once a month, four said every three months, and two said every six months.

Why do the latter two questions' totals add up to 140? One reader voted for Wal-Mart only as a favorite store and failed to fill in answers to the other two questions.

Clothing, garden and health/beauty items are most popular at Kmart, while beauty/health and housewares garnered the most votes for Target shoppers. Wal-Mart and ShopKo shoppers were all over the map with their purchases, and Kmart shoppers seem to visit the store more frequently than those who shop elsewhere.

Some readers chose to submit comments on their favorite discount store. JoAnn Achammer, Sun Prairie, wrote: "I drive by Wal-Mart, ShopKo and Target and stop at Kmart, as I find they have better prices and they carry what I'm looking for." She's lucky; her favorite store was the East Washington location.

Another reader who did not leave her name said: "I like everything about Kmart, and I'd be very saddened to see them go. I've always found what I've wanted there. I've always had polite people take care of me. There's always ample parking, just a top-notch store and I'd hate to see them go."

At the other end of the spectrum was Oscar Lange of Middleton. He wrote eight pages of opinion on discount stores, basically stating that they're "ripoffs" and fail to offer great discounts.

Surprising to many of the women in our newsroom was mention by several readers that they don't like Kmart's Martha Stewart Everyday label because they think it caused inflation of prices throughout the store to compensate for pushing her products.

The bottom line is that we all like to have choices when it comes to discount shopping, and it's good news that Kmart will maintain a presence in Madison. We've forwarded a copy of the survey to the company's headquarters, in case they start thinking about closing more stores.

**LOAD-DATE:** March 15, 2002



Copyright 2001 McClatchy Newspapers, Inc.  
Fresno Bee (California)

December 28, 2001, Friday SOUTH VALLEY EDITION

**SECTION:** South Valley Bee; Pg. 13; OPINION -- MEGAN LUNA

**LENGTH:** 654 words

**HEADLINE:** Wal-Mart vs. Reedley

**BYLINE:** Megan Luna

**BODY:**

The idea of a Wal-Mart in Reedley sounds good to many: low prices, employment opportunities, local convenience. It's been said, however, that all good things must come to an end.

Many locals of the Valley are aware of Reedley. Having always been a small town with a population to match, many people like the notion of a local Wal-Mart and many do not. The town is basically run by "ma and pa" stores. If you plan to find a job, you had better have connections or know lots of people. Agriculture thrives in Reedley and is praised by many throughout the Valley. The chain that remotely resembles Wal-Mart is the local Rite-Aid which has done well. The world's fruit basket is currently in a debate as to whether a Wal-Mart should be built.

Well, should it or shouldn't it?

Bad idea

As a student at Reedley College, I think it's a bad idea. The top concern is location. The rush hour in Reedley has progressed to an all-time high. If a Wal-Mart were to be built, it would be on Manning Avenue and I Street. Manning is one of the busiest streets in town and during rush hours, it's even busier. The traffic issue is already a problem faced daily with cars backed up, all waiting for the light to turn green. Traffic congestion would surely be much worse.

Not only will traffic be a problem but one must also be aware that the Kings River is a few feet away. It is inevitable that the river's cleanliness would suffer. Can you imagine all the Wal-Mart bags floating around? The smiley face logo would be in places we never thought of.

Right behind the dirt area that may become Wal-Mart is a quiet neighborhood. This area is close to the river, which would make the houses also close to Wal-Mart. This is not a good thing for any neighborhood. This would allow easier access to the subdivision and the river. You can be assured that the people living in this area do not want a Wal-Mart built for these obvious reasons.

Location isn't the only problem associated with Wal-Mart. One must consider all the small businesses in downtown Reedley. These little stores that have kept Reedley alive and going all these years would surely feel the wave of Wal-Mart's presence. The ma and pa stores need to make a living, too, and a Wal-Mart wouldn't make it easier for them. Downtown Reedley has done exceptionally well all these years, why change that now?

At one point, Reedley had a K-mart in town at a different site. Initially, it was great. Lower prices were locally available. But, with the progression of time, K-mart became a rundown building that remains abandoned today. History proves that Reedley cannot handle a large corporation with a large building. You know what they say about history repeating itself? Well, they were right.

Fresno Bee (California) December 28, 2001, Friday

Sure, Wal-Mart might bring in jobs, but what a lot of people are unaware of is that these jobs are temporary and offer minimum-wage paychecks. This is good for an after-school job, but it will not help the employee in the long run.

Now fully aware of the idea that a Wal-Mart may soon exist, I enter stores differently than I used to. I'm much more observant, and I don't like what I see. I've been to three local Wal-Marts and they've all looked like victims of a tornado.

Messy, crowded

Trying to find a decent parking space is murder, and the lots are littered with trash everywhere. Selection is cut back, and the stores are unkempt. The buildings are usually overflowing with people in every open space. The greeters at the front door are great. However, it's going to take a lot more than a smiley-face sticker to change my mind about a Reedley Wal-Mart.

After much thinking and evaluation, I conclude it doesn't make sense to build a Wal-Mart in Reedley, nor is the town ready for it. This small town enjoys being just that. Wal-Mart would change this drastically and not for the better.

Megan Luna is a resident of Reedley and a student at Reedley College.

LOAD-DATE: December 28, 2001

November 22, 2001 Thursday

**SECTION:** Pg. 2

**LENGTH:** 445 words

**HEADLINE:** Small shops resent Wal-Mart

**BYLINE:** Tara King Journal Staff Writer

**BODY:**

\* Los Lunas business owners say discounter's prices will hurt their sales

LOS LUNAS Wal-Mart's trademark smiley face is bringing no joy to some Los Lunas business owners.

Wal-Mart Stores Inc. is in the preliminary stages of bringing a superstore, which sells everything from tires to tomatoes, to the west side of the village.

Some shop owners, such as Lori Branch, who owns The Branch gift and Christian bookstore with her husband, Barry, say the giant retailer could put them out of business.

"Los Lunas is a village of small businesses, and I think it's a shame that Wal-Mart is going to come in and take a big bite out of everyone's business," she said.

Wal-Mart sells some of the Branch's best sellers, such as a fiction series called "Left Behind," for less than the wholesale prices Branch pays for them, she said.

"We can't compete pricewise with that kind of buying power," Branch said.

Steve Brown, who owns Sam's Tires with his brother, said Wal-Mart prices don't allow fair competition.

"They undercut the price so bad. They'll sell new tires so cheap, they're cheaper than some of our used tires," Brown said.

Already, the Wal-Mart Supercenter in Belen, which replaced a Wal-Mart store there in 1997, has "put the hurt on us," he said.

"They don't need one here; they got one right down the road," he said.

Rick Turrietta, a manager at Smith's Food & Drug Center, and 18 of his employees attended a recent Los Lunas planning and zoning meeting to protest Wal-Mart's coming to the village.

"We wanted to say that (Wal-Mart) wouldn't be creating more jobs the jobs will just be shifted around once businesses start closing," Turrietta said.

Wal-Mart's preliminary plan to subdivide 22 acres west of Interstate 25 was recently approved by the planning and zoning commission. Phillip Jaramillo, village administrator, said the commission had to base its decision on whether Wal-Mart had fulfilled its requirements for the application to subdivide, which it did, he said.

"They weren't asking for a zone change, which is where people protesting could have made a difference," Jaramillo said.

The Village Council will consider Wal-Mart's final plan, which is called a plat, at its regular meeting Nov. 29. Wal-Mart spokeswoman Daphne Davis Moore said plans for the Los Lunas store were too preliminary to give a target opening date.

Several local business owners said they were disappointed the megastore is coming but that they would survive because they provide what Wal-Mart doesn't customer service.

"I'd just as soon not have that kind of competition," said Dan Dorman, manager of Ken's Electronics.

**GRAPHIC: PHOTO BY: JAY FLORES/FOR THE JOURNAL**

**PHOTO: b/w**

**ALREADY STINGING:** Sam Brown, left, and his brother, Steve, background, own a tire store in Los Lunas. Steve Brown says Wal-Mart makes competition difficult and that their business already suffers because of the Supercenter in Belen.

**LOAD-DATE: November 23, 2001**

Copyright 2001 The State Journal-Register  
The State Journal-Register(Springfield, IL)

June 17, 2001 Sunday

**SECTION:** MARKETPLACE, Pg. 37

**LENGTH:** 584 words

**HEADLINE:** Insight Communications pushing cable-system upgrades

**BODY:**

It has been more stop than start, more marketing than delivery when it comes to cable-system upgrades in the Springfield market.

Remember @Home, AT&T's high-speed Internet service? Other than signing up customers in a few west-side neighborhoods early last year, the much-hyped rollout quickly stalled. MCLEODUSA opened talks with city officials two years ago on the possibility of establishing a competing cable system. Nothing much has happened since.

Now, INSIGHT COMMUNICATIONS is pushing to pick up the momentum.

New York-based Insight took over the Springfield cable system from AT&T early this year. Then came last week's announcement that Insight would acquire cable systems in Chatham, Divernon, Pawnee and Glenarm from Cass Communications. Cass, based in the Cass County community of Virginia, primarily serves rural communities in the local market.

Chatham, population 8,500 and still growing, was the prime target of the buyout, though Pawnee, Divernon and unincorporated Glenarm also have been growing the past decade.

Greg Capranica, vice president of operations for Insight, said following last week's announcement that the company now expects to rollout its upgraded cable system in early 2002. The network would be capable of carrying a variety of telecommunications services, including high-speed Internet connections.

Though plans are to introduce the service in Springfield first, Capranica said Chatham, Divernon, Pawnee and Glenarm would be included soon thereafter.

"Our plans there would be the same plan as far as technology deployment," Capranica said of the newly added communities. "We'll be offering the same range of products that we're offering in Springfield."

Insight is the nation's eighth-largest cable company with approximately 1.4 million customers.

Local housing construction continued to slow in May, according to the SPRINGFIELD BUILDING AND ZONING DEPARTMENT.

Figures released last week showed 34 permits for single-family construction were issued last month compared to 58 for May of last year. For the first five months of this year, 121 permits were issued compared to 168 for the same period last year.

DETAILS IN STORE LTD., a gift and collectibles shop, has opened at 214 S. Sixth St. In addition to gifts and collectibles, the shop offers clothing, jewelry, home accessories, floral arrangements and bulk coffee beans.

Nena Bartold is the owner. Hours are 10 a.m. to 5:30 p.m. Monday through Friday, and 10 a.m. to 4 p.m. Saturday. The phone number is 523-9600.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000597

It's the smiley face vs. the blue light.

KMART and WAL-MART have always gone cash register-to-cash register in the competition for discount shoppers. But a Kmart on MacArthur Boulevard in Springfield added its own little twist to a national campaign promoting the return of Kmart's famous blue-light specials.

Hand-stenciled signs in front of the local Kmart displayed a frowning, blue version of the famous smiley face and the caption, "Look who's blue in the face." It was an obvious reference to Wal-Mart's use of the traditional yellow smiley face in marketing campaigns.

While Wal-Mart is not specifically named, another sign showed the "K" in Kmart applying a kick to a smiley face with the caption, "Kmart's kicking the smile off high prices." Talk about your retail competition.

Kmart, by the way, restored the blue-light specials to its stores nationwide after a 10-year absence. The original blue-light special was introduced in 1965.

**NOTES:**  
ON WEB SITE

**LOAD-DATE:** June 26, 2001

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The Arizona Republic

August 16, 2000 Wednesday Final Edition

**SECTION:** CHANDLER COMMUNITY; Pg. 1

**LENGTH:** 891 words

**HEADLINE:** CHAIN CONFRONTS ITS OPPOSITION WAL-MART SUPERCENTERS ENTRENCH FOR BATTLE

**BYLINE:** By Betty Beard, The Arizona Republic

**BODY:**

Wal-Mart's yellow smiley face is frowning a little in the southeast Valley.

It has been more than two years since the megacorporation planned to begin splattering the southeast Valley with at least five large Supercenters, but to date only one has been built, at Baseline Road and Stapley Drive in Mesa.

Another Wal-Mart west of the Superstition Springs shopping center is being remodeled into a 207,000-square-foot Supercenter to be completed in a few months, but neighborhood opposition sent would-be stores in Chandler and northeastern Mesa into ongoing court battles and disrupted plans for a store in Gilbert.

The opposition and Wal-Mart's willingness to battle for market share in court are typical of what has been happening around the country, says new Chandler resident Bob Ortega, a former Wall Street Journal reporter who wrote the 1998 book *In Sam We Trust*, about the business practices of Wal-Mart, which was founded by Sam Walton.

"It's hard to find a community where there wasn't a fight somewhere, even in Bentonville, Ark.," he said, referring to the location of Wal-Mart headquarters.

And when Wal-Mart loses, it still can be persistent, sometimes coming back after seven to nine years.

"They're very aggressive litigators," he said. "If they think it's a good market, they just keep trying."

After all, citizen groups fighting them may lose steam.

"It's usually a grass-roots group," Ortega said. "It's a fact that for grass-roots groups to keep up energy over the years over and over is very difficult."

It has been two years since his book came out, but to Ortega's amazement, he continues to be interviewed in connection with Wal-Mart controversies, including those in England, Ireland, Germany, the Netherlands and Switzerland. He recently returned from a journalism fellowship in Paraguay and was interviewed by four radio stations while there, including the British Broadcasting Corp.

"I thought I'd write the book and it would be over. To my surprise, there has been a constant stream of Wal-Mart related stuff," Ortega said.

Wal-Mart isn't the only aggressive retailer or builder of big stores, but Ortega believes it has become more controversial than others because it has come to symbolize look-alike strip malls that foes say are sapping individuality and character from towns and cities.

Ironically, he said, it's not unusual to see people suddenly rise up to protest a Wal-Mart planned for an area already developed into a strip mall.

The Wal-Mart becomes the final straw.

"They see a Wal-Mart, and they don't want it to go further," he said.

Ortega doesn't dispute that Wal-Mart is very successful and predicts the company will be the first in the world to break \$200 billion a year in revenues.

"I'm certain that within two or three years they will be the largest corporation in the planet," he said. "They're already the largest employer."

Interviews with some customers at the Wal-Mart Supercenter in Mesa show why the Supercenters are growing. These are giant versions of regular Wal-Marts that feature groceries, larger aisles and bright lights.

John and Sandi Jamieson, who got used to shopping at Wal-Mart in Orlando, now drive five miles from their Chandler home to the Mesa store, bypassing other grocery stores and discounters.

"The prices are good, and it's one-stop shopping," she said. "It's also clean and bright."

Donna Still, 55, of Superior, likes to stop in at the store when she's in town because, along with everything else, it has a fabric section. She's excited about the Supercenter opening near Superstition Springs and may bypass a store in Globe to go to the Supercenter. "It's 45 minutes to Power Road and 30 minutes to Globe," she said.

Some of the shoppers were sympathetic to those Chandler and Mesa residents who have risen up to protest Wal-Mart.

"I like shopping at Wal-Mart, but I'm not sure I'd want them in my back yard," said Mary McGonegle, 36, of Queen Creek. She praises the store for being "very organized and very clean. It has a lot of selection."

Leonard Guzman, 40, of Gilbert, said that while the stores offer convenience and good prices, "It really isn't peaceful and quiet because of all the traffic."

Wal-Mart submitted plans in early 1998 to build a Supercenter near the upscale Ocotillo area in south Chandler, but hundreds of neighbors arose and persuaded the Chandler City Council a year ago to reject the store. Wal-Mart then sued in November, and both sides are waiting for a trial date.

In contrast, the Mesa City Council in February approved plans for a store near Falcon Field, but opponents successfully obtained a referendum against the project and forced it to an election, now set for 2002. Wal-Mart challenged the petition, lost at the Superior Court level and is appealing that to the Arizona Court of Appeals.

The company shelved plans to build a store in Gilbert, apparently because of neighborhood opposition.

Despite the setbacks, the retailer isn't giving up, said Amy Hill, a Wal-Mart spokesperson. "We're going to exhaust all legal resources in these cases before we make further decisions on doing something else," she said.

Also, she said, the business is still looking for opportunities in the southeast Valley, including Gilbert. "It's still a very viable area for Wal-Mart and for Supercenters."

LOAD-DATE: July 14, 2003



427 of 596 DOCUMENTS

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August 3, 2000

**LENGTH:** 618 words

**HEADLINE:** Resource Marketing Study Reveals Discount Giants Wal-Mart and K-Mart Score Zero Online

**BODY:**

COLUMBUS, Ohio, Aug. 3 /PRNewswire/ -- It's been said that you can't teach an old dog new tricks. If that's the case, five major big box retailers are likely to find themselves in the consumer doghouse during the coming holiday season.

According to the Resource E-commerce Watch, a recent report by Internet marketing authority Resource Marketing, Inc., big-name multichannel retailers need to better understand the customer's expectation or will lose out again this holiday.

"In the rush to keep pace with the Web, big box retailers have failed to translate their brands online in a way that makes sense to consumers," said Kelly Mooney managing director of Intelligence for Resource. "Their Internet experiences are filled with blind spots that will put off both experienced and novice shoppers."

Fifty leading e-retailers were studied on 500 consumer-based measures to determine the quality of their online customer experience. WALMART.com scraped near the bottom, coming in 49th. BlueLight.com, K-Mart's online sister, came in dead last at 50. Other sites to watch as retailers gear up for holiday 2000: Toysrus.com ranked 29th. target.com landed at 31, with CircuitCity.com close behind at 32. Some findings from the study showed: \* A kite from BlueLight.com arrived in a box packed with shredded invoices but without an actual invoice, packing slip, or any clue as to the identity of the company from which the product came. \* Wal-Mart's whistling smiley-face is full of cheer as it rolls back prices on television commercials, but there's no sale area on the site and numerous navigational dead-ends. \* None of the selections in CircuitCity.com's games, music and videos section are for sale online. Customers are told to visit their store to make these purchases. \* target.com distributes information within its Target Corporation family of business and their partners, but only promises to "do our best" when consumers ask to have their names removed from Target marketing programs. \* A Rugrat toy purchased from Toysrus.com arrived in an oversized box and the card accompanying the gift left off the body of our message.

Findings also confirmed that big box retailers as a group ranked last in overall performance when compared to apparel sites, toys and games, personal care, and other vertical markets.

"E-retailing is clearly in its formative stages but these big box retailers need to work harder to translate their value proposition online," said Mooney. "All of these retailers are falling short when trying to take their brands to the Web."

Since 1997, Mooney and her team of "undercover" cybershoppers have been tracking the quality of the online customer experience. They've spent thousands of hours and hundreds of thousands of dollars on e-merchandise. Twice per year, Mooney rates 50 leading sites on 500 consumer-based measures, reporting how retailers perform on 14 key success factors. She awards medals to each site: gold for an exceptional customer experience, silver for good, and for those bringing up the rear, bombs. Fortune, Time Digital, Brandweek, Business Week, CNN, CNBC, and CNNfn have profiled results from previous Resource E-commerce Watch investigations.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000601

PR NEWSWIRE August 3, 2000

The study also includes e-retailing bright spots, a ratings chart of leaders and laggards, and results from a satisfaction survey of 3,000 online shoppers.

Mooney is available to discuss findings from the latest edition of Resource E-commerce Watch. For additional information or to arrange an interview, contact Keri Lucas at 614.410.2142. To learn more about Resource, visit our Web site at [www.resource.com](http://www.resource.com).

/CONTACT: Keri Lucas of Resource Marketing, 614-410-2142/ 11:02 EDT

LOAD-DATE: September 5, 2000

TTAB Opp. # 91/150,278  
WM/LOUFNI0000602

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Akron Beacon Journal (Ohio)

July 20, 2000 Thursday 1 STAR EDITION

**SECTION:** METRO; Pg. A1

**LENGTH:** 723 words

**HEADLINE:** MEGASTORE OPENS DOORS MASSILLON WAL-MART GREETES HUNDREDS

**BYLINE:** Mary Ethridge, Beacon Journal business writer

**DATELINE:** MASSILLON

**BODY:**

After four years of pleas from the mayor and coaxing from the Chamber of Commerce, Wal-Mart finally arrived here.

Hundreds of eager shoppers joined Wal-Mart employees and vendors yesterday morning to celebrate the grand opening of the 220,000-square-foot Wal-Mart Supercenter - Ohio's largest and one of the biggest in the nation.

"If you have any doubt why Wal-Mart is number one in the world - well, this is the reason," Massillon Mayor Francis H. Cicchinelli Jr. said, gesturing to the dozens of beaming employees clad in the ubiquitous blue vests with smiley faces.

The mayor, as every speaker, was greeted in the traditional Wal-Mart style.

"Good morning, mayor," the employees caroled, following with a stomp of each foot, two claps and an enthusiastic hoot.

The store - the Arkansas retailer's 2,914th in the United States (it has hundreds more abroad) - is on Erie Street near the interchange of state Routes 30 and 21.

The Massillon store wasn't the only Wal-Mart having its day in the sun yesterday. More than 15 new Wal-Mart stores across the country had grand openings, according to regional manager Don Swann.

The Massillon store is larger than four football fields and about twice the size of the Wal-Mart in the Montrose area of Summit County. It carries a full line of groceries as well as general merchandise and includes a pharmacy, lube center and photo studio.

Although the Wal-Mart Supercenter concept is about a decade old, the huge Massillon store represents a new breed of bigger and broader Wal-Marts the company hopes to build across the country. The idea, company officials said, is to have such a wide selection of merchandise that shoppers never need to go anywhere else.

Wal-Mart Stores Inc. had \$165 billion in sales in its most recent fiscal year, more than the next two leading mass merchants combined.

The Massillon store's opening was celebrated in appropriately grand style. The Fairless High School Marching Band played uplifting music, and the Perry High School cheerleaders shared their pep and style with the crowd.

"Isn't this great?" said Stephanie Haney, a sophomore cheerleader at Perry.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000603

Shoppers crowded around the ceremonial platform and lined up through the doorways of the store. At first they waited patiently, but as the 8 a.m. festivities continued past 9 a.m., they grew restless.

"Hurry up," one man shouted as yet another Wal-Mart manager stood up to speak.

"We're anxious to shop," said Sharon Derbin of Massillon whose son, Bob, is an associate at the store.

It seemed no one was smiling more broadly yesterday than Mayor Cicchinelli. He has complained routinely that Massillon is underserved by retailers, and he spent much effort and time luring Wal-Mart to his community.

"They're finally here," he told the crowd.

Wal-Mart anchors a new 450,000-square-foot shopping center called Massillon Marketplace, which also houses home improvement retailer Lowe's. The \$30 million center doubles the amount of existing shopping center space in Massillon - 454,040 square feet, according to the National Shopping Center Directory. It took four years to come together, and finally jelled when Lowe's and Wal-Mart gave the go-ahead after Cicchinelli convinced them that western Stark County has enough potential customers to support the development.

In a report released last year, the U.S. Department of Housing and Urban Development said Massillon was operating \$2.5 million below its potential for retail sales.

Cicchinelli said the Massillon Marketplace development has been needed for a while. The eastern part of the county is served by retailers in Alliance, the central tier by Belden Village and the southern by Wal-Mart and other retailers in Dover- New Philadelphia. Western Stark shoppers have had to travel elsewhere to find big-box retailers. A typical Wal-Mart store draws shoppers from within 30 miles, company statistics show.

"Finally, I have a real grocery store here," Pamela Metz of Massillon said as she scooted her cart into the frozen foods section. "I've been waiting on this for a long time."

A passing Wal-Mart associate gave her the thumbs up for her comment and then enthusiastically presented the Wal-Mart greeting - stomp-stomp, clap-clap, hoot.

Metz, looking just a bit embarrassed, hooted back.

**NOTES: SEE ALSO:** "Massillon retailers bracing for impact of new competitor", page A11: Mary Ethridge can be reached at 330-996-3545 or [methridge@thebeaconjournal.com](mailto:methridge@thebeaconjournal.com)

**GRAPHIC: PHOTO:** KAREN SCHIELY, Akron Beacon Journal;

1. (Color Photo) Massillon 5-year-old Brandon Michael Smith protects his ears from the loudspeaker yesterday as a crowd waits to shop during the grand opening of the state's first Wal-Mart Supercenter in Massillon. 2. (Black and White Photo) Shoppers-to-be wait for the end of yesterday's opening ceremony at Massillon's new Wal-Mart Supercenter.

**LOAD-DATE:** January 30, 2002

445 of 596 DOCUMENTS

Copyright 2000 Little Rock Newspapers, Inc.  
Arkansas Democrat-Gazette (Little Rock)

April 28, 2000 Friday

**SECTION:** NWA WEEKEND; Pg. NW14

**LENGTH:** 864 words

**HEADLINE:** Feel-good film may cause case of rabid anger

**BYLINE:** PHILIP MARTIN ARKANSAS DEMOCRAT-GAZETTE

**BODY:**

\*NW EDITION\*<br>

Film review

<EM>Where the Heart Is</EM>

Grade: C-

Cast: Natalie Portman, Ashley Judd, Stockard Channing, Dylan Bruno, Joan Cusack, Keith David, Sally Field

Director: Matt Williams

Rated: PG-13 for cursing and on-screen deflowering of Natalie Portman

Running time: 120 minutes

Playing: Wynnsong 10, UA Lakewood 8, Tinseltown Lordy me, this ain't a'goin' to be easy. That purty lil' Natalie Portman, that purty Ashley Judd, that sweet ol' Rizzo woman and that mean nasty Sally Field (no, ma'am, we don't like you no more) set out to be in this movie about this poor but proud lil' knocked-up girl who gets abandoned at the Wal-Mart.

Natalie gets to play this spunky girl, who ain't got but a few dollars that her trashy boyfriend allowed her to buy herself some house shoes with, and she ends up getting locked in the Wal-Mart and discovers it ain't so bad to camp out in the outdoor goods department eating Sam's Choice cookies for dinner.

It's my duty to warn you folks that <EM>Where the Heart Is</EM> ain't exactly no <EM>Baby Doll</EM> or even no <EM>Fried Green Tomatoes</EM>. More like a great big ol' commercial for the Wal-Mart, all they need is one of them smiley-face button things bouncing down the aisles rolling back prices and scaring the bejesus out of the little kids 'bout to get their fannies tanned over by the marked-down Easter candy display.

Some of you folks ain't a'goin' to like it, gonna call me up and say how come you got to be so dadburn mean to a show that's got Natalie Portman's naked backside in it? And Ashley Judd talking like some trashy little trailer gal (though she still manages to look like Ashley Judd) and getting preggers every time some character actor with a little round belly looks twice at her?

"You mean to tell me you got something against a heart-warming movie that portrays the good-hearted but kind of down there on the socio-economic ladder rural folks as cute and quirky salt-of-the-earth types? What are you, boy, one them Elian Gonzalez's daddy-lovin' communists from New York City?"

TTAB Opp. # 91/150,278  
WM/LOUFNI0000605

Heck, I know how it's a'goin' to be -- this is like the feel-good movie for all them folks that like <EM>Touched by an Angel </EM>and <EM>Dukes of Hazzard</EM> reruns. And I ain't saying there's anything wrong with that, just that I was kind of offended by the pictures, descriptions and accounts of the poor white (with Keith David as the token black face) redneck culture in this movie. Why, my people ain't like that.

There ain't no way those ladies' hair could have stayed so clean through this entire movie either. And while it was awful nice of Miss Natalie to write down everything she stole from the Wal-Mart, and it was awfully nice of Wal-Mart to -- after she had the baby in the store and her geek quasi boyfriend-to-be from back East busted through the window to deliver it -- to just say now that's all right, Miss Natalie, we'll just forgive all that stuff you stole from us and by the way, since you did us the favor of having your baby on our floor without the benefit of any prenatal care, why don't you just go ahead and take a job here, we can get you stocking those shelves soon as you're up and around. Take your time, honey, we can wait.

Yep, tell you what you do. Next time you're in the Wal-Mart why doncha walk on over to the school supplies and pick up one of those handy-size spiral notebooks and a neon Bic and just commence to roaming the aisles, tossing whatever it is you think you need in your shopping cart. Make sure you write it all down in the notebook, under the legend "I owe Wal-Mart."

When you get to the front, wheel on around the checkout and when the old guy in the vest with "Chick" on his nameplate comes to ask you what in far-flung Hades do you think you're about to try to do, show him the notebook and tell you saw Queen Amidala do it in a movie.

But don't call me, because I ain't no lawyer.

Anyway, some of you gonna think I'm a makin' fun of y'all 'cause of how I wrote this here review. Well, maybe that's so and maybe it ain't none too good of me to do it like that. After all, this ain't the worst movie in the world and you can't really fault the acting that all the ladies do (and they do do them some acting). There ain't many movies that make an old movie seer like me downright mad, but this here one did, what with all its mealy platitudes and cheap manipulations and downright condescending views of ordinary folks who don't just wait in trailers for their assistants to come fetch 'em to the set, but actually have to live in them.

I mean, this thing made <EM>Steel Magnolias</EM> seem like<EM> Peer Gynt</EM> by ol' Hank Ibsen.

This is one cynical, false and overwrought motion picture here and if you like it I guess I'm happy for you but I ain't about to go see it with you just so you can try to convince me of your point of view. If'n you like this one, well, fine, 'cause we can't always hep it when we like stuff and we all ought to be grateful whenever anything teases out a smile even if we're smiling at the sheer silly absurdity of it all. And I just about can see how you might come around to that point of view, but there are some things you just oughta keep to yourself.

**LOAD-DATE:** November 8, 2004

Copyright 2000 Little Rock Newspapers, Inc.  
Arkansas Democrat-Gazette (Little Rock)

January 28, 2000 Friday

**SECTION:** FEATURES; Pg. E1

**LENGTH:** 719 words

**HEADLINE:** WHAT'S IN A DAME: <EM>Wampum babe objects to idea on the face of it</EM>

**BYLINE:** JENNIFER CHRISTMAN

**BODY:**

<EM>Welcome to Dame's first Guest Channeling Session. Today's visitor from The Great Beyond: Sacagawea, the late Shoshone Indian guide to the 1804-06 Lewis and Clark exploration of the American West.</EM>

How. I'm Sacagawea. And no, I don't actually say, "How" to greet people. But the mortal who is evoking my spirit right now watched far too many of those <EM>Brady Bunch</EM>-imitating-the-Indians-imitating-the-<EM>Brady</EM>-<EM>Bunch</EM> episodes in her youth when she should have been out picking berries. Ahem.

Anyhoo, I'm glad to have your attention today because I'd like to talk about my new posthumous position.

I'm the new Token Woman -- literally!

Yes, I Sacagawea (or Sacajawea -- there's dispute over the spelling of my name. I personally vote for the "g" spelling. The translation "Bird Woman" is a lot cooler than "Boat Launcher.") am going to be the face on the new dollar coin that will be released in two days. I'm going to be the Claudia Schiffer of coinage, and soon I'll be mingling in your pants pocket lint with the likes of George, Thomas and Abe.

OK, so it doesn't have the kitschy commemorative prestige of that Princess Diana/Mother Teresa calling card, but, hey, it's a living. You know, I wish those chicks would stop bragging about that thing already. It's really beginning to wear thin.

I'm really flattered that the U.S. Mint is going to so much expense and effort to promote my coin. In addition to being featured on Cheerios boxes, I'll also be promoted by White Man's Burden-Mart, oops, I mean Wal-Mart, which will be doling out my coins as change.

I hate to kvetch, but is the discount department store really the best gig they could get me? I'm not asking for Bloomingdale's, here, but did they have to pick a place where people go to stock up on roach spray, nose-hair clippers and Odor-Eaters? Besides, I'm a Target girl. And Wal-Mart. Hmmm. Isn't that the chain with the animated cowboy happy face that goes around whipping the prices into submission?

Now that I've gotten that off my chest, let me say I am excited about this cash effort. First of all, it's quite an honor to be chosen as the second real woman to appear on U.S. currency. Even if the Susan B. Anthony dollar was a dreadful failure and they're potentially setting me up to be a bad sequel -- the <EM>Leprechaun II</EM> of coins -- I'm still flattered.

And what's more, I'm learning things about myself -- starting with my religion. Did you know that I was a Christian? Neither did I, but apparently the U.S. Mint knows better. Here I am pictured next to the words

"In God We Trust."

Arkansas Democrat-Gazette (Little Rock) January 28, 2000 Friday

Actually, that's not even my picture. There is no known likeness of me, so the mint folks had to wing it. And they really didn't do me justice, if you ask me. I'm far cuter than that. Much better cheekbones in person.

Now, I am a pretty laid-back gal. So, why did the mint feel it necessary to make me look so angry? Hmm, perhaps it's because I'm questioning if the word "Liberty" stamped boldly above the head of me -- a slave wife hailing from a most oppressed nation of people -- is some kind of sick joke? Hey, you know, I really <EM>am</EM> starting to get angry!

I wonder why they picked me to be on this coin in the first place. I mean, sure I certainly had a role in guiding some of history's important explorers. But many modern scholars say I did little besides looking for food, mending men's clothes and beating dirty laundry on rocks. They say I was nothing but a better-than-average maid. An Alice, if you will. (I wasn't kidding about this girl and her <EM>Brady Bunch</EM> thing.) That my image represents the enslavement of women and is replacing Susan B. Anthony, a champion for women's rights and social reform, is disturbing to many people.

But to Indian groups who hold me in their legends and in their hearts as a heroine, I represent strength.

So maybe this coin -- this "golden dollar," as they're calling it -- really is meant to recognize the contributions of my people to America.

Hey, wait a minute! This coin isn't made out of gold! This gold-colored coin is made of cheap manganese and copper!

Cheated by the white man, once again, we are!

Peace out,

Sacagawea

<EM>Heads, tails, e-mails:</EM>

jennifer\_christman@adg.ardemgaz.com <EM>What's in a Dame is a weekly report from the woman 'hood.</EM>

Slug Line: dame0128

LOAD-DATE: November 19, 2004

TTAB Opp. # 91/150,278  
WM/LOUFNI0000608



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Fort Collins Coloradoan

January 20, 2000 Thursday

**SECTION:** LOCAL; Pg. 3A

**LENGTH:** 656 words

**HEADLINE:** Supercenter foe sticks a needle in Wal-Mart

**BYLINE:** David Ruisard, Coloradoan staff

**BODY:**

The Coloradoan

When Larimer County resident Elaine Spencer heard a citizen-initiated ordinance in favor of the Mulberry/Lemay Crossings project was approved by voters last year, she got mad. Then she started sewing.

The result of her frustration with the 375,000-square-foot shopping complex is a colorful cotton quilt with a clear message - "Go Away Wal-Mart."

Spencer plans to bring the quilt to the city's Planning and Zoning Board meeting tonight for the project's final development review hearing. After that, she's not sure what will become of the quilt.

A self-described Target patron, Spencer said her quilt is not an indictment of Wal-Mart. In fact, she sometimes frequents the chain's sister operation, Sam's Club.

"If this quilt helps people become aware of the issue, then it was worth it," Spencer said.

Spencer is most upset by the location of the development, which would have a 192,000-square-foot Wal-Mart Supercenter on the northeast corner of the Mulberry Street/Lemay Avenue intersection as its centerpiece.

"I'd like it out by I-25," the steel-haired 60-year-old retired teacher said.

She worries the shopping center's traffic will permanently snarl the Mulberry/Lemay intersection. She also believes the proposed project will wreak havoc on the Poudre River floodplain.

Spencer also thinks runoff from the shopping center's parking lot will pollute the nearby river. Mulberry/Lemay Crossings also will draw shoppers away from Old Town Fort Collins and hurt her favorite locally owned stores, Spencer said. "I really wish it would go away," Spencer said. "It's not going to, but that's what I wish would happen."

The 80-by-56 inch quilt is bordered with the "Go Away Wal-Mart" slogan in electric blue. The center contains 12 panels depicting the demise of Wal-Mart's happy little smiley face mascot.

The logo suffers all sorts of indignities:

nIt gets flushed down the toilet.

nAliens come and blast it to pieces.

nA spilled bottle of bleach ruins the happy symbol's demeanor.

Fort Collins Coloradoan January 20, 2000 Thursday

nA bull happens by and gores the mascot. "Plus it's a double entendre because the whole thing is a bunch of bull," Spencer said.

nA knife wedged into the smiley face causes it to bleed dollar green.

nA multicolored cowboy boot stomps the smiley face into the ground.

nA paper shredder chews it into neat little strips.

nIt floats in a watery grave. "Maybe because it is in a floodplain," Spencer said.

nThe smiley face, coated with worms, slowly rots in a compost heap.

nThe hand of God stretches down from a cloud and smites the little guy.

nA tornado sucks the mascot into the air.

nA person's rump accidentally sits on the smiley face. "That's my favorite because of the plumber's crack," Spencer said.

After assembling ideas for the Wal-Mart smiley face to meet its maker, hand-dying the cloth and sewing it together took approximately six weeks and \$30 to complete.

"I would have made a lot more blocks because we had a lot more ideas, but it had to end somewhere," Spencer said.

Her next project will be a little less politically charged: a bright-red triple Irish quilt for her son and daughter-in-law.

What's next

The Fort Collins Planning and Zoning Board will consider the final development plan for Mulberry-Lemay Crossings at 6:30 p.m. today in the council chambers at City Hall, 300 LaPorte Ave. City staff has recommended the planning board approve the project proposed by Denver-based developer Mark Goldberg.

**ARTFUL OPPOSITION:** Elaine Spencer holds a quilt Wednesday that she made as a symbol of her opposition to the proposed Wal-Mart Supercenter and the Mulberry/Lemay Crossings project it would anchor. Spencer is pictured at the site of the project, at the intersection of Mulberry Street and Lemay Avenue. Below, a closeup of the quilt shows the Wal-Mart smiley face meeting its demise several ways. The Fort Collins Planning and Zoning Board will vote on the project tonight.

**GRAPHIC:** s by Sherri Barber, The Coloradoan

**LOAD-DATE:** November 5, 2002

TTAB Opp. # 91/150,278  
WM/LOUFNI0000610

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Hartford Courant (Connecticut)

December 21, 1999 Tuesday, 5 WEST HARTFORD/NORTHWEST CONNECTICUT

**SECTION:** TOWN NEWS; Pg. B1

**LENGTH:** 630 words

**HEADLINE:** RESIDENTS TO WAL-MART: NO WAY;  
STORE OFFICIALS GET A NEGATIVE EARFUL

**BYLINE:** PHIL LEMOS; Courant Staff Writer

**DATELINE:** GRANBY --

**BODY:**

Wal-Mart officials told residents Monday night that they are not interested in opening a store where they are not wanted.

So, residents asked, why are they interested in Granby?

Only a proposed Wal-Mart could make hundreds of residents brave the rain during the holiday season and crowd a board of selectmen's meeting. The meeting was moved to the high school commons to accommodate a large audience. The auditorium was filled to nearly twice its capacity, which is 228, with people who took turns bashing Wal-Mart.

Of the 45 who spoke, none want Wal-Mart's trademark yellow smiley face welcoming people to town.

Dave Carlson began whipping up the crowd like a football coach before the state championship.

"Do we want Wal-Mart in town?" he asked.

"No!" they said.

"I can't hear you," he replied.

"No!" they said, louder.

"I still can't hear you," he yelled.

"No!" they said, even louder.

Robert Moody, Wal-Mart's senior real estate manager, then told the audience that the big-box retailer wouldn't come to Granby if the residents didn't want it. He was greeted with a chorus of "Then don't."

Later, Moody said the chain wouldn't make any decisions on whether to go forward with an application based on one meeting.

Wal-Mart has approached the town about building a 165,000- square-foot "superstore" on Salmon Brook Street, across the street from Kearns Primary School and the McLean Game Refuge. The store would feature grocery and discount goods, a pharmacy and an oil and lubrication center.

After a brief presentation, Moody found out Granby residents and public officials love the town's open space and rural character.

"Wal-Mart has absolutely nothing to bring to our lovely town," resident Gene Bruckner said.

Still, Moody pitched the chain's benefits. After all, he asked, why would Wal-Mart be so evil if the retailer hired its millionth employee this month?

He cited study after study praising Wal-Mart. A Fortune Magazine study lauded Wal-Mart as one of the 100 best employers. Another study said a super Wal-Mart would add \$500,000 in taxes annually to the town's coffers.

But resident Janet Ford said that while the town may receive property tax money, revenue would be negated by the additional police patrols and lost business elsewhere in town.

"That's not a tax gain," she said.

The other concern among residents is the store's numbers. There are already about six Wal-Marts within 45 minutes of Granby. A seventh will open in Avon in March. Residents couldn't figure out why Wal-Mart needs to open an eighth in the region.

Moody told residents the corporation expects the Granby Wal-Mart to draw from a market of 40,000 people. Given that Granby has a population of 9,500, that has everyone scratching their heads.

"Do you know what the population of Granby is?" Selectman Ron Desrosiers asked Moody.

The selectmen held Monday's meeting as an informational session. The planning and zoning commission will ultimately determine Wal-Mart's fate in Granby. That panel has yet to receive a proposal from Wal-Mart.

\*\*\*\*\*

The nine Wal-Mart stores closest to Granby

\*Wal-Mart stores within a 30-mile radius of the proposed Granby site, which has been met with stiff opposition by Granby residents.

%%

Address Town

69 Prospect Hill Road East Windsor

141 Springfield Road Westfield

420 Buckland Hills Drive Manchester

970 Tarringford St. Torrington

436-490 Slater Road New Britain

161 Berlin Road Cromwell

1092 N. Colony Road Wallingford

225 W. Main St. Avon

%%

GRAPHIC: CHART

LOAD-DATE: December 21, 1999

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The New York Times

December 5, 1999, Sunday, Late Edition - Final

**SECTION:** Section 3; Page 7; Column 1; Money and Business/Financial Desk

**LENGTH:** 1195 words

**HEADLINE:** BUSINESS WORLD;  
Selling to Argentina (As Translated From the French)

**BYLINE:** By CLIFFORD KRAUSS

**DATELINE:** LA PLATA, Argentina

**BODY:**

WHEN Wal-Mart opened its first store in Argentina four years ago, it found itself cast in the unaccustomed role of David -- against a Goliath of a competitor in Carrefour, the French general merchandise chain. And finding a slingshot has been anything but easy.

Carrefour's position here is formidable. Argentine shoppers have long felt at home in its stores, much as they historically have taken to other French trends and fashions. Argentine painters, architects and psychologists have all taken cues from France. Even the tango was only fully accepted by polite Argentine society after it became a hit in post-World War I Paris. Carrefour has been so readily accepted here since it arrived in 1982 that it is now the country's largest retailer.

Still, Wal-Mart executives felt that if Carrefour's fleur-de-lis logo could catch on in the Francophile Argentina of the 1980's, the yellow Wal-Mart smiley face could do the same when the cultural winds here seemed to be blowing America's way. Globalization, and with it American cultural influences, swept through the country in the early 1990's, and by 1995 Argentines were beginning to dress more casually, drink more beer and less wine, and even acquire a taste for jazz and the blues. And English was replacing French as the primary foreign language taught in schools.

So with typical Yankee can-do confidence -- some would call it arrogance -- Wal-Mart entered the Argentine market with a team of American managers and the same basic store model that worked from Des Moines to Dallas.

The meat counters featured American cuts like T-bone steaks, not the rib strips and tail rumps that Argentines prefer. Cosmetics counters were filled with bright-colored rouge and lipstick, though Argentine women tend to like a softer, more natural look. And jewelry displays gave prominent placement to emeralds, sapphires and diamonds, while most women here prefer wearing gold and silver.

The first few stores even had hardware departments full of tools and appliances wired for 110-volt electric power; the standard throughout Argentina is 220.

But the miscalculations went beyond the merchandise mix, and all the way to the widths of store aisles and the carpeting on the floor. Only by trial and error did Wal-Mart learn that far more Argentine customers than Americans were in the habit of stopping at a store each day. The much greater traffic meant more sales of small items, but also aisles that always seemed overcrowded and floors that always seemed dirty and wore out rapidly.

In entering Argentina, Carrefour had kept its Frenchness fairly subtle. At Wal-Mart, however, it soon became clear that the Americanness was too obvious, and counterproductive. Wal-Mart will not divulge any sales or income figures

The New York Times, December 5, 1999

for its Argentine operations, but analysts here and on Wall Street say the company racked up huge losses in its first few years in Argentina and only began to break even, or perhaps turn a small profit, last year.

Credit Suisse First Boston estimated last year that Wal-Mart's sales in Argentina were running about \$500 million a year, less than a quarter of Carrefour's. Carrefour has 23 big stores in Argentina, while Wal-Mart has 10, plus 3 warehouse membership clubs.

And Wal-Mart has overhauled its top management in Argentina four times in four years.

"Wal-Mart seemed to be learning by doing, and that can be very expensive," said Martin Redrado, an Argentine economist. "Carrefour better understood from the beginning the local idiosyncrasies and managed its strategy around local conditions."

Wal-Mart's current leadership here concedes the point. "Following our blueprint too closely wasn't a good idea," said Donald C. Bland, president and chief executive of Wal-Mart Argentina.

It is a lesson that Wal-Mart may well take from Argentina as it expands globally and finds itself toe-to-toe with Carrefour in more and more countries. They already compete fiercely in Brazil, Mexico and South Korea, and when Carrefour has finished acquiring the Primordes chain, it will be the second-largest general merchandise retailer in the world after Wal-Mart, but with more international experience.

BUT Wal-Mart seems to be learning, as can be seen here in La Plata, 50 miles southeast of Buenos Aires. The American chain competes with a Carrefour store just down the street for an essentially suburban, middle-class clientele; in only one other place in the world -- near Sao Paulo, Brazil -- are the two companies' stores so close to each other.

When Wal-Mart came to La Plata in July 1997, it avoided repeating many of its early mistakes.

The aisles were made wider than in the first few Buenos Aires stores, and the floor was scuff-resistant tile, not carpet. Metal displays for fish gave way to ceramic tile reminiscent of traditional Argentine fish markets. Wooden wine shelves with overhanging arbors replaced metal racks, a change that bolstered wine sales by 20 percent in other stores.

Tailoring its La Plata store to Argentine tastes meant glazing doughnuts with dulce de leche, a caramel-like confection. Clothing racks hold more articles in medium sizes and fewer in large sizes, because Argentines are on average a bit smaller than Americans and like a tighter fit.

"Let's call it the tropicalized Wal-Mart way," said Cristian Corsi, an Argentine Wal-Mart district manager, with a smile.

THE chain even adopted some French touches here and in the nine other main stores around the country, like big supplies of croissants in the bakery department and tripe in the meat aisle.

"They have adapted pretty well," said David Shriver, a retail analyst at Credit Suisse First Boston. "And they have stolen a lot of ideas from Carrefour."

Still, while Wal-Mart has made progress, on one recent Tuesday the Carrefour store here was decidedly busier all day, and shopping carts seemed to be piled higher. It is not obvious why. Customers interviewed in each store were divided over which was cleaner, had better prices or selection or gave better service. If competing cultural affinities are at war here, Argentine shoppers do not seem to notice -- at least not consciously; few said they thought of either store as being American or French. Both stores fly Argentine flags prominently.

But that does not mean the Wal-Mart and Carrefour stores don't say, in their own way, "Vive la difference." Carrefour's wine selection is much greater and its produce and fish displays more elaborate: piles of shrimp and lobsters look as pretty as a still life. The cheese counter is a small outpost of France, with neatly stacked Roquefort, Gruyere, Chamois d'Or and St. Albay.

At Wal-Mart, the selection of microwave ovens, gardening tools and golf supplies is larger, but the cheese section is decidedly less fragrant, with a heavier emphasis on fontina and provolone.

"American, French -- workers like me don't care about the country," said Hugo Felgueras, a 51-year-old livery driver, as he eyed Carrefour's cheeses. "We just care about our pockets and prices." Yet there he was with the French cheese. If his tastes don't change, Wal-Mart will probably stock more Gruyere.

<http://www.nytimes.com>

**GRAPHIC:** Photos: Wal-Mart learned by trial and error the shopping habits of customers in Argentina. At it's store in Laplata, it adjusted by making aisles wider and floors scuff-resistant. It also tailored its merchandise to local tastes. (Photographs by Horacio Paone for The New York Times)

**LOAD-DATE:** December 5, 1999

TTAB Opp. # 91/150,278  
WM/LOUFN10000615

November 29, 1999, Monday

**SECTION:** Pg. 1

**LENGTH:** 2116 words

**HEADLINE:** Wal-Mart stores go private (label); Power 'house': Top U.S. retailer takes on the world with own store brands

**BYLINE:** Jack Neff

**BODY:**

As Sears, Roebuck & Co. built such store brands as Kenmore, Craftsman and DieHard, a little-known Arkansas retailer pursued a different idea.

Sam Walton was creating a discount powerhouse out of cheap small-town real estate, ruthless efficiency and low prices on brand-name goods. Today, with Wal-Mart's sales quadruple those of Sears, Mr. Walton's way has proved superior.

Even so, the victor is borrowing a tactic from its long-vanquished foe in creating its own brands. In the past year, Wal-Mart has rolled out such brands as White Cloud paper products, Spring Valley nutritional supplements, Sam's American Choice detergent and, just last month, EverActive alkaline batteries.

O'l Roy, named after Mr. Walton's Irish setter, has become the best-selling dog food brand in America. And although those are unadvertised, Wal-Mart's EverStart car batteries have become as ubiquitous on TV sports programming as Sears' DieHard ads once were.

Unfortunately for brand marketers, Wal-Mart's newfound devotion to store brands is where it's resemblance to the darker side of Sears' past ends. Wal-Mart's private-label push is steadily stoking up-creating a fearsome rival-even as the chain's overall sales growth remains on fire. Long the nation's biggest mass-merchandiser, Wal-Mart is on pace to become the biggest food-store chain this year.

Brand marketers should be afraid, says consultant Christopher Hoyt, as Wal-Mart transforms itself from their biggest customer to their biggest competitor. The retailer will become even more of a threat as Wal-Mart nears 60% household penetration, making network TV advertising cost-effective, Mr. Holt says.

"They're going to become the marketers of their own brands," he notes. "In five years, the consumer isn't going to be able to tell the difference between a Wal-Mart brand and a national brand."

In some cases, they already can't. Besides O'l Roy, Wal-Mart's garden fertilizer also has become the best-selling brand in the U.S. in its category. In vitamins, Wal-Mart's Spring Valley line, launched earlier this year, may soon reach best-seller standing, too, maintains Burt Flickinger, a consultant with Reach Marketing.

#### PRIVATE LABEL'S PROMISE

Of course, private label is nothing new to Wal-Mart-or to retailing. Neither are dire predictions of its ascendance.



During the recession of the early 1990s, some pundits predicted private-label shares in the U.S. would reach 35% to 50% by 2000, pushing the country down the European path to private-label hell for brand manufacturers. Nothing of the kind happened. In the second quarter of 1999, private-label dollar shares in package-goods categories of food, drug and mass merchandise reached 14.3%, up only marginally from 13% in 1994.

One reason private-label brands didn't grow faster is that the 1990s saw the explosive growth of Wal-Mart, which emphasized private labels far less than its supermarket rivals. While roughly 25% of Kroger Co.'s sales come from store labels, Wal-Mart's private-label sales in package goods are believed to be more in the range of 10%; they are relatively understated because of Sam Walton's commitment to branded products, which has been carried on by current management, Mr. Flickinger says.

So why is Wal-Mart suddenly turning to a bigger, better private-label program?

Besides the obvious lure of better profits, Wal-Mart's private-label push is linked to a number of marketing and strategic forces at play in its plans to expand nationally and globally. Wal-Mart's focus on rolling back prices, which puts the retailer at odds with manufacturers, is one factor.

Record economic expansion or no, Wal-Mart's customer base remains the 60% of consumers in this country who still have not realized any real dollar gain in income since 1970, Mr. Hoyt says. To serve those consumers, Wal-Mart claims to have rolled back 25,000 prices in the second half of 1999 alone, saving them \$8 billion, Mr. Flickinger says. In the past three years, the price rollback program has helped increase weekly customer counts from 80 million to a brisk 100 million, he adds.

#### HAGGLING

But the whistling, happy-face price rollback character that has become Wal-Mart's icon has a more sinister countenance for product marketers.

Manufacturers always had incentives to give Wal-Mart the best price to get merchandising support and shelf space, says Paul Kelly, president of Silvermine Consulting. Now, however, Wal-Mart is increasingly haggling even beyond the best offer.

"They've been turning more to manufacturers than in the past for margin growth," he says.

Manufacturers, meanwhile, have generally gotten more aggressive on pricing in the past year to fatten sales amid years of sluggish growth, Mr. Flickinger notes.

Enter private labels, particularly premium-price private labels, which are slightly less expensive than premium brands but look like the exclusive premium products.

"I think the key is that it is premium," says Andrew Shore, analyst with PaineWebber. "I think premium is there to almost forever limit the ability of manufacturers to raise prices. It's really a price cap."

Most consultants see building store brands as a fairly expensive means for Wal-Mart to control prices, even though growing excess capacity is putting more manufacturers into the private-label business. Store brands also play into other Wal-Mart strategies.

"They're going global," says Ken Harris, a partner with Cannondale Associates. "They believe the brands they sell can mean more to international consumers than national brands in the U.S., and they're probably right."

The higher private-label shares and lower disposable incomes in many overseas markets also are likely influencing Wal-Mart's growing interest in private label as it, like many of its suppliers, looks to manage its brand globally.

"Even if (Wal-Mart store) brands weren't successful in the U.S., the potential for them being successful overseas is much greater," Mr. Harris says.

Store brands also provide Wal-Mart with a point of difference that the growing ranks of dot-coms can't match, as it prepares a stronger entry into e-commerce next year, Mr. Flickinger says. They could even figure into Wal-Mart's efforts to expand its presence in the Northeast U.S.-which, like Europe, presents such obstacles as high real-estate costs and entrenched opposition from local governments.

Advertising Age November 29, 1999, Monday

Not only could store brands help offset higher costs for Wal-Mart in potential new markets, but they also could help Wal-Mart compete more like a supermarket as it experiments with its smaller, lower-volume neighborhood market format.

That format could expand in a hurry if—as Mr. Hoyt believes it will—Wal-Mart buys the Food Lion grocery chain, which in turn will give it control over retail chain Hannaford Brothers and an overnight presence in New England without having to struggle with town councils over zoning and permit issues.

Regardless of the motivation, Wal-Mart store brands create major challenges for package-goods marketers.

"They've definitely served notice on the brand manufacturers that if you want to survive, you'd better have a reason to exist," says William Steele, analyst with Bank of America Securities. "Second- and third- and fourth-tier brands that don't bring consumers to the shelves are going to have a very hard time."

Mr. Hoyt, in fact, believes phase two of Wal-Mart's program will be ridding shelves of brands that no longer make sense after Wal-Mart has built successful store brands.

#### BRANDS' RAISON D'ETRE

In the past, manufacturers' brands could stay in Wal-Mart even if they didn't have a strong consumer following, as long as they delivered a price low enough to let Wal-Mart make a margin. But if Wal-Mart can build store brands that generate better margins than category also-rans with little consumer loyalty, Mr. Hoyt says, it will jettison those brands.

By eliminating some of the other competition, Wal-Mart store brands could even be allies of category leaders such as Procter & Gamble Co. or Kimberly-Clark Corp., says Gary Stibel, a consultant with New England Consulting.

K-C has been monitoring the impact of White Cloud diapers in weekly sales and share data, and has seen no impact on its category-leading Huggies diaper brand, says Kathi Seifert, exec VP at the company.

"Our belief is that (White Cloud) will take share from brands that are less premium, like Luvs and Drypers," she says.

Even major marketers, however, have second-tier brands in some cases. And the success of White Cloud could ultimately push P&G's Luvs off store shelves, Mr. Harris says.

The jury is still out, however, on whether Wal-Mart can move beyond building the brand on its storefronts to building brands on its shelves.

#### LACK OF 'MARKETING MINDS'

In the U.S., neither Sears nor supermarket chains have seen store-brand programs deliver strong same-store sales growth. One reason, Mr. Harris says, is that retailers "don't have enough marketing minds in their building to pull it off, or they miss trends. They're suddenly relying on themselves to figure out the next big thing, and they can't."

An exception is Target Stores, which has made its private-label merchandise into fashion leaders, Mr. Harris says.

But given its more downscale clientele and down-home image, Wal-Mart doesn't have to be a fashion leader. It could succeed by being a fast follower, Mr. Harris says.

While Ol' Roy has flourished without advertising and EverStart batteries have flourished with it, Wal-Mart still hasn't shown it can build its own brands consistently. The chain abandoned its Sahara Supreme line of towels earlier this year, and its apparel and housewares labels have lagged Kmart's Martha Stewart or Target's Cherokee lines.

Moreover, in other cases such as White Cloud paper products or Faded Glory and Earth Shoe apparel, Wal-Mart has moved to mine residual equity of old brands, but hasn't proved it can build equity on its own.

#### ASKING FOR HELP

"(Wal-Mart is) a threat, no doubt about it," says one consultant. "But they require a lot of help in developing these brands. They aren't geared to do it. They aren't qualified to do it."

Whether the company is willing to go out and get that help remains to be seen. Though Wal-Mart solicited suggestions from its agencies for a brand name for its new detergent, it ultimately settled on extending its existing Sam's brand, using what several industry observers label as uninspired packaging.

Though he believes Sam's American Choice detergent could rack up \$100 million to \$150 million in sales and take share from second-tier players, Mr. Shore calls the branding effort behind it "a joke"-one that overseas consumers won't get.

Besides simply not catching on with consumers, Wal-Mart also risks damaging its highly cultivated image if something goes wrong with its private labels.

#### SPREADING DISTRUST

"The fire can either warm the house or burn it down," says Gordon Wade, a Cincinnati consultant and former P&G executive. "Companies like Wal-Mart don't have their own quality-control labs. They don't have their own manufacturing. And if you have a problem, one category can spread distrust within the Wal-Mart base for various Wal-Mart products."

One scare for Wal-Mart came a year ago, when the chain recalled packages of its Ol' Roy dog food in Dallas after 25 dogs died of liver damage caused by fungal toxins in food made by its supplier. Separately, Wal-Mart wrestled for years over publicity connected to charges its Kathy Lee clothing line was made by child labor overseas. Wal-Mart ended that exclusive relationship last year.

#### RIVALS BOOST ADS

But brand marketers aren't waiting for Wal-Mart to stumble. The company's embrace of its own premium brands has been one factor that has led some players to boost advertising in hopes of surviving the onslaught.

Such vitamin brands as Rexall Sundown and Nature Made began to get their first major media advertising in the past year, in part to stem the Wal-Mart threat, Bank of America Securities' Mr. Steele says. Likewise, K-C and Georgia-Pacific have begun advertising their Scott, Angel Soft and Sparkle brands this year as Wal-Mart prepared to roll White Cloud.

Even mid-tier brands can survive at Wal-Mart if they can develop a niche or a consumer following that Wal-Mart's own brands don't serve, says John Bess, consultant with Price Waterhouse Coopers.

"Wal-Mart people are business people first," Mr. Harris says. "They are not going to do something just to cling to the precept that ours is better. If a company is doing it better than they are, they will stay with it."

**GRAPHIC:** Sam's stable: Wal-Mart's growing private-label line could pose a big threat to brand marketers. \* Supermarket savvy: Wal-Mart will become the No. 1 food chain this year. \* Buying ubiquity: EverStart auto batteries spots are regular players on TV sports programming. \* Mining Equity: P&G's abandoned White Cloud is now a Wal-Mart house brand.

**LOAD-DATE:** December 2, 1999

479 of 596 DOCUMENTS

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November 14, 1999 Sunday 2D EDITION

**SECTION:** BUSINESS; Pg. K-07

**LENGTH:** 1032 words

**HEADLINE:** Target aiming for brand ID Discounter plays up 'hip' image

**BYLINE:** By Jim McCartney, Knight Ridder News Service,

**BODY:**

You wouldn't know that Target and Wal-Mart are archrivals in the discount retailing game by their current television commercials, and that's just fine with Target.

Wal-Mart ads feature a yellow smiley face bouncing around the store 'rolling back' prices, the theme song of the old 'Rawhide' TV series playing as happy customers and store employees look on.

Target shows off hip young men and women grooving to Petula Clark's '60s hit song 'Sign of the Times,' their clothing and surroundings saturated with the red Target bull's-eye logo.

'What could be more dramatic in showing their differences?' said Dean Ramos, a securities analyst with George K. Baum & Co. 'Target says they're a cool place to go; Wal-Mart says they're a place to go to save money.'

Minneapolis-based Target has always brought a department store feel to its more than 890 discount outlets, but lately it's cultivating that perception in its brand identity. Aside from The Gap and its catchy swing dance commercials, no other retailer has made a more concentrated effort to develop its brand image than Target. Its blitz has included high-fashion ad layouts and an extensive line of proprietary products, ranging from teakettles to lip liners.

The strategy is key to fueling growth at Target, which accounts for three-quarters of parent company Dayton Hudson's \$ 31 billion in annual sales. As Target goes, so goes Dayton Hudson. Its other two units, Mervyn's and Dayton's department stores, have languished in recent years, making Target the reason why the company's stock has propelled from a split-adjusted price of about \$ 13 a share three years ago to the mid-\$ 50s today.

If Target can't continue to put up strong numbers, the same investor doubts that have haunted Sears and J.C. Penney could dog Dayton Hudson.

For now, Target's strategy gets high marks from many in the industry, but it's not without risk. Stray too far from an emphasis on low prices, something that Target officials vow they won't do, and consumers may forget why they should shop there.

'The reality is that they have the quality of a department store,' said Don Stuart, a partner in Cannondale Associates, a retail marketing consultant based in Wilton, Conn. 'But I'm not sure how close they want to get to being perceived as one.'

Target has gone beyond its 'Sign of the Times' ad campaign to embrace glitz. It has hired top fashion photographers to create glossy ads for glamor magazines not associated with discount retailers, and the company tapped designers to create proprietary products ranging from Stiffel lamps and Michael Graves teakettles to Sonia Kashuk cosmetics aimed at beefing up profit margins.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000620

The retail chain known for good deals on Coca-Cola and plastic storage bins is even out to convince Manhattan that it's a fashion-forward, trend-savvy retailer by hosting fashion shows and plastering its bull's-eye on billboards, construction sites and even water towers all over New York City.

'Our idea is that you can have a beautiful design and good quality, and don't have to spend a million for it,' said John Pellegrine, Target's executive vice president for marketing. 'The trick is that price has to be right no matter how beautiful it is.'

That could become even more important if the economy slows and cools the popularity of fashionable clothes and trendy products. If a recession puts the shopper's eye back on price tags, Target's fashion image could be a liability, Stuart said.

A good example of how Target plays the nuances is its magazine ad campaign showing high-fashion models dressed up in household items. The latest ad shows a model with her hair done up in paint-roller brushes (with prices discreetly added) - a way to whimsically exaggerate the combination of fashion and value.

For the most part, while its fashion image is promoted in television commercials and magazine ads, its value message is carried by the Target circular inserted in an estimated 47 million copies of Sunday newspapers around the country each week.

'Even the circular is produced not to fight with Target's brand; it's designed to carry a reasonably high-quality look, and promote trend as well as price,' Pellegrine said.

But while it's a tricky strategy to execute, Pellegrine argues there's more risk in not building a brand name. No longer can you plop down a store in a good location, fill it with products, promise low prices and expect to survive. Retailing is an industry with few barriers to entry; that is, anyone who registers a Web site or opens a shop can be your competitor.

'You can just have a price strategy, but most retailers have failed at that, everyone but Wal-Mart,' Pellegrine said.

On the other hand, retailers who can develop a brand identity with consumers achieve a 'defensible niche,' Ramos said. Branding helps retailers take market share from competitors and maintain their profit margins.

'Branding is the most powerful thing you can do,' Ramos said. 'If it's well done, it's impossible to duplicate.'

A key element to the brand is the shopping experience. That's why Target has created a store format featuring comfortable lighting, color-coded sections, uncluttered aisles, precisely planned shelves and catchy displays. It even has a new checkout policy of no more than two customers in any one line.

Another way in which Target is differentiating itself from competitors, and boosting profits, is by introducing a host of proprietary products. After all, one way to have the right product at the right price is to make it yourself.

So far, the higher-fashion, higher-markup approach appears to be working. Target has been able to maintain profit margins that are consistently wider than its fellow discounters, according to Dan Barry, a securities analyst at Merrill Lynch. Target's gross profit margins are around 27 percent of sales, while the discount industry's gross margins are around 23 percent, he said.

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Business and Industry  
Discount Store News Wal Mart Commemorative Issue

October 1999

**SECTION:** Pg. 111; ISSN: 0012-3587

**RDS-ACC-NO:** 2165140

**LENGTH:** 678 words

**HEADLINE:** Simple marketing hits the mark

**HIGHLIGHT:**

Wal-Mart spent \$405 mil on advertising in the last FY, well below industry averages: Summer 1999 campaign focused on back-to-school crowd

**BODY:**

Wal-Mart has based its advertising on the theme of "Every Day Low Pricing." Its advertising budget for the FY ending 31 January 1999 was \$405 mil. That figure is 1/3 of 1% of total sales vs the industry average of about 2%. A summer 1999 television promotion targeted the back-to-school audience. The full text contains additional information.

**THE WAL-MART THAT IS:** Marketing

When it comes to marketing strategies, Wal-Mart sticks to its knitting. From the start, Wal-Mart's advertising focus was all about Every Day Low Pricing, and it remains true today. "What we were obsessed with was keeping our prices below everybody else's," said Sam Walton in "Made in America." "Our dedication to that idea was total."

On this, the retailer has never wavered: Offer customers the products they want at the lowest possible prices. While many of the methods Wal-Mart uses to achieve this goal have become more sophisticated, its advertising strategy remains very much the same. And like most other aspects of Wal-Mart's operations, it continues to be influenced by Walton himself.

"Sam really respected our customers," said Paul Higham, senior vp of marketing. "Everything he did provided us a great example of customer respect and service. Today we make every effort to have our advertising continue to reflect Sam's message of inclusion and respect.

"Our advertising simply reflects what happens in our stores," he said. "Truth is, our culture of trying to take care of our customers and one another powerfully influences the outcome of our ads."

photo omitted

The thrust of Wal-Mart's TV commercials has been consistent over the years. The ads project homey images and use real associates and customers (not actors) to relate all the reasons why it's nice to shop at Wal-Mart. The 10-year-old tactic has dual benefits.

"We continue to get an incredible number of favorable comments from our customers," said Higham.

The marketing department also gets calls and letters from associates wanting to be in the ads. The signature smiley face is practically a punctuation mark in Wal-Mart's low-price, down-home message.

The company did depart slightly from its standard TV ads in summer 1999 when it launched two spots targeting the youth market for Back to School. In one ad designed to point up the improved fashionability in the apparel department, college-age girls talked about what fun it is to shop at Wal-Mart for clothes.

Going after the youth market is not Wal-Mart's mainstay and is plainly a bid to attract the next generation of shoppers. But even in these more contemporary spots, the value equation is clearly present.

By unwaveringly maintaining its EDLP policy throughout its history, the retailer imparts a consistent message to consumers -- "low prices save you money."

It also saves Wal-Mart money. By sticking with a direct mail monthly circular, shunning high profile sales and running minimal TV spots that feature real people rather than models and celebrities, Wal-Mart maintains the lowest ad costs in the business.

Of all the mass discount chains, Wal-Mart spends the least on advertising, less even than many much smaller specialty retail chains. In the fiscal year ended Jan. 31, 1999, the company incurred just \$405 million in advertising costs on sales of \$137.6 billion. That's a mere one third of one percent--well below the industry average of approximately 2% of sales.

Its circular not only costs less to produce than other retailers' Sunday supplements, but paired with Wal-Mart's sophisticated data-mining capabilities it allows for highly targeted and more effective direct marketing.

The beauty of Wal-Mart's marketing program is its simplicity. Wal-Mart has engendered a trust with customers that they will always find that low price, and chances are good that a product will always be in stock. The consumer understands this and responds. Advertising may not rank high in terms of dollars spent, but in its most basic form, it has proven to be priceless. Copyright 1999 Lebhar-Friedman Inc. 573

**TYPE:** Journal; Fulltext; Abstract

**JOURNAL-CODE:** DISSTNEW

**LOAD-DATE:** January 17, 2005

TTAB Opp. # 91/150,278  
WM/LOUFNI0000623

500 of 596 DOCUMENTS

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August 1999

**SECTION:** CHANNEL SURFING; ISSN: 1047-1707

**LENGTH:** 870 words

**HEADLINE:** Converging in Bentonville

**BYLINE:** JIM HOLBROOK

**BODY:**

Convergence - I'm tired of the whole trendy idea. We're all waiting around watching "convergence" happening, and I suppose it is. Television and www.com. Rock stars and soft drinks. AT&T and the IRS. Whatever. It's all converging. Converging on us. Squeezing us. Taking us over.

It's not natural. You know that. You sat in the back of Physics 101 just like I did and learned about entropy. Entropy is the natural state of things, and it means something like, stuff just naturally tends to drift apart.' (Look at retail conditions, for example. We've all left the stores alone and now they look like hell. I rest my case.) So, there must be a plot-meister pulling the convergence strings. Michael Eisner? Rupert Murdoch? Bill Gates? I sure don't have the first clue. Maybe Mulder and Scully can tackle this one.

The kind of convergence that really worries me is what I'll call The Wal-Mart Effect. This is a convergence of marketing tools. Like gravity, it's almost irresistible and indefensible. The crux of the theorem is that your new vp of marketing will be David Glass, Wal-Mart CEO. While I haven't run this one by Professor Spoignet (my college physics teacher) or even Dr. Stephen Hawking, author of A Brief History of Time, I know it to be true.

Here's the way it will work. All marketing tools will converge in Bentonville, AR. FSI coupons? Forget about em. All you need is EDLP. Thirty-second spots on NBC? Why bother when Wal-Mart has in-store broadcast advertising, compliments of its own studio and satellite network? You don't even need a media department anymore because your friendly Wal-Mart buyer will help you build the right media plan for your brand. (After all, Wal-Mart reaches 90 percent of the U.S. population, so all you need to negotiate is frequency in order to crank out the best GRP weight level for you. Hey, wasn't that easy?)

Wal-Mart even offers print advertising, courtesy of its monthly tab circulars. Goodbye People and TV Guide. Who needs em, especially at their page rates? Just work with your friendly Wal-Mart buyer and you can get plugged into the circular "for free" - at least as part of an overall

TTAB Opp. # 91/150,278  
WM/LOUFNI0000624



Promo August 1999

marketing package.

Oh, and your advertising agency? Wal-Mart has in-house production capabilities and a very rigorous set of advertising guidelines, so you really won't need to be visiting Madison Avenue at all. (Think the little whistling smiley-face guy isn't the best spokesperson for your brand? Get over it! He's more powerful than Tony the Tiger and the Marlboro Cowboy combined. That's why Wal-Mart is almost a \$200 billion brand.)

#### At a Parking Lot Near You!

Special events are a key marketing tactic, used by many brand managers to reach people in an entertaining way. Your Wal-Mart buyer just may be able to help you on this one, too. Ever been to a Wal-Mart annual meeting? It's the most special special event I've ever attended. Where else can you see Kathy Lee Gifford, Billy Ray Cyrus and Miss America together? And, don't forget, there are more than 2,000 Wal-Mart parking lots ready and waiting to sample and pitch your brand.

How about publicity? Wal-Mart is the perfect public relations agency for your brand. Of course you've heard about Garth Brooks's latest CD release, with a live concert simulcast into every Wal-Mart store? Or how about the Barbie parties? Couldn't miss getting the press to cover those. Is there a vehicle more potent than Wal-Mart for getting attention? I don't think so.

As I mentioned above, there's little need for couponing when Mr. Glass is your marketing honcho. Even though Wal-Mart is the largest redeemer of coupons, it really doesn't fit into its - I mean, your - marketing plan long-term. We all know that coupons are like heroin, a brand-eroding evil, so we'll all enroll now in the EDLP methadone cure. Wal-Mart will construct other promotional opportunities for you, like Falling Prices, Rollbacks, and more! No need to pay Hanson mega-bucks to be the borrowed-interest celebrity family on your package. They're passe anyway. Let Wal-Mart do it for you!

Speaking of packaging, the Wal-Mart folks are experts. Just look at Sam's Club, Better Homes & Gardens lawn care, Ol' Roy dog food, and others. They'll help you design your brand's wardrobe so it fits into the overall plan. They may even let you put their name on your package along with your own. Just think: Wal-Mart's Tide Detergent.

This is one-stop integrated marketing. This is true convergence. What's my brand support budget? I'll call my Wal-Mart buyer and find out. How's my spending versus budget? What's my share? What's my revenue growth? What's my competition doing? One call answers all these questions. How easy. How effective. How efficient.

I don't know, though. When manufacturers are invited to converge in Bentonville for the "Welcome To Wal-Mart: You Make It And We'll Market It" sessions, maybe entropy isn't so bad after all.

If you've read this article and think it's an attack on Wal-Mart, you might want to read it through again. And, if you have ideas on how to avoid the Wal-Mart Effect, e-mail them to me and I'll publish them in October's column!

LOAD-DATE: September 3, 1999

TTAB Opp. # 91/150,278  
WM/LOUFNI0000625

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Providence Journal-Bulletin (Rhode Island)

May 17, 1999, Monday, West Bay EDITION

**SECTION:** NEWS, Pg. 1C

**LENGTH:** 867 words

**HEADLINE:** The First Great East Greenwich Scavenger Hunt: Elvis, fuzzy dice

**BYLINE:** C. EUGENE EMERY JR.; Journal Staff Writer

**BODY:**

EAST GREENWICH - At 11:37 a.m. Friday, Karin Pierson raced triumphantly into the Recreation Department office on Frenchtown Road as her fellow scavengers screamed with delight.

In her hand was a 1981 East Greenwich telephone book, which she set down on a table already littered with a truly odd assortment of items including fuzzy dice, a G.I. Joe doll, a tie-dyed T-shirt, a plastic flamingo, a Chocolate the Moose Teenie Beanie Baby and an Elvis Presley record album.

ROh my goodness, one of these actually exists, S said Recreation Director Catherine Bradley as she leafed through the phone book, one of 84 items in the First Great East Greenwich Scavenger Hunt.

The phone book came from Greene Industries, on Rocky Hollow Road. Why would anyone keep an 18-year-old telephone directory around?

RWhy do I have, in my attic, all the bills my mother had from the 1930s, S Pierson said. RI'ts called 'pack rat.' S

Pierson and fellow Laidlaw Transit employees Danith Johnson, Carol Boldt and Bette Jo RB.J.S Williamson may not all be pack rats, but they certainly proved on Friday that they could scrounge up obscure items. They handily won the Recreation Department-sponsored hunt Q locating 83 of the 84 items on the list, released two weeks ago Q and garnered a \$ 100 restaurant gift certificate.

The only thing the Laidlaw team couldn't find: a guitar pick inscribed with the logo of a band.

A four-member team fielded by the local Fraternal Order of Police found 75 items. A team of girls, age 10-12, brought in 50 items.

RI't was a good experience for the girls to know how to organize, how to plan, S said Shirin Moid, the mother one of one of the girls, who helped coordinate their effort. REverything was a find. I couldn't believe they had a ticket stub from Disney World.S

The team of Pierson, Boldt, Johnson and Williams, known collectively as the RBouncing Brave Bus Drivers, S went far and wide in search of the items, many with an East Greenwich flair.

To get a Bill Almon baseball card, Johnson called Almon's house in East Greenwich and got his wife.

R'Can I have a picture of your husband?' I asked. She said, 'Not in his underwear, but you can have a picture.' S

Almon, who played shortstop for seven major league teams over 15 years, retiring in 1989, donated a card to the cause.

Providence Journal-Bulletin (Rhode Island) May 17, 1999, Monday,

Boldt got the RDo Not DisturbS sign by going to an area motel and simply asking for one. RIf most people knew we were doing a scavenger hunt, they were very cooperative,S she said. Otherwise, Rthey wanted to know who these women were who were asking these stupid questions.S

For some items on the list, the drivers came in with more than one object.

The list called for a Rpicture of your team at Hill Top,S but didn't say whether that meant the Hill-Top Creamery or the long-defunct Hill Top Drive-In. They had their picture taken at both.

When Bradley asked for a Rsmiley button,S Boldt was ready with four.

RDo you want a regular smiley, a Wal-Mart one, one riding a school bus, or an angel one?S she asked.

The list called for a candy cane. The group had two Q red-and-white, or just white.

RThe most difficult thing was the Bobby Orr card,S said Boldt, who almost bought one at a mall for \$ 8, but found one in a yard sale for several dollars less.

When she first saw the list, RWhat I thought at first was, 'How am I going to get this and this and this?' S said Johnson. But the more they thought about it, the more they realized they had Q or knew someone who might have them.

Boldt discovered she had a picture of the Vietnam Veterans Memorial in Washington, D.C., in the same photo album that has a picture of a pregnant doe and a too-short and too-fat Elvis impersonator.

The Elvis record came from one of the bus monitors, who collects Presley memorabilia.

Johnson got the G.I. Joe doll by calling one of the students she transports as a school bus driver for Laidlaw, a boy who collects the action figures. He said he thought his older brother had a doll. RHe said, 'Do you want him dressed or undressed?' S Dressed was fine.

RWe had a lot of fun with it,S said Johnson.

The final item on the list was Ra post with some 'Words of Wisdom' hand-written on it.S

The team submitted a yellow Post-It slip that read: RSome 'Words of wisdom.' S

The bus drivers may be a tough act to follow. Bradley said she was surprised the women got so many items so quickly.

Next year, when her department puts on the Second Annual Great East Greenwich Scavenger Hunt, she said, Rwe may have to come up with a harder list.S

IN THE HUNT: Bette Williamson, left, and Carol Boldt, right, members of the winning team, share a moment of exhilaration after successfully finding 83 of the 84 items in the Great East Greenwich Scavenger Hunt. At right is teammate Danith Johnson. Below, an Elvis record and a pair of fuzzy dice were a couple of the items they had to find.

Journal photo/ANDREW DICKERMAN

SUCCESSFUL HUNT: Among the 84 items hunters had to find in the contest sponsored by the East Greenwich Recreation Department, was a Bobby Orr card like the one held by Danith Johnson of the winning team.

Journal photo/ANDREW DICKERMAN

LOAD-DATE: May 19, 1999

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May 13, 1999, Thursday, Home Edition

**SECTION:** Cherokee Extra; Pg. 6JQ

**LENGTH:** 771 words

**HEADLINE:** Cherokee in the New Millennium;  
Folksy store's era over;  
Thornton Hardware hammered to death by retail giants

**BYLINE:** D.L. Bennett, Staff

**SOURCE:** AJC

**BODY:**

Thornton Hardware in Free Home is the kind of place where locals sit in rockers and while away the hours telling stories of the days when Cherokee County was all dirt roads and farms.

In overalls or jeans, dirty T-shirts and work boots, regulars amble in to find a store owner who knows them by their first name.

Danny Thornton not only knows who they are, but what they do and what they need. He also extends credit, not with Visa or MasterCard, just on a customer's name.

But it's also the kind of place that has a hard time fitting into the new Cherokee --- a burgeoning county with a glittering array of huge new homes and massive strip shopping centers with anchor stores like Home Depot and Wal-Mart and people hurrying frantically from job to home to school.

Homespun businesses like Thornton's find getting people to slow down a difficult task in today's rat race. It's just easier to zip by Home Depot where the selection is 10 times what Thornton's can offer. Besides, all the newcomers don't have the connection to the community that draws them to a place like Thornton's.

So, after 26 years Danny Thornton is closing the business he literally helped his father build.

The building will become an office for the trucking company next door on Ga. 20 by next month.

"I guess I'm going to have to start looking for work," Thornton said. "I haven't done that in a long time. Small businesses' days are numbered. You are just about going to have to be service-oriented. Retailers just can't make it."

Residents of Free Home will have to drive to Canton or Cumming for the drill bits, fertilizer, paints and other staples Thornton's has sold. He plans to clear out his inventory by the end of May.

In emerging counties, growth is a boon to some businesses and a bane to others.

In Cherokee, locally owned tanning salons, hairstylists, banks and dry cleaners spread like weeds. But locally owned hardware stores, groceries, drugstores and video stores often are squeezed out by big retailers like Home Depot, Wal-Mart, Blockbuster, CVS Pharmacy and Publix.

Thornton knows. When his father opened the family store 26 years ago, Free Home was still a farming community with just a handful of families who'd been around generations.

The store once did much of its business in cattle and farming supplies.

But residents found farming wasn't profitable. So, Thornton cut back on the corn, beans and tomatoes. And, since few cattle farms are left, the store now sells more gear for horses.

Today, there are three Home Depots within 12 miles. The store has a hard time keeping up.

"If you are not open 24 hours a day, seven days a week, people tend to run over to Home Depot or Wal-Mart," Thornton said. "The misconception is that they are so much cheaper than we are, but that's not true. They have marketing and advertising power we can't match. Your local dry goods dealer is as cheap as Wal-Mart, but they don't have the smiley face."

The closing is so difficult for Thornton that he hasn't even told his regular customers, who are finding places that allow customers to gather and shoot the breeze scarcer than working farms.

"This is about the only place left you can still do this," said Dwight Smithwick, 53, reclining in a worn rocker. "Everybody's in such a hurry now. Rush. Rush. Rush."

The Smithwick family has owned land in the area for generations. Developers have used the family name for the nearby Smithwyck subdivision, but changed the spelling.

Smithwick said growth makes life easier. Once, he said, property owners considered land "a burden." He bought the 15 acres he lives on for \$ 1,200. Recently, he turned down more than \$ 15,000 per acre.

"A lot of people around here grew up hard," Smithwick said. "They grew up on beans and taters. Now, they get to live a life of luxury."

However, Smithwick resents the loss of community. Most of the newcomers, he lamented, don't know the history of the area or have time for those who remember dirt roads and living without electricity. Visiting, once on Sunday afternoon and on a weeknight, is no more.

"Life was hard, but everybody helped everybody," Smithwick said. "Now, they ain't got the time to tell you to kiss their butt."

The days are over, Thornton said ruefully, when families stay in a community and set down roots that last for generations. He sees the new subdivisions and the strip malls and wonders what will be left of the friendly community he's known.

One thing's certain. Thornton's won't be around.

"The kind of growth that's coming," Thornton said. "I don't wish that on anybody."

**GRAPHIC: Photo**

Horseshoes, anyone? Danny Thornton, who helped his father open Thornton Hardware 26 years ago in Free Home, finds there's no place in the new Cherokee for a locally owned, homespun business that depends heavily on lifelong friendships with customers and their families./ FRANK NIEMEIR / Staff

**LOAD-DATE:** May 13, 1999

512 of 596 DOCUMENTS

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Arkansas Democrat-Gazette (Little Rock, AR)

May 09, 1999, Sunday

**SECTION:** BUSINESS MATTERS; Pg. BM6

**LENGTH:** 53 words

**BYLINE:** Arkansas Democrat-Gazette/JEREMY SCOTT

**BODY:**

**\*NW EDITION\***

Karen Marshall (right) and Amy Ames, workers at the Wal-Mart distribution center in Bentonville, paint the retailer's signature smiley face on a box of toys being sent Wednesday to Oklahoma and Kansas tornado victims. The company gave more than \$ 150,000 in cash and goods to help storm victims.

**LOAD-DATE:** May 17, 1999

TTAB Opp. # 91/150,278  
WM/LOUFNI0000630

519 of 596 DOCUMENTS

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February 3, 1999 Wednesday Final Edition

**SECTION:** MESA/APACHE JUNCTION COMMUNITY; Pg. 1E

**LENGTH:** 947 words

**HEADLINE:** AUTHOR DETAILS WAL-MART PRACTICES BOOK TAKES LOOK AT MARRED IMAGE OF GIANT RETAILER

**BYLINE:** By Barbara Yost, The Arizona Republic

**BODY:**

Wal-Mart is the bogeyman that strikes fear in the heart of small-town America, Wall Street Journal reporter Bob Ortega says.

It's the big, bad retail chain that strides into town like Godzilla, crushing local businesses.

Behind the scenes, Ortega says, it exploits child labor, busts unions and masks abusive work practices in third world countries behind a "Made in the USA" label.

Exposeas like Ortega's new book that detail the corporate giant's aggressive retailing practices have tarnished Wal-Mart's warm and fuzzy image of a yellow smiley face and elderly greeters.

Ortega's book is titled In Sam We Trust. Its subtitle is more ominous: The Untold Story of Sam Walton and How Wal-Mart Is Devouring America.

Ortega, a veteran journalist now based in Denver, will be signing and talking about his book at 2 p.m. Saturday at Changing Hands Bookstore, 6428 S. McClintock Drive in Tempe.

His appearance comes at a time when neighborhood opposition is mounting in pockets of Mesa, Gilbert and Chandler, cities where Wal-Mart is looking to expand its presence with new big stores.

Ortega, who expects to hear from activists on both sides, welcomes a lively discussion on his work.

"I did my homework on this book," Ortega said by phone from his office at the Journal. "I'm not trying to destroy Wal-Mart. I'm not trying to run them out of business. In an ideal world, these corporations would act more responsibly."

Wal-Mart has the same reservations about Ortega's efforts as a reporter and writer.

Asked to comment on Ortega's book, Wal-Mart public relations Director Les Copeland said, "It's obvious . . . that the author in this case was very anti-business, and the book takes a very sensational look at big business and specifically in this case targets Wal-Mart. We don't feel the book has much credibility."

Copeland, who operates out of corporate headquarters in Bentonville, Ark., said that the book calls Wal-Mart a company without a soul but countered that "if that's the theme of the book, there couldn't be anything that's more far from the truth."

Wal-Mart, he said, is "a great company," adding, "We have great people that work within our organization."

TTAB Opp. # 91/150,278  
WM/LOUFNI0000631

Ortega said that no one at the company has disputed his facts and that insiders have told him he "got it right on the money."

Ortega did not come naively to his subject matter. While based in the Journal's Dallas office, he covered Wal-Mart as part of his retail beat. He had written investigative articles on the company's "Code of Conduct" policies for overseas labor practices (finding those codes inadequate in protecting workers) and its pension and profit-sharing programs.

Thanks in part to media accounts painting Wal-Mart as a corporate behemoth that wipes out local competition, communities have become more aggressive in fighting its incursions.

Strong unions have also proved a formidable enemy. Except at one store in labor-friendly Canada, Wal-Mart workers are non-unionized and discouraged from organizing, inspiring union activists to join other groups in opposing new Wal-Mart settlements.

Local merchants who fear being crushed have begun to fight back as well, and sometimes, David beats Goliath.

"Small-business owners are terrified of Wal-Mart" and its aggressive business policies, Ortega said. Although big chains such as Target and Kmart can also hurt smaller competitors, Wal-Mart "is the poster boy for that kind of impact."

In small towns, the company courts local officials by pitting one community against another. Wal-Mart demands goodies such as tax breaks while threatening to locate in another town.

Naive officials, fearing the loss of tax revenues, too often cave in and deliver goodies like a Welcome Wagon kit, Ortega said. But he discovered that once Wal-Mart sets its sights on a location, it most likely will build there whether or not its demands are met.

The best fight-back strategy a community can use to keep out a Wal-Mart is to point out the impact the giant can have on local interests, Ortega said. Mom-and-pop stores can't compete with the buying power of the mammoth chain.

Over the past several years, Wal-Mart opponents have become more sophisticated in their efforts. They share information. They build on past successes.

There is even a Web site - [www.sprawl-busters.com](http://www.sprawl-busters.com) - that details how to battle a megastore.

In some neighborhoods, the entry of a Wal-Mart can be beneficial, Ortega concedes. The corporation sells 70,000 different products at discount prices.

For himself, Ortega chooses not to shop at Wal-Mart, saying, "I don't want to support a system that exploits child labor."

Ortega's book details abusive practices where children as young as 12 toil in factories that make goods for Wal-Mart, including a line of clothing to which talk show host Kathie Lee Gifford has lent her name. When reports of exploitation surfaced, Wal-Mart denied it and Gifford struck back with an emotional outburst on TV's Live With Regis and Kathie Lee.

Customers need not become detectives to ensure the goods they buy are exploitation-free, Ortega said. Activist groups cited at the back of his book shoulder those responsibilities. Concerned consumers can support activists financially.

Consumers can also write to retailers expressing concerns about fair labor practices because, Ortega said, "those letters have a disproportionate impact."

Some companies, such as Levi Strauss, Nordstrom and Reebok, are cleaning up their act, he said, and trying to become more socially conscious.

"We're fortunate to live in a democracy where enough people care about these issues and there are enough people to act forcefully," he said.

LOAD-DATE: July 15, 2003



January 28, 1999, Thursday

**SECTION:** Pg. 1

**LENGTH:** 953 words

**HEADLINE:** Wal-Mart Comes to Espanola

**BYLINE:** James Yodice Journal Staff Writer

**BODY:**

#### Grand Opening Draws Hundreds

ESPANOLA -- At precisely 8:46 Wednesday morning, Bill Klebesadel of Arroyo Seco stepped up to cash register No. 4 to ante up as the first paying customer at Espanola's Wal-Mart Supercenter.

Store manager Barry Barger said he expects the Supercenter to do approximately \$1 million in business from 8 a.m. Wednesday (when the doors officially opened) through closing on Sunday.

Klebesadel got things rolling with his 83-cent purchase of a big Snickers bar.

"Nobody else was buying anything, so I thought I'd be the first customer," he said. "Eighty-three cents and I saved the receipt."

He wasn't planning on saving the candy bar.

"Do you want it?" he asked.

When even the customers are acting like sales agents, spirits must be high.

And they were.

Hundreds of anxious and curious residents of the Espanola Valley crowded the front of the Supercenter at 8 a.m. They stirred about through the 45-minute opening ceremony before Barger finally cut the ribbon and cleared paths for shoppers.

"It was a very good opening," Barger said, "and the store (No. 2656) is in really good shape."

Within minutes, each of the 23 departments in the 152,000-square-foot Supercenter was flooded with eager shoppers and employees.

"I didn't want to hear anymore what I've heard for so long: 'I have to go to Santa Fe to buy something!' Now you can buy it in Espanola," Espanola Mayor Richard Lucero said to the crowd, which cheered loudly.

"This will be good not just for Espanola but all the little villages up north," said Linda Hale of Dixon. "It makes a big difference to us."

Hale, like many shoppers on Wednesday, felt the Espanola Supercenter is now the preferable alternative to smaller Wal-Mart outlets in Taos and Santa Fe.

Hale said she traveled 15-20 miles to Espanola, versus a 55-mile trip she'd ordinarily make to Taos or a 30-mile jaunt to Santa Fe.

Everywhere you looked were people who planned to shop here instead of Santa Fe.

Melissa Atencio lives in La Mesilla, Judith Bustos in Espanola. They were shopping together and said they were relieved not to have to drive to the Santa Fe Wal-Mart.

"Wonderful," Atencio said. "We're just too happy."

"That's probably the opinion of everyone living in Espanola," added Bustos. "(Wal-Mart) will bring a lot of business to Espanola."

Larry Pacheco, a software engineer with the State Highway Department in Santa Fe, is a Chamita resident and he, too, has no further plans to shop outside Espanola. Same for Laura Griego of La Madera.

But nobody's commute time was cut as drastically as that of Loretta and Henry Martinez of Espanola, former Santa Fe Wal-Mart regulars. They live only one block from the Supercenter and walked over Wednesday morning.

"This is fantastic," said Loretta Martinez, 62, and a lifelong Espanola resident. "We've waited a long time. It's going to contribute significantly to the valley. I'm just elated that they're here."

The Supercenter has a staff of about 350, of which about 70 percent are full-time, Barger said.

Wal-Mart sifted through 1,800 job applications. Eighty workers were hired on Dec. 7, another 100 just prior to Christmas and the rest in the last two weeks.

Barger said he estimated that 8,000 transactions were completed on Wal-Mart's first day. The Supercenter is open 24 hours, save for the final hours of Christmas Eve and Christmas Day.

As part of the grand opening ceremony, Wal-Mart made several charitable donations.

Barger presented a \$1,000 check to the local United Way, \$1,650 to the Espanola Women's Crisis Center, \$500 to McCurdy School and \$2,000 to Northern New Mexico Community College. The college donation will eventually total \$10,000; Wednesday's was the first of five annual checks going to the school's scholarship fund.

It was a day to rejoice not just for a new business with 350 jobs but also the money that can be saved as shoppers and employees are going to use less gas.

The SmartStyle salon at the front of the store has two cutters, Monica Vigil and Melissa Penns, who live in Espanola but were working in Santa Fe.

At least until Wednesday.

"We're home," Vigil, the salon manager, said with a smile almost as big as the bright yellow happy face which is a signature of the Wal-Mart logo.

It was a sentiment shared by 18-year-old Jerome Valdez of Espanola, who graduated from Pojoaque High School last spring.

Valdez is working a full-time night shift at Wal-Mart but was on hand Wednesday for the opening. He was a member of Northern New Mexico's Beam Team, which captured a world championship at the International BEAM Robotic Games and Quanta Competition in Lucknow, India, last November.

He currently is a part-time student at Northern New Mexico Community College in Espanola.

And, right now, he is homeless.

"I really needed help, and I see a lot of people working here that needed help, too," the personable Valdez said. "I don't have a permanent home (he moves around, staying with friends), but this job will help me so I can get on my feet."

Employees and management at Wal-Mart extended a hand to Valdez by raising money to help with his tuition.

"They're like family here," he said proudly. "After a month, I should be able to get a place of my own. This job is a lifesaver for me. It really is."

PHOTOS BY: MICHAEL DIBARI JR./JOURNAL

PHOTO: Color

**SUPERCENTER OPENS:** Hundreds of people streamed through the doors of the new Wal-Mart Supercenter in Espanola when the ribbon was officially cut Wednesday morning.

PHOTO: Color

Miriah Martinez, 5, gets help from her mother choosing a doll as they shopped on opening day at the new Wal-Mart Supercenter on Wednesday.

**LOAD-DATE:** January 28, 1999

TTAB Opp. # 91/150,278  
WM/LOUFNI0000635

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The Pantagraph (Bloomington, IL)

September 7, 1998, Monday

**SECTION:** NEWS; Pg. A3

**LENGTH:** 573 words

**HEADLINE:** A little bit country, a little bit Shania Twain

**BODY:**

Allegedly, this Shania Twain is like the biggest thing to hit country music since the last time some singer tried to use Nashville as a steppingstone toward a bright and shiny pop music career.

You have your Rebas and Trishas and Garths and Kennys (Rogers) and, yes, even your outcasts named k.d. and such.

Nonetheless, she's big, that Shania Twain is.

So big, in fact, that she really put a charge into the summer vacations of a couple of Metamora High School band members who don't even like country music.

Just a while back, drummers Eric Keysor and Brad Rogers got to perform with Twain during a show at the Peoria Civic Center.

Here's how: Because her charitable interest is food banks and because she needed backup musicians for the show, Twain asked someone with the Peoria Food Bank if there were any local last-minute candidates. That someone, the husband of a Metamora High School biology teacher, ultimately suggested Keysor and Rogers.

The rest was country music history ... er, something to that effect. The two played on the hit "If You're Not In It For Love" and sang on a rendition of "God Bless the Child."

Saaaaaa-looooot!

Attention shoppers: Check out these smiles

Like those punchy Wal-Mart smiley-face mascots, the Eickhorst family really knows how to smile.

Just last month, someone from the Steve and Charmaine Eickhorst family won an Illinois State Fair smile contest for the third consecutive year.

In an event sponsored by the Illinois State Dental Society and judged by a bunch of teeth doctors, 15-year-old Kyle, grinned his way to a \$50 prize.

Before that, younger brother Reid had taken second place for two straight years.

Incidentally, Reid and Kyle each brush twice a day.

Boy Scouts give Maitland a great big hug

The group known for building camp fires, tying good knots and helping old ladies across the street did something else lately.

They gave John Maitland a great big hug.

The Pantagraph (Bloomington, IL) September 7, 1998, Monday

More or less.

Thanking Maitland for many years of support and service to the Boy Scouts of America, the W.D. Boyce Council recently gave the Republican state senator from Bloomington its Distinguished Citizen Award.

In addition to giving him a plaque and kind words, they also gave him a free meal during a fund-raising dinner back in August.

Miss Teen of Illinois cites Clinton girl

Mandy Wagner is smart. Mandy Wagner plays the piano. Mandy Wagner loves to take pictures. Mandy Wagner plays volleyball. Mandy Wagner is an artist - at least in an aspiring high school kind of way.

Now, Mandy Wagner of Clinton is a fairly successful beauty pageant contestant, too.

During the summer, she finished second-runner up in the Miss Teen of Illinois state pageant in Rock Island.

If you can win this contest, more power to ya

Beginning Tuesday, Illinois Power Co. will challenge junior high and high schools in its service area to design Web pages. The incentive: Top two entries win a new computer system with color printer and scanner. The next best eight get a color printer.

Each entry must include work by at least two students that is sponsored by at least one teacher. Students from the grand prize entry will share an additional \$300 prize.

For more information, point your mouse in this direction: [www.illinova.com](http://www.illinova.com), then click on "power of education."

Write to Monday Memos in care of The Pantagraph, 301 W. Washington St., Bloomington, IL 61702-2907.

**GRAPHIC:** Sen. John Maitland, R-Bloomington, who was feted at a fund-raising dinner in August at Illinois State University, accepted an award from the Boy Scouts of America. W.D. Boyce Council President Henry Spellman, center, and former director Ken Walters, right, joined Maitland.

**LOAD-DATE:** September 10, 1998

Copyright 1998 Little Rock Newspapers, Inc.  
Arkansas Democrat-Gazette (Little Rock, AR)

August 23, 1998, Sunday

**SECTION:** FEATURES; Pg. E6

**LENGTH:** 910 words

**HEADLINE:** 20ish Century: Target hits a bull's eye in bargain shoppers showdown

**BYLINE:** Jennifer Christman

**BODY:**

I adore Helaine. In my book, she's diva supreme.

Usually we agree on things. Like we agree that heaven probably serves Star of India's lunch buffet. We agree that Tyson Beckford is the bomb. And we agree that jokes about gas can be funny.

But there is one thing we just can't see eye to eye on.

I'm of the Target persuasion.

And she's a Wal-Martian.

This is not to say that I never shop in Wal-Mart or that Wal-Mart has no redeeming value. I do and it does.

It's a good place to go when you need a sumo-size box of fabric-softener sheets or a supply of garbage bags that will outlive you. It's a good place to go when you're all sweaty and funky after working out and you just need to grab a bar of soap so you can shower. Whew, and deodorant, too. That's because no matter how bad you look, no one ever stares at you funny. After all, there's always someone at Wal-Mart who looks far worse.

Of course, the downside is it'll take you two hours to get the soap. First you have to search in vain to find the soap aisle, look in vain for an employee to help you find the soap aisle, eventually stumble on the aisle, hike back to the checkout area, wait in a ridiculous line only to finally get "helped" by the cashier who inevitably doesn't know how to work the credit card machine, give the finger to the guy who almost runs you over in the crosswalk and finally make it back to your car, which you realize has a dented door thanks to a stray shopping cart left in spite by another "satisfied" Wal-Mart customer.

Oh, and then you have the joy of feeling your way out of the chaotic mess that is the parking lot -- you know the lot that you thought could not get worse and then they plopped down a Sam's Club to make it especially unbearable?

**A REAL STEAL**

At Target it's different. At Target it's civilized.

I've never been to Target when I couldn't find a relatively close space. Once you enter the store, the organization can be a bit confusing -- why are the candles in the home office section, hmm? -- but there's always a red-wearing employee somewhere nearby to help. Usually they're friendly about it, too. And even if you can't find something, you don't even mind getting lost in Target because it's pretty, full of cool stuff, impeccably clean and has no peculiar signature smell like some discount stores do. Well, the cheap shoes kind of have a certain synthetic bouquet to them, but that's a universal thing. At least Target's smelly shoes are really quite cute for \$ 10.99.

Want to find a pair of earrings to match one outfit? They'll have something stylish and affordable and you won't feel bad if you never wear them again. They've got styling houseware stuff in fun colors and everything is handily coordinated to match.

In all fairness, sometimes it makes more sense and cents to shop at Wal-Mart. If you are organized enough to comparison shop -- I'm not, but I'm told by people who are -- you'll probably find that quite a few things are cheaper at Wal-Mart.

You pay in other ways though.

Like their one-hour photo developing. Oh sure, it's an hour. One hour for them to think about beginning to deal with your film. One hour to find your film. Another hour to process it. Three hours. Then they give you a lame apology and try to make it all better by knocking a generous \$ 1 off the price. And to make the ritual even more inconvenient for people in a hurry (which you obviously are, if you're paying for the convenience of one-hour photo), the counter is in the back of the store.

Plus at Wal-Mart, you have to deal with those Unnerving People Who Stand at the Door whose purpose is to greet you and make you feel welcome. First of all, I don't really want to have social hour there. I want to get my dental floss and detergent and high-tail it on out of there as soon as possible, hopefully without any communication with anyone whatsoever. And secondly, I never get the feeling that these people sincerely want to talk to me (gee, what was it? The ultra-bored hello?) but rather it's just a disguise for their true motive -- making sure I'm not stealing anything. Well, let me tell you something, Unnerving People Who Stand at the Door. If I was going to risk my reputation and my lily-white karma by stealing something, it would be something actually valuable and tasteful. Not some frumpy ol' Kathie Lee Gifford sweater vest.

And while we're on the subject of clothes, there really is no comparison. Target usually has quite a few fun, trendy pieces from tank tops to dresses scattered among their inventory that don't scream "discount store." It's not embarrassing to admit you got an outfit at Target. I'll do it right now. I'm enamored with my \$ 9.99 pair of Target rayon pants. At least I was until I unintentionally shortened them in the washing machine -- and I followed the label's instructions and everything.

I guess sometimes you do get what you pay for.

**SAY CHEESE!**

One more thing I don't like is Wal-Mart's stupid little yellow smiley face. Like they know the customers aren't going to get a smile out of the employees, so they have to emblazon them onto their plastic bags. It's just too Stepford. It's too insecure. See, we're happy at Wal-Mart! We're really happy! Dang it, happy!

Target, on the other hand, doesn't need to tell you to smile. Usually you just do it automatically. That is, if you hand wash in cold.

<EM>Target that e-mail to:</EM>  
jennifer\_christman@adg.ardemgaz.com

**LOAD-DATE:** September 8, 1998

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Charlotte Observer (North Carolina)

July 22, 1998 Wednesday TWO EDITION

**SECTION:** METRO; Pg. 1C

**LENGTH:** 474 words

**HEADLINE:** WAL-MART GETS A GREEN LIGHT

**BYLINE:** JON GOLDBERG, Staff Writer

**DATELINE:** HICKORY

**BODY:**

A controversial rezoning to allow a Wal-Mart Supercenter in northeast Hickory got the go-ahead Tuesday night in the most crowded City Council meeting in recent memory.

An opposition group known as Northeast Concerned Citizens plans to appeal the decision in Superior Court.

More than 400 residents - roughly 250 supporting the Wal-Mart - were on hand to watch the City Council vote 4-3 to rezone 30 acres at the southwest corner of Springs and Kool Park roads for the 243,000-square-foot project.

Wal-Mart workers from the U.S. 70 store in Hickory rode a bus to the meeting and donned red, white and blue "I'm For Wal-Mart" buttons and ones bearing the store's trademark yellow smiley face.

Though they acknowledged the center would clog local roads, council members supporting the proposal said north Hickory doesn't have enough retail.

"If we vote for progress now," council member Jeff Cline said, "we will solve those problems."

Council members Z. Ann Hoyle, Larson Moore and Pat Moss joined Cline in backing the rezoning. Mayor Bill McDonald and board members Sally Fox and Bruce Meisner voted against it, primarily because of concerns about increased traffic.

The council's decision comes eight months after the board rejected a similar project off of N.C. 127 in affluent northwest Hickory. Some northeast Hickory residents say the board sets a different standard for the less wealthy northeast section of town.

"The people of northwest Hickory spoke, and you listened," resident Mike Jenkins told the council. "Your response to the northeast should be the same."

Cline, Hoyle and Moss all said the northwest vs. northeast issue did not come into play when they made their decisions.

Allen Ingram, an attorney for Wal-Mart builder Tricor Development Corp., said the two rezonings were different and that better traffic flow into northeast site and its already commercial surroundings made it more appropriate.

The City Council must still approve the shopping center's site plans, which dictate the complex's final size and design.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000640



The board also will determine whether to require Tricor to follow concessions recommended by the Planning Department. They include widening Kool Park Road from two lanes to four lanes between Springs Road and the end of the property line.

Northeast Concerned Citizens likely will have until October to appeal. The group's leaders say an attorney hasn't been hired yet.

County commissioner and developer Steve Ikerd urged the council to delay deciding on the rezoning until after the state widens all of Kool Park Road to four lanes. Under current plans, that likely wouldn't occur for at least 10 years.

"It can always be done at a later date," said Ikerd, who has lived in the nearby St. Stephens community for five decades, "but if we do it now, it can't be reversed."

**NOTES:** A shorter version appeared in edition 1.

**LOAD-DATE:** October 17, 2002

Copyright 1998 Little Rock Newspapers, Inc.  
Arkansas Democrat-Gazette (Little Rock, AR)

May 31, 1998, Sunday

**SECTION:** NEWS; Pg. A1

**LENGTH:** 1453 words

**HEADLINE:** Wal-Mart has something to smile about

**BYLINE:** LOIS FLOWERS, ARKANSAS DEMOCRAT-GAZETTE

**BODY:**

BENTONVILLE-- It's 3:30 p.m. at Wal-Mart corporate headquarters.

Thousands of employees are hard at work, analyzing sales figures, ordering merchandise, meeting with vendors and preparing for the next Supercenter grand opening.

Suddenly the calm is broken as Mr. Smiley, the yellow happy-face character who stars in Wal-Mart's TV commercials, starts whistling "Happy Days Are Here Again" over the intercom.

Employees, many of them Wal-Mart shareholders, pause in midsentence and perk up their ears. They know Mr. Smiley's familiar tune is the signal the retailer's stock hit another all-time high that day.

"People clap, people literally do the Wal-Mart cheer; we're almost like children when they announce the stock price," said John Clarke, who works in the international division.

The retailer's shareholders have had plenty to smile about lately. Wal-Mart shares gained 73 percent last year. In early March, they topped \$ 50 for the first time. The stock closed Friday at \$ 55.13.

Now many investors hope the company will announce a stock split -- the 11th since going public 28 years ago -- at Friday's annual meeting. But split or no split, this year's shareholder extravaganza should be one of the most upbeat gatherings in recent history.

Since July 2, Mr. Smiley's cheery whistle has been piped over the intercom more than 40 times. But not so long ago, times weren't this good for the Bentonville retailer's stock.

After the last split in February 1993, the stock began to slump. Its price fluctuated in the \$ 20s for nearly two years before bottoming at \$ 19.25 in January 1996. That's when the company announced bad news. For the first time in 99 quarters, Wal-Mart would not post increased earnings in the quarter ending Jan. 31. Instead, net income dropped 9 percent.

The world's largest retailer stiffened its upper lip and took this as a wake-up call. To repeat its phenomenal success of the 1980s, it had to make changes.

The company shifted its emphasis from concentrating solely on increasing sales and profits. It looked for ways to manage its assets better. It began to use the latest technology to be sure each store stocked only the merchandise its customers wanted.

By doing so, it cut the amount of inventory on its shelves by \$ 1.5 billion in 1996 and \$ 1.4 billion the next year.

Savings in interest expense alone amounted to millions of dollars.

These activities didn't produce instant results, of course. In the mid-1990s, antsy stockholders had one burning question for President and Chief Executive Officer David Glass: When would the stock price start rising again, as it did so dramatically in the 1980s?

**SLOWDOWN**

In the 1980s and early 1990s, Wal-Mart experienced explosive growth. From fiscal 1980 to fiscal 1993, sales skyrocketed from \$ 1.25 billion to \$ 55.48 billion. Earnings gained 20 percent to 58 percent every year.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000642

"Because we were a smaller company, there were many new markets to enter, and there was less competition and less retail space out there," said John Menzer, chief financial officer and executive vice president.

Shareholders reaped the rewards. An investor who bought 100 shares in 1970 would have seen his holdings grow from \$ 1,650 to about \$ 1.7 million by mid-1990.

Wal-Mart's rapid earnings growth and future prospects made the company popular on Wall Street in the 1980s.

"The market generally pays a high premium for that type of growth stock," said Dan Barry, first vice president with Merrill Lynch in New York.

But as the decade ended, some analysts stopped recommending the stock, thinking it was overpriced. In early 1991, it was at \$ 40 a share and had a price-to-earnings ratio of 35, according to Wal-Mart: A History of Sam Walton's Retail Phenomenon by Sandra S. Vance and Roy V. Scott.

The price-to-earnings ratio relates stock price to earnings per share. The market average at the time was 17.6.

In 1993, the stock price stalled. The company that had been hitting home runs in the 1980s found itself in a slump.

There were several reasons. Retail stocks that were popular when the country was pulling out of the 1990-91 recession fell from grace, Barry said. The new darlings were technology firms, financial companies and other nonretailers.

A tough retail environment also hurt Wal-Mart stock. Consumer spending was down, and many retail chains expanded rapidly, creating a glut of store space. Several retailers near bankruptcy slashed prices to attract customers and bolster sales.

Wal-Mart was investing a lot of money in growth, developing its Supercenter concept and testing foreign markets.

Two acquisitions affected the short-term bottom line. Wal-Mart bought more than 100 Pace Membership Warehouse stores in 1993 and 122 Canadian Woolco stores in 1994.

#### IMPACT OF SLUMP

The mid-1990s were quiet for Mr. Smiley, whose celebratory whistle was absent from corporate headquarters. And the stagnant stock price didn't help employee morale.

"Wal-Mart has always had a strong employee culture, and part of that was built on owning shares in the company," said David Presson, a retail analyst with NationsBank Private Investments in St. Louis. "It was a tough period for everybody."

Over the years, Wal-Mart's profit-sharing and stock purchase programs have made many of its workers wealthy.

Employees can deduct up to \$ 25,000 a year from their paychecks to buy Wal-Mart shares. The company matches 15 percent of that, up to \$ 1,800 a year. Menzer said 60 percent of the employees participate.

Clarke, development director for South America and Canada, recalls when he bought his first shares in the stock program a few years after he began working for the company in 1990.

The stock was languishing, but it didn't discourage Clarke. He had an advantage over the average Wal-Mart employee because he was involved in real estate development and got to see the company's expansion plans firsthand.

Halfway through the slump, he increased the number of shares he was buying. "I knew the future looked very good."

Not all shareholders were so confident. Robert Kennedy, a University of Arkansas finance professor, bought the stock in the 1980s and sold it soon after it started "resting." He looks back on the decision as unfortunate. "With the move it's made from \$ 29 to \$ 54, almost doubling in a year, you can hardly do better than that," he said. "Naturally, I wish I'd kept most of my stock, but you never can look back and cry about those things."

During the slump, local brokers advised their clients to be patient.

"I've always felt you can't time the market, and you can't time the market price of an individual stock," said Trent Trumbo, assistant vice president and financial consultant for Merrill Lynch in Fayetteville.

He encouraged his clients to buy more stock when the price was low. "Wal-Mart is going to be a mainstay in the global economy for decades to come," he said. "Any time the market value of a stock of that nature drops, you just buy more of it and hang on for the long haul."

Jack Toussaint, a retiree from Rogers, held on to his stock. With the share price now more than \$ 50, he is glad he listened to his broker.

"He said, 'No, don't sell now,'" Toussaint recalled. "He felt it was going to come back, and he even named the price. He said it would come back to \$ 30."

#### COMEBACK

Don Soderquist, vice chairman and chief operating officer, believes the wake-up call Wal-Mart got a few years ago may have been the best thing that could have happened.

At a recent Merrill Lynch conference, Soderquist said companies the size of Wal-Mart face the danger of becoming complacent. The disappointing fourth-quarter results renewed the retail giant's determination and energy, Soderquist said.

It also led to a fundamental shift in the way Wal-Mart runs its business, Presson said.

"Up until that point, this was a company whose primary goal was to open up as many stores as they could and generate as much sales growth as they could," he said.

Now Wal-Mart is focused on profitable sales growth and improving its return on assets. It has reduced inventory at stores by fine-tuning the merchandise mix at each.

Wal-Mart has been helped as well by investments. Sales in Canada have nearly tripled since the company bought the Woolco stores four years ago. The retailer operates more than 600 stores in Argentina, Brazil, Canada, China, Germany, Mexico and Puerto Rico. The international division posted operating profits of \$ 262 million on sales of \$ 7.5 billion last year.

The financial community has changed its mind about Wal-Mart's growth potential. Barry of Merrill Lynch rates the stock a "buy." He thinks its share price will rise to \$ 62 within a year.

**LOAD-DATE:** June 9, 1998

July 15, 1997, Tuesday, FINAL EDITION

**SECTION:** UNIVERSITY/NEW TAMPA, Pg. 1

**LENGTH:** 492 words

**HEADLINE:** Store rezoning vote is tonight

**BYLINE:** ACE ATKINS ; of The Tampa Tribune

**BODY:**

**SUMMARY:** City planners recommend Temple Terrace City Council deny Wal-Mart's request to rezone land near the Hillsborough River.

**TEMPLE TERRACE** - Like their signature whistling happy face, Wal-Mart planners want to lead Temple Terrace in a chorus of "Happy Days are Here Again."

Instead city planners have joined concerned voices of river residents opposed to Wal-Mart building on 23 acres east of the Hillsborough River and south of Fowler Avenue and Morris Bridge Road.

Tonight the city's community development department will recommend that the city council deny Wal-Mart's request for a zoning change.

Residents who have complained about the project's proximity to the Hillsborough River also will be heard. The meeting begins at 7 p.m. at city council chambers, 11250 N. 56th St.

The discount store's planners requested a continuance from July 1 to tonight's meeting because of "several unresolved issues." Vero Beach developers Kimley-Horn & Associates Inc. and Wal-Mart officials will attend the meeting.

The land is zoned for multifamily residential - apartments, condominiums and town houses. Wal-Mart representatives have requested a zoning change to Planned Development, which would allow for mixed uses from office/retail to single- or multifamily homes with substantial design flexibility.

City community development officials recommend denial because the proposed project doesn't meet the criteria for a Planned Development zoning district and city code, according to records.

Problems with the Wal-Mart plan include compatibility with surrounding developments and lack of a true mixed use for the property.

Wal-Mart attorney Margaret Bowles said earlier Wal-Mart wants to do whatever possible to work with the city.

"We've read the staff comments about the intent of planned development," Bowles said Monday. "We don't entirely agree with their definition."

She said they've already modified site plans to include finishing the side facing Interstate 75 and adding a 12-acre park along the land's 200-foot river setback. The building also would feature Mediterranean revival architecture, which is the style of many historic Temple Terrace landmarks.

But Michael Knox, one of many river residents opposed to Wal-Mart, is not impressed with the changes.

"Mega-stores are huge, ugly, cheap, tawdry and tacky," Knox said. "No amount of Mediterranean architecture can hide that."

In other business tonight, a final site plan review is scheduled for Montessori Academy. The 7,280-square-foot children's education building would be built at the northwest corner of 53rd Street and 113th Avenue.

Also, Jenkins Construction company seeks an amendment to the SunTrust Bank site plan. It wants to change the material used in a buffer wall along the east and south property lines at 11253 N. 56th St. Community development will recommend council deny the request because the change does not meet city code.

**LOAD-DATE:** July 16, 1997

Copyright 1997 Post-Standard, All Rights Reserved.  
The Post-Standard (Syracuse, NY)

July 10, 1997 Thursday Metro Edition

**SECTION: BUSINESS**

**LENGTH:** 901 words

**HEADLINE:** CAMILLUS WAL-MART NEARLY READY THE RETAILER'S STORE IN AN OLD CALDOR LOCATION IS A LITTLE DIFFERENT FROM OTHER WAL-MARTS.

**BYLINE:** BOB NIEDT The Post-Standard

**BODY:**

Dave Eaton has visited the Old Country Buffett and the Tully's in Fairmount.

He's been to the Camillus town hall and the police precinct. People have knocked on the doors of his new store and wherever he goes, it seems, everyone asks the same question:

"When is that Wal-Mart going to open?"

Eaton's answer: "July 16."

He's the store's general manager, and on Tuesday, touring the store, he ran into the stirring enthusiasm of Julie Marra.

Marra was standing behind the counter of a still-pill-less pharmacy, getting ready for her job as a 21st-century druggist.

"We'll be out there in the aisles helping people, consulting more," said Marra, who heads the huge, four-pharmacist operation at the new Camillus Wal-Mart. "It's not just licking, sticking, counting and pouring anymore."

That's the assembly-line method of filling prescriptions, and this new Wal-Mart, scheduled to open six days from today, plans to be anything but assembly line or cookie cutter.

That began Day 1 with this store. It is unusual in that the design does not come from Wal-Mart architects or blueprints.

Instead, Bentonville, Ark.-based Wal-Mart has taken over an abandoned Caldor store in the Fairmount Fair shopping center and tailored it into still another outlet for the nation's No. 1 retailer.

For Onondaga County, it will be the third Wal-Mart. The others are in Clay and DeWitt.

It's the first to be run by Eaton, a 28-year veteran of Kmart who until recently piloted Wal-Mart's Cortland store.

On tour in the store

On Tuesday, he toured the store as Marra put up her prescription shelves, the 325 workers stocked shelves with \$5 million in merchandise, hung up Kathie Lee Gifford's collection of clothes, took sales and setup training on six computers, ran film through the one-hour processing center, slurped Icees, built bicycles and lowered Wal-Mart's already-low prices. No kidding. Some of the prices on the shelves read \$00, but expect that to change.

TTAB Opp. # 91/150,278  
WM/LOUFNI0000647

And - look out, kids - a lot of those workers unpacked boxes just loaded with back-to-school items. Yes. The theme on Wal-Mart's July 16 opening in Fairmount is back-to-school, a scant six or seven weeks before the young'uns breathe the stale summer air and freshly squeezed chalk dust in their new classroom.

This new Wal-Mart is so close to looking like it's open they've had to put up smiley face signs on the doors saying they're not open, they will be open soon, come back and visit us soon, etc. And the pressure has been on from future customers in the Camillus-Westvale-Solvay area to get it opened, pronto.

What those shoppers will see is a layout a tad different from other Wal-Marts. This one had to adjust to the Caldor design, so the restaurant - the '50s themed Radio Grill, complete with Wurlitzer jukebox - electronics, domestics and other areas will be in different areas than they are in other Wal-Marts.

#### Different, but the same

Wal-Mart also is adjusting to some broadsides from Target, the Minneapolis-based upscale discounter that is giving Wal-Mart a retail run for its money in some parts of the country.

Shoppers may see some trendier themed clothing areas with designer names, a nod to Target.

But, says Eaton, Wal-Mart is just continuing to do what it does: move goods quickly and at a discount, keep store costs down and recycle, recycle, recycle. Stores are credited 75 cents per shipping box returned to Wal-Mart's warehouse, for example.

One way it keeps costs down is through quick turnaround. Department managers, like Kim Mazzoli, carry hand-held computers that scan barcodes, check inventory, change prices, order printouts for shelf signs and tags, send e-mail and check supplier and vendor databases.

Ordering is based on need and sent through the checkouts.

When Eaton started in retailing, it took 45 days to order items.

Now, through the checkout, the computers gauge store supply needs. If, by 2 p.m., the stock is out or getting low, it could be in the store by the next morning.

This store is about ready. And there will be no "soft opening" before the grand opening. Wal-Mart has done away with that, and the store will open precisely on July 16.

"The only thing I'm worried about," said Eaton, as he looked out from the new, mesh-covered Better Homes & Gardens garden center, "is that parking lot. We're tight here."

This new Wal-Mart, built as a 113,000-square-foot stand-alone store for Caldor in late 1994 and closed in early 1996, shares its parking area with the Fairmount Fair strip shopping center, next to a P&C supermarket. That lot has at most been half full, even when Caldor had its short life there.

But take a cue from the East Syracuse Wal-Mart. Its parking lot - which it shares with no retailer - is almost always filled to the rim.

And take it from Eaton, because he's a man of accurate projections. While visiting a buying show for Wal-Mart managers about a year ago, he was in the toy area and bought a ton of these little red stuffed animals.

"Everyone laughed at me when I bought 1,200," he said. "But I'm a father of eight, and I and my kids know toys. Know what the thing was? Elmo."

As in Tickle Me Elmo, last Christmas's hottest toy, selling out everywhere and causing panic shopping.

"Cortland Wal-Mart had lots of Elmos," Eaton said with a smile, and as for the upcoming buying show in Houston, "I'm sure I'll be followed this year."

**GRAPHIC: PHOTO; DICK BLUME/The Post-Standard; Camillus Wal-Mart employee Michele Sheeman stocks liners at the store, set to open July 16 at the Fairmount Fair plaza.; MAP: Site of Camillus Wal-Mart Syracuse Newspapers**

**LOAD-DATE: January 30, 2003**



TTAB Opp. # 91/150,278  
WM/LOUFNI000649

December 9, 1996

**SECTION:** Cover Story, Pg. 37, Inside Look

**LENGTH:** 3130 words

**HEADLINE:** Wal-Mart Ups The Pace -- Retailer boosts IT spending, expands development staff in effort to get profits growing again

**BYLINE:** Bruce Caldwell

**BODY:**

Visitors to the Bentonville, Ark., headquarters of Wal-Mart Stores Inc. are struck by two enduring legacies of the company's late founder, Sam Walton: the speed with which every job function is expected to be carried out, and the control exercised over every detail of the operation. Wall-painted Waltonisms such as "Get it done by sundown" and "Acknowledge any customer within 10 feet" constantly remind employees of the corporate ethic.

The nearly contradictory call to be both fast and in control converge in Wal-Mart's aggressive IT machine as it tries to drive the huge retailer past the inertia that has come with the company's \$100 billion girth. Wal-Mart's profit growth was flat last year while net sales were up just 13%-decent numbers by most standards but "not a Wal-Mart year," noted CEO David Glass in the company's 1995 annual report.

Wal-Mart, like many other big companies in an assortment of industries, realizes that future growth will come as much from productivity gains achieved through technology and other innovations as from market-share conquests. That's why Wal-Mart's management boosted the company's IT budget by 10% this year. It's also why the IS division has been given the go-ahead to add 240 people to its 400-strong application development team by August, Wal-Mart's first major IS hiring effort since 1992 (see story, p. 40)

These developers will be charged with writing proprietary code for everything from data mining to transportation systems. Senior VP and CIO Randy Mott aims to halve Wal-Mart's development backlog to 12 months, matching the business planning cycle. Also, having started its year 2000 planning in 1991, Wal-Mart now intends to fix all

computer date-field problems in the coming year. It's a big task: Wal-Mart has 30 million lines of proprietary code.

There is nothing particularly flashy about Wal-Mart's approach to IT. The only thing that really matters is return on investment. "Wal-Mart has not originated a lot of unique and original thoughts," says Steve Bicocchi, a partner in the consumer goods and retail practice of Computer Sciences Corp.'s consulting unit. "But they have evaluated new technologies and processes early, made big commitments, and followed and executed on them like no other company has done in terms of thoroughness, quality, and attention to detail."

**Competitive Advantage**

Wal-Mart insists on speed in all of its operations, as well as in those of its suppliers. Software changes, for instance, are electronically distributed to all 3,017 stores in less than a week, sometimes in less than three hours. "Our only competitive advantage is speed of delivery," says Mott. Still, he refuses to cut corners, eschewing both packaged software and outsourcing. "Most everything we do," Mott says, "we think we can do better through customization."

Wal-Mart now has 350 application development projects in hand-and will complete each, on average, within 90 days-for its stores, distribution centers, and suppliers. Among the more interesting projects piloted by Wal-Mart is a voice-activated unit worn by associates, as the retailer calls all its employees, to replace costly shelf-lighting systems that now guide warehouse workers from item to item. Store Manager Workbench, a proprietary decision-support tool set for rollout in January, will drive merchandise, display, and pricing decisions by providing store managers with "up-to-the-minute profitability analysis" and what-if scenarios, Mott says.

New for the holidays is Item Locator, an application on handheld computers that lets store clerks look up which nearby stores are still carrying stock items that are sold out in that particular outlet. Item Locator is one of more than 1,000 applications, including proprietary E-mail and Wal-Mart's intranet, that can be accessed by the 90,000 Telxon handhelds linked by radio frequency to the in-store Unix servers that support Wal-Mart's SMART (Store Merchandising through Applied Retail Technology) system. That system alone has more than 12 million lines of proprietary code written in C, C-ESQL, MicroFocus ESQL, and Informix 4GL.

Development continues at a rapid pace as Wal-Mart learns how to flex its data warehouse muscle, now at 7.5 terabytes and expected to grow to 10 terabytes next year. "We're moving from data warehousing to data mining to knowledge discovery," says Rick Dalzell, VP of application development for merchandising and distribution.

By next spring, Wal-Mart expects it will be able to determine the profit and loss on each of the 65 million shopping baskets consumers wheel up to Wal-Mart checkout counters every week (see story, p. 44). The company can already access the weekend sales, gross margins, payroll, and other profit-and-loss data for every one of its 3,017 stores in seven countries around the world by 6 a.m. Monday, and then slice and dice that data any way it wants.

Cost-consciousness, another legacy of Sam Walton, remains pervasive at Wal-Mart. Offices at the 36-year-old headquarters are spartan-even the small space allotted for executive row. Over the low walls of cubicles that divide offices are bright yellow smiley-face signs, the only accent of color in an otherwise drab environment-reminders to everyone that Wal-Mart's strengths are customer friendliness and EDLP.

That's not a technology acronym. EDLP stands for Every Day Low Prices. It's a slogan that permeates the headquarters, peppers everyone's speech, shows up in the attention to detail, and lurks behind every discussion with a vendor, whether it is a negotiation over Barbie dolls or the Unix servers that are popped into each new store.

Wal-Mart opens about 185 new stores each year, and negotiates with Hewlett-Packard, IBM, and NCR each quarter for the Unix servers it needs in those stores. The frequent negotiations help Wal-Mart get the best price as well as the best and latest technology.

#### Careful Spending

The penny-pinching mentality born of EDLP also has helped Wal-Mart avoid duplicate operations and other excesses. Its \$500 million annual IT budget is just 0.5% of its total sales, while its competitors' IT budgets are 1.0% to 1.4% of sales. Until recently, Wal-Mart had only one data center, a three-story building attached by a hallway to the sprawling headquarters. A backup site was opened 18 months ago in nearby Tulsa, Okla., where security guards are the only staff needed for the highly automated facility.

While the company's 27 regional distribution centers each have an IBM CMOS mainframe and HP 9000 server, everything else is highly centralized. For example, says Mott, "when the PC change began to hit, we kept it as part of the IS budget, so while a lot of companies treated PCs like pencil sharpeners, we treated it as a business decision."

Technology has to pay at Wal-Mart. Senior management expects technology projects to cover development and deployment costs within four months of implementation. "We come back every year and review where we are with payback," Mott explains. "We prepare a report for the business units on expected and actual payback to date, and if we don't get the expected payback, that becomes a point of discussion." Maybe business processes were not changed to take advantage of the technology, or the new system missed a key function that would deliver the payback. Mott conjures up another Waltonism: "Do it, try it, fix it."

If there's an opportunity to apply new technology to improve employee performance, Wal-Mart explores that opportunity, even if the idea comes from another industry. For example, the voice-activated units being piloted at Wal-Mart's food distribution centers are most commonly used on manufacturing assembly lines. Even time-and-motion studies, also originally applied in manufacturing, are brought to Wal-Mart's check-out counters by cameras hidden behind dark-glass globes on the ceiling. Those checkout studies prompted Wal-Mart to install two NCR bar-code

scanners, one horizontal and the other vertical, at each register to reduce the need for cashiers to manipulate items. Every second shaved off 65 million transactions a week adds up to cost savings, reasons Kevin Turner, VP of application development for store systems and finance. "Those processes we can't eliminate, we automate," Turner says.

Wal-Mart's proactive approach to technology doesn't bother the company's technology suppliers. Because hardware prices are declining, "the only way up for these hardware suppliers is for people to get innovative," says Mott, "and that is where we get very strategic to some of these people, because they can go to Kmart and Target and others and say, 'Look at what Wal-Mart is doing. You need to do that.'"

While Wal-Mart extracts bargains from vendors by jointly developing new technology that the vendors can later sell with reference to Wal-Mart, it also makes sure that competitors can't immediately latch on to the new technology. For example, a tiny shelf-label printing unit that Wal-Mart developed with Comtec Information Systems Inc. in Cumberland, R.I., can't go on the market for 18 months. Meanwhile, Wal-Mart has deployed more than 60,000 of the units.

Technology industry heavyweights such as IBM CEO Louis Gerstner and Microsoft executive VP Steve Ballmer are always available when Wal-Mart calls. "If you're faint of heart, Wal-Mart is a tough account to deal with," says a spokesman for another technology supplier.

#### Internet Standard

When Wal-Mart supplier Warner-Lambert Co., which makes Listerine, proposed real-time sharing of sales-forecasting data to help improve the link between retail sales and manufacturing planning, Wal-Mart helped assemble funding from IBM, Manugistics, and SAP to develop CFAR (Collaborative Forecasting and Replenishment), an Internet standard designed to cut tens of billions of dollars in inventory costs for the consumer packaged goods and retail industries (see story, p. 46)

RetailLink, Wal-Mart's electronic data interchange system for connecting to its suppliers, already provides weekly forecasting data to more than 3,500 of the 5,000 vendors from which Wal-Mart buys goods. "But that seems to be difficult to implement consistently within vendor organizations," Mott says, "and marketing plans are not shared well now."

Making RetailLink accessible through a Web browser will help ease implementation among vendors, Mott notes, but there is still a need for increased collaboration. A vendor, for example, might view a Wal-Mart forecast as too optimistic and decide to produce fewer units without telling the company. The goal of CFAR is to make it possible for everyone involved to "work off the same page," Mott says.

CFAR is not the only Web-based technology initiative at Wal-Mart this year. Last spring, Wal-Mart launched an Internet-based catalog of merchandise. The server, overwhelmed by a million hits on its first weekend, has since been upgraded twice. Today, Wal-Mart sells more than 2,500 products from its Web site and plans to expand next spring to more than 80,000 items, some of which can be ordered directly from the manufacturer. In addition, Wal-Mart used Java applets last March to launch CarrierLink, an Internet-based system for improving communications with the retailer's transportation partners for scheduling, training, and other purposes.

#### Open House

Wal-Mart treats its retail suppliers as partners by giving them access to its data warehouse. But the warehouse can be a double-edged sword—Wal-Mart also uses it to keep tabs on supplier performance. Wal-Mart monitors vendors' ability to meet orders, the lead time required, and the price of their products. "We know what their contribution is to Wal-Mart," notes VP Dalzell.

Some suppliers fear Wal-Mart's leverage. When the retailer uses its massive marketing clout, it can, for instance, ask for and get music CDs and tapes stripped of lyrics it deems offensive. But when it comes to buying technology, the company usually helps its suppliers, observers say. "The supplier relationship that is defined by beating them to death on profit margins is different from forcing someone into the 20th century to reduce costs in the pipeline," says Darryl Landvater, a consultant with Retail Pipeline Integration Inc. in Essex Junction, Vt. "The behavior of great organizations is to focus on getting information on their operations so they can manage it, and that is Wal-Mart's behavior."

Closing the loop with everyone that touches the company in some way is a central theme within Wal-Mart IS. Everything is integrated, and whenever a technology or other change is made, everyone knows about it. Wal-Mart has 5,

800 computer-based-learning workstations, each with magnetic-optical drives that can be rewritten remotely, that provide multimedia sessions on demand for company associates worldwide.

Nearly 3,000 changes are made every year to the Unix servers in the stores, as well as an average of 24 changes every year at the IBM point-of-sale registers. That, in turn, makes

it necessary for Wal-Mart to retrain some 600,000 cashiers every two weeks, says VP Turner. One recent change was a message prompting cashiers to ask customers for proof of age when certain products, such as inhalants, are scanned at the register, helping to keep the store in compliance with new Drug Enforcement Administration regulations. In addition, thousands of price changes are made each day, keeping associates busy with their Telxons and portable label printers.

The Telxon handheld unit, first deployed five years ago, is Wal-Mart's Swiss army knife. Equipped with a keypad, bar-code scanner, a 16-line character display, and radio frequency communications with the in-store servers, it is what is now called a network computer. No modifications have been made since they were first purchased, though Wal-Mart may replace the units with pen-based computers if the return on investment can be demonstrated.

The Telxon is so indispensable that the running joke at Wal-Mart is that no one can go to the bathroom without it, Turner says. While stores have 15 to 35 Telxons each, they have to be shared with anywhere from 100 to 600 associates. The devices are considered so critical to store operations that Wal-Mart contracted with Telxon for overnight replacement of the units when a problem occurs.

But even with the trusty Telxon, price changes for each item can be implemented only three times a day with the current system and processes. Wal-Mart is testing LCD shelf tags from NCR that are powered and controlled by infrared light units on the ceiling and can be changed in real time, concurrent with changes at the point-of-sale registers.

However, the devices still look too expensive for frugal Wal-Mart, where payback in three to four months is the rule. An NCR spokeswoman says the vendor's pricing strategy for the experimental units is now based on a return-on-investment period of 12 to 24 months. Wal-Mart, no doubt, will work on shortening that.

#### Young At Heart

Wal-Mart's headquarters may show its age, and its long lists of huge numbers may show its size, but its drive has not faded. "Wal-Mart's IT department is extremely proactive," says John Harte, CEO of NeoVista Solutions Inc. in Cupertino, Calif. NeoVista is providing data-mining software to the retailer. "They tend not to think of themselves as a service department in a passive sense. They are very aggressive in evaluating technology and then bringing it to the attention of the business departments."

Dave Carlson, former CIO of Kmart, says Wal-Mart remains the industry leader in logistics technology and is now out front in merchandising systems as well, having caught up to and passed Kmart. Carlson, now a principal of Customer Focused Technology, a retail IT consulting firm in Bloomfield Hills, Mich., notes that Wal-Mart has a "pretty insulated culture in Bentonville, but that hasn't prevented them from making major contributions to the creation and proliferation of standards"-particularly in EDI and point of sale.

Wal-Mart still has tricks up its sleeve, and a nonstop curiosity that is now taking it into markets around the globe, where analysts warn competition can be much tougher and cultures much harder to penetrate with Ozarks-inspired homilies. But by borrowing here, innovating there, and forever counting and crunching numbers, Wal-Mart expects to tackle challenges and change on the fly. Says Mott: "Here at Wal-Mart, the only thing people are comfortable with is change."

- with additional reporting by John Foley, Marianne Kolbasuk McGee, and Tom Stein

#### SIDEBAR: Technology Snapshot

Annual technology budget

\$500 million

Information systems staff

1,100

Applications

More than 30 million lines of code, 90% proprietary, includes distribution, decision support, profit and loss, and merchandise support; D&B payroll and fixed assets software; 50 call-center apps based on Remedy system

#### Data centers

Bentonville, Ark., with "hot" backup site in Tulsa, Okla.

#### Mainframes

Hitachi Skyline 7-way, IBM 10-way, Hitachi 8-way, IBM

8-way, Hitachi 4-way, two IBM CMOSes (model 9672 r21) in Bentonville, one IBM CMOS (model 9672 r21) at each of 27 distribution centers

#### Servers

5,000 Unix servers, predominantly NCR model 3450, but including NCR S40, HP 9000, and IBM RS/6000; NCR 3600 and NCR WorldMark 5100M for data warehouse

#### Desktop

5,800 PCs in home office, 11,500 in stores

#### Mobile

90,000 Telxon radio-frequency handheld computers

#### Point-of-sale

100,000 IBM 4680 registers and NCR 7870 flat-bed, bioptic scanners

#### Databases

Informix Online Dynamic Server, NCR Teradata, IBM DB2, proprietary Common Access Server

#### Operating systems

Windows 3.1 on desktop, moving to Windows NT

Workstation; Unix and NT on servers

#### Connectivity

Satellite for 1,800 stores and frame relay for 1,100 stores exchange 35 Gbits of data daily; TCP/IP; Ethernet LANs; Cisco and ACC routers

Data: Wal-Mart

SIDEBAR: Wal-Mart By The Numbers

New stores opened annually: 185

Average store size: 90,000 sq. ft.

Average supercenter size: 121,000 sq. ft.

Varieties of merchandise in a supercenter: More than 100,000

Weekly customers: More than 65 million

Time between each Barbie sale: 2 seconds

Annual changes to in-store servers: 3,000

Daily queries to data warehouse: 10,000

Store-item combinations in daily sales forecasting: 50 million

Web server hits on first weekend: 1 million

Data: Wal-Mart

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July 13, 1998, Monday, FIVE STAR LIFT EDITION

**SECTION:** BUSINESS PLUS, Pg. 18, MONDAY MEMO COLUMN

**LENGTH:** 813 words

**HEADLINE:** MONDAY MEMO

**BYLINE:** Compiled By Gary A. Clark; Of the Post-Dispatch

**BODY:**

Picked off.

That's what we were upon discovering that a new flavor of M&Ms candy will come out this year.

M&Ms, as far as we knew, were and are the chocolate candy "that melts in your mouth, not on your hands" - a ditty drilled into our head back in the days of black-and-white television. And they came in two flavors - plain and peanut.

Then we heard about the new flavor put out by M&M/MARS. The new M&Ms will have a crisped rice center, which sounds interesting - a bit like NESTLE'S CRUNCH, we suppose. The new flavor should be available around December.

In the meantime, M&Ms has two flavors that we knew nothing about - almond and peanut butter. The latter sounds disgusting, as we don't care for the flavor of peanuts that are buttery. The former sounds good, as we like the flavor and taste of almonds.

All of which says something about our sweet tooth.

It was so often indulged, in the form of candy, in our youth that we no longer care about candy.

It was MOM and GRANDMA CLARK and GRANNY ALLEN and AUNT JUNE, AUNT VIOLET and AUNT RUBY who poured all that candy down our childish throat.

Why Granny and Mom and the aunties did so was probably connected to their past. Granny's girls, numbering seven, and two sons lived over a confectionery on Ruskin Avenue.

Neighborhood kids had plenty of money with which to sample the store's candies and treats. Granny's kids didn't. So they went without.

"Grandma (our great granny) gave us fudge on our birthdays," Mom said. "That was like heaven."

Because Mom and her sisters had a candy shortfall in their youth, they made up for it by pouring candy into their kids and nephews and nieces. All that candy created our indifference to candy later.

But the store on Ruskin also featured ice cream. "That's what I envied the most," Mom said.

So she poured plenty of ice cream into us, too. Alas, despite her heroic and loving endeavors and the endeavors of her sisters, it was not enough. We still love ice cream.



So we blame Mom and her sisters for our cravings today. The fault couldn't be ours, so it must be theirs, when that half-gallon of EDIE'S chocolate fudge mousse beckons us from the freezer.

We can almost hear it calling right now. . . .

"Gary . . . come hither . . . I am so delicious, and just a little wicked!"

Or, it could be genetic. We just might be the victim of a weak ice cream gene, the one with a large cavity we've been trying to fill for years.

Which gets the dear aunties off the hook, somewhat, anyway. . . .

If it's genetic, we can't blame them . . . for one midsummer spare-tire on the middle-aged midsection of a middling middlebrow in the middle of America.

SMILEY FACE update:

Frowns all around.

But, you might ask, Why?

Let's face it, right up front. We said last week that a Frenchman had invented the Smiley Face.

But HARVEY BALL of Worcester, Mass., begs to differ. In fact, the whole town of Worcester says Ball designed the ubiquitous happy face in 1963, as part of an in-house happiness program for an insurance company.

Ball got really steamed when he heard that the Frenchman, FRANKLIN LOUFRANI, was threatening to sue U.S. companies that manufacture or sell products with the Smiley symbol.

"So much for Smiley and happiness," Ball said.

Loufrani, president of SMILEY LICENSING CORP., said he made up Smiley while working at a French newspaper to illustrate positive stories after the student riots in 1968. Since registering the trademark, he has made millions.

The people of Worcester - which bills itself "The Birthplace of the Smiley Face" - side with Ball.

He said he first drew the perky yellow face in 1963 as part of a "friendship" campaign to ease tensions between employees after STATE MUTUAL LIFE INSURANCE CO. took over a small Ohio insurer.

Ball, a free-lance artist, was paid \$ 45 for the graphic. State Mutual printed 100 Smiley buttons. A 1964 State Mutual publication shows company Vice President JOHN ADAMS wearing one.

Soon requests for tens of thousands of buttons began pouring in. Finally, Ball said, the company stopped printing them in the late 1960s.

Ball never sought a trademark or copyright. He said he doesn't miss the millions he could have made. And he isn't planning legal action against Loufrani, who has a U.S. trademark, but only for a combination happy face and the word "Smiley."

Ball just wants the recognition.

"Never in the history of mankind or art has any single piece of art gotten such widespread favor, pleasure, and enjoyment," Ball said. "And nothing has ever been so simply done and so easily understood in art."

Loufrani, for his part, had no comment.

Given the 1964 picture and Loufrani's 1968 date for "inventing" the symbol, there is only one thing to say about his no-comment stance: The silence is deafening.

**GRAPHIC:** GRAPHIC (1) Graphic / Illustration - (Smiley Face)

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(2) Graphic / Illustration - (Sad Face)

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January 25, 1999, Monday, FIVE STAR LIFT EDITION

**SECTION:** BUSINESS PLUS, Pg. 5, MONDAY MEMO COLUMN

**LENGTH:** 722 words

**HEADLINE:** MONDAY MEMO

**BYLINE:** Compiled By Gary A. Clark; Of the Post-Dispatch

**BODY:**

**SMILEY FACE update:**

The guy who created the original Smiley Face is declaring commercial warfare on others who have profited from the friendly yellow icon he drew for an insurance company 35 years ago.

HARVEY BALL, a graphic artist who earned all of \$ 45 for designing the face, has formed WORLD SMILE CORP. From now on, his Smiley products will contain his signature inside the Smiley drawing. Not only that, but the profits from greeting cards, buttons and other products will go to charity.

All this because a Frenchman, FRANKLIN LOUFRANI, was threatening to sue U.S. companies that sell Smiley products overseas. Loufrani holds the trademark for Smiley in 75 countries, but not the United States.

Ball thought about a countersuit, but then decided against it. "It's repugnant" to sue over a smile, Ball said.

His son summed up the family's approach: "Smiley's been pretty successful in the commercial arena," said CHARLIE BALL. "If we're going to take it to Loufrani, let's do it in the marketplace."

Given Loufrani's attitude, we will always look for the Signature Series, and hope you do, too.

From across the pond, NICOLAS LOUFRANI, son the of the vice president of London-based SMILEY LICENSING CORP. , responded in a manner you'd find typical for his sort:

"He (Ball) has the right to use the Smiley character in the U.S.," he said. "If he's able to sell Smiley products and give the money to charity, that's great."

Notice the distinct lack of an offer to do the same. \$

**UFO update:**

For those interested in last week's item about the Silicon Valley chief executive who abandoned his career to search for aliens and UFOs, there is a Web site:

<http://www.thewordistruth.org> is where JOE FIRMAGE details his beliefs about the "teachers" who have visited our orb through the centuries. Fascinating stuff.

There's plenty of info about the Roswell incident and other things in UFOlogy that respected types believe are true.

St. Louis Post-Dispatch (Missouri) January 25, 1999, Monday, FIVE STAR L

"These are certainly speculative and provocative theories, but on the other hand, he's not a crackpot," HAROLD PUTHOFF, a physicist at the INSTITUTE FOR ADVANCED STUDIES in Austin, Texas, said in a follow-up article in the SAN FRANCISCO CHRONICLE. "As far as whether we'll meet up with E.T., the jury is still out. The proof is yet to be found. The fact that (Firmage) opened up the issue required a lot of courage. He stuck his neck out."

But then we have the woman in Daly City, Calif., who says she personally has been visited by aliens 33 times and has been implanted with alien materials.

And there is the man who swears that extraterrestrials are in cold storage in the WHITE HOUSE.

Then, again, that would explain a lot. ... \$

Speaking of the White House and its current resident, an entrepreneur is taking advantage of BILL CLINTON's being in hot water.

BUBBA'S IMPEACHMENT SAUCE is one of SUZIE'S SAUCES put out by designer MIKE GARRETT, and his wife, SUZIE, of Wesley Chapel, Fla. A bloated version of the president is airbrushed on each label of the jalapeno-pepper hot sauce with this quote, "I think they have something against cigar smokers."

Most of the Garretts' sauces are sold to hot sauce shops that offer gourmet and collector sauces.

Garrett, a Republican, says Clinton is his favorite target. "It's just so easy," he said. "But I'm an equal-opportunity offender."

To prove that notion, Garrett offers NUKEM NEWT'S TAX EXEMPT, with a label commemorating the former House Speaker's dip into a tax-exempt education fund.

Plans in the works include a top-secret label for Gov. JEB BUSH of Florida and one for ELIZABETH DOLE, should she decide to run for the Oval Office.

"Let's just say there'll be some VIAGRA involved," Garrett said.

Bill Clinton's sauces are the biggest sellers, although Garrett has tried HILLARY'S DIET SAUCE - "made with pure Whitewater" and BORE SAUCE in honor of the vice president.

Garrett purchases his sauce from six distributors and offers 14 varieties with more than 30 labels. But he doesn't always get to do every label he wants to try. Suzie has the final say, Garrett admitted.

"She's vetoed a few."

And that, as many a red-blooded husband will tell you, is - in a nutshell - a demonstration of a time-honored American tradition:

The balance of power.

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