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CATALOG STORE USE AND EXCLUSIVE CLAUSES: PART 1

The giant reawakens.

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The *Catalog store* sounds like an oxymoron, a combination of words conjuring visions of divergent retail paths: home shopping and store shopping. However, home shopping and store shopping aren't always rivals. Some merchants have found and continue to find success by combining aspects of both.[1]

Why is this journal devoting so much space to an analysis of catalog store leases? After all, the heyday of America's general merchandise catalog stores has passed. The Sears Roebuck and Montgomery Ward catalog stores and their catalogs (the industry's giants) vanished in the late-1980s and early-1990s.[2]

Why worry about the remaining catalog stores? Three categories of good reasons make worrying about catalog store leases imperative.

The Catalog Store Idea Still Lives. Retail concepts, like so many other human designs, don't die irrevocably. Although many general merchandise catalog stores disappeared in corporate downsizings or found their way to the bankruptcy courts, other general merchandise catalog stores survive, and specialized catalog stores are thriving. The conditions that made general merchandise catalog stores useful in the first place may reemerge. The old new idea may become exciting in a new technological environment. (Indeed, I've heard rumors that Sears is thinking about reissuing the big catalog.)

Many Catalog Store Leases Executed Years Ago Are Still Alive and Can Cause Big Trouble For Today's Landlords. Catalog store executives have demanded (and landlords have conceded) the right to sell any catalog item from the store. Because landlords have no control over the catalog, a shopping center catalog store's right to sell all catalog items can be used to drastically expand the kinds of merchandise the tenant is permitted to sell in the store. That right creates the hazard that the catalog store will decide to sell merchandise prohibited by other tenants' exclusive clauses. If the catalog store tenant's use clause permits sales prohibited by another tenant's exclusive clauses, the landlord is vulnerable to lawsuits from both tenants.

Catalog Store Exclusive Clauses Can Unwittingly Exclude Other Desirable Merchants From the Shopping Center. Many catalog store exclusive clauses bar any other catalog store from locating in the same shopping center. These broad restrictions exclude stores that are so unlike each other that they could easily occupy neighboring downtown stores or coexist in the same shopping center without harming each others' business one bit.

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CATALOG STORE ROOTS

To more fully understand the impact of catalog store use and exclusive clauses, we need to explore the roots of cataloging and other forms of home shopping and how they came to intersect with store shopping.

> With catalogs, door-to-door salespersons could be walking department stores.

Throughout American history, home shopping has been an important alternative to in-store shopping. Peddlers, door-to-door salespersons and, later, telemarketers all provided home shopping opportunities well before the modern shopping center era or the contemporary retail scene.

Peddlers were the first merchants to serve the American home shopping market. Before 1870, rural Americans had only two practical shopping alternatives: the (often tedious) journey to the closest town or village and call at the general store, or purchase from itinerant peddlers. Only the rich could afford to take the time-consuming and arduous trip to a big city merely to shop. But for the peddlers, routine shopping would have been possible only by setting aside valuable time. Peddlers made it possible to buy the things one needed without the special effort needed to get to the local village's general store.

Traveling on horseback or by horse and cart, they carried their wares with them. They sold diverse items like clocks, chairs, books, and portraits. They provided an alternate distribution channel that connected craftspeople, manufacturers and artisans on the one hand and rural consumers on the other. Peddlers sold and delivered merchandise directly to the consumer's doorstep. When roads were primitive and the trip to the general store in the local village had to be made on foot or by horse power, farmers were glad to see a peddler approach.

According to the 1860 census, 16,594 peddlers plied their trade in the United States. Most were from the Northeast and they included the famed and crafty "Yankee Peddlers." Others were German Jewish immigrants.

Occasionally, a prosperous and industrious peddler would tire of his perennial travels, settle down, and open a retail store. If he was successful, he would open another store and then another. Adam Gimbel was such a successful peddler. Gimbel sold to farmers and woodsmen, carrying his wares on his back along with a rifle for security until he opened his first store in Vincennes, Indiana in 1842. In Lyman S. Ayres' backpack were maps, pictures, and frames until he opened a store in Chardin, Ohio. In 1872, he purchased a controlling interest in the Indianapolis store that was later to be known as the L.S. Ayres Department Store.

Although peddlers played an important role during the post-Civil War expansion years, peddling is far from an efficient method of merchandise distribution. New circumstances and new technology replaced peddlers with more efficient alternatives. As roads and transportation modes improved, rural consumers found they could more easily get to town and shop at the general store.

Nevertheless, peddling and other forms of door-to-door sales have continued to be significant elements of the distribution system. Door-to-door sales have become more sophisticated over the years. Fuller Brush developed the art of getting salespersons' feet in the door. Tupperware promoted house parties in order to capture the Mah Jongg set. Avon ladies descended on American women and promised to make them more beautiful than nature intended. Amway burst on the scene with its own aggressive sales methods.

THE EMERGENCE OF CATALOG SALES

The inherent limitation of door-to-door sales is that salespersons can sell only what they carry with them. Catalogs solve this problem. With catalogs in hand, door-to-door sales persons can be walking department stores. Even the legendary Fuller Brush sales staff was armed with catalogs. Avon introduced its first catalog in 1973.

Before the end of World War II, few families had telephones in the house, but catalog retailers had foreseen the possibilities ten years earlier. Telephone orders were promoted by both Sears, Roebuck and Montgomery Ward in the 1930s. Contemporary home shoppers make purchases in many ways. They look to television home shopping networks, junk mail, credit card invoice stuffings, telemarketers, and computer-based shopping services.

After the Civil War, expansion of the United States Post Office and improved postal service made it possible for an enterprising business person to reach right into the farmer's kitchen. E.C. Allen is reported to have begun the first mail order catalog sales business in 1870 in Augusta, Maine. Aaron Montgomery Ward, formerly a traveling salesman, published his first catalog (a single eight-by-twelve-inch page) in 1882. R.W. Sears Watch Company issued a catalog in 1887, and in 1893 Sears & Roebuck in 1893 launched its first general merchandise catalog.

The label "catalog store" has been, and continues to be, confusing.

Catalogers prospered despite the absence of facilities and services we take for granted today. Many years passed before Sears, Roebuck & Co. routinely provided home delivery to catalog customers. Earlier on, customers had to travel to a distribution center to get what they ordered.

The mail order catalog industry eventually became a powerful distribution engine. In its heyday, the Sears catalog contained 1,500 pages, weighed six pounds and reached twenty million people. Two big factors in the industry's growth were significant improvements in postal service (rural free delivery started in 1893 and parcel post in 1913) and the ethical business practices of the major catalog houses. The Sears catalog offered a full satisfaction guaranty. A dissatisfied customer could get a refund merely by returning the merchandise at Sears' expense.

Catalog operations and retail store operations began to overlap. Retail store merchants observed the new selling method and were quick to issue their own catalogs. Tiffany tried mail order in 1870. R.H. Macy distributed a catalog in 1874. Conversely, catalog merchants were not shy about opening their own retail stores. Wards experimented with retail units in its mail order plants as early as 1921.

Catalog stores that sell the same merchandise as the retailer offers in the catalog blend the home shopping and store shopping concepts. They permit consumers who would otherwise prefer to be store patrons to save time by selecting merchandise from the catalog instead of hunting for their needs on the sales floor.

THE MANY KINDS OF CATALOG MERCHANDISING

Nevertheless, the label "catalog store" has always been confusing. Originally, there were four completely different kinds of catalog merchandising in shopping centers:

- Retail outlets of major general merchandise chains that conducted both department store operations and mail order catalog operations;
- Retail outlets of a novelty catalog organization;
- Franchised catalog desks in retail stores unrelated to the catalog company; and
- Consumer electronics stores tied to a catalog operation.

Today, three additional kinds of catalog stores compete for the consumer's favor, namely:

- Instant pickup catalog stores;
- Upscale specialty catalog stores; and
- Specialized hard goods catalog stores.

Now, let's take a quick look at each of these seven kinds of catalog stores.

Retail Catalog Outlets of Major General Merchandise Chains

Sears, Roebuck and Montgomery Ward stores are prime examples of retail outlets of major general department store chains that also carried on catalog operations. Both firms operated (1) catalog stores that were separate from their regular retail stores and (2) in-house catalog desks in the department stores. Although many leasing professionals think the stores came first and spawned the catalogs, the reverse is true. Today's significant Sears, Roebuck and Montgomery Ward retail stores didn't exist until the 1920s. Until then, except for brief experiments, Wards and Sears were strictly mail-order companies.

The earliest Wards outlet stores opened in 1921. They were located in its mail order plants in Aurora and Springfield, Illinois and were initially intended to dispose of distress merchandise. Wards had so much distress merchandise in 1921 that it expanded the outlet store program. To avoid sullying the good name of Montgomery Ward, they named some of the outlet stores George Lane Stores. (Who was George Lane, and why did nobody care about George Lane's good name?)

Ward's General Merchandise Manager, Vice President Robert E. Woods, who conceived the outlet program, was convinced that Ward's should further expand retail operations. When the company failed to act on his views, he moved to Sears in 1924 and quickly convinced his Sears' bosses that his way was the way of the future. Sears opened its first retail store (except for a brief early experiment) in 1925 at its Chicago mail-order plant. By the end of 1925, Sears had opened seven more retail stores, spreading from Chicago to Seattle, Dallas, Kansas City, Philadelphia, and Evansville (Indiana).

> Over time, catalogs have offered items that, if sold in the stores, would violate other tenants' exclusive clauses.

In 1926, Wards entered the store competition by creating "mail order agencies." Although the mail-order agencies displayed a fair sprinkling of merchandise, automobile tires were the only items consumers could purchase there without completing a mail order form and waiting for the goods to arrive at a later date. Wards' mail-order agencies evolved into conventional retail stores when customers insisted on buying one store's floor samples on the spot, and the store personnel yielded to the demands.

Some Wards and Sears stores were located in downtown central business districts. Early on, Sears concentrated its smaller stores there, but it subsequently sought more convenient customer parking facilities in outlying urban and suburban areas. After World War II, both Wards and Sears opened large full-line department stores and catalog units in shopping centers. As the millennium approaches, Sears is rediscovering downtowns, and planning large-scale expansion in urban settings.

Although the early Sears retail stores had catalogs available, the stores were not important sources of mail-order sales until Sears introduced catalog order desks in 1935. The in-house catalog order desks were the source of substantial new sales. Customers who couldn't find the item they were seeking in the store looked for it in the catalog. The in-house catalog desk helped the small Sears stores (which couldn't maintain huge inventories) even more than the big ones. However, by 1932, Sears' store sales exceeded catalog sales.

Retail Outlets of a Novelty-Type Catalog Organization

Some catalog organizations that sold novelties also found it attractive to do business from retail stores. Spencer Gifts is a prime example. Early on, this organization called its stores gift shops, and the stores carried items that were also featured in the catalog. The stores were small and youth-oriented and focused on novelties and gadgets. They also sold incense, cosmetics, clothing, greeting cards, jewelry, posters, and candles.

In the early 1990s, Spencer Gift stores were upgraded. They remained youth-oriented, but jewelry was given a bigger share of selling space. Although catalogs were available at the stores, the stores didn't take or fill catalog orders. In addition to the store items, the catalog features novelty merchandise and gadgets, product lines that aren't necessarily related to the merchandise being offered in the stores. Indeed, the stores and the catalog seemed to target different markets.

Over time, the catalog has offered items that, if they were sold in the stores, would violate many other tenants' exclusive clauses. These items include food, toys, and hardware, all of which could violate the restrictions of particular stores in the shopping center.

Franchised Catalog Desks in Retail Stores

Franchised catalog order desks are a third kind of catalog merchandising. In this format, a mail-order catalog company makes a franchise deal with a retail store chain supplying catalogs to be displayed in the stores. The stores take orders that are filled by the mail-order catalog company. Western Auto's (former) arrangement to display the Spiegel catalog is a good example.

Consumer Electronics Stores Tied to a Catalog Operation

The retail outlets of consumer electronics giant Radio Shack carry catalogs. If a store doesn't have what a customer wants, the salesperson searches through the catalog and orders the item. The customer can then pick it up on a subsequent visit. This approach was used advantageously by Lafayette Electronics, an early consumer electronics retailer (later acquired by Circuit City).

Instant Pickup Catalog Showrooms

A new breed of catalog store surfaced in the 1970s and spread rapidly. The new chains, emerging almost simultaneously in different geographical areas, included Best Products, Service Merchandise, S.J. Wilson, Modern Merchandising, Sam Solomon's, W. Bell, Consumers Distributing, L. Luria, and Basco's. Instantaneously, these stores became popular shopping destinations.

The new players kept an extensive inventory in the store. The merchandise items that customers selected (either from a thick catalog or conve-

> Catalogers' moves led to increased market share but not to long-term stability.

nient personal computers scattered about the showroom), were waiting, boxed in the storeroom. Shortly after filling out an order form and paying the purchase price, customers could pick up the merchandise and carry it home.

The stores featured name-brand hard goods, appliances, and jewelry, and their low-price policy spurred rapid growth and handsome profits. Until they arrived on the scene, the public could find bargains among the private labels featured in the retail store catalogs or they could find low prices at discount stores. But the new instant pickup catalog stores emphasize brand name labels.

Instant pickup catalog store chains made handsome profits because they used space efficiently, kept real estate expenses down, and held down the payroll. Their overhead was reported to be one-half that of a traditional department store.

The catalog played an important role in keeping catalog showroom overhead low. It was substituted for both display space and sales personnel. For example, Best's 500-page catalog depicted around 8,500 items, and in 1984, Best's shipped catalogs to about 10 million prospective customers in addition to featuring those catalogs in the showroom.

In addition to saving on showroom space and personnel, instant pickup catalog store chains save by their carefully selected merchandise mix. They have concentrated on jewelry, luggage, and nationally advertised hard goods like electronics and housewares, avoiding merchandise that is subject to markdowns because of changes in fashions and seasons.

The original scheme worked well for a while, and catalog store chains spread rapidly across the United States and Canada. They were reputed to be the cheapest guys on the block and consumers flocked to them.

In the late 1970s and early 1980s when they realized that their own stores were losing market share and potential profits to the catalogers, discount department store executives undertook two responses. Some were able to negotiate restrictive covenants in their shopping center lease exclusive clauses that barred catalogers from cotenancy, while others found ways to compete more effectively against instant pickup catalog stores.

The discount department store people figured out that their discount price policies are useless if consumers can get a better deal elsewhere. So they lowered their prices on merchandise usually carried by instant pickup catalog stores, and they increased the amount of brand-name merchandise on their gondolas and shelves.

Later, a former discount department store chain CEO, Saul Price, popularized an entirely new kind of store: the warehouse club.[3] Warehouse clubs offer brand-name merchandise. Because the stores are as big as warehouses and sell "club price" quantities, their selections and prices are terrific.

By the late 1970s, many shoppers were disenchanted with the catalog showroom style of shopping. The catalog showroom routine had become tedious. The shopper had to fill out forms, wait on line, pay for the merchandise, and stand on line again to wait for it. The waiting was sometimes irritating. Worse, waiting didn't guarantee that the shopper got the merchandise. Sometimes the store was out of stock.

Both discount department stores and members-only warehouse clubs had become appealing alternatives to catalog showroom shopping. The instant pickup catalog store chains responded by becoming more like the discount department stores. They changed store layouts and appearance and they increased store size. Larger stores gave them more space to display merchandise and to carry merchandise categories other than their traditional hard goods lines. They added housewares, sports equipment, consumer electronics, and jewelry. They even entered the seasonal clothing business.

These moves increased sales volume, but they also increased operating expenses. They could have expected no less. When you look like a department store and act like a department store, you're bound to have expenses like a department store. Although the catalogers' moves led to increased market share, they didn't lead to long-term stability. Instant pickup catalog chains and their investors have suffered. Some chains have visited the Bankruptcy Court; others, too weak to operate independent organizations, have been acquired. Some of the acquirers were subsequently acquired themselves, and some acquirers subsequently made their own trek to the Bankruptcy Court. By 1991, even Best's filed for Chapter 11 protection.

Upscale Specialty Catalog Stores

Despite the decline of both the Wards' and Sears' catalogs and some instant pickup catalogers, mail order is alive and well.

Many of today's most successful catalog merchants target elite customers and offer upscale merchandise. To many consumers, the arrival of the LL Bean catalog signals the change of seasons. Its high-quality offerings (mostly clothing) are supported by a money-back, full-satisfaction guaranty. Bean's policy has been to refund the customer's money whenever he or she is dissatisfied with a purchase. Many softwear catalogers currently compete with Bean for the upper-income bracket trade. Among these are J. Crew, Land's End, Talbot's, and Eddie Bauer. Banana Republic is yet another softwear merchant with catalog ties that concentrated on the well-to-do.

These catalogers sell much more than softwear. Brookstone's catalog includes items like hard-to-find tools and housewares, electronic jewelry cleaners, and self-coiling garden hoses. The Sharper Image offers expensive gadgets that appeal to the upper uppers (some even to the upper upper uppers). Hammacher, Schlemmer packs its catalog with products it claims are the best of their class.

The process that spawned the Sears and Wards general merchandise department stores from mail-order catalog operations is happening again. This time, it's the upscale catalogers opening stores. They include J. Crew, Talbot's, Eddie Bauer, Brookstone's, and The Sharper Image. Just as Macy's and Tiffany's responded to the catalog challenge in the last century, contemporary upscale stores, including Victoria's Secret and Bloomingdales, have issued catalogs.

When an upscale catalog merchant opens a store, the store usually mirrors the catalog. If the catalog is small and the store is big, the store can stock all items in the catalog. This is not possible when the store is small and the catalog is big. In these circumstances, the store's catalog desk becomes a partial substitute for extensive display space. Talbot's stores don't carry everything in the catalog. If a customer can't find what she's looking for in the store, she's encouraged to shift to the catalog desk and thumb through the catalog. If she's tempted, she can use a direct telephone line to the catalog order department. Delivery charges for goods so ordered are less than charges for orders placed from a customer's home.

Specialized Hard Goods Catalog Stores

A number of computer hardware, computer software, and office supplies stores have combined store and catalog operations. Office supply giant Staples regularly mails catalogs to customers. Although the catalogs are used principally to facilitate phone orders, they are also available at the stores. When the store doesn't have an item that a customer wants, store personnel encourage the customer to order from the catalog. Staples makes telephone catalog ordering very convenient and tries to provide next-day delivery for merchandise ordered by telephone.

PROMISES, PROMISES

The unusually difficult problems presented by catalog stores' use and exclusive clauses will appear in the next issue of this journal. ■

NOTES

1. Some of the historical material used in this article is based on information from the following sources: Jeff Blyskal, "Metamorphosis," Forbes, November 8, 1982, p. 83; Business Week, July 23, 1984, p. 138, March 16, 1987, p. 39 and September 9, 1985, p. 98; Kimberley Carpenter, "Catalog Showrooms Revamp to Keep Their Identity," Business Week, June 10, 1985, p. 117; Boris Emmet and John E. Jeuck, Catalogues and Counters (Chicago: University of Chicago Press, 1950), p.458; Fortune, January 20, 1986, p.63; Gray, Paul, "An Ode to the Big Book," 141 Time, February 9, 1993, pp. 66-67; Joseph Gustaitis, "Closing the Book," 28 Am. History Illustrated, pp.36-39; Kerry Hannon, "A Foot in the Door," 138 Forbes, October 20, 1986, p. 134; Davis Jafee, "Peddlers of Progress and the Transformation of the Rural North," The J. of Am. History, (September, 1991) p.514; Mary Kuntz,"Catalog of Woes," Forbes, May 4, 1987, p. 75; Maggie McComas, "Catalogue Fallout," 113 Fortune, January 20, 1986, pp.63-64; Paul H. Nystrom, Economics of Retailing (New York, Arno Press, 1978), 78; Philip J. Reilly, Old Masters of Retailing, (New York: Fairchild Publications) p.90; Ruthanne Suter, "Service Merchandise: Service with a Smile", Financial World, May 2, 1989, p. 22; Ann Walmsley,"An Aggressive Company Changes Course," MacCleans, February 24, 1986, p. 19.

2. The 1993 catalog was reported to be Sears' last catalog by the February 9, 1993 edition of Time Magazine. (See Gray, "An Ode to the Big Book.") In its September 9, 1985 issue, Business Week sadly reported that Wards was about to discontinue its 113-year-old general merchandise catalog. Business Week, September 9, 1985, 98.

3. Membership-only retailing didn't originate with the Price Club. However, the Price Club applied the membership only concept to huge stores and large quantity purchases in the United States.