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CONSUMER LAW

## Law firm targets businesses for allegedly misleading 'sale' prices

BY SARA RANDAZZO

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*Small business owner Deborah Dombrowski's Lighthouse Trails Publishing is among dozens of online retailers around the country that have been sued by the Institute for Truth in Marketing, an 11-year-old Washington, D.C., nonprofit that bills itself as protecting consumers against deceptive advertising. (Image from [Shutterstock](https://www.shutterstock.com/image-photo/white-paper-plate-wooden-mousetrap-on-1875451366) (<https://www.shutterstock.com/image-photo/white-paper-plate-wooden-mousetrap-on-1875451366>))*

Small business owner Deborah Dombrowski had just returned home from the hospital after a severe case of pneumonia when her husband told her that a man came by the house on Sunday morning to serve them legal papers. Dombrowski learned that Washington, D.C., attorneys were suing her Christian publishing

business for alleged deceptive pricing practices under a consumer-protection statute that she'd never heard of that was designed to prevent sellers from keeping items on "sale" for too long.

"I was completely at a loss," she says. "We've always tried to do everything with integrity."

Dombrowski's Lighthouse Trails Publishing, formerly of Montana, is among dozens of online retailers around the country that have been sued by the Institute for Truth in Marketing, an 11-year-old D.C. nonprofit that bills itself as protecting consumers against deceptive advertising.

The lawsuits argue that listing items for sale with a comparison to an outdated retail price that the business hasn't actually used in the recent past violates the District of Columbia Consumer Protection Procedures Act because consumers are falsely led to think that they're getting a deal.

The cases cite various sections of [Section 28-3904](https://code.dccouncil.gov/us/dc/council/code/sections/28-3904) (<https://code.dccouncil.gov/us/dc/council/code/sections/28-3904>) of the Code of the District of Columbia, including that it's unlawful to "make false or misleading representations of fact concerning the reasons for, existence of or amounts of price reductions or the price in comparison to price of competitors or one's own price at a past or future time."

Business owners targeted by the Institute for Truth in Marketing say the legal actions feel like a shakedown, and that the items were genuinely on sale.

Joshua N. Rose, an outside attorney for the Institute for Truth in Marketing, says he and his client are simply capitalizing on a law that allows for private enforcement.

"We're in it to impose a small fee to those who have done this kind of deception and hopefully deter it for the future," Rose says.

Dombrowski's case illustrates the nonprofit's typical pattern. First, an employee at the Institute for Truth in Marketing buys several sale items from an online retailer to establish standing. Its lawyers then send a demand letter informing businesses that they've violated the D.C. law with their pricing practices, and that they need to pay \$1,500 per violation.

Those who don't engage face a suit some months later. Most companies eventually settle, for between a few thousand dollars and \$15,000, according to interviews with business owners and lawyers. Rose says he doesn't think that he's cut a settlement for more than \$50,000, and that most are small.

Over a stressful several-week period in 2024, Dombrowski handled the negotiations on her own without a lawyer. Still using an oxygen tank after her hospital stay, which slowed her speech, she asked D.C. attorney Kelli Jareaux, who works with Rose, to drop the claim. Jareaux refused. She finally agreed to pay \$2,000, which is more than the salary that she allotted herself each month, and to stop listing retail prices on sale items.

“I wasn’t about to go and start fighting city hall in Washington, D.C.,” says Dombrowski, who is now based in Oregon (<https://www.lighthouse trailsresearch.com/aboutus.htm>).

The businesses that have been sued in recent years sell products ranging from nail polish and cigars to sporting goods and barber supplies. Many of the targeted items cost less than \$20.

Some business owners say the sale products were older or discontinued items that they were trying to clear out of inventory, and that they never considered the long-term sale prices to be deceptive.

“It’s an easy tool to use to prey on these businesses, especially small ones that can’t afford to mount a defense,” says Tennessee attorney Larry Crain, who tried to get a pricing suit against a small Christian bookstore thrown out on jurisdictional grounds before ultimately settling.

## On the right or wrong side?

Every state has some form of unfair and deceptive acts and practices law (<https://www.nclc.org/resources/how-well-do-states-protect-consumers>) that must be followed by businesses that sell products nationwide, says Adrienne Fowler, the assistant dean for privacy and technology law at the George Washington University Law School. Many of the laws are fairly broad, saying not to price products in a way that’s deceptive. D.C.’s law is among the most specific in what it limits, Fowler adds.

Some of the laws allow a private right of action, with others leaving enforcement up to state officials.

Fowler says a rule of thumb for businesses is to think about how the average consumer would view a pricing practice. For instance, “Would it look like this is on sale when it’s not really on sale?” she says.

Consumers love the perception of a discount, which is why regulators often look at “slash-through” pricing warily.

“If the consumer thinks they’re getting a great deal and they’re not getting a great deal, there’s some deception there,” Fowler says of the spirit of the laws generally.

Attorneys general have won suits against major retailers over discounting practices, and the Federal Trade Commission has issued guidelines against deceptive pricing.

Rose says his law firm, the DC Consumer Law Group, has been bringing deceptive pricing suits for about the last five years. He previously represented the Institute for Truth in Marketing in cases over deceptive nutrition supplement labeling, but he says the lab testing involved in such cases made them more difficult to pursue than pricing claims. The brother of Rose's former law partner founded the Institute for Truth in Marketing in 2015, but its leadership has since changed hands.

Rose claims that he doesn't try to target small businesses, but that he leaves it up to his client's researchers to find online retailers violating the law. Larger businesses are often quicker to engage and settle before a case is publicly filed, he says. None of the hundred or so cases that he's filed in the District of Columbia Superior Court have gone to a trial, and the vast majority of cases resolve before substantive motions are filed.

"I understand that the people we're targeting often feel it's unfair we targeted them, but our goal is to have less of this sort of thing out there," Rose says.

Keval Kantaria, a Tampa, Florida-based businessman originally from Kenya, says he was outraged when his online pen store faced a suit from Rose. Representing himself, he logged in to a virtual hearing in D.C. and told the judge that he couldn't afford to hire an attorney. Eventually, Rose dropped the case.

"I haven't changed anything on my website. I feel I didn't do anything illegal," Kantaria says. "It's just a scam."

Rose, whose career has included a decade working for the federal government and stints bringing suits over construction defects, water rights and civil rights, views it differently.

"We do think we're on the side of the angels here," he says.

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