

Complaint

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IN THE MATTER OF
ARKANSAS CITY COOPERATIVE MILK
ASSOCIATION, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 (a) OF THE CLAYTON ACT

Docket 6639. Complaint, Sept. 24, 1956—Decision, Sept. 4, 1957

Consent order requiring a cooperative marketing association of some 2,000 dairy farmers in Kansas and Oklahoma to cease discriminating in the price of fluid milk in violation of Sec. 2(a) of the Robinson-Patman Act by charging wholesale customers in Arkansas City prices ranging from 1¢ to 3¢ less per quart than it charged their competitors—mostly retail grocers—throughout the rest of its territory comprising a 50-mile radius of Arkansas City; and by reducing by 13¢ per gallon the price of milk it delivered to private homes, in which retail sale it was in competition with two local cash-and-carry dairies and with retail grocery stores.

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The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and more particularly designated and described hereinafter, have violated and are now violating the provisions of Section 2(a) of the Clayton Act (U.S.C. Title 15, Sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Arkansas City Cooperative Milk Association, Inc., sometimes hereinafter referred to as respondent Co-op, is a cooperative marketing association organized and existing under the laws of the State of Kansas with its principal office and place of business located at 615 West Chestnut Avenue, Arkansas City, Kansas. Respondent Co-op is composed of approximately 2,000 members who are dairy farmers located in the States of Kansas and Oklahoma.

The control, direction and management of respondent Co-op's affairs, policies, practices and actions are vested in respondent Co-op's officers, directors and members. Respondents Homer S. Call, Carl Fitzgerald, Ivan J. Scott and John Weir, Jr., are officers, directors and members of respondent Co-op and are sometimes hereinafter referred to as respondent officials.

The membership of respondent Co-op constitutes a class so numerous and changing as to make it impracticable to specifically name each member as a party respondent herein. Therefore, there

are named and included as respondents herein the respondent officials in their individual and official capacities and since they are likewise members of respondent Co-op and are fairly representative of the entire membership, they are also named as representative of all the members of respondent Co-op as a class so that those members not specifically named are also made parties respondent herein.

The principal office and place of business of each of respondent officials is in care of respondent Arkansas City Cooperative Milk Association, Inc., 615 West Chestnut Avenue, Arkansas City, Kansas.

PAR. 2. Respondent Co-op was organized in 1933 and has been and is now engaged in the purchase of fluid milk and in the processing, sale and distribution of milk and other dairy products. It is primarily engaged in the production and sale of dairy products, including, but not restricted to, butter, cheese and ice cream. It sells bottled and packaged Grade "A" milk, having a butter fat content of approximately 3.5, at both wholesale and retail and it operates and maintains home delivery service to consumer customers in Arkansas City only, which is located three miles north of the Kansas-Oklahoma line. Its wholesale customers, to whom it also makes delivery, consist primarily of grocery stores reselling to the public.

For the past 4 years the total annual sales of respondent Co-op for all products have ranged between \$2,500,000 and \$3,000,000, with sales of bottled milk amounting to approximately \$450,000 to \$500,000.

PAR. 3. Respondent Co-op, in the course and conduct of its said business, is engaged in commerce as "commerce" is defined in the Clayton Act in that it sells and distributes fluid milk and other dairy products to purchasers thereof located in states other than the state of origin of shipment and causes such products when sold to be shipped and transported from its place of business in the State of Kansas to purchasers located in the State of Oklahoma. There is now and has been a constant course and flow of trade and commerce in such products between respondent Co-op in the State of Kansas and purchasers located in the State of Oklahoma, as well as in the State of Kansas.

Respondent Co-op is an instrumentality in the current of interstate commerce and is subject to the jurisdiction of the Federal Trade Commission.

Respondent officials, through the medium of respondent Co-op, in formulating the policies and directing the operations and activities thereof, are engaged in interstate commerce and are subject to the jurisdiction of the Federal Trade Commission.

PAR. 4. In the course and conduct of its said business respondent Co-op has been and is now in competition with others in the sale

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and distribution in commerce of fluid milk and other dairy products, except as such competition has been substantially lessened by the pricing practices of respondent Co-op, as hereinafter alleged.

Some of the customers of respondent Co-op are in competition with each other and with customers of competitors of respondent Co-op in the purchase and resale of fluid milk and other dairy products.

PAR. 5. Respondent Co-op has been for several years last past, and is now, directly or indirectly, discriminating in price between different purchasers of its bottled or packaged fluid milk by selling such products to some purchasers at substantially higher prices than it sells such products of like grade and quality to other purchasers, some of whom are engaged in competition with the less favored purchasers in the resale of such products.

Respondent Co-op has charged and now charges prices for the sale of fluid milk in various places in its area of operations in the States of Kansas and Oklahoma, which have been and are now substantially higher than those charged by respondent for the same grade and quality of milk sold and distributed in Arkansas City. Such lower prices in Arkansas City have been and are to the injury of competitors of respondent Co-op and also to the injury of those purchasers who are charged the higher prices and are in competition in the resale of such products with the purchasers receiving the benefit of the lower prices.

PAR. 6. The respondent Co-op has priced and sold its bottled and packaged fluid milk in quart, half gallon and gallon size containers in the trade area of Arkansas City to purchasers thereof at wholesale prices ranging from 1¢ to 3¢ per quart less than is charged for the same product in the same size and kind of containers sold at wholesale to other purchasers located in places as near as 3 miles to Arkansas City and to still other purchasers located in various places in Kansas and Oklahoma within a radius of approximately 50 miles of Arkansas City, with most of such purchasers being engaged in the retail grocery business.

PAR. 7. Among the competitors of respondent Co-op is an independent dairy located in Arkansas City. Such competitor has been for several years last past and is now engaged in the sale of fluid milk and other dairy products on a cash and carry basis, as well as on a delivery basis at wholesale. In or about August 1954 respondent Co-op reduced its prices for bottled or packaged fluid milk for sale in Arkansas City only, to the extent of 3¢ per quart. At the same time respondent sold its fluid milk of the same grade and

quality to purchasers located in all other places within its sphere of operations at wholesale prices amounting to 3¢ per quart higher than those at which it sold milk of the same grade and quality to its Arkansas City purchasers.

Respondent Co-op, while maintaining one schedule of prices for bottled or packaged fluid milk in all the various places within the States of Kansas and Oklahoma in which it does business, has, at the same time, in the area of Arkansas City only, substantially reduced the prices of such products.

Respondent Co-op has continued to maintain a differential between the prices at which it sells its fluid milk at wholesale to purchasers in Arkansas City and those at which it sells the identical products in places other than Arkansas City. Such differential has been from 2¢ to 3¢ per quart below this respondent's prices at which it sold the identical products at wholesale in all other towns and places within its sphere of operations.

PAR. 8. In addition to its wholesale business, respondent Co-op sells its dairy products, including fluid milk, at retail only in Arkansas City. There it operates and maintains a delivery service to private homes. In so selling the respondent Co-op is in competition with two local dairies in that these competitors also sell fluid milk to the consuming public but on a cash and carry basis. Furthermore, said respondent, in this phase of its business, competes with retail grocery stores who resell to the public in Arkansas City and nearby areas. In 1954 respondent Co-op reduced its retail fluid milk prices in Arkansas City by 13¢ per gallon delivered to the purchaser which price was less than its competitors' prices for the sale of fluid milk on a cash and carry basis.

PAR. 9. The discriminations in price on the part of respondent Co-op being substantial, it is alleged that the effect thereof may be substantially to lessen competition and to tend to create a monopoly in the respective lines of commerce in which respondent and the purchasers receiving the preferential prices are engaged and to tend to injure, destroy, and prevent competition between respondent and its competitors and between and among purchasers of the afore-described products from respondent.

Furthermore, the aforesaid discriminatory pricing practices of respondent Co-op have an additional tendency of adversely affecting the business of those dairy farmers who supply fluid milk to the competitor or competitors of respondent Co-op who are also engaged in the sale of milk in the Arkansas City area.

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PAR. 10. The discriminations in price, as hereinbefore alleged, are in violation of the provisions of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Lewis F. Depro for the Commission.

Templar, Wright and Templar, by *Mr. George Templar*, of Arkansas City, Kans., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on September 24, 1956, charging Respondents with violation of the provisions of § 2(a) of the Clayton Act (U.S.C. Title 15, § 13) as amended by the Robinson-Patman Act, approved June 19, 1936, by unlawful discrimination in price in the sale of their bottled and packaged fluid milk.

On June 4, 1957, Respondent Arkansas City Cooperative Milk Association, Inc., by its President, Homer S. Call; Respondent Carl Fitzgerald; their counsel; and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and the Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration.

Respondent Arkansas City Cooperative Milk Association, Inc. is identified in the agreement as a Kansas corporation, with its office and principal place of business located at 615 West Chestnut Avenue, Arkansas City, Kansas, and Respondent Carl Fitzgerald as an individual and manager of the respondent corporation, and having the same address as the respondent corporation.

As to Respondents Homer S. Call, Ivan J. Scott, and John Weir, Jr., named in the complaint individually, as representative of all the members of the corporate respondent cooperative, and as officers and directors thereof, the agreement sets forth a stipulation that the complaint be dismissed insofar as it relates to these three Respondents in their individual and representative capacities. The parties to the agreement state therein that the reason for such dismissal of the complaint as to these Respondents is the belief that adequate relief will be secured by an order directed to the corporation, its officers, directors, representatives, agents and employees, and to Respondent Carl Fitzgerald, who personally directed the operations of the respondent corporation.

Respondents Arkansas City Cooperative Milk Association, Inc., and Carl Fitzgerald admit all the jurisdictional facts alleged in the complaint; agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; and waive any further procedure before the Hearing Examiner

and the Commission, the making of findings of fact or conclusions of law, and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

All signatory parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist as contained in the agreement shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondent Arkansas City Cooperative Milk Association, Inc., a corporation, its officers, directors, representatives, agents, and employees, and respondent Carl Fitzgerald, individually and as manager of respondent Arkansas City Cooperative Milk Association, Inc., directly or through any corporate or other device, in connection with the sale of fluid milk in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating in price by selling fluid milk of like grade and quality to any purchaser at a price which is lower than the price charged any other purchaser engaged in the same line of commerce:

(1) where such lower price undercuts the price at which the purchaser charged the lower price may purchase fluid milk of like grade and quality from another seller; or

(2) where any purchaser who does not receive the benefit of the lower price does in fact compete in the resale of such product with the purchaser who does receive the benefit of the lower price.

It is further ordered, That the complaint herein, insofar as it relates to respondents Homer S. Call, Ivan J. Scott, and John Weir, Jr., be, and the same hereby is, dismissed as to them individually

and as representative of the entire membership of Arkansas City Cooperative Milk Association, Inc.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 4th day of September, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Arkansas City Cooperative Milk Association, Inc., a corporation, and respondent Carl Fitzgerald, individually and as manager of respondent Arkansas City Cooperative Milk Association, Inc., shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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IN THE MATTER OF
THE VENDO COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 7 OF THE CLAYTON ACT*Docket 6646. Complaint, Oct. 11, 1956—Decision, Sept. 5, 1957*

Consent order requiring the nation's largest manufacturer of soft drink vending machines, with main office in Kansas City, Mo., to make available to competitors the patents for coin-operated vending machines which it acquired by absorbing a major competitor, Vendorlator Manufacturing Company, of Fresno, Calif.; prohibiting it from acquiring for 10 years the capital stock or assets of any company in the United States making or selling vending machines built to dispense bottled drinks; and prohibiting it, after one year, from manufacturing vending machines under the Vendorlator patents except for replacement purposes, and from using on goods it makes or sells the trade-mark "VMC", to which it is to retain title and which it is to permit others to use on machines produced under the Vendorlator patents.

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The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18) as amended and approved December 29, 1950, hereby issues its complaint, pursuant to Section 11 of the aforesaid Act (U.S.C. Title 15, Sec. 21) charging as follows:

PARAGRAPH 1. Respondent The Vendo Company (hereinafter referred to as "respondent") is a corporation organized and existing under the laws of the State of Missouri with its office and principal place of business at 7400 E. 12th Street, Kansas City, Missouri.

PAR. 2. Vendorlator Manufacturing Company (hereinafter referred to as "Vendorlator") is, or at all times pertinent herein was, a corporation organized and existing under the laws of the State of California with its office and principal place of business at 2550 S. Railroad Avenue, Fresno, California.

PAR. 3. Respondent is engaged in the production and sale of a variety of products in commerce, as "commerce" is defined in the Clayton Act. In the year ending December 31, 1955, respondent's sale of all products aggregated approximately \$20,700,000. Such production and sale in commerce included the production and sale of coin operated vending machines built to dispense bottled soft drinks. In the year ending December 31, 1955, respondent's sales of these products aggregated approximately \$11,500,000. Respondent