

IN THE MATTER OF
UNITED FARMERS OF NEW ENGLAND, INC., ET AL.

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

Docket 8406. Complaint, May 26, 1961—Decision, Mar. 22, 1962

Consent order requiring a marketing cooperative composed of dairy farmers in the New England States to cease discriminating in price among its customers in violation of Sec. 2(a) of the Clayton Act by charging some retailer-purchasers substantially higher prices than their competitors, the differentials ranging as high as 40% for cream and 15% for fluid milk; and to cease violating Sec. 2(d) of the Act by such practices as granting large grocery chains preferential cash payments for promotional advertising, display cabinets, and new store openings, while making no such allowances available on proportionally equal terms to all other competing customers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsections (a) and (d) of Section 2 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:

COUNT I

PARAGRAPH 1. Respondent, United Farmers of New England, Inc., sometimes hereinafter referred to as United Farmers, is a cooperative marketing association organized and existing under the laws of the State of Vermont, with its principal office and place of business located at Morrisville, Vt. Respondent United Farmers is composed of ap-

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proximately 2,200 members who are dairy farmers in the States of Maine, New Hampshire and Vermont.

The control, direction and management of respondent United Farmers' affairs, policies, practices, and actions are vested in respondent United Farmers' officers, directors and members.

Respondents Earl N. Gray, Eldon J. Corbett, William F. Sinclair and J. C. Thomas, are officers, directors and members of respondent United Farmers and are sometimes hereinafter referred to as respondent officials.

The membership of respondent United Farmers 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 United Farmers and are representative of the entire membership, they are also named as representative of all the members of respondent United Farmers 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 and all other members is in care of United Farmers of New England, Inc., Morrisville, Vt.

PAR. 2. Respondent United Farmers is extensively engaged in the business of processing, manufacturing, purchasing and selling on its own account and as agent for its members fluid milk and other dairy products throughout the States of Maine, New Hampshire, New York, Vermont, Connecticut, Rhode Island, and Massachusetts. United Farmers' annual net sales are in excess of \$24 million.

PAR. 3. Respondent sells fluid milk and other dairy products of like grade and quality to a large number of purchasers located throughout the States of Maine, New Hampshire, Rhode Island, Connecticut, Vermont, New York and Massachusetts for sale, consumption or resale therein.

Respondent owns, maintains and operates a large number of receiving stations, processing and manufacturing plants, and distribution depots located in the above-named states, from which it sells and distributes its said products to purchasers.

PAR. 4. In the course and conduct of its business, respondent is now, and for many years past has been, transporting fluid milk and other dairy products, or causing the same to be transported, from dairy farms and other points of origin to respondent's receiving sta-

tions, processing and manufacturing plants, and distribution depots located in states other than the state of origin.

Respondent is now, and for many years past has been, transporting fluid milk and other dairy products, or causing the same to be transported, from the state or states where such products are processed, manufactured or stored in anticipation of sale or shipment, to purchasers located in other States of the United States.

Respondent also sells and distributes its said fluid milk and other dairy products to purchasers located in the same states and places where such products are processed, manufactured or stored in anticipation of sale.

All of the matters and things, including the acts, practices, sales, and distribution by respondent of its said fluid milk and other dairy products, as hereinbefore alleged, were and are performed and done in a constant current of commerce, as "commerce" is defined in the Clayton Act.

PAR. 5. Respondent sells its fluid milk and other dairy products to retailers and consumers. Respondent's retailer-purchasers resell to consumers. Many of respondent's retailer-purchasers are in competition with other retailer-purchasers of respondent.

Respondent, in the sale of its fluid milk and other dairy products to retailers and consumers, is in substantial competition with other manufacturers, distributors and sellers of said products.

PAR. 6. In the course and conduct of its business in commerce, respondent has discriminated and is now discriminating in price in the sale of fluid milk and other dairy products by selling such products of like grade and quality at different prices to different purchasers at the same level of trade.

Included in, but not limited to, the discriminations in price, as above alleged, respondent has discriminated in price in the sale of said products by charging many retailer-purchasers in the State of Massachusetts substantially higher prices than respondent charged to other retailer-purchasers, many of whom are competing purchasers. Such differences in price have ranged as high as 40 percent for cream and 15 percent for fluid milk.

PAR. 7. The effect of such discriminations in price by respondent in the sale of fluid milk and other dairy products has been or may be substantially to lessen, injure, destroy or prevent competition:

1. Between respondent and its competitors in the processing, manufacture, sale and distribution of such products.
2. Between retailers paying higher prices and competing retailers paying lower prices for respondent's said products.

PAR. 8. The discriminations in price, as herein alleged, are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

COUNT II

Charging violation of subsection (d) of Section 2 of the Clayton Act, the Commission alleges:

PAR. 9. Paragraphs 1 through 5 of Count I hereof are hereby set forth by reference and made a part of this count as fully and with the same effect as if quoted herein verbatim.

PAR. 10. In the course and conduct of its business in commerce, as aforesaid, respondent has paid, or contracted for the payment of, money, goods, or other things of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers, in connection with the handling, sale, or offering for sale of respondent's dairy products and respondent has not made or contracted to make such payments, allowances, or consideration available on proportionally equal terms to all of its other customers competing in the sale and distribution of such products.

Included among such discriminatory and disproportionate allowances, respondent has paid and allowed advertising, promotional and other allowances in connection with the resale of its said products to some of its customers while not offering or otherwise making available on proportionately equal terms such payments and allowances to other competing customers. As illustrative of such practices, respondent has paid certain amounts of money to selected customers, principally to large grocery store chains, for promotional advertising, display cabinets, and new store openings. Respondent has not offered or otherwise made available on proportionately equal terms such allowances and payments to many of its customers who compete with those who receive such benefits. Such discriminatory payments and allowances, as herein alleged, have been made by respondent to its customers located and doing business in the State of Massachusetts.

PAR. 11. The acts and practices as alleged in paragraph 9 above are in violation of subsection (d) of Section 2 of the aforesaid Clayton Act.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of subsections (a) and (d) of the Clayton Act, as amended by the Robinson-Patman Act, and an agreement by and between respondent United

Farmers of New England, Inc., and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by said respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by said respondent that it has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's Rules, and which agreement further provides for dismissal of this proceeding as to respondents Earl N. Gray, Eldon J. Corbett, William F. Sinclair and J. C. Thomas; and

The Commission having considered said agreement and the affidavits made a part thereof which state, among other things, that one of the above named respondent individuals is deceased, that two others have severed all connection with the corporate respondent and that none of the respondent individuals participated as officers or otherwise in the acts and practices challenged in the complaint; and

The Commission having determined that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered.

1. Respondent United Farmers of New England, Inc., is an incorporated cooperative marketing association organized and existing under the laws of the State of Vermont with its principal office and place of business located at Morrisville, Vt.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, United Farmers of New England, Inc.

ORDER

It is ordered, That respondent, United Farmers of New England, Inc., a corporation, its officers, members, employees, agents, representatives, successors and assigns, directly or through any corporate or other device, in connection with the sale of fluid milk and other dairy products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating in price by selling fluid milk and other dairy products of like grade and quality to any purchaser at a price lower than the price granted to other purchasers:

(1) Where respondent, in the sale of said products, is in competition with any other seller; or

(2) Where any purchaser who does not receive the benefit of the lower price does, in fact, compete in the resale of said products with the purchaser who does receive the benefit of the lower price.

It is further ordered, That respondent, United Farmers of New England, Inc., a corporation, its officers, members, employees, agents, representatives, successors and assigns, directly or through any corporate or other device, in connection with the sale of fluid milk and other dairy products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer, any payment or allowance of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of products sold to him by respondent, unless such payment or allowance is made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

It is further ordered, That the complaint be, and it hereby is, dismissed as to the individuals Earl N. Gray, Eldon J. Corbett, William F. Sinclair, and J. C. Thomas, named as respondents individually and as officers, directors, and members, and in their representative capacities as representative of all the members of respondent cooperative.

It is further ordered, That respondent, United Farmers of New England, Inc., shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

ACME BRIEF CASE COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-98. Complaint, Mar. 23, 1962—Decision, Mar. 23, 1962

Consent order requiring New York City manufacturers of brief cases, looseleaf notebooks, ring binders, school bags, etc., to cease such false and misleading practices as tagging zipper binders "Made of solid one piece split cowhide leather" and "A top value in laminated split cowhide leather" when the interior surfaces and sections were made of a material simulating leather; and labeling binders as "Virgin vinyl" and school bags as "Vinyl Plastic", when both had outside sections made of very thin sheets of a plastic-like material backed with thicker layers of cardboard or paper.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Acme Brief Case Company, Inc., a corporation, and Abraham Klotz, Abraham Lishinsky, and Gerald S. Klotz, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Acme Brief Case Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 440 Nepperhan Avenue, city of Yonkers, State of New York.

Respondents Abraham Klotz, Abraham Lishinsky and Gerald S. Klotz are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of brief cases, looseleaf notebooks, ring binders, school bags and other articles of merchandise.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other states of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the sale of said products, respondents have engaged in certain acts and practices as follows:

1. The tag attached to certain of respondents' two-ring zipper binders reads in part, "Made of solid one piece split cowhide leather". The interior surfaces and sections of said binders are made of a material engrained, finished and colored so as to have the appearance of leather.

2. Certain of respondents' two-ring zipper binders have attached thereto a tag which reads, "A top value in laminated split cowhide

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leather." The interior surfaces and sections of said binders are made of a material engrained, finished and colored so as to have the appearance of leather.

3. Certain of respondents' three-ring zipper binders have attached thereto a tag which reads, "Virgin vinyl luxurious jewel tone." The exterior and interior surfaces and various interior sections are engrained, finished and colored so as to have the appearance of leather.

Certain of respondents' school bags have attached thereto a tag which reads, in part, "Vinyl Plastic Texon". The interior surfaces of said school bags are finished so as to have the appearance of cloth or plastic.

PAR. 5. Through the use of the aforesaid statements and representations and materials in the manner aforesaid, respondents represent, directly or indirectly:

1. That said binders described as being made of "Solid one piece split cowhide leather" are, in fact, made of one solid piece of split cowhide leather and that said interior portions having the appearance of leather are made of leather.

2. That the said binders described as being made of "Laminated Split Cowhide Leather" are, in fact, made of successive layers of split cowhide leather bonded together into a whole and that the various interior portions thereof having the appearance of leather are made of leather.

3. That said binders described as being made of "Virgin Vinyl" are, in fact, made of solid vinyl plastic of the apparent thickness of the respective portions of said binders. That the said school bags described as being made of "Vinyl Plastic" are in fact made of solid vinyl plastic of the apparent thickness of the respective portions of said school bags.

PAR. 6. Said statements and representations are false, misleading and deceptive. In truth and in fact:

1. Said binders described as being made of "solid one piece split cowhide leather" are not in fact made of one piece of solid split cowhide leather and said interior surfaces and sections having the appearance of leather are made of substances and materials other than leather. Actually the outside covering of said binders is made of very thin sheets of leather laminated to or backed with thicker layers of cardboard or paper finished on its underside to resemble leather. The various other interior portions of said binders having the appearance of leather are in fact made of nonleather materials.

2. Said binders described as being made of "laminated split cowhide leather" are not in fact made of successive layers of split cowhide

leather bonded together into a whole and said interior sections having the appearance of leather are in fact made of nonleather materials. Actually said outside coverings of said bindings are made of very thin sheets of leather laminated to or backed with thicker layers of cardboard or paper which has been finished on its underneath surface to have the appearance of leather. The various interior sections of said binders having the appearance of leather are, in fact, made of various nonleather materials.

3. Said binders described as being made of "Virgin Vinyl" are not made of a solid piece of vinyl plastic and the interior sections thereof having the appearance of leather are not made of leather. Actually the outside covering of said binders is made of very thin sheets of a plastic-like substance laminated to or backed with thicker layers of cardboard or paper. Neither the interior nor the exterior surfaces or sections of said binders having the appearance of leather are in fact leather.

Said "Vinyl Plastic" school bags are not made of a solid piece of vinyl plastic. The outside sections of said school bags are made of very thin sheets of a plastic-like material laminated to or backed with thicker layers of cardboard or paper.

PAR. 7. By the aforesaid practices, respondents place in the hands of retailers and dealers the means and instrumentalities by and through which they may mislead and deceive the public as to the quality, leather or plastic content of said binders and school bags.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of brief cases, looseleaf notebooks, ring binders, school bags and other articles of merchandise of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Acme Brief Case Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 440 Nepperhan Avenue, in the city of Yonkers, State of New York.

Respondents Abraham Klotz, Abraham Lishinsky, and Gerald S. Klotz are officers of said corporation and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Acme Brief Case Company, Inc., a corporation, and its officers, and Abraham Klotz, Abraham Lishinsky and Gerald S. Klotz, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of looseleaf notebooks, ring binders, school bags, brief cases or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "one piece split cowhide leather", "laminated split cowhide leather" or any other words or terms denominating

leather to describe any of said products or their parts which are not made wholly of the kind of leather so stated and which are made of said leather laminated to or backed with a different kind of leather from that so stated or with nonleather material without clearly, conspicuously and in immediate connection therewith stating that said product is laminated or backed and revealing the kind of leather or nonleather material comprising such lamination or backing.

2. Using the words "Virgin Vinyl", "Vinyl Plastic", or any other words or terms which reveal or purport to reveal the substance from which said products or their parts are made, to describe any of said products or their parts which are not made wholly of said substance and which are made of said substance laminated to or backed with a material different from said substance without clearly, conspicuously and in immediate connection therewith stating that said product is laminated or backed and revealing the kind of material comprising such lamination or backing.

3. Offering for sale or selling said products made of nonleather material which simulates leather without attaching thereto or affixing thereon in such manner that it cannot readily be removed, and of such nature as to remain on the product until it reaches the ultimate consumer, a mark, tag or label, which clearly and conspicuously discloses that the product is not made of leather.

4. Furnishing or otherwise placing in the hands of retailers or dealers in said products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

It is further ordered, That the respondents herein 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 this order.
