

Complaint

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IN THE MATTER OF

CENTRAL ARKANSAS MILK PRODUCERS
ASSOCIATION, INCORPORATED, ET AL.

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

Docket 8391. Complaint, May 5, 1961—Decision, Feb. 7, 1964

Consent order requiring an association of some 1,500 dairy farmers in Arkansas, Louisiana, Texas, Oklahoma and Missouri, engaged in the sale and distribution to processors of raw milk, produced by its members and also by non-members, to cease conspiring to fix or establish prices, terms or conditions of sale of raw milk; urging or inducing any milk processor to buy all his raw milk requirements from it by use of threats, coercion, etc.; charging or granting different premiums, surcharges, terms or conditions of sale in excess of the minimum requirements of a marketing agreement issued by the Secretary of Agriculture, to competing purchasers regulated by the agreement; and charging or granting different prices, terms or conditions of sale to competing purchasers not wholly regulated by said marketing agreement, with exceptions as set forth in the order below.

COMPLAINT

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 5 of the Federal Trade Commission Act, and Section 2(a) of the Clayton Act (U.S.C., Title 15, Sec. 13) as amended by the Robinson-Patman 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 with respect thereto as follows:

COUNT I

(Alleging violation of Section 5 of the Federal Trade Commission Act.)

PARAGRAPH 1. Respondent Central Arkansas Milk Producers Association, Incorporated, hereinafter referred to as CAMPA, is a corporation existing and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 1008 Ringo Street, Little Rock, Arkansas.

Respondent CAMPA is composed of approximately 1,500 members who are dairy farmers located in the States of Arkansas, Louisiana, Texas, Oklahoma and Missouri.

Respondent David L. Parr is an individual who is secretary-manager of respondent CAMPA, with his office and principal place of business located at 1008 Ringo Street, Little Rock, Arkansas.

PAR. 2. Respondent CAMPA is engaged in the sale and distribution of raw milk, produced by its members, to processors or handlers. Its operations also include the buying of raw milk from non-members and the resale thereof to various processors or handlers. Its annual volume of sales of raw milk have been substantial.

PAR. 3. Respondent Parr has been in the position of secretary-manager of respondent CAMPA since about 1954. In such capacity he has conducted, directly or indirectly, the business operations of CAMPA, including negotiations with dairy farmers to persuade them to become members of CAMPA, and also negotiations with milk processors or handlers for the purchase of their raw milk requirements from CAMPA.

In the sale in distribution of raw milk, respondent Parr has, under the direction of CAMPA's Board of Directors, exercised control over the marketing of such product and carrying out of the policies and practices of CAMPA in connection with the offer for sale or sale and distribution of raw milk. Respondent Parr also has authority over all subordinate employees of respondent CAMPA and has directed their activities in the course of their employment.

PAR. 4. Respondent CAMPA, in the course and conduct of its said business, is engaged in commerce, as "commerce", is defined in the Federal Trade Commission Act and in the Clayton Act, in that it sells and distributes raw milk to purchasers thereof located in States other than the State of origin of shipment and causes such product, when sold, to be shipped and transported from the State of origin to purchasers in other States, and there is now, and has been, a constant course and flow of trade and commerce in such product and respondent CAMPA is subject to the jurisdiction of the Federal Trade Commission.

Respondent Parr, through the instrumentality of respondent CAMPA, in executing the policies and practices and personally directing the operations and activities of the business is also engaged in interstate commerce and is likewise subject to the jurisdiction of the Federal Trade Commission.

PAR. 5. In the course and conduct of the said business, respondent CAMPA has been and is now in competition with others in the sale and distribution in commerce of raw milk. Some of respondent's customers are in competition with each other and with customers of competitors of respondent in the purchase of raw milk and in the sale and distribution of processed milk.

PAR. 6. Since about 1954, respondents have been engaged in a combination, conspiracy and planned common course of action with certain independent processors of milk for the purpose, or with the effect, of restraining or eliminating, or tending to restrain or eliminate, competition in the production, sale and distribution of milk in the State of Arkansas and adjoining areas.

The respondents have agreed between and among themselves and with said independent processors of milk that respondent CAMPA should supply all of the requirements for raw milk of these processors.

The agreements and understandings, either express or implied, between respondents and said milk processors have been, and are, the result of threats and intimidations by respondents which had for their purpose or effect, the forcing, or compelling, of these processors to contract with the respondents for the purchase of all of their milk requirements at prices fixed and established by the respondents, and by forcing said processors to agree to pay, and to pay, such prices to the respondents for all of said processors' milk requirements.

PAR. 7. Pursuant to, and in furtherance of, the aforesaid combination, conspiracy, and planned common course of action, as charged in Paragraph Six, the respondents have done and engaged in, among others, the following acts, practices and things:

1. Agreed to sell, and to force the aforementioned independent processors of milk to buy, raw milk at premium prices, which were in excess of the prices established as being reasonable by the U.S. Department of Agriculture under Federal Milk Marketing Orders;
2. Agreed between and among themselves, and with others engaged in processing raw milk, to sell such milk at fixed prices which were higher than those charged other processors by the respondent for raw milk of like grade and quality;
3. Have, by threats, intimidation and coercion caused some processors of raw milk to contract with respondents to buy all of their raw milk requirements from respondent CAMPA;
4. Threatened to drive out of the milk processing business those processors who refused to agree to purchase all of their requirements from respondent CAMPA;
5. Caused raw milk to be processed and shipped into areas and offered for sale at unreasonably low prices in competition with processors in such areas, with the purpose or effect of compelling, or attempting to compel such processors to contract with respondents for their milk supply;

6. Agreed to fix, and have fixed, raw milk prices, so that such prices resulted, or tended to result in price discriminations against independent local dairies and in favor of national or regional dairies.

PAR. 8. The result and effect of the combination, conspiracy and planned common course of action, and the acts, practices and things done pursuant thereto, and in furtherance thereof, as hereinbefore alleged, have been, are, or may be to hinder, suppress, lessen and eliminate competition or to tend to hinder and suppress, lessen and eliminate competition, in the production, sale and distribution of milk and other dairy products, in commerce, and to tend to cause, or to further a monopoly in such commerce in the respondents, in the production, sale and distribution of such products.

PAR. 9. The aforealleged combination, conspiracy and planned common course of action, and the acts, practices, and things done pursuant thereto and in furtherance thereof are to the prejudice of the public, and have a dangerous tendency to, and actually have, hindered, suppressed, lessened, and eliminated competition in the production, sale and distribution of milk and other dairy products in commerce, within the intent and meaning of the Federal Trade Commission Act, and constitute unfair methods of competition in commerce or unfair or deceptive acts or practices in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

(Alleging violation of Section 2(a) of the amended Clayton Act).

PARAGRAPH 1. The allegations of Paragraphs One through Five of Count I are incorporated by reference and made a part of the allegations of Count II herein.

PAR. 2. Respondents have been for several years last past, and are now, directly or indirectly, discriminating in price between different purchasers of raw milk by selling same to some purchasers at substantially higher prices than they sell such product of like grade and quality to other purchasers, some of whom compete with the less favored purchasers in the resale of such milk.

For example, respondents have sold raw milk to some purchasers in Little Rock, Arkansas, at prices substantially less than those at which they sold to other purchasers of milk of the same grade and quality who compete with the favored purchasers in the resale of such milk.

As a further example, respondents have sold raw milk to some purchasers in Arkansas at approximately 20 cents per hundred

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weight less than the prices at which the respondents sold to other purchasers of raw milk of the same grade and quality, some of whom compete with the favored customers in the resale of such milk.

PAR. 3. The discriminations in price being substantial, it is alleged that the effect thereof may be substantially to lessen competition and to tend to create a monopoly or further monopoly in the respective lines of commerce in which respondents and the purchasers receiving the preferential prices from the respondents are engaged, and to tend to injure, prevent or destroy competition between respondents and their competitors and between and among purchasers of raw milk from the respondents.

PAR. 4. The discriminations in price, as hereinbefore alleged, are in violation of the provisions of Section 2(a) of the amended Clayton Act.

DECISION AND ORDER

This matter came before the Commission on cross-appeals from the hearing examiner's initial decision and upon briefs *amicus curiae* filed by the Secretary of Agriculture of the United States and the National Milk Producers Federation. At the oral argument thereon, on November 7, 1963, the Commission, having considered the uniqueness of the situation and the briefs, instructed the parties to negotiate with the view to executing a consent order.

The respondents and counsel supporting the complaint have submitted to the Commission a properly executed agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, 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 the complaint, and waivers and provisions as required by the Commission's rules governing consent order procedure.

The Commission has considered said agreement, has determined that it constitutes an appropriate disposition of this proceeding and hereby accepts same. Accordingly, the Commission makes the following jurisdictional findings, and enters the following order:

1. Respondent Central Arkansas Milk Producers Association, Inc., is a cooperative corporation, existing and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 6500 Forbing Road, in the city of Little Rock, State of Arkansas.

Respondent David L. Parr is an individual, who is Secretary-Manager of respondent Central Arkansas Milk Producers Association, Inc., with his office and principal place of business located at 6500 Forbing Road, in the city of Little Rock, State of Arkansas.

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 respondent Central Arkansas Milk Producers Association, Inc., a corporation, named in the complaint as Central Arkansas Milk Producers Association, Incorporated, and respondent David L. Parr, individually, and as Secretary-Manager of Central Arkansas Milk Producers Association, Inc., and their officers, agents, representatives, and employees, either directly or through any corporate or other device, in connection with the sale and distribution of milk in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Entering into, continuing, cooperating in or carrying out any conspiracy between or among any one or more of said respondents and others not parties hereto, to fix or establish prices, terms, or conditions of sale of raw milk, or any conspiracy to do or perform any of the acts or practices otherwise prohibited by this order.

It is further ordered, That the said respondents Central Arkansas Milk Producers Association, Inc., and David L. Parr, their officers, agents, representatives and employees, either directly or through any corporate or other device, in connection with the sale and distribution of milk in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Urging, inducing, coercing, or attempting to urge, induce or coerce, any processor or handler of milk to buy or to contract to buy all or any of his raw milk requirements from respondents by using threats, coercion or other predatory tactics.

It is further ordered, That the said respondents Central Arkansas Milk Producers Association, Inc., and David L. Parr, their officers, agents, representatives and employees, either directly or through any corporate or other device, in connection with the sale and distribution of milk in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Charging or granting, for milk of like grade, quality, and utilization, different premiums, surcharges, terms or conditions of sale in excess of the minimum requirements of a marketing agreement or order issued by the Secretary of Agriculture pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, to competing purchasers fully regulated by the same marketing agreement or order; provided, that respondents when acting in the capacity of a handler as defined in a marketing

agreement or order may charge or grant prices, terms, or conditions of sale different than those charged or granted when acting in the capacity of a cooperative association as defined in a marketing agreement or order for such milk, so long as the said prices, terms, or conditions are uniformly applied by respondents acting in each capacity to all competing customers fully regulated by the same marketing agreement or order.

2. Charging or granting different prices, terms or conditions of sale, for milk of like grade and quality or utilization, to competing purchasers wholly unregulated or partially regulated by a marketing agreement or order; provided, that where such wholly unregulated or partially regulated purchasers compete in fact with others fully regulated by a marketing agreement or order, respondents may in good faith charge or grant the prices, terms, or conditions of sale which would be applicable if all such purchasers were fully regulated by the same marketing agreement or order.

Provided, however, that nothing herein contained shall prevent any association of producers of milk, acting as an agricultural cooperative pursuant to and in accordance with provisions of the Capper-Volstead Act (C. 57, 42 Stat. 388); (C. 725, 44 Stat. 802); Section 6 of the Clayton Act (C. 323, 38 Stat. 730, 731); and the Agricultural Marketing Agreement Act of 1937, as amended (C. 296, 50 Stat. 246), from performing any of the acts and practices permitted by said acts or other applicable law.

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.

It is further ordered, That the initial decision be, and hereby is, vacated and set aside.

Commissioner Reilly not participating for the reason that he did not hear oral argument.

IN THE MATTER OF

BALI BRASSIERE COMPANY, INC., ET AL.