

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA,)
)
 Plaintiff,) **Filed: December 27, 1973**
)
 v.)
) Civil Action No.
 MID-AMERICA DAIRYMEN, INC.,) **73-CV-681-W3**
)
 Defendant.)

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Acting Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendant, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, to prevent and restrain the continuing violations by the defendant as hereinafter alleged of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2).

2. The defendant transacts business and is found within the Western District of Missouri.

II

THE DEFENDANT

3. Mid-America Dairymen, Inc., hereinafter referred to as "Mid-Am", is made a defendant herein. It is a corporation organized and existing under the laws of the State of Kansas and has its principal office in Springfield,

Missouri. It is an association comprised of approximately 19,000 milk producers with members located in Wisconsin, Minnesota, Illinois, Iowa, Nebraska, Kansas, Missouri, Arkansas, Oklahoma and Texas.

III

DEFINITIONS

4. As used herein:

- (a) "Milk" means the raw milk of cows;
- (b) "Fluid Milk" means pasteurized milk sold for human consumption in fluid form;
- (c) "Milk Products" means products processed and manufactured for milk such as butter, cheese, ice cream and dry milk;
- (d) "Producer" means a person engaged in the production of milk;
- (e) "Independent Producer" means a producer who is not a member of Mid-Am;
- (f) "Processor" means a person, partnership or corporation engaged in the business of purchasing milk and processing, bottling and/or packaging and selling fluid milk and milk products;
- (g) "Milk Hauler" means a person, partnership or corporation engaged in the business of transporting milk by tank truck;
- (h) "Mid-Am Marketing Area" means the geographic area comprising the territory in which Mid-Am members produce and regularly sell milk, i.e., substantially all of Missouri, Kansas, Nebraska and Iowa, and portions of Illinois, Wisconsin, Minnesota, Oklahoma, Arkansas and Texas; and

(i) "Federal Milk Marketing Order" means an order and applicable rules of practice and procedure relating thereto, establishing minimum prices which processors within a defined market area are required to pay producers and adopted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended 7 U.S.C. § 601, et seq.

IV

TRADE AND COMMERCE

5. Substantial quantities of milk are produced and marketed in Mid-Am's marketing area by Mid-Am and by independent producers who compete with Mid-Am in the sale of milk to processors. Milk is transported by haulers from producers to processors who require a constant supply of milk in order to manufacture fluid milk and milk products. In the production, transportation and marketing of milk by producers, haulers and processors in Mid-Am's marketing area, there is a continuous and substantial flow of trade and commerce among the states.

6. During the period covered by this complaint, Mid-Am has sold and shipped substantial quantities of milk in states other than the states in which it was produced. Mid-Am accounts for a substantial majority of the milk marketed throughout its entire marketing area, and in some areas it controls over 90 percent of the available milk supply. In most areas of Mid-Am's marketing territory, processors must purchase at least a portion of their milk supply from Mid-Am in order to have sufficient quantities of milk for processing. During 1972, Mid-Am marketed approximately 7.5 billion pounds of milk and processed about 3 billion pounds of milk. Its net sales in 1972 were \$532.2 million.

7. As an association of milk producers, Mid-Am determines, to some extent, how the money it receives from the sale of milk shall be allocated among its members. In certain parts of its marketing area, Mid-Am has established a "base-excess" plan as a basis for payments to its members. Under this plan, each member is assigned a specified number of pounds of milk as base; all milk produced over that amount is considered excess or surplus milk. Mid-Am pays its members a higher price for base milk than it does for surplus milk. To obtain enough base to make milk production profitable, many members of Mid-Am must buy another member's base or produce surplus milk for a certain period of years. In either case, to operate profitably under this base-excess plan a substantial investment is required of Mid-Am's members.

8. Most individual producers do not produce sufficient quantities of milk to make it economically feasible for them to transport their milk themselves and must rely on independent milk haulers to perform this service. Such haulers must transport the milk of enough producers to provide them with a minimum volume of milk for a profitable business.

9. Under federal milk marketing orders which are in effect throughout most of Mid-Am's marketing area processors pay for milk according to its end use. A market administrator sets a Class I price for milk used as fluid milk and a lower Class II price for milk utilized in manufacturing milk products. The market administrator each month pays each milk producer, or association of milk producers, in the market a uniform blend price, which represents the average value of all milk, both Class I and Class II, sold in the market area for a particular month. The provisions of certain marketing orders have

permitted cooperatives such as Mid-Am to report Class II milk as having been used in a given market area when, in fact, it has not been. Even though such milk has not been utilized within a particular market, it has affected the price received by producers within the federal marketing area for such milk.

V

VIOLATIONS ALLEGED

10. Beginning at least as early as 1968, and continuing thereafter up to and including the date of the filing of this complaint, the defendant has entered into contracts, agreements and understandings in unreasonable restraint of the aforesaid trade and commerce in milk in violation of Section 1 of the Sherman Act. The substantial terms of said contracts, agreements and understandings are that independent milk haulers are required to haul milk only for defendant or for independent producers approved by defendant.

11. Beginning at least as early as 1968, and continuing thereafter up to and including the date of the filing of this complaint, the defendant has been engaged in an attempt to monopolize the aforesaid trade and commerce in milk in violation of Section 2 of the Sherman Act. The defendant has furthered and effectuated said attempt to monopolize by various means and methods including, among others:

- (a) Unreasonably restricting the ability of its members to withdraw from defendant and market milk in competition with defendant;
- (b) Unreasonably restricting the right of independent milk haulers to transport the milk of independent producers;

- (c) Requiring as a condition of the sale of milk that processors purchase all or substantially all of their milk supply from defendant;
- (d) Inducing processors to purchase their full supply of milk from defendant by requiring processors to pay higher handling or service charges if they purchase milk from independent producers;
- (e) Acquiring the business and assets of processors who purchased milk from independent producers;
- (f) Entering into and acting upon agreements with other associations of milk producers to flood local milk markets in order to depress the price which independent producers receive for their milk under applicable federal milk marketing orders; and
- (g) Agreeing with other milk producers and processors to restrict the shipment of milk into its marketing area.

12. The violations alleged in this complaint are continuing and will continue unless the relief hereinafter prayed for is granted.

VI

EFFECTS

13. The aforesaid violations have had, or will have, the following effects, among others:

- (a) Member-producers of defendant have been and may be prevented from withdrawing from membership in defendant and from competing with defendant;

- (b) Independent milk producers have been and may be foreclosed from having their milk transported by independent milk haulers in competition with defendant;
- (c) Independent producers have been and may be foreclosed from selling their milk to processors in competition with defendant;
- (d) Processors have been and may be deprived of alternate and competing sources of milk supply; and
- (e) Actual and potential competition in the production and sale of milk generally in defendant's marketing area has been and may be restrained and eliminated.

VII

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendant has unreasonably restrained and attempted to monopolize the aforesaid trade and commerce in violation of Sections 1 and 2 of the Sherman Act.

2. That the defendant, its officers, directors, agents, representatives, successors, assigns, and all persons acting or claiming to act on its behalf, be perpetually enjoined and restrained from:

- (a) compelling producer-members of defendant to enter into membership agreements which unreasonably restrain the right of said members to withdraw from defendant and market their milk in competition with defendant;

- (b) refusing to allow any member of defendant to withdraw from membership in defendant pursuant to his membership agreement;
- (c) requiring any member producer to forfeit the value of his production base under any production plan if such member terminates his membership in defendant pursuant to his membership agreement and markets milk in competition with defendant;
- (d) requiring as a condition to any contract, agreement or understanding with any milk hauler that such hauler transport milk only for defendant or that such hauler may only transport the milk of independent producers with defendant's permission;
- (e) requiring as a condition to the sale of milk to any milk processor that such processor purchase all or substantially all of its milk supply from defendant;
- (f) charging any milk processor a higher price for the purchase of milk if such processor does not purchase his complete milk supply from defendant;
- (g) purchasing or acquiring control of any milk processing facilities which have purchased milk from independent producers for the purpose or with the effect of eliminating said facilities as markets for said producers; and
- (h) importing milk into marketing areas for the purpose of depressing the prices which independent producers receive for their milk.

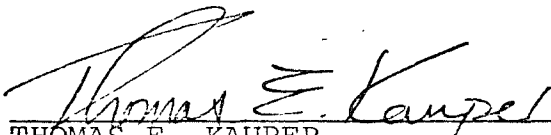
3. That the defendant, its officers, directors, agents, representatives, successors, assigns, and all persons acting or claiming to act on its behalf be perpetually enjoined from engaging in or participating in practices, contracts, relationships, or understandings, or claiming any rights thereunder, having the purpose or effect of continuing, reviving, or renewing any of the aforesaid violations.

4. That the plaintiff have such other and further relief as may be just and proper.

5. That the plaintiff recover the costs of this suit.


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