

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 80-147
v.	)	
	)	
AGRI-MARK, INC.,	)	
AGWAY INC., AND	)	Filed: June 27, 1980
H.P. HOOD, INC.,	)	
	)	
Defendants.	)	

COMPLAINT

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

COUNT ONE

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, in order to prevent and restrain the violations by the defendants, as hereinafter alleged, of Sections 3 and 7 of the Clayton Act, as amended, 15 U.S.C. §§ 14 and 18.

2. Agway Inc , with its principal place of business in the Northern District of New York, transacts business and is found within the District of Vermont.

3. Agri-Mark, Inc. transacts business within the District of Vermont and upon consummation of the transaction alleged in paragraphs 21 through 24 of this complaint will be found in the District of Vermont.

4. H.P. Hood, Inc., with its principal place of business within the District of Massachusetts, transacts business and is found within the District of Vermont.

## II

### DEFINITIONS

5. As used herein:

- a. The term "fluid grade milk" means the raw milk of cows which is produced under state or local health standards making it suitable for processing into fluid milk products. Fluid grade milk is sometimes known as Grade A milk;
- b. The term "fluid milk products" means pasteurized fluid grade milk sold by processors in fluid form for human consumption;
- c. The term "dairy farmer" means any person or entity engaged in the production of fluid grade milk;
- d. The term "processor" means any entity engaged in the business of purchasing fluid grade milk and bottling and/or packaging and selling fluid milk products and other milk products. A processor is also known as a dealer or a dairy.

## III

### DEFENDANTS

6. Agway In . ("Agway") is made a defendant herein. Agway is a corporation organized and existing under the laws of the state of Delaware, with its principal offices in De Witt, New York. Agway conducts its business in part

through subsidiary corporations. Agway functions as an agricultural supply cooperative. It purchases and produces goods such as seed, fertilizer, and pesticides for resale to 124,102 farmer members and its other patrons. Approximately 60% of Agway's member sales is to dairy farmers. Agway's retail supply stores and cooperative members are concentrated in the New England states and in New York, Delaware, Pennsylvania, New Jersey, and Ohio. For the fiscal year ending June 30, 1979, Agway had revenues from unaffiliated customers of \$2,049,080,356. As of June 30, 1979, Agway had current assets of \$528,356,111 and total assets of \$914,189,004.

7. Agri-Mark, Inc. ("Agri-Mark") is made a defendant herein. Agri-Mark is a corporation organized and existing under the laws of the state of Delaware. Agri-Mark, formed on April 21, 1980, will function as a fluid grade milk marketing cooperative for its dairy farmer members located in New England and parts of eastern New York. Agri-Mark has been through its directors and representatives actively soliciting members in Vermont. Agri-Mark will direct the flow of milk from members' farms, market the raw milk to processors and handle the surplus volume. When it becomes fully operational, Agri-Mark will be the largest milk marketing cooperative in New England.

8. H.P. Hood, Inc. ("Hood") is made a defendant herein. Hood is a corporation organized and existing under the laws of the state of Massachusetts with its corporate headquarters in Boston. Hood conducts its business in part through subsidiary corporations. Hood is engaged in the processing of fluid grade milk into dairy and related products including fluid milk products, cream, ice cream, cottage cheese, yogurt, sour cream, and butter. These products account for about 46% of Hood's total sales and are

sold primarily in New England for retail distribution. Hood purchases the raw, fluid grade milk production of 1,882 dairy farmers in New England and parts of eastern New York. Hood operates four fluid milk processing plants, one of which is in Vermont, and is the largest purchaser of fluid grade milk in New England. For Hood's fiscal year ending March 3, 1979, Hood had sales of \$218,875,000 in dairy and related products, excluding sales of hard cheese. Its total sales for fiscal 1979 amounted to \$493,890,000.

#### IV

#### TRADE AND COMMERCE

9. Fluid milk products for human consumption are distinct products without practical substitutes. Fluid milk products are recognized by the industry, government agencies, the general public, and by statute as products distinct from other food products for human consumption including other dairy products such as dried, powdered, and evaporated milk and hard and soft cheeses. Fluid milk products are processed almost exclusively from fluid grade raw milk produced by dairy farmers.

10. Fluid milk products sold and consumed in the New England states are processed almost exclusively by processors found within the New England states ("New England market").

11. Hood is the largest seller of fluid milk products in the New England market. In 1978 it sold approximately 16% of all fluid milk products sold in the New England market.

12. Hood markets its fluid milk products throughout the New England market in competition with approximately 98 processors. Several processors compete with Hood for sales in major parts of New England. The majority of Hood's competitors

compete with Hood for sales in limited geographic areas surrounding their plants.

13. All raw milk sold to processors in the New England market must be, by state or local health regulation, fluid grade milk.

14. Fluid grade milk is a distinct product without practical substitutes. Fluid grade milk is recognized by the industry and governmental agencies as distinct from other farm products.

15. Processors in the New England market purchase their fluid grade milk requirements from dairy farmers in the New England states and parts of eastern New York (the "New England milkshed").

16. In 1978 dairy farmers in the New England milkshed produced between 5.7 and 7.5 billion pounds of fluid grade milk.

17. The dairy farmers who will be members of Agri-Mark when it commences operation produced approximately 2.65 billion pounds of fluid grade milk, or between 35% and 46% of the fluid grade milk produced in the New England milkshed in 1978. Agri-Mark intends to increase its membership until it has members whose production in 1979 was at least 3 billion pounds, or between 40% and 53% of the fluid grade milk produced in the New England milkshed in 1978.

18. In 1978, Hood purchased approximately 1 billion pounds of fluid grade milk or between 13% and 18% of the fluid grade milk produced in the New England milkshed.

19. In addition to purchasing fluid grade milk from milk marketing cooperatives, in 1979 Hood provided a market for approximately 900 independent dairy farmers. Hood competes with other processors and milk marketing cooperatives for dairy farmers' production by providing marketing services at competitive prices.

20. Hood and Agway sell substantial quantities of products in states throughout New England and are engaged in interstate commerce. Agri-Mark is or will be as a result of the transaction alleged in paragraphs 21 through 24 engaged in interstate commerce.

V

VIOLATION ALLEGED

21. On or about July 1, 1980, Agway will purchase via a tender offer at least two-thirds of the common stock of Hood. The purchase price is \$41.33 per share for a possible transaction price of \$40,000,000.

22. At or about the same time, Agri-Mark will purchase all of Hood's assets except those related to its candy and furniture businesses. The purchase price is the book value of the assets--approximately \$34,500,000.

23. At or about the same time, Agri-Mark will lease back the assets to Hood. It will also lease to Hood certain dairy product manufacturing and service facilities that it purchases at or about the same time from its predecessor marketing cooperative, Yankee Milk, Inc. The term of the lease is 10 years plus two 5-year options to renew. Hood will continue its present fluid milk product and other dairy product businesses and will assume operation of the dairy product manufacturing and service facilities Agri-Mark purchases from Yankee Milk, Inc.

24. At or about the same time Agri-Mark and Hood will enter into the following 10-year agreements:

- a. An administrative services agreement,
- b. A marketing agreement,
- c. A loan agreement,
- d. A full supply agreement.

25. The effect of the transaction alleged in paragraphs 21 through 24 may be substantially to lessen competition or tend to create a monopoly in the previously described interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

- a. Dairy farmers who are not members of Agri-Mark will be foreclosed from selling their fluid grade milk to Hood;
- b. Competition may be lessened in the production and sale of fluid grade milk;
- c. Competition may be lessened in the procurement of fluid grade milk from dairy farmers;
- d. Competition may be lessened in the production and sale of fluid milk products.

COUNT TWO

26. Plaintiff re-alleges and incorporates the allegations contained in paragraphs 1 through 24 of this complaint.

VI

VIOLATION ALLEGED

27. Agri-Mark and Hood will execute a full supply agreement, referred to in paragraph 24d above, on or about July 1, 1990, under which Agri-Mark will supply the requirements of Hood for fluid grade milk and Hood will buy essentially all its requirements of fluid grade milk from Agri-Mark for a period of ten years.

28. The effect of the supply agreement alleged in paragraph 27 may be substantially to lessen competition

or tend to create a monopoly in the previously described interstate trade and commerce in violation of Section 3 of the Clayton Act in the following ways, among others:

- a. Dairy farmers who are not members of Agri-Mark will be foreclosed from selling their fluid grade milk to Hood;
- b. Competition may be lessened in the production and sale of fluid grade milk;
- c. Competition may be lessened in the procurement of fluid grade milk from dairy farmers.

PRAYER

WHEREFORE, Plaintiff prays:

1. That pending final adjudication of the merits of this complaint, a temporary restraining order and preliminary injunction be issued preventing and restraining the defendants Agri-Mark, Agway, and Hood, and all persons acting on their behalf, from taking any action, directly or indirectly, in furtherance of the acquisition of Hood's assets by Agri-Mark, and the related agreements including the full supply agreement.

2. That the acquisition of Hood's assets by Agri-Mark be adjudged to be in violation of Section 7 of the Clayton Act.

3. That the full supply agreement between Agri-Mark and Hood be adjudged to be in violation of Section 3 of the Clayton Act.




4. That Agri-Mark and its successors and all persons acting on its behalf be permanently enjoined from acquiring either directly or indirectly any interest in Hood or Hood's assets.

5. That Agri-Mark and its successors and all persons acting on its behalf be permanently enjoined from entering into a full supply contract with Hood or any other supply contract with Hood of an unreasonable duration.

6. That plaintiff have such other, further, general, and different relief as the nature of the case may require and the Court may deem proper.

7. That the plaintiff may recover its costs.

  
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