

Problem 3

Yo-Go International and the Happy Cows Collective

Yo-Go International is a successful manufacturer of yogurt and other dairy products operated out of Santa Barbara, California. It ships yogurt products throughout North America. It was founded by Tony Bach nearly forty years ago when he started making fresh yogurt in homemade yogurt boxes (Styrofoam boxes lined with foil and heated by a 100 watt bulb) in his kitchen, inspired by the health food craze of the late 1960s and early 1970s and books such as Adelle Davis' "Let's Eat Right to Keep Fit!" Today Yo-Go is a multi-million dollar family business, still headed by Tony with the help of a daughter, Elise.

In the past decade, Yo-Go has been at the forefront of the organic movement and has converted all of its production to organic products. The most important ingredient, of course, is organic milk. Tony has insisted on the strictest of organic standards, far beyond the industry norm and what is required for official USDA Organic certification. Tony proudly displays this on every Yo-Go label: "100% Organic—The Real Deal." In his view—and he has made his views known through public lectures and a column he writes in a Santa Barbara dairy newsletter—the USDA standards are far too lenient, on everything from what feed they allow organic dairy farmers to feed their cows to how much time the cows spend in pasture as opposed to feedlots.

Yo-Go has changed milk suppliers a number of times in the past decade as a result of Tony's dissatisfaction with the practices at the farms he has used, although all the milk has met USDA Organic standards. Last year, in frustration, he turned to a small dairy collective from Northern California, Happy Cows Collective. Happy Cows members—small dairy farms throughout Northern California—are committed to exclusively organic production at higher-than-industry standards. Happy Cows president, Alberto Hernandez, was anxious for Yo-Go's business and spent many hours with Tony and his daughter Elise discussing the careful attention to organic production protocols to which all Happy Cow farms are required to adhere. Tony asked hundreds of detailed questions about how the farms were operated, including details of the living arrangements provided for the dairy cattle. Alberto assured Tony, "Our cows are completely babied. Practically free-range. I wish my kids would spend that much time outdoors instead of playing video games! All of our dairy farmers have been with us since the beginning 10 years ago and let me tell you, that beginning was forged in a collective commitment to going well above and beyond the requirements of the National Organics Program, which, we both agree, are a travesty." The National Organics Program establishes the federal standards for obtaining USDA Organics certification. (See excerpt from regulations, attached.)

The more radical members of the organic industry—the true believers, as opposed to the ‘corporate wannabes’—believe that the regulations allow far too much leeway in how animals are housed and pastured. As Tony has been heard to sneer, “ ‘Access to pasture’---sounds like you can satisfy the USDA with one fifteen minute ‘recess’ a day. People in prison get more than that!”

Tony regaled Alberto with the litany of his disappointments with previous suppliers and Alberto was empathetic. “With us,” he told Tony, “you’re the boss. Anything you’re uncomfortable with, you let me know and I’ll fix it. Personally.” Tony felt as if he had finally found someone who ‘got it.’ “Sounds like the supplier for me,” Tony told Alberto as they shook hands, “Delighted to sign up with you on our usual terms. Just need to get out of my current contract and we can start deliveries in 30 days.” Alberto responded, “Fantastic. I’m sure you’ll be very happy. Happy cows, happy customers!” There was no need to discuss price as milk prices in California are regulated by the state. The usual arrangement for a regular milk supply contract is daily deliveries of whatever quantity the buyer needs for its production—known as a ‘requirements contract.’ These are usually long-term contracts that can be cancelled with, on average, 6 months notice.

A week or so after this meeting, Yo-Go’s purchasing manager sent the Happy Cows account manager a standard form “Terms of Agreement.” (See attached.) A similar form is sent to all Yo-Go suppliers. The Happy Cows account manager, who did not read the Yo-Go document (it was simply placed in the Yo-Go manila file folder), sent Yo-Go their “Supply Contract” a day later. (See attached.) Yo-Go’s purchasing manager glanced at the document and asked her assistant to scan it and enter into the Happy Cows database.

All went well at first. Then, six months into the relationship (as usual, Tony’s previous suppliers might observe), Tony started to find problems. He started calling Alberto weekly pestering him about one thing or another: whether Happy Cows farmers had taken a type of feed off their approved list, adjusted their manure management practices to take further steps to avoid contamination of water or crops, or adopted the latest suggested stress reduction practices for dairy cattle. All of these were organic practices that only the most ardent organic farmers followed; none were required to meet USDA organics standards. Alberto took it all in stride, reassuring Tony that Happy Cows farmers were up to date on all the latest organic practices. Tony began taking trips to visit the Happy Cows farms, dropping in unannounced to tour the barns, fields and pastures.

On one of these trips Tony parked his truck on an access road and spent a full day watching the Arden farm, one of the farms supplying him with milk through Happy Cows. He was outraged: the cows were confined to the barn the whole time. He called up Alberto that evening and told him that he considered this a “major breach of our agreement” and “you better fix this, immediately.” Alberto, now weary of Tony’s constant complaints and angry at what he considered to be Tony’s ‘stalking’ of his dairy farms, told Tony tersely “I’ll take care of it.” “I



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want daily reports of time spent in pasture at all farms supplying Yo-Go with milk,” Tony insisted. Alberto responded through clenched teeth, “Yeah. Sure.”

Alberto did indeed start collecting daily reports from Happy Cows farms about time in pasture and sent these on to Tony—Yo-Go was a very important customer. Alberto had very unhappy farmers, however, who correctly complained that these reports and requirements were far in excess of USDA requirements. After a month of these reports (which showed that the cows were in pasture several hours a day at all of the Happy Cow farms), Alberto started collecting data and sending reports to Tony less and less frequently. Tony fumed. Alberto responded “we don’t have to give you these things; this is ridiculous. We exceed all the required standards by a wide margin.”

Tony met with Elise and told her that he wanted out of the Happy Cows contract. Elise urged him to try and fix the problem rather than dumping yet another supplier. But Tony insisted. “They were late with deliveries last week. And I have proof those Arden cows were locked up all day last month. They’re not sending me daily reports any more like I asked. And to top it off I just learned that the Arden farm was NOT with Happy Cows “from the beginning”—they just joined the collective three years ago! Alberto lied to me from the start! Call them and cancel.” Elise reminded Tony that with the exception of last week all the deliveries had been on time and that heavy rains had probably slowed deliveries last week. But Tony insisted. Reluctantly Elise called Alberto and told him Yo-Go was cancelling because of the late deliveries and failure to give the cows several hours of pasture time every day. She followed up with a letter stating that “Yo-Go International will not accept any further deliveries from Happy Cows, effective 30 days from today.”

Needless to say, Alberto is furious. The market for milk in California has been glutted for the past year and Happy Cows will be unable to find a replacement buyer for the \$4 million worth of milk that Yo-Go was purchasing monthly.

You have been contacted by Elise on behalf of Yo-Go International for legal advice. Prepare a brief outline of issues (no more than 2 pages) and choose one issue that you consider to be important to resolving the advice Yo-Go is seeking from you. Analyze that issue in depth, in no more than 1000 words. I will not be grading the outline of issues but will provide feedback on it.



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## Excerpt from Regulations, National Organic Program

### § 205.239 Livestock living conditions.

(a) The producer of an organic livestock operation must establish and maintain livestock living conditions which accommodate the health and natural behavior of animals, including:

(1) Access to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight suitable to the species, its stage of production, the climate, and the environment;

(2) Access to pasture for ruminants;

(3) Appropriate clean, dry bedding. If the bedding is typically consumed by the animal species, it must comply with the feed requirements of §205.237;

(4) Shelter designed to allow for:

(i) Natural maintenance, comfort behaviors, and opportunity to exercise;

(ii) Temperature level, ventilation, and air circulation suitable to the species; and

(iii) Reduction of potential for livestock injury;

(b) The producer of an organic livestock operation may provide temporary confinement for an animal because of:

(1) Inclement weather;

(2) The animal's stage of production;

(3) Conditions under which the health, safety, or well being of the animal could be jeopardized; or

(4) Risk to soil or water quality.



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## YO-GO INTERNATIONAL

### TERMS OF AGREEMENT

Seller: Happy Cows Collective

Buyer: Yo-Go International

WHEREAS Seller is desirous of selling Grade “A” Organic milk to Buyer and Buyer is desirous of purchasing Grade “A” Organic milk from Seller;

NOW, THEREFORE, it is understood and agreed between the parties as follows:

1. Contract amount shall be all of the Grade “A” organic milk requirements of BUYER, the actual amount shall be agreed on a weekly basis on Thursday of the week prior to delivery.
2. Price shall be the component price for Class 2 milk as established by the California Department of Agriculture.
3. Quality. All milk purchased under this agreement shall meet the requirements of the appropriate health authority for use as Grade “A” milk for human consumption. All milk shall be supplied exclusively from dairy farms meeting all applicable National Organics Program standards, with current certification of USDA Organic compliance available at all times. FURTHER Seller agrees to adopt best practices in the organics industry EVEN WHEN SUCH PRACTICES EXCEED THOSE REQUIRED FOR USDA ORGANICS CERTIFICATION.
4. Delivery All milk will be delivered no later than 9 am daily.
5. Testing. Milk shall be subject to testing using third-party tester to ensure compliance with required standards. FURTHER, Seller agrees to allow Buyer reasonable access to member dairy farms to ensure compliance with required organic practices.
6. Payment. Milk delivered from the 1<sup>st</sup> through the 15<sup>th</sup> will be paid for on the 28<sup>th</sup> of the month in which the milk was delivered. Milk delivered from the 16<sup>th</sup> through the last day of the month will be paid for on the 13<sup>th</sup> of the month following delivery.
7. Termination. The term of this agreement shall be five years unless either party terminates the agreement earlier. Termination may be accomplished by either party by delivering 6 months written notice to the other party. PROVIDED HOWEVER that BUYER retains full discretion to cancel this agreement immediately if SELLER is in breach of any provision of this agreement or in Buyer’s judgment has failed to follow BEST PRACTICES for Organic Production.
8. Entire Agreement This agreement constitutes the entire agreement between the parties. Any modifications to this agreement must be in writing and signed by both parties.



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## *Happy Cows Collective*

### *Supply Agreement*

Happy Cows agrees to supply Yo-Go International with Grade "A" Class 2 milk, USDA Certified Organic, on the following terms:

1. Price is as established by the California Department of Agriculture.
2. Quantity is Buyer's daily requirements.
3. Delivery will be at Buyer's facility daily by 9 a.m.
4. Payments must be made PROMPTLY on the 15<sup>th</sup> of each month.  
TIME IS OF THE ESSENCE.
5. Seller agrees to work with Buyer to achieve ongoing compliance with best practices in organic production at member dairy farms.
6. This agreement shall have a term of 5 years and be terminable by either party on 6 months written notice.
7. This is the entire agreement between the parties.

*We are happy to have your business!*

*Happy Cows! Happy Customers!*

<http://www.realcaliforniamilk.com/happycows>



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