

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 Edith Ramirez
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

In the Matter of

**IDEXX Laboratories, Inc.
a corporation.**

Docket C- 4383

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of IDEXX Laboratories, Inc., hereafter referred to as “Respondent IDEXX,” and Respondent IDEXX having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent IDEXX with violating Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent IDEXX, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent IDEXX of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent IDEXX that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondent IDEXX has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments filed by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure described in Commission Rule 2.34, the Commission

hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent IDEXX is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at One IDEXX Drive, Westbrook, Maine.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent IDEXX, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent” or “Respondent IDEXX” means IDEXX Laboratories, Inc.; its directors, officers, employees, agents, and representatives; its successors and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by IDEXX Laboratories (including, but not limited to IDEXX Distribution, Inc.), and the respective directors, officers, employees, agents, representatives, successors and assigns of each.
- B. “Butler” means Butler Schein Animal Health, which is controlled by Henry Schein, Inc., a Delaware corporation, with its principal place of business located at 135 Duryea Road, Melville, NY 11747 and any successors to Butler’s business related to the distribution of Products.
- C. “MWI” means MWI Veterinary Supply, Inc., a Delaware corporation, with its principal place of business located at 3041 W. Pasadena Drive, Boise, Idaho 83705 and any successors to MWI’s business related to the distribution of Products.
- D. “Webster” means Webster Veterinary, a subsidiary of Patterson Companies, Inc., a Minnesota corporation, with its principal place of business located at 1031 Mendota Heights Road, St. Paul, MN 55120 and any successors to Webster’s business related to the distribution of Products.
- E. “Commission” means the Federal Trade Commission.

- F. “Distributor” means MWI, Webster, Butler, or any other Person who has entered into an agreement with Respondent IDEXX to distribute any Products to end-user veterinary customers regardless of whether that agreement is based on Exclusivity with regard to such Products.
- G. “Exclusivity” or “Exclusive” means any requirement, whether formal or informal, or direct or indirect, by Respondent IDEXX that a Distributor refuse to distribute or limit its distribution, marketing, promotion, sales, or purchases of any Person’s Products other than IDEXX products.
- H. “MWI Distribution Agreement” means the September 28, 2012, Distribution Agreement entered into between Respondent IDEXX and MWI and which is attached as Confidential Appendix A to this Order.
- I. “National Distributor” means MWI, Webster, and Butler so long as each respectively is a Distributor of Products.
- J. “Distribution Agreement” means any agreement between Respondent IDEXX and any Distributor to distribute any Products to end-user veterinary customers.
- K. “Exclusive Distribution Agreement” means any agreement between Respondent IDEXX and any Distributor that contains terms requiring that Distributor to act as an Exclusive distributor of Respondent IDEXX’s Products.
- L. “Non-Exclusive Distribution Agreement” means any agreement between Respondent IDEXX and any National Distributor that does not contain terms requiring that National Distributor to act as an Exclusive distributor of Respondent IDEXX’s Products.
- M. “Person” means any natural person or artificial person, including, but not limited to, any corporation, unincorporated entity, or government entity. For the purpose of this Order, any corporation includes the subsidiaries, divisions, groups, and affiliates controlled by it.
- N. “Products” means any in-house diagnostic testing products sold to and used by companion animal veterinarians.
- O. “Product Pricing” means Respondent IDEXX's standard list prices, less a margin discount, the amount of which is negotiated between Respondent IDEXX and the National Distributor.
- P. “Renewal Date” means each date upon which the Non-Exclusive Distribution Agreement automatically renews.

II.

IT IS FURTHER ORDERED that, except as otherwise provided herein, if Respondent IDEXX has an Exclusive Distribution Agreement with any National Distributor, Respondent IDEXX:

- A. Shall cease and desist from having concurrent Exclusive Distribution Agreements with all of the National Distributors;
- B. With regard to any Non-Exclusive Distribution Agreement with a National Distributor, such agreement:
 - 1. Shall provide an initial term of no less than two (2) years;
 - 2. Shall provide renewal for one or more additional one (1) year terms on or before each Renewal Date;
 - 3. Shall provide Distribution of IDEXX Products on a fully non-Exclusive basis;
 - 4. Shall not include any term or understanding that the National Distributor refuse or limit the purchase or sale of Products of any Person other than IDEXX;
 - 5. Shall not withhold the sale of Products to the National Distributor based on that National Distributor's sale, or intention to sell, Products of any Person other than IDEXX;
 - 6. Shall not urge, induce coerce, threaten, or pressure, or attempt thereto, the National Distributor to refuse to sell Products of any Person other than IDEXX, or to limit its sales of Products of any Person other than IDEXX; and
 - 7. Shall not penalize, or otherwise retaliate against the National Distributor because that National Distributor sells or intends to sell Products of any Person other than IDEXX.

Provided, however, that IDEXX may charge different prices to any Non-Exclusive Distributor;

Provided, further, however, that the MWI Distribution Agreement is a Non-Exclusive Distribution Agreement that satisfies this Paragraph II.B;

Provided further, however, that for all notifications received or sent by Respondent IDEXX regarding a termination, election not to renew, or material breach of a Non-Exclusive Distribution Agreement, Respondent IDEXX shall provide a copy of each such notification to the Federal Trade Commission at the same time it provides such notice to the National Distributor, or within five (5) days of receiving such notice from the National Distributor;

Provided further, however, that, if the Non-Exclusive National Distributor merges with, acquires, or is acquired by a Distributor whose distribution agreement with Respondent IDEXX is Exclusive, Respondent IDEXX shall continue to honor the Non-Exclusive Distribution Agreement in accordance with the terms of this Order.

- C. Shall submit any Non-Exclusive Distribution Agreement that is not the MWI Distribution Agreement to the Commission at least thirty (30) days prior to entering into such Distribution Agreement.

III.

IT IS FURTHER ORDERED that:

- A. Sixty (60) days after the date this Order is issued, Respondent IDEXX shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the terms of this Order.
- B. Beginning twelve (12) months after the date this Order is issued, and annually thereafter on the anniversary of the date this Order is issued, for the next four (4) years, and at such other times as the Commission requests, Respondent IDEXX shall submit to the Commission verified written reports setting forth in detail the manner and form in which it is complying and has complied with this Order.

IV.

IT IS FURTHER ORDERED that Respondent IDEXX shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent IDEXX;
- B. Any proposed acquisition, merger or consolidation of Respondent IDEXX; or

- C. Any other change in Respondent IDEXX, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

V.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent IDEXX, Respondent IDEXX shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent IDEXX and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondent IDEXX related to compliance with this Order, which copying services shall be provided by Respondent IDEXX at the request of the authorized representative(s) of the Commission and at the expense of Respondent IDEXX; and
- B. Upon five (5) days' notice to Respondent IDEXX and without restraint or interference from Respondent IDEXX, to interview officers, directors, or employees of Respondent IDEXX, who may have counsel present, regarding such matters.

VI.

IT IS FURTHER ORDERED that this Order shall terminate on February 11, 2023.

By the Commission, Commissioner Ohlhausen abstaining and Commissioner Wright not participating.

Donald S. Clark
Secretary

ISSUED: February 11, 2013