

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

101 0023

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill
 Maureen K. Ohlhausen

In the Matter of

**IDEXX LABORATORIES, INC.,

a corporation.**

Docket No. C-

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that IDEXX Laboratories, Inc. (“IDEXX” or “Respondent”) has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

NATURE OF THE CASE

1. IDEXX has maintained a monopoly in the market for point-of-care (“POC”) diagnostic products used by veterinarians who treat companion animals (“POC Diagnostic Products”) through the use of exclusive contracts with its distributors. POC Diagnostic Products include rapid assay tests, equipment and supplies that permit a companion animal veterinarian (“Veterinarian”) to test, diagnose and treat certain conditions such as heart worm during a single office visit. POC Diagnostic Products provide real-time results that cannot be obtained through other testing alternatives, such as services offered by outside reference labs.

2. Nearly all Veterinarians buy their supplies, including POC Diagnostic Products, from distributors who specialize in supplying veterinary clinics, and most of their purchases are made from a small number of “top tier” distributors. IDEXX has used its monopoly power, the threat of termination, and explicit agreements to prevent those top tier distributors from selling

rival POC Diagnostic Products that the distributors would otherwise choose to sell. As a result, IDEXX has foreclosed its competitors from distributors that sell over 85% of all products purchased through distribution by companion animal veterinary clinics in the United States.

3. Veterinarians prefer to buy diagnostic products, equipment and supplies through top tier distributors because other purchasing options are less efficient and more costly. As a result, IDEXX's competitors are impeded from effectively and efficiently marketing competing POC Diagnostic Products to Veterinarians.

4. IDEXX's exclusionary practices have blocked rivals from the most efficient sales channel. IDEXX has used its exclusionary practices to successfully diminish, marginalize or force its competitors from the U.S. market.

5. IDEXX intentionally engages more distribution than it needs, causing it to suffer certain inefficiencies. Nevertheless, IDEXX continues its exclusionary conduct because that conduct insulates IDEXX from competition from its rivals. Thus, IDEXX maintains its monopoly at the expense of distributors who would prefer to offer a greater variety of POC Diagnostic Products, and Veterinarians who could buy cheaper, superior, and more convenient POC Diagnostic Products.

RESPONDENT

6. 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. IDEXX develops, manufactures and sells diagnostic products and services to Veterinarians. It has worldwide operations with 2011 revenues in excess of \$1.2 billion, of which \$700 million were from sales in the United States. IDEXX's United States companion animal diagnostics business produced 2011 revenues of approximately \$644 million.

7. IDEXX's core business is companion animal diagnostics, including POC instruments and their related consumables, rapid assay test kits (SNAP© tests), digital radiography equipment, practice management software, and diagnostic services through wholly owned and operated reference laboratories.

JURISDICTION

8. At all times relevant herein, IDEXX has been, and is now, a corporation as "corporation" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

9. The acts and practices of IDEXX, including the acts and practices alleged herein, are in commerce or affect commerce in the United States, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

RELEVANT MARKET

10. The relevant product market in which to evaluate IDEXX's conduct is the development, manufacture and sale of POC Diagnostic Products, and narrower relevant markets as contained therein (collectively, the "Relevant POC Markets"), including:

- A. rapid assay single-use test kits; and
- B. diagnostic instruments and their associated single-use products ("consumables") designed for in-clinic testing of biological samples.

11. The relevant geographic market is the 48 states of the continental United States.

12. Veterinarians are the primary consumers of POC Diagnostic Products. Veterinarians use POC Diagnostic Products to assess the general health of animals and to identify pathologies. Veterinarians perform diagnostic testing at veterinary clinics with instruments or test kits manufactured and sold by IDEXX and its competitors. POC testing provides Veterinarians and pet owners the medical advantage and convenience of almost-immediate results.

13. As of 2009, more than 75% of Veterinarians used POC diagnostic testing. Each year, Veterinarians in the United States purchase approximately \$500 million worth of POC Diagnostic Products.

14. There are no close substitutes for POC Diagnostic Products. Although Veterinarians can purchase some diagnostic services by sending specimens to outside laboratories, POC testing provides state-of-the-art diagnostics. Veterinarians value faster results, particularly when testing is associated with emergencies, pre-surgery, and for diagnoses of conditions that may require the Veterinarians to perform follow-up testing or dispense or prescribe medicine as soon as possible after the results have been received.

IDEXX HOLDS MONOPOLY POWER IN THE RELEVANT MARKET

15. IDEXX has monopoly power in the POC Diagnostic Products market. IDEXX has the most comprehensive set of offerings in the relevant market. IDEXX's share of the relevant market has been at least 70% during each of the past five years (2006-2011). No other firm had more than a 20% share of the relevant market in those same five years.

16. IDEXX directly demonstrates its monopoly power in the Relevant POC Markets by forbidding its distributors from carrying any competing products, thereby excluding IDEXX's competitors from sales of those products to any IDEXX distributor. Because IDEXX has a dominant position in the Relevant POC Market, distributors have no practical choice but to agree to carry IDEXX's line of products exclusively. Distributors would prefer to sell competing products as well as IDEXX products.

17. IDEXX's control of distributors means that it forecloses its competition from effectively and efficiently reaching large segments of the Veterinarian market, thereby forcing Veterinarians to incur greater costs to obtain non-IDEXX products, or to use only IDEXX products.

DISTRIBUTORS

18. Nearly all Veterinarians purchase equipment and supplies from Veterinary products distributors. Veterinarians overwhelmingly prefer to buy through distributors because of the efficiency and customer service they offer.

19. Most Veterinarians buy a majority of their equipment and supplies from a preferred distributor. More than 75% of Veterinarians name Butler Schein Animal Health ("Butler"), Webster Veterinary Supply, Inc. ("Webster"), MWI Veterinary Supply Co. ("MWI"), Midwest Veterinary Supply, Inc. ("Midwest"), or Victor Medical Company ("Victor") as their preferred distributor. Combined, these distributors sell more than 85%, by revenue, of the products sold to Veterinarians in the United States.

20. IDEXX and other POC Diagnostic Product manufacturers use distributors because distributors provide important services to the manufacturer and are the most efficient way for the manufacturer to channel their products to Veterinarians. Manufacturers who do not use distributors face more significant obstacles to sales, marketing and delivery than manufacturers who use distributors.

21. IDEXX's distributors provide better services to their manufacturer clients than other distributors. Those better services can include, but are not limited to, higher sales volume, better sales and inventory data transfer, more experienced sales representatives, better market forecasting, more timely payments, and more frequent visits to Veterinarian clients.

22. Butler, Webster and MWI are recognized by manufacturers, distributors and Veterinarians as the pre-eminent companion animal veterinary supply distributors in the United States. There are no other distributors that provide equivalent levels of service to manufacturers and regularly visit Veterinarians in as wide a geographic area as Butler, Webster or MWI.

IDEXX'S CONCERTED ACTION AND EXCLUSIVE DEALING

23. IDEXX has contracted with its distributors to sell IDEXX products to Veterinarians and other users. Each firm's contract states that IDEXX may discontinue providing a category of products to the distributor if the distributor sells any product, with small exceptions, that competes with an IDEXX product within the category.

24. IDEXX's distributors have a clear and well-founded understanding that IDEXX will cut off the supply of *all* categories of IDEXX products and terminate its contract with the

distributor if the distributor sells or promotes any competing product in the Relevant POC Market .

25. IDEXX's dominant market position, its practice of demanding exclusivity, and its imposition of an "all-or-nothing" policy give distributors of veterinary products powerful economic incentives that require them to deal with IDEXX on an exclusive basis.

26. IDEXX's exclusionary acts and practices require competing manufacturers to settle for less efficient means to sell their products to Veterinarians.

ANTICOMPETITIVE EFFECTS OF IDEXX'S CONDUCT

27. IDEXX's concerted action and exclusionary acts and practices erect significant barriers to entry for those manufacturers that have developed, would otherwise have developed, or offered for sale POC Diagnostic Products that would compete with IDEXX products.

28. The acts and practices of IDEXX as alleged herein have the purpose, capacity, tendency, and effect of impairing the competitive effectiveness of IDEXX's competitors in the relevant market.

29. The acts and practices of IDEXX as alleged herein reasonably appear capable of making a significant contribution to the enhancement or maintenance of IDEXX's monopoly power.

30. IDEXX's conduct adversely affects competition and consumers by:

- A. reducing the output of POC Diagnostic Products;
- B. deterring, delaying and impeding the ability of IDEXX's actual or potential competitors to enter or to expand their sales in the market for POC Diagnostic Products;
- C. reducing innovation; and
- D. reducing consumer choice among users of POC Diagnostic Products.

31. IDEXX's acts and practices as alleged herein were intended to, and have, restrained competition unfairly and unreasonably, and enhanced or maintained IDEXX's monopoly power.

32. There are no legitimate procompetitive efficiencies that justify IDEXX's conduct or outweigh its substantial anticompetitive effects.

VIOLATION ALLEGED

33. The acts and practices of IDEXX, as alleged herein, contribute to the enhancement or maintenance of IDEXX's monopoly power, and constitute unfair methods of competition in or affecting commerce, all in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

34. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this ____ day of _____, 2012, issues its complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: