

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeney

_____)
In the Matter of)
)
National Association of Animal Breeders, Inc.) Docket No. C-
a corporation.)
_____)

DECISION AND ORDER

The Federal Trade Commission, (“Commission”), having initiated an investigation of certain acts and practices of National Association of Animal Breeders, Inc. (“Respondent” or “NAAB”) and Respondent having been furnished thereafter with a copy of a draft of 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 with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent 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 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 agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order (“Order”):

- 1. Respondent National Association of Animal Breeders, Inc., is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Missouri, with its office and principal place of business located at 401 Bernadette Drive, Columbia, Missouri 65203.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

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

- A. “Respondent” or “NAAB” means National Association of Animal Breeders, Inc., its directors, boards, officers, employees, agents, representatives, committees, foundations, divisions, successors, and assigns.
- B. “Antitrust Counsel” means a lawyer admitted to practice law in a Federal court or in the highest court of any State or Territory of the United States whose practice areas include antitrust law.
- C. “Antitrust Laws” means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, the Sherman Act, 15 U.S.C. § 1 *et seq.*, and the Clayton Act, 15 U.S.C. § 12 *et seq.*
- D. “Code of Ethics” means a statement setting forth the principles, values, standards, or rules of behavior that guide the conduct of an organization and its members.
- E. “FTC Settlement Statement” means the statement attached to this Order as Appendix A.
- F. “Member” means a member of NAAB, including any regular or associate member.
- G. “Organization Documents” means any document relating to the governance, management, or direction of the relevant organization, including, but not limited to, bylaws, rules, regulations, Codes of Ethics, policy statements, interpretations, commentaries, training materials, or guidelines.
- H. “Regulating” means (1) adopting, maintaining, recommending, or encouraging that Members follow any rule, regulation, interpretation, ethical ruling, policy, commentary, or guideline; (2) taking or threatening to take formal or informal disciplinary action; or (3) conducting formal or informal investigations or inquiries.

II.

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, in or in connection with Respondent's activities as a professional association in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, do forthwith cease and desist from Regulating, restricting, restraining, impeding, declaring unethical or unprofessional, interfering with or advising against the advertising, publishing, stating, or disseminating by any Member of the prices, terms, availability, characteristics, or conditions of sale of animal breeding services, including but not limited to, the adoption or maintenance of any principle, rule, guideline, or policy that restricts any Member from:

- A. Naming members or other competitors when making statements comparing the products and services of a Member with the products and services of any other Member or competitor, including restrictions against naming Members in printed material comparing the average performance of a Member's products and services with the average performance of any other Member's or competitor's products and services, or in any other context; and
- B. Publicizing or disclosing price information relating to the purchase or sale of animals, whether an animal was purchased or sold at private treaty, public auction, or in any other context.

PROVIDED, HOWEVER, that nothing in this Paragraph II. shall prohibit Respondent from adopting and enforcing reasonable principles, rules, guidelines, or policies governing the conduct of its Members with respect to representations that Respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III.

IT IS FURTHER ORDERED that:

- A. No later than thirty (30) days from the date this Order is issued, Respondent shall:
 - 1. Post and maintain for five (5) years on the Code of Ethics page of NAAB's website, together with a link from Respondent's home or menu page that is entitled "Antitrust Compliance," the following items:
 - (a) An announcement that states "NAAB agreed to change its Code of Ethics and will not adopt, encourage its members to follow, or enforce any Code of Ethics provision relating to the advertising, publishing, stating, or disseminating of information that does not comply with the FTC Consent Order;"

- (b) The FTC Settlement Statement; and
 - (c) A link to the Federal Trade Commission's website that contains the press release issued by the Commission in this matter.
- 2. Distribute electronically or by other means a copy of the FTC Settlement Statement to its board of directors, officers, employees, and Members.
- B. No later than sixty (60) days from the date this Order is issued Respondent shall:
 - 1. Remove from NAAB's Organization Documents and NAAB's website any statement that does not comply with Paragraph II. of this Order; and
 - 2. Publish on NAAB's website any revisions of NAAB's Organization Documents.
- C. For a period of five (5) years after this Order is issued, Respondent shall distribute electronically or by other means, a copy of the FTC Settlement Statement to each:
 - 1. New Member no later than thirty (30) days after the date of commencement of the membership; and
 - 2. Member who receives a membership renewal notice, at the time the Member receives such notice.
- D. For a period of five (5) years after this Order is issued, Respondent shall require that each Member delegate certify that he or she has received and read the FTC Settlement Statement as a condition to allowing the Member delegate to attend Respondent's annual convention or any other Respondent event in which Member delegates participate.
- E. Respondent shall maintain and make available to Commission staff for inspection and copying upon reasonable notice records adequate to describe in detail any:
 - 1. Action against any Member taken in connection with the activities covered by Paragraph II. of this Order, including but not limited to enforcement, advisory opinions, advice or interpretations rendered; and
 - 2. Complaint received from any person relating to Respondent's compliance with this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall design, maintain, and operate an antitrust compliance program to assure compliance with this Order and the Antitrust Laws:

- A. No later than thirty (30) days from the date this Order is issued, Respondent shall appoint Antitrust Counsel for the duration of this Order to supervise Respondent's antitrust compliance program.
- B. For a period of five (5) years from the date this Order is issued, Respondent shall:
 - 1. Provide in-person annual training to its board of directors, officers, and employees concerning Respondent's obligations under this Order and an overview of the Antitrust Laws as they apply to Respondent's activities, behavior, and conduct; and
 - 2. Conduct a presentation at NAAB's annual convention that summarizes Respondent's obligations under this Order and provides context-appropriate guidance on compliance with the Antitrust Laws.
- C. No later than sixty (60) days after the date this Order is issued, Respondent shall implement policies and procedures to:
 - 1. Enable persons (including, but not limited to, its board of directors, officers, employees, Members, Member delegates, and agents) to ask questions about, and report violations of, this Order and the Antitrust Laws, confidentially and without fear of retaliation of any kind; and
 - 2. Discipline its board of directors, officers, employees, Members, and agents for failure to comply fully with this Order.

V.

IT IS FURTHER ORDERED that Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:

- A. No later than ninety (90) days after the date this Order is issued; and
- B. No later than one (1) year after the date this Order is issued and annually thereafter for four (4) years on the anniversary of the date on which this Order is issued, and at such other times as the Commission staff may request.

VI.

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

- A. Dissolution of Respondent;
- B. Acquisition, merger, or consolidation of Respondent; or
- C. Any other change in Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

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 and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent 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 the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date it is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

APPENDIX A

(Letterhead of NAAB)

Dear Member:

As you may know, the Federal Trade Commission conducted an investigation concerning the provisions in NAAB's Code of Ethics ("Code of Ethics") that stated:

Member competitors will not be named in printed material comparing averages between members.

The purchase price of sires, purchased at private treaty, by NAAB members shall not be disclosed by the Buyer, and the Seller shall be requested not to quote the selling price.

Also, prices of bulls purchased at public auction by AI organizations shall not be quoted in their printed statements, advertising, and/or publicity material.

The Federal Trade Commission alleges that these provisions in the Code of Ethics violate the Federal Trade Commission Act because they unnecessarily restrict members of NAAB from competing for customers, thereby depriving customers of the benefits of competition among organizations engaged in the artificial insemination of dairy and beef cattle and other livestock.

To end the investigation expeditiously and to avoid disruption to its core functions, NAAB voluntarily agreed, without admitting any violation of the law, to the entry of a Consent Agreement and a Decision and Order by the Federal Trade Commission. As a result, NAAB is in the process of revising its Code of Ethics, and will implement an antitrust compliance program.

In general, the Federal Trade Commission has prohibited NAAB from maintaining bylaws, code of ethics, operational policies, or membership requirements that restricts members from advertising, publishing, publicizing, disclosing, stating, or disseminating the prices, terms, availability, characteristics, averages, or conditions of sale of animals or artificial insemination services.

Under the Decision and Order, NAAB may not restrict members from making statements comparing their products and services with the products and services of any other member. In particular, NAAB may not restrict members from naming members or other competitors when making statements comparing the products and services of a member with the products and services of any other member or competitor, whether the statements are made in printed material, whether the statements compare the average performance of a member's products and services with the average performance of any other member's products and services, or in any other context. NAAB also may not restrict members from publicizing or disclosing price information relating to the purchase or sale of animals, including restrictions on disclosing the purchase price,

whether the animal was purchased or sold at private treaty, public auction, or in any other context.

The Decision and Order does not prohibit NAAB from adopting and enforcing Codes of Ethics or similar documents that govern the conduct of members with respect to representations that NAAB reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

A copy of the Decision and Order is enclosed. It is also available on the Federal Trade Commission website at www.FTC.gov, and through the NAAB web site.