

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

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeny

In the Matter of)
) Docket No. C-
National Association of Animal Breeders, Inc.)
)
 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 (“Consent 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 Decision and 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 8413 Excelsior Drive, Suite 140, Madison, WI 53717.

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. “NAAB” or “Respondent” means National Association of Animal Breeders, Inc., its directors, boards, officers, employees, agents, representatives, committees, divisions, successors, and assigns.
- B. “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.*
- C. “Artificial Insemination Business” means any business relating to the collection, processing, and freezing of bull semen, and the sale or purchase of bulls or bull semen.
- D. “CRADA” means a cooperative research and development agreement authorized by the Federal Technology Transfer Act of 1986, 99 P.L. 502, 100 Stat. 1785, 15 U.S.C. § 3710a *et seq.*
- 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, as defined in NAAB’s Bylaws.
- G. “Regulating” means (1) adopting, maintaining, recommending, or encouraging that Members follow any Regulation; (2) taking or threatening to take formal or informal disciplinary action; or (3) conducting formal or informal investigations or inquiries.
- H. “Regulation” means any rule, regulation, resolution, interpretation, ethical ruling, policy, commentary, or guideline.
- I. “Research Project” means research and development activity (1) conducted by NAAB, or (2) conducted pursuant to a CRADA or any other arrangement to which NAAB is a party, including but not limited to, research and development activity relating to genetic evaluations.

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 trade 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:

- A. The ability of any Member to obtain, disclose, provide, sell, or use any technology or information resulting from any Research Project; and
- B. Price-related competition by its Members, including, but not limited to, adopting any regulation that maintains or stabilizes the retail or wholesale prices, credit terms, or other monetary or non-monetary compensation relating to the sale or acquisition of bulls or bull semen;

Provided, however, that nothing in this Order shall prohibit Respondent from any conduct that is reasonably necessary to achieve procompetitive benefits or efficiencies relating to the operation of Respondent or to the operation of an Artificial Insemination Business by its Members provided that such benefits or efficiencies likely would offset the anticompetitive harms.

III.

IT IS FURTHER ORDERED that;

- A. For a period of five (5) years from the date this Order is issued, Respondent shall notify the Commission in writing (hereinafter "Notification") no later than thirty (30) days after it adopts or modifies any Regulation that restricts or restrains the ability of any Member to obtain, disclose, provide, sell, or use any technology or information resulting from any Research Project.
- B. In the Notification, Respondent shall describe the Regulation as adopted or modified and the reasons for Respondent's action.

IV.

IT IS FURTHER ORDERED that;

- A. No later than thirty (30) days from the date this Order is issued, Respondent shall:

1. For a period of five (5) years, post and maintain the following items in the link on the homepage of NAAB's website entitled "Antitrust Compliance":
 - (a) An announcement that states "NAAB has agreed to change its practices relating to the use by members of technology and information developed through cooperative research and development programs to 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 this Order to its board of directors, officers, employees, and Members.
- B. 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.
- C. 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.
- D. 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.

V.

IT IS FURTHER ORDERED that from the date this Order is issued until November 2, 2020, Respondent shall design, maintain, and operate an antitrust compliance program to ensure compliance with this Order and the Antitrust Laws pursuant to the terms set forth in Paragraph IV. of the Decision and Order issued by the Commission in *In the Matter of National Association of Animal Breeders, Inc.*, Docket No. C-4558 (Nov. 2, 2015).

VI.

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.

VII.

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

- A. Any proposed dissolution of Respondent;
- B. Any proposed 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.

VIII.

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.

IX.

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 investigated the Resolution approved by NAAB's Board of Directors on October 14, 2008, titled "NAAB Resolution Regarding Access to USDA Genomic Transmitting Ability." The Resolution, which expired on February 28, 2013, relates to the results of a Cooperative Research and Development Agreement with the Agricultural Research Service of the United States Department of Agriculture. Policy 5 of the Resolution stated that:

GPTAs may only be obtained for bulls owned by the submitter or as to which the submitter has a written and signed agreement for purchase of at least 30% or lease of a bull, or an exclusive marketing agreement within the United States. Bull owners will receive GPTAs, unless explicitly stated otherwise in the purchase or lease agreement.

The Federal Trade Commission alleges that Policy 5 violated the Federal Trade Commission Act because it unnecessarily limited competition in the way members may use genomic predicted transmitting abilities (GPTAs) commercially.

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 will not create or enforce rules or guidelines that restrict how members can use any technology or information that results from research and development conducted through NAAB, to the extent such rules or guidelines are not reasonably necessary to achieve procompetitive benefits that likely would offset the anticompetitive harms.

The Decision and Order also prohibits NAAB from regulating or restraining price competition among its members, including adopting any regulation that maintains or stabilizes the retail or wholesale prices, credit terms, or other monetary or non-monetary compensation relating to the sale or acquisition of bulls or bull semen, to the extent such restraints or regulations are not reasonably necessary to achieve procompetitive benefits that likely would offset the anticompetitive harms.

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.