**Chocolate-makers hit with lawsuits**

**Class action lawsuits allege that chocolate-makers have engaged in an international cartel to raise prices.**

By HENRY D. MCCOY

STEMMING from an investigation by Canada’s Competition Bureau of alleged price-fixing by chocolate-makers, a small flood of class action antitrust cases have been filed in U.S. courts.

There are 51 cases filed as of April, the number has reportedly grown now to more than 80 cases. Three cases have been filed in Canada.

The cases — filed on behalf of direct purchasers of chocolates, such as large wholesalers, and indirect purchasers, such as retailers and consumers — allege that since 2002, chocolate-makers have engaged in an international cartel to raise prices in violation of Section 1 of the U.S. Sherman Antitrust Act.

Defendants include Hershey, Cadbury, Mars and Nestlé. Additionally, a Canadian trade association known as the Canadian Food Product Council Ltd., which describes itself as one of Canada’s largest independent wholesalers of foodstuffs, has been named as a defendant in one complaint as an alleged co-conspirator.

Government investigations

Through its Antitrust Division, the U.S. Department of Justice confirmed that it is continuing its investigation into alleged anticompetitive practices in the chocolate industry.

Marilyne Nakum, a spokesperson for the Canadian Competition Bureau, said its investigation is ongoing.

So far, as presently known, no indictments for alleged criminal price-fixing have been issued by either DOJ or Canada’s Competition Bureau.

The Competition Commission of the European Union is reported to have begun its own investigation into the practices of the chocolate industry.

**About the class actions**

A principal complaint among these cases charges the defendants with an international cartel to fix prices.

In contrast to vitamin antitrust cases, which involved criminal indictments and the largest single criminal antitrust fine (price-fixing) ever imposed in this country, these cases have been brought without any pending indictments.

The three cases were consolidated on April 7 as one multidistrict action (Case No. 1:08-mdl-1395) in the U.S. District Court for the Middle District of Pennsylvania in Harrisburg, not too far from the Hershey operation at Hershey, Pa.

Hershey attorney Thomas Yannucci said, “They haven’t alleged a single meeting in the U.S. by anybody at any time on any product to fix prices.”

Defendants also sought to file a motion to dismiss the cases before any discovery of documents, depositions, etc., is undertaken. Class counsel has argued that plaintiffs should be permitted discovery before the court considers any motion to dismiss. The court left the parties to brief the issue.

Some 12 law firms have applied to be lead class counsel. At the time this article was written, there had been no decision on the motions, according to the clerk of the court.

Nature of the suits

As presently postured, these cases fall within the category known in antitrust law as alleged “conscious parallelism” cases.

Plaintiffs asserted that because the defendants are alleged to have consciously copied each other in raising prices, this is sufficient to find a conspiracy or agreement in violation of Section 1 of the Sherman Act.

It is difficult to survive a motion to dismiss in a conscious parallelism case. Not only must there be allegations of conscious copying of prices, but the plaintiffs must also assert allegations that meet a laundry list of “plus factors” introduced by the courts themselves to cut out market-law, including reasons to increase prices, such as declining market share, before they have stated a case sufficient to go forward.

Plaintiffs must now allege facts that set forth a “plausible” basis for going forward. In their complaints, plaintiffs aver alleged facts that they assert will meet the plausibility and plus factor tests. Exactly what meets the new “plausibility” standard will surely be tested in these chocolate antitrust cases.

*Henry D. McCoy is a New York anti-trust attorney located in Peterstown, W.Va. The article is not intended to offer a legal opinion or legal advice.*

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**Feather meals evaluated for poultry**

**Because both products had similar amounts of fat, their calculated true metabolizable energy (TME) value was relatively equal and similar to the value reported by Major amino acid companies and recent research reports (Table 3), while the IDEA essentially digested efficiencies are consistent with recent estimates by other laboratories (Table 4).**

Therefore, it can be concluded that these nutrient values should be representative of current commercial feather meal production and can be used with confidence by poultry nutritionists during feed formulation.

The energy value of a feed ingredient is also of great importance in considering it for use in poultry diets. There has been a considerable difference in reported TME values for feather meal in past research (Han and Parsons, 1990; Dale, 1992; Wang and Parsons, 1997). Dale evaluated feather meals from 15 different commercial sources and concluded that metabolizable energy of feather meal could be accurately predicted from its fat content.

With this being the case, a model of feather meal samples from the current study was estimated using the equation reported by Dale and found to be 3.632 kcal/kg for feather meal processed with no blood and 3.594 kcal/kg for feather meal processed with blood.

While feather meal can never be considered a major source of protein in poultry diets due to its poor balance of amino acids, it has the possibility of providing some of the needs for essential amino acids.

Recent research has indicated that glycine needs of chicks can be seriously underestimated in low-protein, amino acid diets. Feather meal is a good source of glycine.

Data from this study should be of benefit to poultry nutritionists who wish to consider feather meal.

**References**


**4. Comparison of IDEA estimates of amino acid digestibility coefficients for commercial samples of feather meal processed with and without blood addition with recent estimates**

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