

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

ABRAHAM & VENEKLASEN JOINT VENTURE, §
ABRAHAM EQUINE, INC., and §
JASON ABRAHAM §
§
V. § CASE NO. 2:12-CV-103-J
§
AMERICAN QUARTER HORSE ASSOCIATION §

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON EQUITABLE RELIEF**

After the jury returned its verdict, the Court held a hearing on the question of equitable relief. The hearing concluded and evidence closed on August 12, 2013. Plaintiffs then submitted their proposed findings of fact and conclusions of law, to which the Court ordered Defendant to respond. Attached to Defendant's August 19, 2013 response, entitled "Defendant's Response to Plaintiffs' Request for Equitable Relief" (Doc. 138), is the verification of Robert Chad Pierce, General Counsel to the American Quarter Horse Association (AQHA), stating that "I have read Defendant's Response to Plaintiffs' Request for Equitable Relief above and swear that all the allegations of fact contained in that document are within my personal knowledge and are true and correct." The hearing on the request for equitable relief concluded on August 12, 2013. Any proposed facts in Defendant's response of August 19, 2013 that were not offered as evidence in the jury trial or at the hearing on equitable relief will not be considered by the Court. The Court has otherwise considered the response. The Court adopts herein as its findings of fact the Stipulated Facts included in Document 90 filed on July 11, 2013. The Court makes the following findings of fact and conclusions of law based on the pleadings and on the testimony and evidence admitted during the jury trial and subsequent hearing on Plaintiffs' request for injunctive relief.

1. This Court has personal jurisdiction over all the parties.
2. This Court has subject matter jurisdiction over this case.
3. AQHA and its members did not operate as a single business entity.
4. AQHA is a trade association.
5. The relevant product market in this case is the market for elite Quarter Horses.
6. The relevant geographic market in this case is the United States and Canada.
7. The American Quarter Horse Association (“AQHA”) has unique access to a business element essential to effective competition, so that registration is necessary for Plaintiffs to compete effectively in the market;
8. Decisions to exclude clones and their offspring from the AQHA registry were a result of concerted action.
9. The denial of registration to clones and their offspring unreasonably impairs competition in the relevant market.
10. AQHA's denial of registration to clones and their offspring affects interstate commerce.
11. Plaintiffs were injured in their business or property because clones and their offspring were denied registration with AQHA.
12. The market for elite Quarter Horses is a valid antitrust market.
13. AQHA possessed monopoly power in the market for elite Quarter Horses.
14. AQHA "willfully" acquired or maintained monopoly power in the market for elite Quarter Horses by engaging in anticompetitive conduct.
15. AQHA's conduct occurred in or affected interstate commerce.
16. Plaintiffs were injured in their business or property because of AQHA's anticompetitive conduct.
17. Plaintiffs were in fact injured as a result of Defendant's alleged violation of the antitrust laws.
18. AQHA's illegal conduct was a material cause of Plaintiffs' injury.

19. Plaintiffs' injury is an injury of the type that the antitrust laws were intended to prevent.
20. AQHA violated Section 1 of the Sherman Antitrust Act.
21. AQHA violated Section 15.05(a) of the Texas Free Enterprise and Antitrust Act.
22. AQHA violated Section 2 of the Sherman Antitrust Act.
23. AQHA violated Section 15.05(b) of the Texas Free Enterprise and Antitrust Act.
24. AQHA's actions caused damage to the Plaintiffs.
25. No sum of money would fairly and reasonably compensate Plaintiffs for the damages that AQHA caused each Plaintiff.
26. Plaintiffs prevailed on the merits in a trial by jury.
27. Plaintiffs will continue to suffer injury in the absence of an injunction.
28. Failure to grant an injunction will result in irreparable injury.
29. The injury to Plaintiffs outweighs any damage that the injunction will cause AQHA.
30. The injunction will not disserve the public interest.
31. Plaintiffs are entitled to the following injunction to prevent continuing damages:
 - A. Defendant American Quarter Horse Association is hereby enjoined and restrained from enforcing former Rule 227(a), currently known as **REG106.1**, the rule that precludes the registration of horses produced by any cloning process.
 - B. Defendant American Quarter Horse Association shall immediately amend its Registration Rules and Regulations to provide and allow for the registration of Quarter Horses produced through Somatic Cell Nuclear Transfer and their offspring by making at least the following amendments.
 1. Rule **REG102.1** shall be amended to include, (in addition to the named individuals set forth in the rule), the following:

In the case of Somatic Cell Nuclear Transfer, the record owner of the cell donor at the time of cloned foal birth.

2. Rule **REG102.2** shall be amended to include, (in addition to the named individuals set forth in the rule), the following:

In the case of Somatic Cell Nuclear Transfer, the record owner of the cell donor at the time of cloned foal birth.

3. Rule **REG102.8** shall be amended to provide for the parentage verification of foals, by adding “*or Somatic Cell Nuclear Transfer*” to the end of **REG102.8.2** so that it reads:

REG102.8.2 it was the result of an embryo/oocyte transfer *or Somatic Cell Nuclear Transfer;*

4. Rule **REG104** shall be amended to include a new section or subsection which provides that:

In the case of Somatic Cell Nuclear Transfer, the foal shall receive a registration number if confirmed by DNA testing to match the DNA of a numbered American Quarter Horse.

5. Rule **REG110** shall be amended, or another rule identified, to include a new section or subsection which provides that:

In the case of Somatic Cell Nuclear Transfer (“SCNT”), the cell donor must be listed on a properly completed SCNT [or Cloning] Verification Certificate (or such other form as AQHA may reasonably require).

6. Rule **REG 113** shall be amended to provide as follows (words that are stricken are to be deleted from the existing rule and those underlined and in italics are to be added):

REG113.1 The breeder of a horse is the owner of the dam at the time of service, except when a mare is held under lease at the time of breeding and written notification of such lease signed by the lessee and lessor is on file with AQHA, in which event the registration certificate shall show the lessee as the breeder. When a frozen embryo permit is used to register a foal; *or when an embryo that results from Somatic Cell Nuclear Transfer, is implanted,* the original purchaser of the frozen embryo permit *or of the SCNT permit* shall be listed as the breeder.

REG113.2 Registration applications must be accompanied by a completed breeder's certificate signed by the record owner of the sire and the record owner of the dam at the time of service. If a stallion and/or mare is bred while under lease agreement filed with AQHA the signature of such lessee on the breeder's certificate is required. A breeder's certificate is not required if:

REG113.2.1 a properly signed frozen embryo permit or SCNT permit is used to register a foal, as the breeder's certificate requirements were met when application to purchase the frozen embryo permit or SCNT permit was made.

7. Rule **REG112** shall be amended to provide as follows (words that are stricken are to be deleted from the existing rule and those underlined and in italics are to be added):

REG112.1. A horse foaled by a mare that is not its genetic dam but transferred to her by embryo/oocyte transfer technique or Somatic Cell Nuclear Transfer (SCNT), shall be eligible for registration. In addition to other AQHA registration rules, the offspring shall not be eligible for registration unless:

REG112.1.1 prior to the intended collection of the fertilized egg or cloned embryo transfer in the case of SCNT record owner or lessee has notified AQHA in writing of its intention to attempt an embryo/oocyte or SCNT transfer and has paid the proper fee. For mare enrollments received after collection of the embryo/oocyte, but prior to foaling, a late fee of \$25 will be assessed, in addition to regular fees required. For mare enrollments or for application of a SCNT permit received after foaling collection of the embryo/oocyte or preparation for transfer of donor cells in the case of SCNT, but prior to foaling, a late fee of \$50 will be assessed, in addition to fees required. The mare can be enrolled for her lifetime or the enrollment must be made each year that a transfer is to be performed, and once made, the fee is not refundable, nor can any substitution be made.

REG112.1.2 its pedigree has been verified through genetic testing of foal, sire and or donor mare as necessary; and by such other testing as AQHA reasonably deems necessary to verify the validity of the genetic testing, all expense of which shall be the registration applicant's.

REG112.2 The enrollment notice must be sent by certified mail, return receipt requested, to preserve for the record owner or lessee of the donor mare or of the cell donor horse in the case of SCNT, the only acceptable proof to AQHA of timely compliance, if such proof is requested.

REG112.3 In accordance with AQHA-approved procedures, an embryo/oocyte or SCNT transfer may be transported from the premises where the donor mare or the cell donor horse in the case of SCNT was located at the time of its removal from her or the cell donor horse for use in a recipient mare at another location. To be eligible for such transportation, notice of intention to transport the embryo/oocyte or SCNT transfer shall be given AQHA in conjunction with the advanced notice of intended collection specified above, and subject to the same late fees as specified above in the event such notice is not timely provided.

REG112.4 If a mare or cell donor horse in the case of SCNT is designated with AQHA for embryo/oocyte or SCNT transfer for a specific year, but the procedure is not attempted in the designated year, AQHA must be notified in writing by December 31 of the designated year that the owner has elected not to attempt embryo/oocyte or SCNT transfer. Without such notice a foal produced the following year by designated mare or as a result of SCNT is not eligible for registration without genetic testing for parentage verification. If a mare is enrolled for [embryo/oocyte transfer] her lifetime, all of her offspring must be parentage verified before they can be registered regardless of the breeding method used.

REG112.6 When a foal is produced by an embryo/oocyte transfer or by SCNT such fact will be listed on its registration certificate.

REG112.7 AQHA may inspect the premises and practices of any party using or intending to use embryo/oocyte transfer or SCNT procedures.

REG112.8 The burden of verifying true parentage is the registration applicant's, and any question of parentage shall be resolved against the registration of a horse carried by a recipient mare through embryo/oocyte transfer ***or through SCNT.***

REG112.8.1 ***In the event that the owner of an AQHA registered horse wishes to produce a foal through SCNT, the owner of the AQHA registered horse (for purposes of this rule, the "cell donor horse") must purchase a SCNT permit for \$50 from the AQHA. The application for purchase of a SCNT permit must be on a form provided by AQHA.***

- (a) ***The application for a SCNT permit must be signed by the owner of the cell donor horse. This permit, when used to register a foal, will serve as both stallion breeding report and the breeder's certificate.***
- (b) ***Each of the SCNT permits purchased may be used for the registration of only one foal. AQHA will record the number of outstanding certificates for each donor horse and that number will be the matter of public record. It is the ultimate responsibility of a prospective buyer to confirm with the seller the number of outstanding permit applications not yet recorded on AQHA records as of the date of sale.***
- (c) ***The ownership of the permit may be transferred. Each transfer of ownership of the SCNT permit shall be recorded by the AQHA. The rules for transfer of ownership as listed in Rule 224 for transfer of ownership of a horse shall apply, except the request for transfer of the permit shall be accompanied by the SCNT permit instead of the certificate of registration.***

(d) *When a SCNT permit is used to register a foal, the owner of the permit shall sign the registration application as the owner at the time of foaling or at some time thereafter. However, only the owner of the cell donor horse at the time of SCNT permit application may make any subsequent applications for SCNT permit with respect to subsequent Somatic Cell Nuclear Transfers that derive from the original cell donor horse.*

(e) *For foals produced by SCNT prior to the adoption of this rule, owners of a cell donor horse may complete the requirements listed above upon the adoption of this rule to satisfy the requirements for registration.*

8. Rule **REG106.1** shall be amended to provide as follows (words that are stricken are to be deleted from the existing rule and those underlined and in italics are to be added):

~~REG106.1 horses produced by any cloning process.~~ Cloning is defined as any method by which the genetic material of an unfertilized egg or an embryo is removed and replaced by genetic material taken from another organism, added to/with genetic material from another organism or otherwise modified by any means in order to produce a live foal. *A live foal produced from Somatic Cell Nuclear Transfer (SCNT) or other cloning process whose DNA matches the DNA of an AQHA registered horse and whose registration application is accompanied by the appropriate documentation is exempt from this rule and may be registered.*

9. Rule **REG113.1** shall be amended to include a new section or subsection which provides that:

All foals produced by Somatic Cell Nuclear Transfer and their offspring that meet requirements for AQHA registration shall be eligible to participate in full in the AQHA Incentive Fund.

10. Rule **REG102.8** shall be amended to provide that parentage verification is required for a foal resulting from Somatic Cell Nuclear Transfer, or for a foal resulting from a mating of one or more parents who are the result of Somatic Cell Nuclear Transfer, such as the following:

REG102.8.10 the foal is the result of Somatic Cell Nuclear Transfer.

REG102.8.11 the foal has one or more parent that was produced through Somatic Cell Nuclear Transfer.

11. Rule **REG108** shall be amended to provide additional reporting requirements involving genetic testing of horses produced through Somatic Cell Nuclear Transfer, as follows:

REG108.4 The owner or lessee of a horse produced from Somatic Cell Nuclear Transfer (SCNT) shall, at his own expense, file with AQHA a written report of the horse's genetic type, obtained from a laboratory approved by AQHA, and in accordance with procedures adopted by AQHA. This type shall include the mtDNA haplotype of the horse derived by SCNT. The written report shall also include a photo of the horse derived by SCNT and list all physical identifiers.

In the event that the existing AQHA rules and regulations conflict with this Court's mandated rules allowing registration of cloned Quarter Horses and their offspring, AQHA may in the regular course of its business adopt or amend such additional rules and regulations as shall be necessary to harmonize the rules imposed by this Court with other AQHA rules and regulations. No future adoption or amendment of a rule or regulation shall inhibit full implementation of the Court's order to register clones and clones' offspring without discrimination (except that such animals may be identified as clones or clones' offspring).

C. Subject to reasonably imposed and non-discriminatory rules, Defendant American Quarter Horse Association shall register Quarter Horses produced through Somatic Cell Nuclear Transfer and their offspring.

- D. Defendant is further enjoined from discriminating against or excluding cloned horses and their offspring from any AQHA sponsored, sanctioned, jointly conducted, or affiliated show, competition, and/or other equine related event. This injunction binds the parties, the parties' officers, agents, servants, employees, and attorneys, as well as other persons who are in active concert or participation with anyone who is a party, party's officer, agent, servant, employee, or attorney. Notwithstanding the foregoing, no one can be bound by this injunction who has not received actual notice of it, by personal service or otherwise. FRCP 65(d)(2)(C)
- E. After AQHA makes the ordered changes in regulations, the AQHA may in the regular course of its periodic review of rules and regulations in its regular course of business, review and amend the rules so long as the amendment remains consistent with the requirement that clones and clones' offspring be registered without discrimination (except that such animals may be identified as clones or clones' offspring).

Any finding of fact constituting in whole or in part a conclusion of law shall be deemed a conclusion of law. Any conclusion of law constituting in whole or in part a finding of fact shall be deemed a finding of fact.

It is SO ORDERED.

Signed this 22nd day of August, 2013.



MARY LOU ROBINSON
United States District Judge