

Sports Litigation Alert

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Cloning Decision Could Lead to Copycat Litigation in the World of Racing

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Owners of elite American Quarter Horses may soon be ponying up to create clones of their champions.

On July 31, 2013 a North Texas District Court jury decided that the American Quarter Horse Association's ("AQHA") rule prohibiting the registration of cloned American Quarter Horses violates federal and Texas antitrust laws. The AQHA, located in Amarillo, Texas, is the world's largest equine breed registry and membership organization, with more than 5 million American Quarter Horses registered to nearly 350,000 members.

The American Quarter Horse excels at sprinting short distances and racing of these animals is the third most popular form of horse racing, generating more than \$300 million in bets at U.S. racetracks in 2012. American Quarter Horses are bred to run in races of under a quarter-mile and have been clocked at speeds up to 55 mph.

Plaintiffs Jason Abraham and Gregg Veneklasen sued the AQHA for \$6 million in damages, arguing that Rule 227(a) of the AQHA, which prohibits the registration of clones, violated both the Sherman Antitrust Act and the Texas Free Enterprise Act, which reflects federal antitrust law.

Plaintiffs alleged that the association's prohibition of clones violates Section 1 of the Sherman Antitrust Act because the AQHA acted as a conspiracy that unreasonably restrained interstate or foreign trade. In response, the AQHA argued that the association is a single body and that the Board of Directors acted with a single interest, and therefore cannot be a conspiracy. Plaintiffs further alleged that the rule violated Section 2 of the Sherman Antitrust Act because the AQHA acted to maintain its monopoly power in the industry by enacting the rule. In response, the AQHA argued that the rule did not maintain monopoly power, but instead narrowed the association's reach by reducing the potential universe of its registered horses.

On July 31, the jury found that the AQHA's Rule 227(a) violated Section 1 and Section 2 of the Sherman Antitrust Act, as well as the equivalent Texas laws. In their decision, the jury awarded no damages, but could lead to the reversal of Rule 227(a)

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following an order the District Court Judge.

John Dobbs, the President of the AQHA's Executive Committee, is reported as saying that the AQHA will appeal the North Texas District Court decision to the 5th Circuit, though it may be a year before a decision is made on the appeal.

A decision in favor of the AQHA by the 5th Circuit could have a reversing effect on a number of changes to AQHA rules since 2000, while a decision against could further cement the trend toward the AQHA being more inclusive. In 2000, a breeder sued the AQHA regarding the association's rule that limited one registered horse per breeding pair per year, which thereby prohibited the use of embryo transplants to create multiple foals per breeding pair. The court held in an interlocutory order that the rule was an anti-competitive restraint of trade, adopted for the purposes of limiting the supply of registered quarter horses. Before a final order was written, the two parties settled and the AQHA changed its rules to allow for the registration of all embryo transfer foals. Since then, the AQHA has changed its rules to also register horses considered perlinos and cremellos to register, as well as horses deemed to be excessively white. The AQHA may be interested in pursuing a reversal to these changes if the 5th Circuit rules in their favor.

A decision against the AQHA could also lead to other breeder associations, including the American Kennel Club and American Paint Horse Association, to change their rules prohibiting the registration of clones.

An industry able to support quarter horse clones is likely ready to go if the courts side with the plaintiffs. Texas company ViaGen owns the patent that created the infamous cloned sheep, Dolly. The company has already cloned a number of horses, including Royal Blue Boon, the all-time leading dam of cutting horses with personal lifetime earnings of \$381,764 and produce earnings of over \$2.6 million. Hundreds of American Quarter Horse owners have already gene banked their horses in anticipation of the AQHA changing Rule 227(a).

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