

Jury Finds AQHA Clone Ban Violates Antitrust Laws

A federal jury sitting in Amarillo recently found that an American Quarter Horse Association rule prohibiting registration of cloned horses violates state and federal antitrust laws. The AQHA, founded in 1940, is the world's largest equine breed registry and membership organization, having more than 5 million registered horses and over 280,000 members.

The Rule

The AQHA allows registration of quarter horses that are conceived by live cover, artificial insemination, and embryo transfer. In 2004, however, the AQHA implemented Rule 227 (the rule has since been re-numbered as Rule REG106.1), which prohibits registration of "horses produced by any cloning process" including "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." Under the rule, both cloned horses and their offspring are banned from the AQHA registry.

AQHA rules are proposed by the membership and then sent to one of AQHA's standing committees, which now number 12. A proposal to allow the registration of clones and their offspring was sent to the Stud Book and Registration Committee (SBRC) which reviewed the proposal and made a recommendation it be denied. The SBRC recommendation was then open for discussion at the general membership meeting at the AQHA Convention, resulting in the Membership also voting to deny the request. At that point, the proposed rule was placed in the hands of the 300-member Board of Directors for a final decision. The Board of Directors likewise voted to deny the registration of clones or their offspring. It was with this background that Rule REG 106.1 was enacted. According to the AQHA, a survey revealed that 86% of its members favor banning cloned horses from the organization.

The Arguments

In April, 2012, two AQHA members who own cloned horses filed suit in federal court challenging AQHA Rule REG 106.1. The lawsuit alleges that the AQHA rule violates the federal Sherman Antitrust Act and the Texas Free Enterprise and Antitrust Act of 1983. Both acts prohibit the monopolization of any part of trade or commerce. Plaintiffs explain that the AQHA enjoys a place of "prominence, dominance and market power" in the quarter horse market and provide numerous examples, including that numerous races are limited to AQHA registered animals, that AQHA registered horses are found in all 50 states and in more than eighty other countries. Plaintiffs claim that

Rule REG 106.1 denies cloned horses the ability to compete effectively with registered horses and protects registered horses from having to compete with unregistered horses, which benefits registered horse owners at the expense of owners of cloned quarter horses. Further, they argue that the rule reduces the supply of top quality quarter horses in the market.

Plaintiffs claimed injuries including a 70-80% diminished value of their horses because of the AQHA's refusal to register their cloned horses, and claim that this also harms the public by inflating the value of registered horses. The plaintiffs seek both monetary damages and a permanent injunction against the AQHA to prohibit the enforcement of Rule REG 106.1.

The AQHA argues that the members of a voluntary, private organization should have the right to determine rules for their own organization. Further, the AQHA's mission includes working to improve the quality of each generation of quarter horse. The Association believes that cloning does not improve the breed, as it merely makes copies of the same horses. The AQHA also argued that the plaintiffs were free to create their own registry with its own rules that could compete with the AQHA.

The Verdict

At the conclusion of a jury trial, a 10-person federal jury panel seated in Amarillo found that rule violates both state and federal antitrust laws. The jury refused, however, to award plaintiffs any of the millions of dollars in monetary damages requested. Prior to reaching its verdict, the jury reported to the court that it was deadlocked after less than a day of deliberation. At that time, the judge ordered the jury to continue deliberations and the verdict was eventually reached on July 30. The court has issued an injunction that requires the AQHA to begin registering cloned horses and their offsprings.

The AQHA has announced that it intends to appeal this decision after a unanimous vote by the organization's Executive Committee. Upon appeal, the case will proceed to the United States Court of Appeals for the Fifth Circuit. It is expected that the AQHA will seek a stay to prevent registration of clones until the appeal is resolved.

The Potential Impact

If the decision is upheld, it could lead to similar lawsuits against other animal organizations with similar rules, including the American Paint Horse Association, the Jockey Club, and the American Kennel Club, both of which currently exclude cloned animals. Additionally, the ruling could impact other breed organizations that have rules excluding certain animals from membership. For example, although the American Angus Association allows the registration of cell-cloned calves, it bars the registration of animals possessing various genetic defects including double muscling, dwarfism, horns and an uncommon blood type. The AQHA ruling could encourage lawsuits by

disgruntled members of other organizations who are unsatisfied with rules prohibiting registration of animals.