

## Fed. R. Evid. 408 Settlement Communication

May 23, 2025

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*Via Email Only*

Re: HHCA Registry Dispute

Dear Mr. Perez:

I write in response to your letter, dated April 24, 2025. While we appreciate HHCA's willingness to agree to cease using AHCA's registration numbers on the HHCA Registry and scraping data from AHCA's Registry, we are disappointed that HHCA has not agreed to comply with the other items necessary to resolve this matter, but it seems to be because it has a fundamental misunderstanding of AHCA's claims.

### **I. HHCA's Entire Business Model Unfairly Exploits and Infringes AHCA's Copyrighted Registry.**

While there have been several rounds of negotiation that have focused on narrowed issues as we try to resolve this matter short of litigation, we cannot lose sight of the fundamental premise of AHCA's claims against HHCA.

HHCA's entire business model depends on unfairly exploiting the copyrighted AHCA Registry in its categorization scheme to "grade up" lesser-valued cattle through the HHCA Registry. Indeed, HHCA explains that:

**Dual Registered male or female** – A male or female currently registered in AHCA, Scottish or Canadian Registries can be accepted into the HHCA Herd Book.

In other words, instead of relying on its own unique and creative criteria, HHCA uses the AHCA Registry – which encompasses AHCA’s compilation of criteria – as a means to gain entrance into its “registry.”

And compounding the problem, HHCA doesn’t stop there. Rather, it uses AHCA’s copyrighted Registry as a basis to upgrade unregistered animals:

**4. Registration Categories.** See Attachment C for flow charts.

**4.1 Foundation Pure (B) registry:** Is the term for an original unregistered Scottish Highland male or female as verified by the committee from four (4) photos of the animal. Four (4) HHCA members have final say from pictures of the animal to be registered as B and the decision of the members must be unanimous. A Foundation Pure (B) registered animal can NEVER have an offspring that will go directly into the Herd Book.

4.1.1 Two (2) unregistered Scottish Highland animals.

*Example: Unregistered + Unregistered = B*

4.1.2 One (1) unregistered Scottish Highland animal bred to a (B) registered animal.

*Example: Unregistered + B = B*

4.1.3 One (1) unregistered Scottish Highland animal bred to an (A) registered animal.

*Example: Unregistered + A = B*

4.1.4 One (1) Unregistered Scottish Highland animal bred to a (HHCA Herd book, AHCA, Scottish, Canadian) registered animal.

*Example: Unregistered + HHCA, AHCA, SCOTTISH OR CANADIAN = B*

**4.2 (A) Registry:** An animal which is the offspring of the following combinations:

4.2.1 Two (2) Foundation Pure (B) registered Scottish Highland animals.

*Example: B + B = A*

4.2.2 One (1) Foundation Pure (B) registered Scottish Highland animal bred to an (A) registered animal, a Herd Book registered animal, an AHCA, Scottish Registry, Canadian Registry registered animal, or a dual registered animal from the HHCA Herd Book.

*Example: B + AHCA = A*

4.2.3 One (1) Foundation Pure (B) registered Scottish Highland animal + One (1) A registered Scottish Highland animal.

*Example: B+A=A*

**4.3 HHCA Herd Book:** An animal which is the offspring of the following combinations:

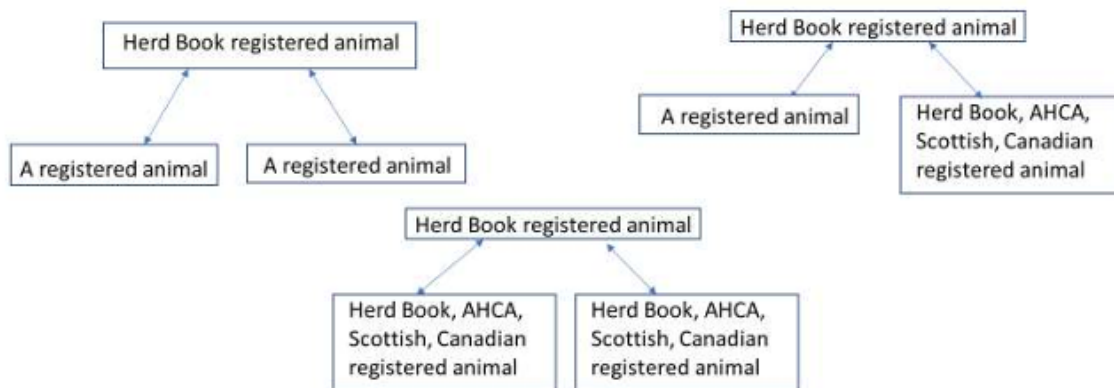
4.3.1 Two (2) (A) registered Scottish Highland animals.

*Example: A + A = HHCA Herd Book*

In sum, nearly HHCA’s entire herdbook depends on an animal being either AHCA-registered or being bred with an AHCA-registered animal. As is shown in Exhibit C of HHCA’s handbook, almost none of its herdbook would exist without relying on the AHCA Registry.

# Herd Book Registration Possibilities

- Herd Book Registered Animal



The only exceptions to this are animals registered in the Scottish or Canadian registries, but those are far fewer in number in the United States than AHCA animals.

HHCA is demonstrably trying to increase the value of otherwise lower-value animals by relying on the AHCA copyrighted Registry. This model not only infringes on AHCA's copyright, but it also constitutes unfair competition and unfair misappropriation/exploitation of business value as set forth further below.

## II. HHCA is Infringing on AHCA's Copyrighted Registry.

There is no dispute that AHCA owns the copyright in the AHCA Registry and has applied for copyright in the AHCA Certificates of Registration (Case #1-14491106531). Further, courts have long recognized registries (databases) that are protectable under copyright law where there is originality in the selection or arrangement of the data. *See Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 348 (1991) (noting that the choices of which facts to include, in what order to place them, and how to arrange the collected data as to selection and arrangement are sufficiently original that Congress may protect such compilations through the

copyright laws). The AHCA Registry satisfies such conditions to be protected by copyright.

The case of *Tennessee Walking Horse Breeders' & Exhibitors' Ass'n v. Nat'l Walking Horse Ass'n* – where the factual background is strikingly similar to the present matter – supports AHCA's copyright claim. See No. 1:05-0088, 2007 WL 325774, at \*7 (M.D. Tenn. Jan. 31, 2007).

In *Tennessee Walking Horse*, the plaintiff maintained the authoritative pedigree registry for Tennessee Walking Horses. *Id.* at \*1. The defendant unlawfully copied unique designations and pedigree information directly from plaintiff's Registry Certificates, such as markings and codes that denote a horse's foundation status, without authorization. *Id.* at \*2. While the defendant's application lacked space for pedigree input, it relied on the plaintiff's certificates as its primary source of lineage data. *Id.* Ultimately, the court granted the plaintiff's motion for summary judgment on its copyright infringement claim against the defendant, finding that the defendant had infringed plaintiff's copyright in its Registry and Registry Certificates. *Id.* at \*7.

With respect to the present matter, AHCA has maintained the AHCA Registry for decades, and it is the authoritative pedigree registry for Highland cattle in the United States. HHCA created its database in 2020 and relied on the registration status of AHCA animals as a proxy for HHCA's compilation criteria without AHCA's authorization. HHCA's application seeks information for two generations of cattle. But the HHCA Registry has information describing up to ten generations of cattle per head of cattle.

AHCA's claims against HHCA are even stronger than those in *Tennessee Walking Horse* because HHCA is explicitly using the AHCA Registry as a means to "upgrade" lesser-value animals, thereby increasing the value of HHCA's infringing Registry.

### **III. AHCA's Other Claims Against HHCA**

AHCA's claims against HHCA are not limited to copyright infringement. It also has claims under Colorado's Consumer Protection Act – which provides for treble damages, Colo. Rev. Stat. Ann. § 6-1-113 (West) – and unfair misappropriation/exploitation of business value. Each is discussed below.

a. *Colorado Consumer Protection Act/ Common Law Unfair Competition*

Under the Colorado Consumer Protection Act, a person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person does any of the following – all of which apply to HHCA's conduct:

...

(b) Either knowingly or recklessly makes a false representation as to the source, sponsorship, approval, or certification of ... property;

(c) Either knowingly or recklessly makes a false representation as to affiliation, connection, or association with or certification by another;

...

(e) Either knowingly or recklessly makes a false representation as to the characteristics, ... or quantities of ... property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;

...

Colo. Rev. Stat. Ann. § 6-1-105 (West).

Here, HHCA, in the course of its business, knowingly and recklessly made a false representation as to its affiliation, connection, and association with AHCA. HHCA relies on the AHCA Registry in its categorization scheme of registering cattle in the HHCA Registry in order to "grade up" cattle in the course of its business. Moreover, HHCA's actions adversely affect the public, both as actual and prospective consumers of HHCA's cattle, by misleading them into believing that HHCA's unregistered animals can be "graded up" to purebred status through the unauthorized use of AHCA's name, the copyrighted AHCA Registry, and the copyrighted AHCA Certificates of Registration. This misrepresentation falsely implies an affiliation, endorsement, or sponsorship by AHCA, thereby causing consumer confusion and unlawfully capitalizing on AHCA's established goodwill. Additionally, AHCA copyright in the AHCA Registry and its pending copyright application in the AHCA Certificates of Registration is prima facie evidence of AHCA's legally protected interest. Finally, HHCA's unauthorized use of AHCA's intellectual property is the cause of AHCA's injury.

In sum, HHCA's entire business model infringes the copyright AHCA has in the AHCA Registry, unfairly misappropriates and exploits AHCA's business value as well as falsely suggests an affiliation with AHCA, creating confusion and improperly capitalizing upon AHCA's invaluable goodwill by implying endorsement, affiliation, or sponsorship, which has not been given.

**b. Common Law Unfair Misappropriation/Exploitation of Business Value**

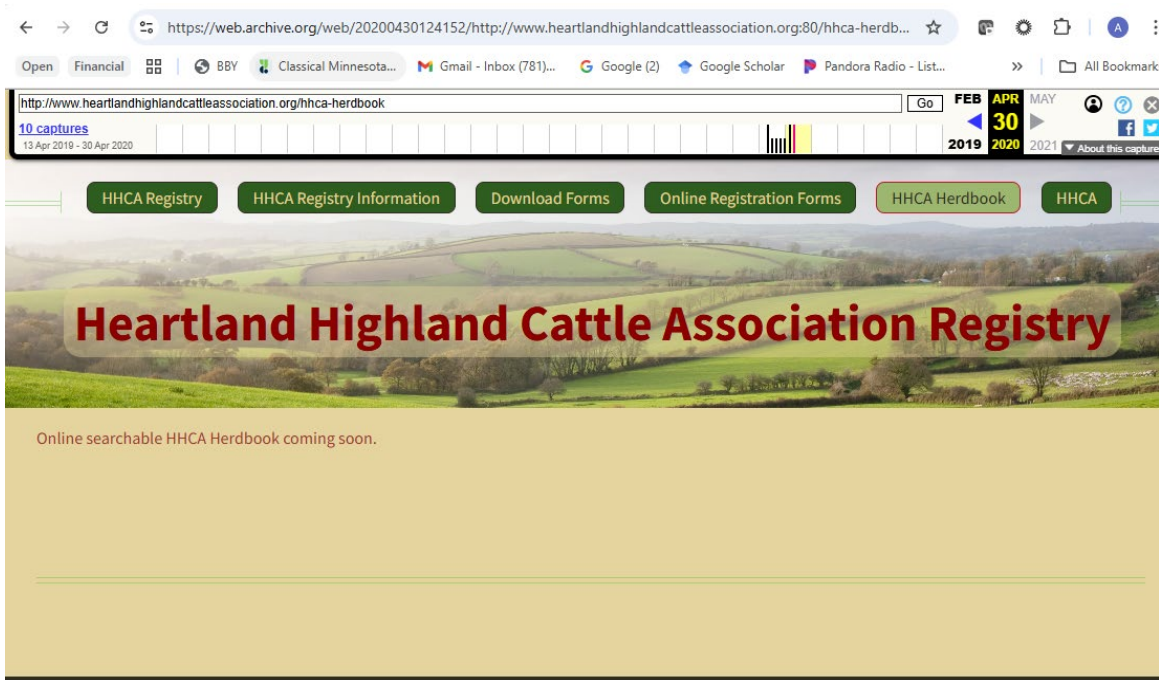
HHCA is also liable to AHCA for misappropriation of business value—a claim recognized by Colorado law. To prove a claim of misappropriation of business value, AHCA must establish that HHCA appropriated a product of AHCA's expenditure of labor, skill, and money—here, the AHCA Registry. *SGS Acquisition Co. Ltd. v. Linsley*, No. 16-CV-02486, 2018 WL 1456272, at \*7 (D. Colo. Mar. 23, 2018) (holding that plaintiff's allegations—that defendants misappropriated plaintiff's transactional structure and mining concept, ultimately profiting by purchasing the mine and selling it to a third party—are sufficient to state a claim). In *Smith v. TCI Communications, Inc.*, 981 P.2d 690, 694 (Colo. App. 1999), the appellate court reversed the trial court's dismissal of a claim for misappropriation as well as a claim for unjust enrichment. In that case, the court rejected the argument that the idea of a 24-hour cable channel with programming directed at an African American audience was not "novel" and instead found "that specific and unique plans for implementing this idea, which required the expenditure of considerable time and money to develop, were what defendants misappropriated and profited from." *Id.* at 695.

Similarly to *Smith* and *SGS Acquisition Co. Ltd.*, the AHCA Registry is the product of AHCA's expenditure of labor, skill, and money. And rather than expend the necessary effort to create its own registry, HHCA relies on the AHCA Registry to do so. It further unfairly uses the AHCA Registry to "grade up" lesser-valued animals through its Registry. Accordingly, AHCA allegations support a viable claim of Common Law Misappropriation of Business Value.

**IV. HHCA's Purported Explanation is Contradicted by an Archived Version of its Own Website**

You stated in your April 24, 2025, letter that HHCA "has not scraped data from AHCA's Registry." You further explained that November 9, 2022, "is the date when HHCA's registry 'went live' to the public; thus, a large number of applications were processed on that day." This assertion, however, is contradicted by evidence of an archive of the HHCA herdbook, which shows that it was live

and publicly accessible at least as early as October 2, 2022. For your review, below are two screenshots of HHCA's website: one dated April 30, 2020, showing that the online searchable HHCA herdbook was "coming soon," and another October 2, 2022, reflecting that the HHCA herdbook was, in fact, live to the public at that time.



http://hearhigh.pedigree-db.com/pedigree.cgi?searchform

1 capture  
2 Oct 2022

SEP OCT NOV  
02  
2021 2022 2023

### Heartland Highland Cattle Association Online Herd Book

**Search Criteria**

Animal Name:  HHCA Reg. No:   
Gender:  Color:   
Tattoo Left:  Tattoo Right:   
Date of Birth:  State/Province:   
Breeder Name:  Sire Name:   
Owner Name:  Dam Name:   
 Only show animals with photos.

Fill in the search criteria that interest you and leave the rest blank. Most of the fields accept partial input (for example, part of an animal's name). Once you've filled in the desired criteria, click the Begin Search button to find all matching animals. The results will appear below (you may have to scroll).

When searching by date of birth, dates are in the form MM/DD/YYYY (e.g. 05/17/2012). You can also enter just a year to find all the animals born in that year.

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[Start New Search](#) - [Trial Breeding](#) - [Upload Photos](#) - [Frequently Asked Questions](#) - [Return to HHCA Home Page](#)

Database last updated by [HHCA Registrar](#) (heartlandhighlandregistrar@gmail.com) on Thursday September 29, 2022 at 1:30 PM EDT.  
Pedigree search engine designed and developed by [Cable Computing, Inc.](#)  
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Therefore, on a single day, November 9, 2022, HHCA registered approximately 20% of the cattle currently listed in its Registry, using information that goes well beyond what a typical applicant would provide through HHCA's standard registration process. The timing, pedigree information, and now HHCA's disproven excuse only increase our belief that HHCA scraped data, including its selection and arrangement, from the AHCA Registry. And we expect that discovery in this matter will confirm our well-founded belief.

To the extent that it hasn't already, HHCA should be preserving all documents relating to this dispute, including all the information that it has regarding the origin of the information in its herdbook.

If AHCA is forced to litigate this matter, it will seek to enjoin HHCA's entire business based on its overall infringement and misappropriation of AHCA's copyrighted Registry. Instead, in an effort to resolve this matter, AHCA has made good-faith, reasonable proposals that would mitigate—but not altogether cease—HHCA's wrongful conduct. Instead of appreciating AHCA's willingness to compromise, HHCA has interpreted AHCA's offers as an invitation to argue the

merits of specific aspects of the settlement proposal as opposed to appreciating AHCA's broader theory of liability against HHCA were this dispute to proceed.

We hope that with this new appreciation of AHCA's claims and the existential threat they pose to HHCA, that HHCA will reconsider its refusal to do the following:

- (i) cease and desist from referencing and relying on AHCA's name and the AHCA Registry to establish categories for registering HHCA cattle;
- (ii) that HHCA take down all AHCA copyright protected material on HHCA's website, the HHCA Registry, and the HHCA Registry Handbook;
- (iii) that HHCA take down all references to AHCA from HHCA's website, the HHCA Registry, and the HHCA Registry Handbook; and
- (iv) that HHCA destroy any infringing material within its possession.

Please let us know whether you would be willing to resolve this dispute under these terms. We look forward to hearing from you.

Very truly yours,



Anne M. Lockner