

**Fed. R. Evid. 408 Settlement Communication**

December 19, 2025

*Via Email Only*

Paul Selness  
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Re: HHCA Registry Dispute

Dear Mr. Selness:

I write in response to your December 2, 2025 letter – a letter notable less for legal analysis than for its bluster. It does not meaningfully engage with AHCA’s well-founded claims, nor does it acknowledge the extensive factual record or the months of negotiations that culminated in your client’s agreement to cease certain conduct in exchange for AHCA’s forbearance of several viable litigation claims. The baseless and meaningless threats in your letter, untethered to either law or fact, are unnecessary and out of place in a professional exchange.

I assume this tone and lack of substance reflects a misunderstanding rather than an intentional disregard of the history and merit of AHCA’s claims. To that end, we provide the following summary of AHCA’s claims against your client and history of the nearly year-long negotiation that resulted in HHCA agreeing to take certain measures that, once formalized in writing, would cause AHCA to stand down and not bring suit against HHCA. I trust that with this background our future communications can proceed on a more constructive and professional footing.

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

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*

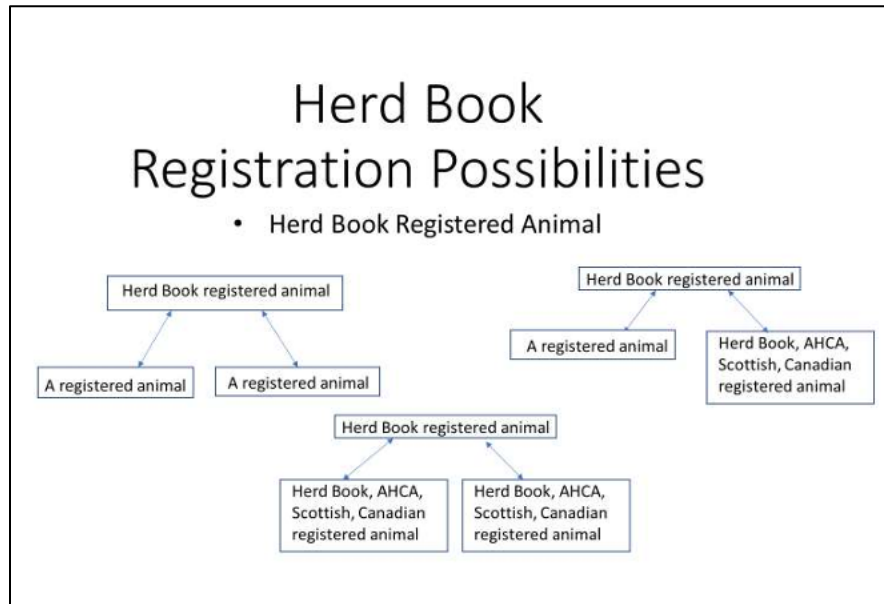
4.2.2 One (1) Foundation Pure (B) registered Scottish Highland animal bred to an (A) registered animal, a Herd Book registered animal, an AHCA, Scottish Registry, Canadian Registry registered animal, or a dual registered animal from the HHCA Herd Book.  
*Example: B + AHCA = A*

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.



**a. HHCA is infringing on AHCA's copyrighted Registry.**

There is no dispute that AHCA owns the copyright in the AHCA Registry and the AHCA Certificates of Registration. 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 Publ'ns, 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. 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-valued animals, thereby increasing the value of HHCA's infringing registry.

**b. 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.

**i. *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 copyright 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.

**ii. 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's allegations support a viable claim of Common Law Misappropriation of Business Value.

## **II. HHCA Already Agreed to Make Various Changes which AHCA Accepted and Memorialized in the Memorandum of Understanding (MOU).**

HHCA has already agreed to make various changes in response to AHCA's concerns. On April 24, 2025, HHCA agreed to cease using AHCA's registration number in its registry. On June 18, 2025, HHCA agreed to remove references to AHCA from its website, rules, and handbook, and that it would no longer consider an animal's AHCA registration when evaluating its classification in HHCA's registry. Additionally, it represented that it will also no longer accept an application form which merely attaches an animal's registration with another registry, instead only processing those who fill in HHCA's specific form.

On August 1, 2025, AHCA provided HHCA with a draft MOU memorializing what HHCA had agreed to and, in exchange, agreed to stand down on its litigation claims.

On August 22, 2025, HHCA responded by revising the MOU to materially change what it had already agreed to and to make it mutual. We responded, on October 30, 2025, that HHCA's proposed changes were unacceptable, contrary to the parties' previous agreement, and made no sense because AHCA had not been engaging in the same conduct as HHCA, creating an inappropriate false equivalency between the parties.

We explained to HHCA that AHCA entered these discussions precisely to afford HHCA the opportunity to resolve this matter short of litigation. AHCA has engaged with HHCA in good faith discussions aimed at finding a practical resolution that would avoid the need for litigation. AHCA's efforts therefore have been directed towards memorializing the terms that HHCA had agreed to that would allow both parties to move forward without litigation.

### III. This Dispute is Not "Closed."

To avoid any misunderstanding, AHCA remains willing to finalize an agreement that accurately reflects the commitments HHCA has already made and that would allow AHCA to stand down. The parties, however, must return to the framework that HHCA agreed to. Specifically, HHCA will remove references to AHCA from its website, registry, herdbook, rules, and handbook; will no longer consider an animal's AHCA registration when evaluating its classification in the HHCA registry; and will no longer accept an application form which attaches an animal's registration with another registry, instead only process those who fill in the HHCA's registry-specific form requesting the names of sire, dam, grandsires, and granddams of the animal being registered.

To move these efforts along, I am attaching the draft MOU that we provided to HHCA. To the extent HHCA proposes edits, we are open to minor refinements. We are not, however, willing to entertain the large-scale changes and false equivalencies that HHCA has previously added to the MOU.

Please let us know whether HHCA intends to respond to the attached draft MOU in a way that does not renege on what it already agreed to do or impose inappropriate and unnecessary obligations on AHCA, other than AHCA's agreement to refrain from suing your client so long as it does what it said it would do. If not, although AHCA is not a litigious organization, we will proceed as necessary to protect it from and seek redress for HHCA's wrongful conduct.

We look forward to hearing from you.

Very truly yours,



Anne M. Lockner

Attachment