

Trey V. Perez
507-354-3111
tperez@gislason.com

June 18, 2025

VIA E-MAIL ONLY

ALOCKNER@ROBINSKAPLAN.COM

Anne M. Lockner
Robins Kaplan
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402

Re: HHCA Registry Dispute
Our File No. 35872.1

RULE 408 SETTLEMENT COMMUNICATION
FOR SETTLEMENT PURPOSES ONLY
NOT ADMISSIBLE FOR ANY OTHER PURPOSE

Dear Ms. Lockner:

This letter is in response to your correspondence dated May 23, 2025. As a preliminary matter, Heartland Highland Cattle Association (“**HHCA**”) general membership and leadership consists primarily of current and former American Highland Cattle Association (“**AHCA**”) members. Having those connections, HHCA’s board members have reached out to AHCA members and position holders, and HHCA has yet to find anyone within AHCA who seemed aware of this registry dispute. HHCA requests AHCA board meeting minutes authorizing this action. In the event no such authorization was provided, please identify which committee is pursuing this action. Members of both organizations are concerned that AHCA—or some committee thereof—is overstepping its bounds and attempting to argue that an animal can effectively be lost to copyright, restricting how the actual owner can use their animal. The position that AHCA seems to be taking is that AHCA can control how and where an individual cattle owner uses and publish their animal’s name and other facts about the individual owner’s animal. This is clearly adverse to how Highland cattle registry members envision and utilize both registries, and is not permissible under copyright law.

HHCA’s leaders find it highly disingenuous for an organization like AHCA to claim HHCA is attempting to “grade up” cattle when AHCA was founded by effectively authorizing a single farm to function as a monopoly for “pure” Highlands within the United States. To be clear, HHCA is not trying to “grade up” any animals; nor is it trying to limit the breed. It is serving its members as best it can, providing as many facts on an animal’s background as possible. HHCA as an organization strives to promote the Highland cattle breed’s unique characteristics, and provides information and assistance to its members and others interested in the breed. It adheres to its breed standards developed in 2019, and assists breeders to improve their animals and the breed as a whole. In determining an animal’s

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eligibility for HHCA’s registration, HHCA’s Registration Committee considers a number of factors, including an animal’s registration status with other recognized registries, like AHCA, Canada, or Scotland. However, an animal does not automatically obtain HHCA registration merely because it is registered elsewhere. As further outlined below, HHCA has expended substantial time, money, and effort to build out its registry, and is not merely piggybacking off of AHCA.

I. HHCA’s Consideration of an Animal’s Registration is Merely A Factor in HHCA’s Broader Registration Determination.

AHCA’s oversimplification of HHCA’s registration process demonstrates a clear misunderstanding of HHCA’s policies and procedures. HHCA has spent no less than \$26,000.00 on developing and maintaining its registry since the beginning of 2024. Prior to 2024, HHCA spent over \$90,000 advancing its registry. HHCA has fostered its own proprietary tests for Highland cattle through collaborating with its business partners, tests which it keeps and maintains as trade secrets. The results of these tests are the primary consideration of HHCA’s Registration Committee. HHCA does not simply take an animal registered with another registry and automatically provide that animal an HHCA registration, nor does it provide HHCA registration to those animal’s offspring. Rather, HHCA has its own Registration Committee who reviews applications, compares photos of the animal to HHCA’s own breed standards, considers DNA testing information, and as part of this review process, the Registration Committee has considered an animal’s registration with AHCA, Canada, or Scotland registries. While such information assists the committee in validating pedigree, it is a small component in the final determination for an animal’s classification or registration.

While HHCA maintains that its procedures have not violated any of AHCA’s intellectual property or other rights, HHCA will remove references to AHCA from its website, Rules, and Handbook, and HHCA’s Registration Committee will no longer consider an animal’s registration with AHCA when considering an animal’s application moving forward.

II. As Previously Outlined, HHCA is Not Infringing AHCA’s Registry.

HHCA does not dispute AHCA’s ownership of AHCA’s registry. It disputes what elements of AHCA’s registry it has exclusive rights to based on copyright law. HHCA’s position is that an individual cattle owner—and not AHCA—names and tattoos the cattle that are registered with the parties’ registries. AHCA is not an original author of the name and tattoo information for each individual animal in its registry. Rather, AHCA owns the compilation of those items. Copyright ownership in a database does not provide the owner rights to all facts comprising that database. *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 348, 111 S. Ct. 1282, 1289, 113 L. Ed. 2d 358 (1991) (“The mere fact that a work is copyrighted does not mean that every element of the work may be protected. Originality remains the *sine qua non* of copyright; accordingly, copyright protection may extend only to those components of a work that are original to the author.”). HHCA is not disputing any authorial or original element of AHCA’s registry; rather, HHCA’s position is that AHCA did not

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author any animal names or tattoos within its registry, and that those works of authorship are, in actuality, owned by individual farmers who control the exclusive rights to them. That is to say, to the extent anyone owns a copyright in a registered animal's name and tattoo information, it is the cattle owner who names and tattoos the animal. *But see Am. Massage Therapy Ass'n v. Maxwell Petersen Assocs., Inc.*, 209 F. Supp. 2d 941, 948 (N.D. Ill. 2002) (outlining that underlying facts within a registry, like "names and addresses" may be copied at will (citing *Feist*, 499 U.S. at 350)). To the extent an animal's name and tattoo information are simply underlying facts within AHCA's registry, they are likewise not protected by copyright.

If an animal is registered with AHCA, the facts comprising that individual registration are not subject to copyright protection. *Feist*, 499 U.S. at 348 ("Others may copy the underlying facts from the publication, but not the precise words used to present them.") Moreover, "[w]here the compilation author adds no written expression but rather lets the facts speak for themselves, the expressive element is elusive." *Id.* at 349. In such an event, the only expressive elements are the selection and arrangement of the uncopyrightable facts. *Id.* "No matter how original the format, however, the facts themselves do not become original through association." *Id.* In fact, the *Feist* Court outlines that "a subsequent compiler remains free to use the facts contained in another's publication to aid in preparing a competing work, so long as the competing work does not feature the same selection and arrangement." *Id.*

A review of the parties' herdbooks demonstrates that they do not arrange factual information in the same manner. Using a single example of a deceased animal with dual registrations, one can see the registries compile their information differently. The screen captures displayed on the following pages depict both parties' respective herdbooks, demonstrating different arrangements and selection of data and information on the same animal.

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Spirit of LSR ♂

Exposed Dates

Name: Spirit of LSR
Reg #: H-000162
Date of Registration: 06/08/2020
Sex: Bull
DOB: 10/16/2017
EID or RFID: None
Left Ear Tattoo: LSR4D
Color: White
Date of Ownership:
Breeder: Keith or Sherilyn Bakeman, (NM46)
Owner: **Semmler, Becky, Semmler Farm (1138)**
Country of origin:
Price:

Health

DNA Completed:
DNA Case #:
DOD:
Cause of death:



Pedigree
Offspring(13)
Siblings(6)
Pedigree Analyses
trial mating

3 Generations Vertical Pedigree 2 generations with photo filter information

<p>Schon Boden's Dylan ♂</p>	<p>Cobblestones Patriotic ♂ Schon Boden's Destiny ♀</p>	<p>Cobblestones Patriot ♂ Cobblestones Misty ♀</p>
<p>LSR Chester's Peach ♀</p>	<p>Winchester of Mapleview ♂ LSR Pennyroyal ♀</p>	<p>Ruger of Mapleview ♂ Finola of Dirlane ♀ Cedrus of Swainee GBB 2C ♂ Anastasia of Mapleview ♀</p>

Direct Offspring/Calves ▼

Siblings from same Sire and Dam ▼

Siblings from Same Sire ▼

Siblings from same Dam ▲

Calves

Skye High Wayward Son ♂
LSR Chester's Peach ♀

↳ LSR Chelstain ♂ :

Calves

Sunset Eb's Kincaid ♂
LSR Chester's Peach ♀

↳ LSR Kincaid's Precious ♀ :

Calves

Colt's Ulla ♂
LSR Chester's Peach ♀

↳ LSR Kaluha ♀ :

HHCA's herdbook entry, available at: <https://hhca.pedigreedatabaseonline.com/en/Spirit-of-LSR/pedigree/635/i> (visited June 13, 2025).

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Highland Cattle Animal Details
Spirit of LSR (D)

[Home](#) [Animal Inquiry](#) [EPD Inquiry](#) [Mating Predictor](#) [Member Inquiry](#) [Sale Catalogs](#) [Semen Catalogs](#) [Download Files](#) [Online Transactions](#)

Regn. No.: 56135
Reg. Status Reg 02/15/17
Sex: Bull
Tattoo: LSR4D(LeftEar)
Birth Date: 10/16/2015
Status: Dead
Type: Fullblood
Breeder: Keith or Sherilyn Bakeman
Current Owner: Keith or Rebecca Semmler
Horn: Horned
Herd ID: LSR 4D
Color: White
Progeny: [\[3 - View\]](#) [\[View by Herd\]](#)

- [Cobblestones Patriot \(D\)](#)
- [Cobblestones Patriotic \(D\)](#)
- [Cobblestones Misty](#)
- **Sire:** [Schon Boden's Dylan \(D\)](#)
 - [Buckwheat of Gurholt \(D\) +](#)
 - [Schon Boden's Destiny](#)
 - [Schon Boden's Delilah **](#)
- Animal:** [Spirit of LSR \(D\)](#)
 - [Ruger of Mapleview \(AI.D\)](#)
 - [Winchester of Mapleview \(ET\)](#)
 - [Finola of Dirtane](#)
- **Dam:** [LSR Chester's Peach *](#)
 - [Cedrus of Swains GBB 2C \(D\)](#)
 - [LSR Pennyroyal](#)
 - [Anastasia of Mapleview](#)

	Birth Wt	Weaning Wt	Yearling Wt	Milk	Mat WWt
EPD	-	-	-	-	-
Accuracy	-	-	-	-	-
Breed Avg. EPDs for 2014 Born Calves Click for Percentiles					
EPD	+0.9	+5	+10	+2	+4

AHCA's herdbook entry, available at: <https://abri.une.edu.au/online/cgi-bin/i4.dll?1=232B2F&2=2420&3=56&5=2B3C2B3C3A&6=595D5D26585A2322&9=51525B58> (visited June 13, 2025).

To the extent AHCA argues copyright infringement based on use of lineage information, such information are facts not reasonably subject to copyright protection. Even the *Tennessee Walking Horse*

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Breeders' & Exhibitors' Ass'n v. Nat'l Walking Horse Ass'n case on which AHCA relies acknowledges that “the underlying facts regarding a particular horse or its lineage may not be subject to copyright protection[.]” No. 1:05-0088, 2007 WL 325774, at *7 (M.D. Tenn. Jan. 31, 2007). As such, AHCA has no protectable rights in the individual facts making up its registry, including an individual animal’s lineage. As outlined in my April 24, 2025 letter, the additional lineage information on certain animals was obtained by HHCA through individual cattle owners attaching AHCA registrations to the application rather than filling in HHCA’s registry form.

While AHCA dislikes that “much of the fruit of the compiler’s labor may be used by others without compensation,” this is not “some unforeseen byproduct of a statutory scheme,” but rather is “the essence of copyright,” and “a constitutional requirement.” *Feist Publications*, 499 U.S. at 349. This is because the primary objective of copyright “is not to reward the labor of the authors, but to promote the Progress of Science and useful Arts.” *Id.* (citing U.S. Const. Art. I, sec. 8, cl. 8). In this vein, copyright law provides authors exclusive rights in their original expression, but “encourages others to build freely upon the ideas and information conveyed by a work.” *Id.* at 349-50. As HHCA has not used any original expression or other copyrightable aspects of AHCA’s registry, no copyright infringement has occurred.

III. AHCA’s New Claims Against HHCA.

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

While I cannot agree that HHCA has any potential liability for claims under Colorado law, HHCA is prepared to cease the practice of referring to AHCA or considering an animal’s AHCA registration when HHCA’s Registration Committee makes a classification determination, and will remove references to AHCA from its website, rules, and herdbook. This change seemingly resolves your concerns for claims brought under the Colorado Consumer Protection Act (“CCPA”) and/or common law unfair competition.

As I cannot provide my client legal advice for the State of Colorado, I have advised my client to consult with Colorado counsel. From my perspective, AHCA seems to lack all the necessary elements for a CCPA claim in this case, but my client is reviewing with local counsel in Colorado on such matters. Additionally, the Tenth Circuit has held that a common law claim for unfair competition which mirrored a copyright claim was preempted by the Copyright Act. *See* 17 U.S.C. § 301; *see generally Ehat v. Tanner*, 780 F.2d 876 (10th Cir. 1985).

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

AHCA’s claim that HHCA relies on AHCA’s registry rather than expending resources to create its own is entirely baseless. HHCA has expended consideration time, money, labor, and skill in developing its own registry and classification factors distinct from those of AHCA. While HHCA has

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previously considered an animal's registration status with AHCA, Canada, or Scotland registries as a single factor in the applicant animal's ultimate classification decision, HHCA is prepared to remove this factor at your request. The removal of this as a factor would, again, seem to eliminate the need to bring claims for common law unfair misappropriation or exploitation of business value.

The Tenth Circuit has outlined that a novelty requirement is likely required for protection of an idea under Colorado law based on the Colorado Court of Appeals decision in *Smith v. TCI Communications, Inc.*, 981 P.2d 690, 694 (Colo. Ct. App. 1999). See *Donchez v. Coors Brewing Co.*, 392 F.3d 1211, 1222 (10th Cir. 2004). The idea of an animal registry generally is not novel, nor is the idea of a Highland cattle registry specifically.¹ However, AHCA seems to now allege that HHCA has taken specific and unique plans for implementing the idea of a Highland cattle registry. Yet AHCA has no evidence that such a taking occurred, because HHCA has received no specific or unique plans from AHCA on how to operate HHCA's registry. The *TCI Communications* case on which AHCA relies is not factually similar or analogous to this dispute.

The plaintiff in *TMI Communications* was able to allege the defendant misappropriated specific, unique, and confidential plans for the technical set-up, programming rights, sample programming, and additional information regarding project size, the general marketplace, advertising ideas, pricing, budgets, revenues, and profits for an African American entertainment channel. *TCI Communications*, 981 P.2d at 695. Here, HHCA did not obtain any information regarding how to set up its registry from AHCA, nor did it obtain any information from AHCA's registry as to the size of the Highland cattle market, advertising ideas, pricing, budgeting, revenues, or profits. In fact, HHCA has never received any information directly from AHCA's registry, as any information on HHCA's registry was provided by individual cattle farmers in the course of registering or attempting to register an animal with HHCA. What HHCA has done is consider an animal's AHCA registration as a single factor in making an animal's classification determination. This is a far cry from the information received by the *TCI Communications* defendants. AHCA registered animals make up less than two percent (2.0%) of animals on HHCA's registry.² If HHCA truly relied entirely on AHCA registration as AHCA claims, one would expect a significantly higher correlation.

IV. HHCA Has Never Scraped Data From AHCA's Registry.

HHCA has not and will not scrape data from AHCA's registry. HHCA's registry "went live" and was viewable to the public sometime in 2020 and entered a trial period. During this initial trial period, HHCA only put a small group of member's cattle into the registry to ensure the software worked for their purposes. HHCA's registrar received applications from other members of the public during the trial period; however, these applications were not processed or registered until November

¹ The Highland Cattle Society in Scotland was founded in 1884, predating AHCA by some 64 years.

² HHCA's registrar found 3,436 total registered animals on HHCA's registry as of June 9, 2025. Of these, 68 were also registered with AHCA.

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9, 2022. Thus, HHCA's registry did not go "live" to members of the public for registration until November 9, 2022, even if it was previously available for viewing. A large number of animals were registered on November 9, 2022 because the registrar processed applications as far back as 2020 on this date.

As previously explained, some applicants would attach an animal's registration form from other registries rather than fill in HHCA's registration application. These forms provided the registrar with more factual information on an animal's lineage than HHCA's application form; however, as AHCA has no intellectual property rights in said facts, and it is not illegal for a cattle owner to share factual information about an animal with HHCA, no action will be taken to revise HHCA's registry to remove any animal's lineage. As an animal's third-party registration will no longer be a factor during a registration determination, I have advised HHCA to cease the practice of accepting an animal's registration with another registry, and to only accept applications which fill in HHCA's specific form. They have agreed to adopt this procedure moving forward.

V. Conclusion.

In summary, HHCA will remove references to AHCA from its website, rules, and handbook, and will no longer consider an animal's AHCA registration when evaluating its classification in HHCA's registry. HHCA 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. HHCA maintains that it is the individual farmer members—and not AHCA—who owns the cattle, ultimately controls where the animal is registered, names the cattle, and tattoos the animal. Thus, HHCA will not be removing any information from any of the animals registered on HHCA's registry, as the information has been provided by the owner of the cattle who applied for registration. HHCA does not dispute AHCA's ownership of information within AHCA's registry as a whole; however, ownership of a registry does not make you the copyright holder of each individual fact and datapoint held within that registry. Consistent with HHCA's agreement to remove references to AHCA from its website, rules, and handbook, HHCA requests AHCA do the same.³

AHCA's own website tells fondly of the early days of AHCA's registry, and the "highlight" that forging an early relationship with the Highland Cattle Society in Scotland was for AHCA and the Highland breed as a whole.⁴ HHCA is not attempting to "grade up" low-end cattle, but rather hopes to benefit the entire Highland breed. HHCA still welcomes the idea of working alongside AHCA in this pursuit, but at this stage, HHCA does not intend to make any further concessions.

³ See particularly, Message from Past AHCA President, available at: <https://www.highlandcattleusa.org/viewarticle.aspx?aname=presmessage#gsc.tab=0>.

⁴ AHCA History, available at: <https://www.highlandcattleusa.org/viewarticle.aspx?aname=ahcahistory#gsc.tab=0>.

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Reservation of Rights. HHCA does not intend this letter to be a full recitation of the facts or its positions in this matter. HHCA's investigation of this matter is ongoing. Nothing stated or not stated in this letter shall be construed as a waiver of HHCA's rights or an admission against its interests. HHCA fully reserves all, and does not waive any, of its rights in connection with this matter.

Document Retention Notice. This letter serves as notice of potential litigation. Once You are on notice of potential litigation, You must preserve all documents and other evidence, whether physical, electronic, and other materials that are or may be relevant to the claims and defenses of either party. You have a duty to retain documents now in existence or hereafter created that relate to this dispute, regardless of Your company's document retention policies. Failing to retain documents, or intentionally destroying documents, may give rise to penalties or repercussions in the event litigation does occur. Please ensure that You do not alter, destroy, or otherwise lose any potential evidence, as such alternation, destruction, or loss may cause You to lose possible claims or defenses, and may subject You to further penalties.

Best Regards,



Trey V. Perez

TVP