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March 18, 2025

VIA E-MAIL & U.S. MAIL
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William E. Manske
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 Mr. Manske:

This letter is in response to your email dated March 6, 2025 providing certain settlement terms for Heartland Highland Cattle Association's ("HHCA") alleged scraping of American Highland Cattle Association's ("AHCA") registry. Your email provided six points to settle this dispute, including (1) HHCA removing any use of AHCA's naming conventions for animal identification; (2) HHCA removing use of AHCA's tattoo tracking convention; (3) HHCA removing AHCA registration numbers; (4) HHCA removing any linkage or direct reference to the AHCA herdbook; (5) HHCA removing any AHCA pedigree information that appears in the AHCA herdbook; and (6) HHCA agreeing to not scrape data from AHCA's registry. I address each of these points substantively below.

I. Removing AHCA's Naming Conventions.

HHCA is not agreeable to removing the herd letters at the beginning of an animals name. My contact at HHCA is a member of AHCA as well, and explained how these letters are assigned to an individual farm. According to her, when a new member farm joins AHCA, the new farm provides two or three options for an abbreviation of their farm to AHCA, and AHCA assigns one of these options to them based on availability. The herd letters are then used by the farm to identify all animals originating from a particular farm. To use an example from her own farm, she purchased an animal known as LSR Spirit, which she bought from Laughing Sun Ranch (LSR). Despite being transferred to another farm, that animal was known as LSR Spirit for its entire life. The animal's name includes the herd letters so that purchasers down the line can identify what farm the animal is coming from.

William E. Manske
March 18, 2025

The farm name and letters are generated by the individual farms prior to AHCA receiving them. Thus, these abbreviations do not constitute an “original work of authorship” as required under 17 U.S.C. § 102(a). If AHCA asserts rights in the collective use of these abbreviations under 17 U.S.C. § 103, such protection “extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material.” 17 U.S.C. § 103(b) (emphasis added). AHCA does not have exclusive rights in the preexisting material, i.e., the abbreviation of individual member farm names. Any farm that is a member of both AHCA and HHCA can choose to identify itself however it wants. If an individual member farm selects the abbreviation it already has on AHCA’s registry, AHCA cannot stop that individual member farm, the original author of the work, from identifying itself as it pleases on HHCA’s registry.

Moreover, AHCA does not have any intellectual property protection in the idea of placing herd letters in front of an animals name. This has been a long-standing practice in farming, and in any event, is not copyrightable pursuant to 17 U.S.C. § 102(b) (“In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”) A brief search of the USPTO uncovered no relevant patents protecting such naming convention held by AHCA. If such a patent does exist, please provide a registration number; however, HHCA may dispute any such patent on the grounds that it lacks both the novelty and non-obvious requirements of 35 U.S.C. §§ 102-103.

Thus, HHCA is unwilling to remove letters provided to it by individual member farms to identify themselves on HHCA’s registry. Moreover, HHCA is unwilling to remove these herd letters from any animals as it is a longstanding naming convention in the farming industry which AHCA has no right to prevent HHCA from utilizing.

II. Removing AHCA’s Tattoo Tracking Conventions.

For similar reasons outlined above, HHCA does not believe AHCA has ownership rights in its tattoo tracking conventions. According to AHCA’s website, the tattoo should include the original owner’s herd letters, a unique number, and the year the calf was born.¹ After discussing the tattoo tracking issue with my contact at HHCA, and reviewing AHCA’s website, it appears an individual animal’s tattoo is not assigned by AHCA and in fact is tattooed onto the animal prior to its registration with AHCA. It appears that animals are tattooed by individual cattle owners or by the vet or handler that an individual member farm brings in to provide the service. While it may follow the guidelines of AHCA, the tattoo is authored by the individual member farms and/or the individual those individual member farms bring in to perform the tattooing. Thus, AHCA lacks exclusive rights to these tattoos.

¹ See <https://www.highlandcattleusa.org/viewarticle.aspx?aname=tattoo#gsc.tab=0>.

William E. Manske
March 18, 2025

III. Removing AHCA's Registration Numbers.

HHCA has directed its registrars to no longer list AHCA-specific registration numbers, instead listing all incoming animals as “dual registered” and leaving it up to the individual cattle owners to keep track of the AHCA or other registration numbers for their animals. Therefore, HHCA believes this item should not be an issue moving forward. It may take time to update HHCA's registry to remove past entries listing AHCA registration numbers, but this will be completed in as timely a manner as possible.

IV. Removing References to AHCA's Herdbook.

HHCA requires additional clarification on this point, as HHCA does not link to AHCA's herdbook, and the only “reference” HHCA makes to AHCA's herdbook is an acknowledgment that AHCA has a herdbook and registry. HHCA likewise references other herdbooks and registries for highland cattle associations, including those in Scotland, Canada, and Australia. The existence of these herdbooks and registries are facts which are not subject to any intellectual property rights of AHCA. Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 344, 111 S. Ct. 1282, 1287, 113 L. Ed. 2d 358 (1991) (“That there can be no valid copyright in facts is universally understood.”).

Upon review, I could not find anything on HHCA's website or registry that links or otherwise addresses any substantive elements of any other cattle association's herdbook or registry. Please advise what precisely AHCA is asking HHCA to remove in this vein.

V. Removing AHCA's Pedigree Information.

HHCA requires additional clarification on this point, as animals that are registered with both AHCA and HHCA registries will continue to have the same parents. The sire and dam for an individual animal are facts not reasonably subject to intellectual property protections. Feist, 499 U.S. at 344 (“That there can be no valid copyright in facts is universally understood.”). This is because “facts do not owe their origin to an act of authorship.” *Id.* at 347. Factual compilations, on the other hand, may possess the required originality for copyright protection. *Id.* at 348. The compilation author typically chooses which facts to include, in what order to place them, and how to arrange the collected data so that the data may be effectively used by readers. *Id.* However, protection for compilations is subject to important limitations; namely, the “mere fact that a work is copyrighted does not mean that every element of the work may be protected.” *Id.* Copyright protection “may extend only to those components of a work that are original to the author.” *Id.* In Feist, the Supreme Court outlines that a compilation author may express facts in an original collocation of words and claim copyright protection in that compilation; however, “[o]thers may copy the underlying facts from the publication, but not the precise words used to present them.” *Id.* In short, regardless of how clever or original AHCA's compilation of progeny data is, “the facts themselves do not become original through association.” *Id.* at 349. “This inevitably means that the copyright in a factual compilation is thin.” *Id.*

GISLASON & HUNTER LLP

Page 4

William E. Manske
March 18, 2025

HHCA understands that AHCA has copyright protection in its original expression of the collection of facts that make up its database; however, the individual sire and dam for an animal does not concern the collective database that AHCA has compiled over the years or, more particularly, AHCA's expression of the facts that make up those individual data points of the collective. "A factual compilation is eligible for copyright if it features an original selection or arrangement of facts, but the copyright is limited to the particular selection or arrangement. In no event may copyright extend to the facts themselves." Feist, 499 U.S. at 350-51. Copyright law "does not prevent subsequent users from copying from a prior author's work whose constituent elements are not original—for example...facts, or materials in the public domain—as long as such use does not unfairly appropriate the author's original contributions." *Id.* at 350 (quoting Harper & Row Publishers, Inc. v. Nation Enterprises, 471 U.S. 539, 548, 105 S.Ct. 2218, 2224, 85 L. Ed. 2d 588 (1985)).

While AHCA's frustrations are understandable, "[t]he primary purpose of copyright is not to reward the labor of authors, but to promote the Progress of Science and useful Arts." Feist, 499 U.S. at 349 (quoting U.S. Const. Art. I, § 8, cl. 8) (cleaned up). In that vein, HHCA does not purport to have exclusive ownership the facts comprising its own progeny information, and AHCA is welcome to utilize the same for the benefit of the breed as a whole. HHCA seeks clarification on what "pedigree information" AHCA seeks to have removed from HHCA's registry, with the understanding that AHCA does not have exclusive rights in the facts of which sire and dam produced which cattle.

VI. Scraping Data.

As I outlined on the phone in our initial conversation, HHCA has never scraped data from AHCA's database, and merely takes information provided from individual cattle owners providing on HHCA's intake forms to fill out its registry. As such, HHCA agrees to abide by its current practices and not scrape data from AHCA's registry.

VII. Conclusion.

As outlined above, HHCA agrees to Points III (Removing AHCA's Registration Numbers) and VI (Scraping Data).

HHCA cannot agree to Point I (Removing AHCA's Naming Convention), in particular, the removal of the herd letters before the name of individual cattle, because AHCA did not author the same, and therefore lacks exclusive rights in the use of herd letters from individual member farms. For similar reasons, HHCA cannot agree to Point II (Removing AHCA's Tattoo Tracking Convention) because the tattoo is also authored by individual member farms or individuals brought in by individual member farms to perform the tattoo service. If there is a misunderstanding on how these herd letters are generated, please let me know and we can discuss further.

GISLASON & HUNTER LLP

Page 5

William E. Manske
March 18, 2025

Regarding Point IV (Removing References to AHCA's Herdbook) and Point V (Removing AHCA's Pedigree Information), please advise what information AHCA is seeking to have removed.

* * *

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.

Sincerely,



Trey V. Perez

TVP:elm