

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

ABRAHAM & VENEKLASEN JOINT VENTURE,
ABRAHAM EQUINE, INC., and
JASON ABRAHAM

V.

AMERICAN QUARTER HORSE ASSOCIATION

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CASE NO. 2:12-CV-103-J

ORDER

After a hearing on equitable relief, the Court informed counsel that it would grant an injunction requiring Defendant American Quarter Horse Association to register horses produced by cloning and their offspring. Accordingly, the Court is considering ordering specific changes in the AQHA registration rules and regulations as follows:

- A. Defendant American Quarter Horse Association is hereby enjoined and restrained from enforcing former Rule 227(a), currently known as **REG106.1**, the rule that precludes the registration of horses produced by any cloning process.
- B. Defendant American Quarter Horse Association shall amend its Registration Rules and Regulations to provide and allow for the registration of Quarter Horses produced through Somatic Cell Nuclear Transfer and their offspring by making at least the following amendments:
 1. Rule **REG102.1** shall be amended to include, (in addition to the named individuals set forth in the rule), the following:

In the case of Somatic Cell Nuclear Transfer, the record owner of the cell donor at the time of cloned foal birth.
 2. Rule **REG102.2** shall be amended to include, (in addition to the named individuals set forth in the rule), the following:

In the case of Somatic Cell Nuclear Transfer, the record owner of the cell donor at the time of cloned foal birth.

3. Rule **REG102.8** shall be amended to provide for the parentage verification of foals, by adding "or Somatic Cell Nuclear Transfer" to the end of **REG102.8.2** so that it reads:

REG102.8.2 it was the result of an embryo/oocyte transfer or Somatic Cell Nuclear Transfer;

4. Rule **REG104** shall be amended to include a new section or subsection which provides that:

In the case of Somatic Cell Nuclear Transfer, the foal shall receive a registration number if confirmed by DNA testing to match the DNA of a numbered American Quarter Horse.

5. Rule **REG110** shall be amended, or another rule identified, to include a new section or subsection which provides that:

In the case of Somatic Cell Nuclear Transfer ("SCNT"), the cell donor must be listed on a properly completed SCNT [or Cloning] Verification Certificate (or such other form as AQHA may reasonably require).

6. Rule **REG 113** shall be amended to provide as follows (words that are stricken are to be deleted from the existing rule and those underlined and in italics are to be added):

REG113.1 The breeder of a horse is the owner of the dam at the time of service, except when a mare is held under lease at the time of breeding and written notification of such lease signed by the lessee and lessor is on file with AQHA, in which event the registration certificate shall show the lessee as the breeder. When a frozen embryo permit is used to register a foal, or when an embryo that results from Somatic Cell Nuclear Transfer, is implanted, the original purchaser of the frozen embryo permit or of the SCNT permit shall be listed as the breeder.

REG113.2 Registration applications must be accompanied by a completed breeder's certificate signed by the record owner of the sire and the record owner of the dam at the time of service. If a stallion and/or mare is bred while under lease agreement filed with AQHA the signature of such lessee on the breeder's certificate is required. A breeder's certificate is not required if:

REG113.2.1 a properly signed frozen embryo permit or SCNT permit is used to register a foal, as the breeder's certificate requirements were met when application to purchase the frozen embryo permit or SCNT permit was made.

7. Rule **REG112** shall be amended to provide as follows (words that are stricken are to be deleted from the existing rule and those underlined and in italics are to be added):

REG112.1. A horse foaled by a mare that is not its genetic dam but transferred to her by embryo/oocyte transfer technique or Somatic Cell Nuclear Transfer (SCNT), shall be eligible for registration. In addition to other AQHA registration rules, the offspring shall not be eligible for registration unless:

REG112.1.1 prior to the intended collection of the fertilized egg or cloned embryo transfer in the case of SCNT record owner or lessee has notified AQHA in writing of its intention to attempt an embryo/oocyte or SCNT transfer and has paid the proper fee. For mare enrollments received after collection of the embryo/oocyte, but prior to foaling, a late fee of \$25 will be assessed, in addition to regular fees required. For mare enrollments or for application of a SCNT permit received after foaling collection of the embryo/oocyte or preparation for transfer of donor cells in the case of SCNT, but prior to foaling, a late fee of \$50 will be assessed, in addition to fees required. The mare can be enrolled for her lifetime or the enrollment must be made each year that a transfer is to be performed, and once made, the fee is not refundable, nor can any substitution be made.

REG112.1.2 its pedigree has been verified through genetic testing of foal, sire and or donor mare as necessary; and by such other testing as AQHA reasonably deems necessary to verify the validity of the genetic testing, all expense of which shall be the registration applicant's.

REG112.2 The enrollment notice must be sent by certified mail, return receipt requested, to preserve for the record owner or lessee of the donor mare or of the cell donor horse in the case of SCNT, the only acceptable proof to AQHA of timely compliance, if such proof is requested.

REG112.3 In accordance with AQHA-approved procedures, an embryo/oocyte or SCNT transfer may be transported from the premises where the donor mare or the cell donor horse in the case of SCNT was located at the time of its removal from her or the cell donor horse for use in a recipient mare at another location. To be eligible for such transportation, notice of intention to transport the embryo/oocyte or SCNT transfer shall be given AQHA in conjunction with the advanced notice of intended collection specified above, and subject to the same late fees as specified above in the event such notice is not timely provided.

REG112.4 If a mare or cell donor horse in the case of SCNT is designated with AQHA for embryo/oocyte or SCNT transfer for a specific year, but the procedure is not attempted in the designated year, AQHA must be notified in writing by December 31 of the designated year that the owner has elected not to attempt embryo/oocyte or SCNT transfer. Without such notice a foal produced the following year by designated mare or as a result of SCNT is not eligible for registration without genetic testing for parentage verification. If a mare is enrolled for [embryo/oocyte transfer] her lifetime, all of her offspring must be parentage verified before they can be registered regardless of the breeding method used.

REG112.6 When a foal is produced by an embryo/oocyte transfer or by SCNT, such fact will be listed on its registration certificate.

REG112.7 AQHA may inspect the premises and practices of any party using or intending to use embryo/oocyte transfer or SCNT procedures.

REG112.8 The burden of verifying true parentage is the registration applicant's, and any question of parentage shall be resolved against the registration of a horse carried by a recipient mare through embryo/oocyte transfer or through SCNT.

REG112.8.1 In the event that the owner of an AQHA registered horse wishes to produce a foal through SCNT, the owner of the AQHA registered horse (for purposes of this rule, the "cell donor horse") must purchase a SCNT permit for \$50 from the AQHA. The application for purchase of a SCNT permit must be on a form provided by AQHA.

(a) The application for a SCNT permit must be signed by the owner of the cell donor horse. This permit, when used to register a foal, will serve as both stallion breeding report and the breeder's certificate.

(b) Each of the SCNT permits purchased may be used for the registration of only one foal. AQHA will record the number of outstanding certificates for each donor horse and that number will be the matter of public record. It is the ultimate responsibility of a prospective buyer to confirm with the seller the number of outstanding permit applications not yet recorded on AQHA records as of the date of sale.

(c) The ownership of the permit may be transferred. Each transfer of ownership of the SCNT permit shall be recorded by the AQHA. The rules for transfer of ownership as listed in Rule 224 for transfer of ownership of a horse shall apply, except the request for transfer of the permit shall be accompanied by the SCNT permit instead of the certificate of registration.

(d) When a SCNT permit is used to register a foal, the owner of the permit shall sign the registration application as the owner at the time of foaling or at some time thereafter. However, only the owner of the cell donor horse at the time of SCNT permit application may make any subsequent applications for SCNT permit with respect to subsequent Somatic Cell Nuclear Transfers that derive from the original cell donor horse.

(e) For foals produced by SCNT prior to the adoption of this rule, owners of a cell donor horse may complete the requirements listed above upon the adoption of this rule to satisfy the requirements for registration.

8. Rule **REG106.1** shall be amended to provide as follows (words that are stricken are to be deleted from the existing rule and those underlined and in italics are to be added):

~~REG106.1 horses produced by any cloning process.~~ Cloning is defined as 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. *A live foal produced from Somatic Cell Nuclear Transfer (SCNT) or other cloning process whose DNA matches the DNA of an AQHA registered horse and whose registration application is accompanied by the appropriate documentation is exempt from this rule and may be registered.*

9. Rule **REG113.1** shall be amended to include a new section or subsection which provides that:

All foals produced by Somatic Cell Nuclear Transfer and their offspring that meet requirements for AQHA registration shall be eligible to participate in full in the AQHA Incentive Fund.

10. Rule **REG102.8** shall be amended to provide that parentage verification is required for a foal resulting from Somatic Cell Nuclear Transfer, or for a foal resulting from a mating of one or more parents who are the result of Somatic Cell Nuclear Transfer, such as the following:

REG102.8.10 the foal is the result of Somatic Cell Nuclear Transfer.

REG102.8.11 the foal has one or more parent that was produced through Somatic Cell Nuclear Transfer.

11. Rule **REG108** shall be amended to provide additional reporting requirements involving genetic testing of horses produced through Somatic Cell Nuclear Transfer, as follows:

REG108.4 The owner or lessee of a stallion or mare produced from Somatic Cell Nuclear Transfer (SCNT) from an AQHA cell donor stallion or mare that has produced one or more AQHA registered foals and who plans to expose SCNT derived stallion to one or more mares producing registered offspring shall, at his own expense, file with AQHA a written report of the horse's genetic type, obtained from a laboratory approved by AQHA, and in accordance with procedures adopted by AQHA. This type shall include the mtDNA haplotype of horse derived by SCNT. The written report shall also include a photo of any horse derived by SCNT and list all physical identifiers.

- C. Subject to reasonably imposed and non-discriminatory rules, Defendant American Quarter Horse Association shall register Quarter Horses produced through Somatic Cell Nuclear Transfer and their offspring.
- D. Defendant is further enjoined from discriminating against or excluding cloned horses and their offspring from any AQHA sponsored, sanctioned, jointly conducted, or affiliated show, competition, and/or other equine related event. For the purposes of this injunction, persons who conduct shows, competitions, and other equine related events where money is paid or AQHA points are awarded, are deemed to be "other persons who are in active concert or participation with" AQHA for purposes of Rule 65(d)(2)(C) of the Federal Rules of Civil Procedure.


Any objection to the foregoing changes in the rules and regulations shall be filed with the clerk of the Court no later than 12:00 noon, August 19, 2013. The objections shall address each *specific* proposed change in the rules and regulations and state the requested alternative change to the rules and regulations.

The Defendant may also submit not later than 12:00 Noon, August 19, 2013, the changes in specific rules and regulations which the AQHA believes represent the best specific changes in the rules and regulations to permit registration of cloned horses. The Court will consider that submission, as well as the foregoing proposed changes.

Plaintiffs were ORDERED to furnish Defendant with Plaintiffs' billing statements so that it could consider them before making any objections to Plaintiffs' request for attorneys' fees. Defendant was ORDERED to respond to Plaintiffs' request for attorneys' fees by August 14, 2013. That Order for Defendant to respond to Plaintiffs' request for attorneys' fees is not extended by this Order.

IT IS SO ORDERED.

Signed this 14th day of August, 2013.


MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE