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Attack of the Clones?: Fifth Circuit Court of Appeals Allows AQHA to Deny Registration of Cloned Horses (/full-blog/mattioni)

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By: Zack Mattioni, Staff Member

The cloning of elite horses may seem like the plot of Hollywood's latest science fiction film, but in reality it is a legitimate, viable operation, albeit one that now faces a major setback.[i] On January 14, 2015, the United States Court of Appeals for the Fifth Circuit reversed a lower court decision that required the American Quarter Horse Association (AQHA), the largest equine membership organization in the world[ii], to include cloned horses in its breed registry.[iii] The AQHA is now free to enforce "Rule 227(a)," originally enacted by its membership in 2004, which categorically denies registration for all clones and their offspring.[iv]



(<http://equestrianquarterly.com/wp-content/uploads/2014/03/clone.jpg>)

The current legal battle demonstrates that, in the twelve years since the first successful cloning of a horse[v], the legitimacy of clones remains stubbornly debated. Proponents of cloning argue that it offers a chance to preserve the DNA of champion horses that are deceased or are otherwise unable to

reproduce.[vi] This seemingly addresses the fact that many top competitors are geldings, which are often castrated before their exceptional potential is known.[vii]

The plaintiffs that filed suit against the AQHA also contend that its policy against cloned horses is motivated by a self-serving economic interest.[viii] Their assertion is that some of the most prominent cloning opponents are their potential business rivals, who are solely interested in keeping prices for their own horses high by avoiding competition with other elite animals.[ix] The end result, the plaintiffs claim, is the perpetuation of a monopoly supported only by greed and sham studies.[x]

The AQHA, unsurprisingly, sees things differently. It stresses that cloning frustrates the DNA testing process employed by the breed registry, making it impossible to discern a horse's lineage.[xi] The AQHA furthermore firmly insists that breeding, not cloning, is the only way to improve each generation of horses.[xii] It warns that the high price of cloning (on average over \$150,000) will ensure that only the most elite horses are included in the process.[xiii] Potentially, the continued cloning of these animals would eventually narrow the existing gene pool and result in the exacerbation of known genetic defects, as well as the creation of new ones.[xiv]

It cannot be ignored that cloning entails serious potential harm. Frequently, cloned animals suffer from diseases and developmental abnormalities that prematurely end their lives.[xv] But supporters of the practice believe the benefits outweigh the risks. The International Federation for Equestrian Sports (Fédération Équestre Internationale, or FEI), the international governing body for equestrian sports, recently reversed its 2007 ban on cloned horses, citing the value of keeping superior genetics in the gene pool and the dropping cost of cloning eventually leveling the playing field.[xvi] However, with the AQHA remaining steadfastly devoted to its anti-cloning policy, and its opponents set on appealing the verdict in its favor[xvii], it is clear that an amicable resolution is unlikely in the near future.

[i] Pat Raia, *Appeals Court Rules AQHA Can Reject Clones*, *The Horse* (Jan. 15, 2015), <http://www.thehorse.com/articles/35185/appeals-court-rules-aqha-can-reject-clones>.

[ii] Mary W. Craig, *Mirror, Mirror in the Stall: Animal Cloning and Its Legal Implications for Equine Registry Associations*, 5 *Ky. J. Equine, Agric. & Nat. Resources* L. 273, 281 (2013).

[iii] *Id.*; *AQHA Prevails in Cloning Lawsuit*, American Quarter Horse Association (Jan. 14, 2015), <http://www.aqha.com/News/News-Articles/2015/January/01142015-Cloning-Lawsuit-Update.aspx>.

[iv] *Abraham & Veneklasen Joint Venture v. Am. Quarter Horse Ass'n*, No. 2:12-CV-103-J, 2013 WL 2297104, at *1 (N.D. Tex. May 24, 2013).

[v] Craig, *supra* note ii, at 274.

[vi] Mike Bruner, *Judge Orders Quarter Horse Association to Register Clones*, CNBC (Aug. 13, 2013, 12:53 PM), <http://www.cnbc.com/id/100959513#>.

[vii] Ollie Williams, *Battle of the Clones: When Will a Replica Horse Win Olympic Gold?* CNN (Feb. 20, 2015), <http://edition.cnn.com/2015/02/20/equestrian/horse-cloning-olympics/>.

[viii] *Abraham & Veneklasen Joint Venture*, 2013 WL 2297104, at *1.

[ix] *Id.*

[x] *Id.* at *1-2.

[xi] *American Quarter Horse Association Position Regarding: Abraham & Veneklasen Joint Venture v. American Quarter Horse Association*, American Quarter Horse Association (Jan. 14, 2015), <http://www.aqha.com/AQHA-Cloning-Lawsuit-Resources/AQHA-Cloning-Position.aspx>.

[xii] *Id.*

[xiii] *Id.*

[xiv] *Id.*

[xv] Craig, *supra* note ii, at 275-76.

[xvi] Bill Chappell, *Equestrian Group Clears Way for Cloned Horses to Compete in the Olympics*, NPR (Aug. 7, 2012, 3:09 PM), <http://www.npr.org/blogs/thetorch/2012/08/07/158373631/equestrian-group-clears-way-for-cloned-horses-to-compete-in-the-olympics>.

[xvii] Jim McBride, *Pro-Cloning Plaintiffs Want AQHA Win Overturned*, Amarillo Globe News (Jan. 14, 2015, 3:45 PM), <http://amarillo.com/news/local-news/2015-01-14/appeals-court-rules-aqha-horse-cloning-appeal>.

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