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Preserving Pedigree: The Fifth Circuit Reverses Lower Court's Finding of Antitrust Conspiracy Involving Quarter Horse Association and Its Members

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In a closely watched case out of a Texas federal court, the Fifth Circuit recently reversed the district court and found that the evidence was insufficient to show that the American Quarter Horse Association (AQHA) unlawfully conspired with its members on one of the association's standard-setting committees in violation of federal antitrust laws. This ruling may impact how associations protect their members who are involved in association-sponsored standard-setting activities, and what proof is required for a plaintiff to prevail in an antitrust case based on those activities.

The case, *Abraham & Veneklasen Joint Venture v. Am. Quarter Horse Ass'n*, No. 13-11043 (5th Cir. Jan. 14, 2015), centered around the defendant AQHA – an organization whose purpose is to protect the breed of the American Quarter Horse, in part, by maintaining a breed registry. Horses must be registered with AQHA in order to participate in the multimillion-dollar industry of AQHA-sponsored races, horse shows and other events. The plaintiffs, AQHA members who invest in cloned horses, alleged that AQHA unlawfully conspired with its Board of Directors and its Stud Book and Registration Committee (SBRC) to manipulate the association's standards regarding cloned horses. The alleged impact was to prevent plaintiffs' horses – which were produced by cloning – from being registered as American Quarter Horses. This excluded plaintiffs' cloned horses from participating in lucrative AQHA-sanctioned racing, breeding and horse shows.

At the district court level, a jury found in favor of the plaintiffs. As remedy, the district court enjoined AQHA from enforcing any association rule precluding registration of clones. The district court also ordered AQHA to "immediately amend its Registration Rules and Regulations" to include specific language that the court had drafted and included in its final judgment. AQHA then appealed the district court's denial of its motion for a judgment as a matter of law (JMOL). The principal questions on appeal were whether plaintiffs proved an actual conspiracy to restrain trade in violation of Section 1 of the Sherman Act, or illegal monopolization by AQHA of breed registration for the "elite Quarter Horse" market in violation of Section 2. Although the Fifth Circuit did not address AQHA's challenge of the scope of the district court's quite broad injunction, the Fifth Circuit characterized it as "a sweeping injunction."

Regarding the Section 1 claim, the Fifth Circuit first analyzed whether, under the Supreme Court's decision in *American Needle, Inc. v. National Football League*, 560 U.S. 183, 190 (2010), the AQHA, its Board of Directors and the SBRC were a single entity incapable of engaging in concerted action under Section 1. The court found that the Supreme Court's rejection of "single entity" status for organizations with "separate economic actors" in *American Needle* did not apply here because it was not clear that AQHA members had diverging economic interests. The court thoroughly analyzed the "troubling distinctions" between the facts of this case and those of *American Needle*, and it ultimately did not resolve the scope of *American Needle* for standard-setting organizations. However, the court did make clear that "the rule of reason should be applied, ensuring that many entities capable of conspiring would not be ultimately found liable."

The court stated that "[a] functional analysis of an organization's ability to conspire with legally distinct members ought to take a [number of] facts into account," explaining that the case law was unclear as to "whether *American Needle* applies on a more abstract plane that covers any organization with actors who have separate economic interests." In its factual analysis of AQHA, the court noted that AQHA's legal structure was designed in a way that prevented the registration rules from being unilaterally and indefinitely imposed by a small group of members. In addition, the court explained that "AQHA is more than a sports league, it is not a trade association, and its quarter million members are involved in ranching, horse training, pleasure riding and many other activities besides the 'elite Quarter Horse' market." The court thus found that AQHA and its alleged coconspirators did not share a "unity of purpose and decisionmaking" similar to that of the economic actors in *American Needle*.

Breaking new ground, the court drew a distinction between trade groups whose entire membership would directly profit from the exclusionary conduct – groups which therefore would be capable of conspiring with its members – and, conversely, organizations such as AQHA whose members include only a "tiny number of economic actors" that may have "an independent economic interest" in the alleged anticompetitive conduct. The court also considered that "AQHA's self-interest as an organization [was] not limited to profit." Ultimately, the court simply assumed arguendo that AQHA was legally capable of conspiring with members of the SBRC in violation of Section 1.

The court instead resolved the Section 1 claim on the issue of whether a conspiracy was adequately proved. The court held that plaintiffs had not demonstrated sufficient evidence of an illegal conspiracy to restrain trade and that AQHA's JMOL motion should have been granted. Plaintiffs, who relied only on circumstantial evidence for their victory at trial were unable to show that the evidence both supported an inference of conspiracy and tended to exclude independent conduct. The court found that much of plaintiffs' evidence of a conspiracy was unsubstantiated, including allegations of "sham" procedures and a "secret meeting." The court also explained that one-sided complaints by a member at a meeting, even if coupled with veiled economic threats, were "insufficient to infer the second party's intent to enter into a conspiracy" because they did not exclude the possibility of independent action. Plaintiffs also failed to show that the members of the standard-setting committee (SBRC) would benefit financially from banning cloned horses from AQHA, and the court held that "more than the existence of the financial interests of a few is required to prove a conspiratorial agreement among them."

With respect to the Section 2 claim that AQHA as a single entity was liable for illegal monopolization, the Fifth Circuit found that, because AQHA as a member organization did not actually *compete* in the alleged "elite Quarter Horse Market," plaintiffs' claim did not meet the Section 2 requirement that the alleged monopolist participate in the alleged monopolized market. The court distinguished AQHA from defendants in cases relied on by plaintiffs, such as a trade association that competed directly in the relevant market for trade shows.

The Fifth Circuit's judgment reverses a district court ruling that had cast a cloud over the ability of standard-setting organizations to control the rules that promote the mission and goals of their organization. The ruling is a significant victory for AQHA, and it also provides useful guidance to associations of all stripes and their members. First, the court's *American Needle* analysis, although nonbinding, suggests that a standard-setting organization may benefit from a more protected status under a rule of reason analysis where: (i) its self-interest is more than just profit-seeking; (ii) its membership is numerous or economically heterogeneous; or (iii) it is structured to prevent the standard-setting functions from being indefinitely and unilaterally decided by a small cadre of members. Second, the court's extensive analysis of the plaintiffs' evidence emphasizes the need for associations to be: (i) careful in their creation of meeting minutes so as to avoid misconstrual of transcribed member comments; and (ii) consistent in their compliance with the organization's documented rules to avoid members' legitimate association conduct being misinterpreted by outsiders as a "sham." Third, an association may have a complete defense to charges of unlawful monopolization where it does not itself "compete" in the relevant market, and therefore associations should assess whether their conduct could be construed as economic participation in a particular market in which they promulgate rules and standards.

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