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# ***Rodeo Cowboys and AQHA: How Trade Associations and Other Groups Buck Antitrust Conspiracy Claims***

Thomas D. York

# Agenda

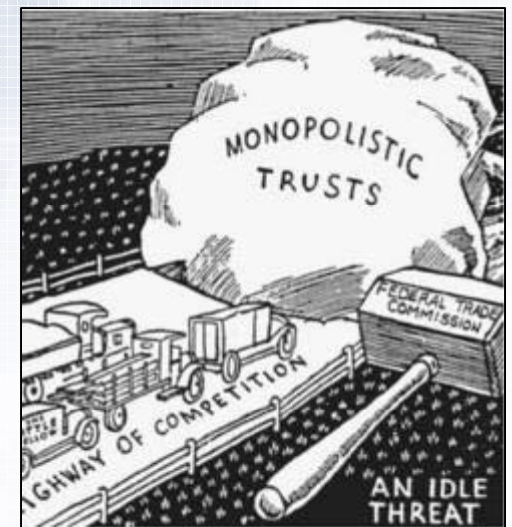
- Texas developments: *AQHA* and *Rodeo Cowboys*
- Viability of *Copperweld* defense
- Finding an “agreement”
- Restraints on trade and procompetitive justifications

***American Quarter Horse Association and  
Rodeo Cowboys***



# Section 1 of the Sherman Act

- Prohibits:
  - All combinations, contracts, or conspiracies (“agreements”)
  - In unreasonable restraint of trade
- Circumstantial evidence of agreement permitted, but must tend to exclude the possibility of independent conduct



# *Veneklasen v. American Quarter Horse Association (“AQHA”)*

- Background:
  - AQHA
    - 280,000 members
    - Sanctioned races, shows, and events
    - ~300-member Board, and 30-member Stud Book and Registration Committee
  - Somatic Cell Nuclear Transfer
    - New rule bans clones from registry
    - Proposed by SBRC, ratified by membership, approved by Board



# AQHA: Key Section 1 Allegations and Defenses

- Restriction on cloning unreasonably restrains trade
  - Registration → more competition
  - Rule eliminates value of cloned horses
- New rule constituted an unlawful “agreement”
  - Rule not result of independent decision-making
- *Copperweld* single-firm defense
  - AQHA is a single entity and incapable of conspiring with itself



# AQHA: Fifth Circuit's Decision

- No decision on *Copperweld* defense
  - Court skeptical of practical ability to conspire, given diverse SBRC and 300+ member board
- Insufficient evidence of agreement
  - Minority of interested SBRC member-breeders
  - No sham procedures
  - One-sided complaints not “agreement”
- No opinion on whether restraint was unreasonable



# *Elite Rodeo Association vs. Professional Rodeo Cowboys Association (“Rodeo Cowboys”)*

- Background
  - PRCA
    - Oldest rodeo-sanctioning body in the world
    - 5,000 cowboys, 1,000 contract personnel
    - 600 events/year; total purse \$41 million
  - ERA formed in 2015 by top PRCA cowboys – “League of Champions”
  - New PRCA bylaws





# Rodeo Cowboys: Key Section 1 Allegations and Defenses

- New bylaws were unreasonable restraint on trade
  - Prevent ERA's owners from competing in PRCA events
  - Foreclose ERA from rodeo committees and contracting parties
- Bylaws are procompetitive
  - Prevent free-riding by ERA
  - Encourage member loyalty, commitment
- *Copperweld* defense
  - PRCA cannot conspire with itself



## Rodeo Cowboys: PI decision

- No decision on *Copperweld* defense
- Bylaws were not anticompetitive agreement
  - No common scheme among diverse board
  - Only a minority of PRCA stood to profit from new bylaws
  - No other evidence of agreement
- PI decision only, not full merits trial



# Lessons from *AQHA* and *Rodeo Cowboys*



# **Lesson #1: Viability of the *Copperweld* Defense As Applied to Trade Groups**



# Will Trade Groups Ever Be “Single Firms”?

- *American Needle* rule: no Section 1 immunity if agreement deprives the market of independent decision-makers
- AQHA amici position: *Copperweld* always protects internal decisions of breed registries, similar organizations
- AQHA v. NFL in *American Needle*
  - 300+ member board vs. 32-team consortium



# Will Trade Groups Ever Be “Single Firms”? (cont.)

- Fifth Circuit highly skeptical of possibility of “agreement” in *AQHA*, but still subjects *AQHA* to Section 1
- Is *Copperweld* viable defense in 5th Circuit?
  - Likely answer: it could apply, but usually won’t
  - How to create bright-line rule?
  - Stuck with rule of reason?
- Trade groups should approach *Copperweld* on case-by-case basis



## **Lesson #2: Finding an “Agreement”**



# When does a Trade Group “Agree”?

- Plaintiffs get two bites at the apple:
  - 1) Is the nominal activity of the trade group itself an “agreement”?
    - (E.g., group of only horizontal competitors)
  - 2) If not, did a smaller slice of membership have a meeting of the minds to co-opt the organization?
    - High evidentiary burden
- Potential circumstantial evidence:
  - Aligned financial interests
  - Side agreements (e.g., to create voting bloc)
  - Persuasive members?





# When does a Trade Group “Agree”? (*cont.*)

- In *AQHA* and *Rodeo Cowboys*, bylaws themselves not enough for “agreement,” and lack of circumstantial evidence to show “agreement” among smaller group
  - Different result if board 100% competitors?
- For diverse trade groups: are there independent, adequate reasons for the bylaw/rule?
  - *AQHA*: protecting breed
  - *Rodeo Cowboys*: protecting sports league
- Lack of second-guessing by Fifth Circuit and Northern District of Texas

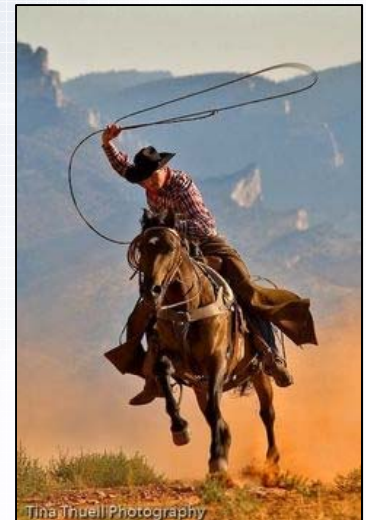


# **Lesson #3: Restraints on Trade and Procompetitive Justifications**



# When is a Restraint Justified?

- Little second-guessing by the courts, despite impact of restraint:
  - Cloned horses (*AQHA*)
  - Excessive white markings (1977 *AQHA* case)
  - Non-competes (*Rodeo Cowboys*)
- Little to no balancing vs. alleged harm



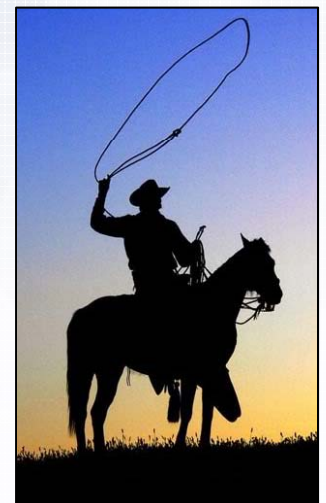
# Better Question: When is a Restraint Not Justified?

- If restraint is related to making the product available at all (sports leagues, breed registries, etc.):
  - Most restraints low risk and likely allowed
- If restraint is ancillary to purpose of organization, then expect detailed review
  - Pricing, market allocation, etc.



# Restraints in the Commercial Context

- In commercial context (e.g., standard-setting organizations), same general rules will apply, but courts less likely to accept arbitrary rules
- Diverse trade groups more likely to pass muster
- Courts also more willing to investigate corruption of process



**Questions?**



## For Further Reading:

- *Abraham & Veneklasen Joint Venture v. Am. Quarter Horse Ass'n*, 776 F.3d 321 (5th Cir. 2015)
- *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492 (1988)
- *Am. Needle, Inc. v. Nat'l Football League*, 560 U.S. 183 (2010)
- *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984)
- *Elite Rodeo Ass'n v. Prof. Rodeo Cowboys Ass'n*, 2016 U.S. Dist. LEXIS 13353 (N.D. Tex. 2016)
- *Hatley v. Am. Quarter Horse Ass'n*, 552 F.2d 646 (5th Cir. 1977)

