

Intellectual Property and Animal Breeding: They are not mutually exclusive

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Intellectual Property

- Intellectual Property (“IP”) = intangible
 - It may be a process to make something tangible or manifest itself in something physical but IP itself can’t be touched
- It is a creation of law, of statutes
 - Without a government saying there is a protection, there isn’t any IP



Intellectual Property

- Promotes innovation and advancements in knowledge
- Recuperation of costs
- Patents, copyright, trade secret, and trademark



Patents

- Intended to promote innovation and advancements in knowledge
- Protects invention in exchange for disclosure to public
- Gives “the right to exclude others from making, using, offering for sale, or selling” the invention in the United States or “importing” the invention into the United States



Patents

- Used on objects, processes, plants, animals
 - “Anything under the sun made by man”
 - Must be useful, novel, and non-obvious
 - Must be able to be disclosed such that others can make it, too



Copyright

- Creative *expression* of ideas or facts
 - Must possess minimal degree of creativity
 - Does not include
 - Facts alone
 - Databases and other compilations, beyond the originality of the selection and arrangement
 - Short slogans or names
- Literary, dramatic, musical, and artistic works



Copyright

- Exclusive right to reproduce the copyrighted work, to prepare derivative works, to distribute copies, and to perform or to display the copyrighted work publicly
- Protects the form of expression rather than the subject matter of



Trade Secret

- Information that is:
 - Kept secret
 - Not generally known to the industry
 - Treated as and kept secret
 - Only disclosed to those legally obligated to keep secret
 - Has economic value because it is secret
 - Provides economic value or advantage over competition
 - Protects the time and money invested in obtaining information



Trade Secret

- Perpetual protection as long as secret
- May be lost
 - Independent discovery
 - Reverse engineering
 - Unrestricted Disclosure



Trademark

- Commonly thought of as brand names
 - Advertising
 - Product identification
 - Service identification
 - Domain names
- A word, name, symbol, or device that is used in trade to indicate the source of the product and to distinguish them from the products of others



Trademark

- Prevents others from using a confusingly similar mark
 - Not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark.
- Focuses on consumer's viewpoint – will the prospective purchaser be confused?



Why do we care?

- Rising costs of research and development
- Price of semen per straw dropping
 - Commodification
- Ability to buy progeny of competitors' sires
- Genetics and Name both valuable
- Impact on research and the market



Application - Patents

- Animals able to be patented
 - Must meet all the same requirements
 - Useful, Novel, Non-obvious, Enabled
- The status of “living” or not is not legally significant
 - The question is not whether the object to be patented is alive or not, but rather if it is invented or merely discovered



Application - Patents

- But must be able to be described such that it allows:
 - A person ordinarily skilled in the art
 - To make and use the full scope of the invention
 - Without undue experimentation
- Difficult to show requirements met
 - Difficult to predictably inherit traits
 - QTLs and environment
 - Long generation intervals
 - Long proof time



Application - Patents

- Genetics must be disclosed completely and usefulness or purpose given
 - “Specific and substantial utility that is credible”
 - Quantitative loci and environmental impact make this difficult
 - SNPs and ESTs not eligible, at least not yet



Application - Copyrights

- Copyright protects the expression of the idea, not the idea itself
 - Database organization
 - Descriptions of products



Application – Trade Secrets

- Important and currently used
- Reverse engineering and independent discovery negate it
 - No reason competitor can buy semen and have the son
 - Exact opposite of publication
- Contract law
 - Contract with user to say what can and cannot be done
 - Price discrimination possible
 - Corn + Computers = Cow



Application - Trademarks

- Companies
 - ABS, Accelerated Genetics
 - Spectrum Farms
 - Where a little rain and a baby calf are always welcome (Whisnand Red Angus Farm)
- Products
 - Semen and accessories
 - Added value products
 - Crave Brothers Cheese
 - AI service
 - Consulting services



Application - Trademarks

- Animal names
 - Names are already used to indicate source
 - Registration process
 - Simpler and broader protection
 - Reaches across breeds
 - Looks at the name people use
- Fit the requirements for registration
 - In commerce
 - For goods
 - To identify source and goodwill



Application - Trademarks

- For Example: Old Mill E Snickerdoodle
 - If you saw that name as a bull in Brown Swiss, would you be confused?
 - What if it were a Jersey or Holstein?
 - Now how about Angus? Or Arabian (horse)? Or Hampshire (pig)?
 - What if it is Sniffledoodle?
 - Is it somehow related?
 - What if there was also Shortbread and Gingersnap?



Application - Trademarks

- Breed Registration
 - Application
 - Calf's pedigree
 - Unique name and identification
 - Small registration fee
 - Prevents taking a previously chosen full name
 - Only protected per breed association



Application - Trademarks

- Trademark Registration
 - Looks at consumer for guidance
 - Will use on both "products" likely to confuse
 - Similar names, similar products, similar channels of trade
 - Federal registration for all of U.S.
 - Other countries have similar protections
 - \$325 + attorney's fees per filing
 - Fair use still allows informative use
 - "Son of" or "Daughter of"



Conclusion

- Have four choices
 - Find ways of using current laws
 - Trademarks, Patents, Trade Secrets
 - Make own protections[®]
 - Contract law
 - Make new laws or interpretations
 - Statutes, regulations, court decisions
 - Ignore it
 - It won't go away
 - Focus on services?

Questions?

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