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
• 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 in alive or not, but rather if it is invented or merely discovered

• 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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