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## LIBERTY GENETICS TO DEFEND LEGAL CHALLENGE BY LIC

Dairy genetics and artificial breeding company, Liberty Genetics Ltd., will defend its position when taken to court in August by the dominant market player, Livestock Improvement Corporation (LIC).

LIC has applied for an interim injunction against a group of New Zealand dairy farmers for an alleged infringement of its "Condition and Service Rules", as prescribed in the 2009 LIC Services Catalogue.

Dr David Hayman, Managing Director of Liberty Genetics, confirmed that LIC initially threatened the dairy farmers with legal action in March 2011 after the Liberty bull teams were released. LIC has since proceeded with an injunction application, yet Liberty Genetics remains confident that the dairy farmers' actions were not in breach of LIC's Condition and Service Rules. Farmers must accept all of the Condition and Service Rules to carry out any business with LIC, regardless of whether genetics are purchased.

The alleged breach relates to bulls that were sired from internationally sourced LIC semen and subsequently leased to Liberty Genetics. LIC claims that the dairy farmers were in breach of terms outlined in Clauses 62 and 63. These clauses restrict farmers from selling or leasing the progeny of LIC semen to other Artificial Breeding companies or from producing and selling the semen themselves, without first obtaining permission or a license agreement with LIC.

However, as the semen was sourced internationally, the bull breeders assert that the bulls are exempt from the terms of the local LIC supply conditions, as is the case with any other imported semen. Further to this, in many cases the LIC semen can be purchased offshore at a significantly lower price than the equivalent can be sourced locally.

"We consider that this legal exercise is a waste of farmer's money", said Dr Hayman, "Our position is that there is no case to answer. In our view, it is no coincidence that Clauses 62 and 63 were introduced into the Condition and Service Rules soon after Liberty Genetics formed in 1998. LIC has been progeny testing since the 1960s so it is difficult to justify new Intellectual Property when those new rules were included in 2000. LIC has all the resources and technology to lead the industry, so it is surprising that they are so concerned about the threat from Liberty Genetics with 5% market share. LIC's motives and behaviour have changed significantly as it has evolved from what was previously considered an 'Industry Good Body' that governed national genetic direction to a competitive corporate model focused on market share."

LIC states in its Condition and Service Rules that clauses 62 and 63 are necessary to protect its "intellectual property" and are:

*"reasonably required to protect the value and viability of the LIC artificial breeding and genetics programme, which represents a substantial and long term investment in capital, research and development and sire proving, and which is of strategic importance to the New Zealand dairy industry".*

Liberty Genetics and the dairy farmers have argued that these clauses impede national genetic gain and dairy farmer investment as it prevents others from breeding and marketing additional sons from top NZ bulls. "It often happens that the best son(s) of a top bull occur through use of that bull by other companies, or the later born sons", explains Kevin Clark from Glenmead Friesians at Waimana, a spokesperson for the dairy farmers involved. "LIC is the only dairy semen marketer in the developed dairying nations that has invoked such IP, and they have only made it stick because of market power and the bundling of their services under one set of service rules. This is a major barrier to new entrants in the New Zealand semen market, and it seeks to protect a dominant position".

Dr Hayman considers that, "Like the Telco industry, all dairy farmers benefit from an active third player in the market. We have also contributed significantly to genetic gain, producing 8% of the proven bulls on the Ranking of Active Sires from our bull team semen sales. "

Liberty Genetics has made some rapid strides in the dairy genetics and artificial breeding market. In 2007 the company implemented an Artificial Breeding technician network which has grown to a force of 50 technicians and the main dairy regions are now serviced with fresh semen. In 2010 at least 250,000 cows were inseminated with semen from Liberty Genetics bulls, with most using the lower cost team option. These innovations have enabled the company to treble semen sales through to 2009.

AB prices have been static for the last 3 seasons due to economic conditions and the competitive pressure of alternative breeding options offered by companies such as Liberty Genetics.

A hearing in August will decide the merits of the LIC interim injunction application.

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