

WHO WE ARE, WHO WE ARE NOT, AND WHO WE CAN BE

By Chris E. Wittstruck, Esq.



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There is no doubt that our sport and industry suffer due to the appalling actions of a small percentage of its participants. Those exhibiting a lack of integrity present a major threat to harness racing. As is most often the case with problems of weighty importance, there is no single, clear means to fix the problem. There is no single person, agency or strategy to deploy, ramp up or engage. There are, however, certain actions that every single one of us can undertake.

I hear the questions repeatedly: “How did the USTA allow this guy to get a license?” “Why does the USTA allow him to race?” “Why doesn't the USTA leadership do something about her?” In sum, our Association is often targeted as a scapegoat for virtually every ill our industry suffers. Yet, it is not because of the USTA, but rather despite its diligent efforts, that dishonesty and corruption are permitted to exist in certain limited quarters. Understanding what the USTA is, what it is not, and how it tirelessly defends the credibility of harness racing is what this article is all about.

First, who we are not: The USTA is not the central office for a league sport. Unlike the teams that constitute Major League Baseball or the National Football League, racetrack operators do not receive a franchise granted by the Association. Racetracks engaged in pari-mutuel horseracing receive their permission to function solely from their state's racing commission. Inasmuch as tracks receive their licenses from and are regulated by government and not the Association, the tracks are under no obligation to heed the call of the USTA on any issues whatsoever. Luckily, most pari-mutuel track operators voluntarily adhere to many of the standards set forth by USTA rules.

Think of the small, standalone clothing boutique in your neighborhood. Its owner must comply with wage and hour laws, local building code requirements, and sales tax regulations. Beyond following statutes and ordinances, however, the single-store boutique owner has the autonomy to operate her business in whatever fashion she deems necessary in order to maximize profit. Even though she's selling blouses, the owner doesn't have to follow the rules of the National Blouse Association, unless she chooses to be a member in good standing. Contrast this with the manager or franchisee of a nationwide clothing chain. Each and every action he takes must be in conformity with the strict obligations set forth by the home office that either owns or franchises the location, in addition to federal, state and local law.

Pari-mutuel harness tracks are akin to standalone boutiques. So long as they follow regulations set forth by government, they operate independent of all other directives and restrictions, including the rules of this Association. They are mandated to comply with USTA's rules only to the extent that those rules are adopted by the various racing commissions as their own regulations.

Contrary to the belief of many, we are also not a national licensing authority of horsemen and other participants. Aside from its important role as a breed registry, the USTA is a trade association operating much like the American Bar Association, the National Association of Realtors or the National Retail Association. Like the Better Business Bureau, the USTA sets forth standards which promote ethics and best practices in racing. Enforcement is limited to casting out of the Association those who fail to comply; the USTA has no authority to force a recalcitrant individual or entity to cease operating in the sport in any jurisdiction and at any racing venue that will have him, her or it. If a horseman, track operator or other participant is able to secure a license in a racing jurisdiction, the fact that a USTA credential is lacking is a circumstance rendered irrelevant. Right now, there are approximately 200 individuals participating in harness racing that are ineligible for USTA membership, but are nonetheless licensed by one or more state racing commissions.

On this score, consider the 1951 decision by New York's highest court, the Court of Appeals, in the Matter of Fink v. Cole. For the purposes of maintaining control over race meetings, the New York legislature delegated the licensing of owners, trainers and jockeys at Thoroughbred meets to The Jockey Club. Fink was denied an owner's license by the group and sued. The Court of Appeals ruled that, despite benefits of great worth that derived from the actions of The Jockey Club, the delegation by the Legislature of licensing control to a private corporation is such an abdication of authority as to be a patently unconstitutional surrender of legislative power. In New York and other states, licensing is a matter solely within the control of the states' police power and not that of a private, albeit well meaning, trade association.

This case demonstrates the reasons why widespread and repeated calls for the establishment of a harness racing "Czar" or Commissioner are misplaced. Lacking the authority to impose its will in a meaningful way upon racetracks and horsemen through licensing or enforcement, the USTA is in no position to put in place a strong national officer to make binding rules, adjudicate controversies or mete out punishment outside the confines of its corporate charter. In the realm of pari-mutuel racing, the USTA can suggest, advocate and cajole, but in the end it is the respective state governments that determine what happens at race meets and who will be licensed to participate at those meets.

If the reality appears grim, consider that the USTA could, in fact, provide the ultimate safeguard against all forms of impropriety in the sport, so long as stakeholders realized just how significant the USTA is and can be.

Who we are, among other things, is a comprehensive repository for license violation information. For a few dollars, anyone can access the USTA's Pacing and Trotting Information Super Highway (*PATHWAY*) and instantly receive a compilation of all rulings, major and otherwise, issued by the USTA and, more importantly, reported to it by the various racing commissions in all jurisdictions. The knowledge gained from these broad, inclusive reports is invaluable.

In sum, if you want a racing "Czar," why not first take a stab at being your own? If you are an owner in search of a trainer, why not access the extensive data provided to you by our Association before entrusting your horse to the conditioner? If a *PATHWAY* report shows a trainer with several major rulings over the past few years, why are you even considering utilizing his or her services? If a fully licensed trainer in your state has been denied a USTA credential, doesn't that raise questions about his reputation for honesty and integrity, his valid status with your state's racing commission notwithstanding?

If you are a fan, why are you betting at a racing venue that permits licensees with extensive records and probably no USTA membership status to compete on a nightly basis? Unless your favorite racing oval is state-owned, why aren't you sending correspondence to track management informing it of your displeasure and the intent to withhold your wagering bankroll until a certain participant is excluded? In sum, while the USTA can't stop participants from participating, it is within the collective responsibility of stakeholders to utilize the information provided by the USTA and take their business elsewhere. A state licensee with no clients or nowhere to race suffers a fate as bad as revocation.

Click here for a link to the USTA's *PATHWAY* site:
<http://pathway.ustrotting.com/subscription.cfm>

Interestingly, after the Matter of Fink v. Cole decision, New York State denied Fink a license on the ground that he was a known associate of bookmakers and other nefarious individuals. The information was derived from the very Jockey Club proceedings the court found unconstitutional. Yet, the Court of Appeals upheld the license refusal, reasoning that in arriving at a determination whether to grant or deny a license, the state may seek and rely upon any facts that exist, regardless of their source, so long as they

are reliable and trustworthy. Clearly, while the USTA does not have the final say on licensing, its public information can and should be used by stakeholders, if not the state.

Additionally, the USTA is a vibrant cheerleader for the preservation and enhancement of everything that is good about our sport. Through its directors, the Association endeavors to set guideposts, offer positions and provide needed solutions to problems with the hope that these propositions will be adopted uniformly by as many racing jurisdictions as possible. In this regard, the emergence of a national racing compact commission might help advance the USTA's pronouncements far and wide. When a state passes legislation agreeing to join and be bound by the compact, member states can create, and via the compact easily adopt, uniform practices, programs, and rules and act collectively. Such a compact already provides for a National Racing License for owners, trainers and drivers, which have been obtained by about 300 USTA members.

The methods of action under the compact include rule making and the adoption of practices and programs to provide more uniform, effective and efficient ways to address issues affecting live horseracing and pari-mutuel wagering activities. While the commission would be made up of representatives from state racing commissions, the compact would present the opportunity for cooperative uniform implementation of USTA regulations as they affect harness racing in compact member jurisdictions. Here, the USTA's unique and indisputable expertise as the provider of model rules and best practices in Standardbred racing could finally be utilized in a widespread and highly meaningful way. While the Association would still not be the national adjudicator of individual integrity allegations, uniform adoption of USTA rules and penalty policies might give the violators little wiggle room in the various pari-mutuel jurisdictions.

In sum, there is a lot of good to be said about the administration of NASCAR. Unlike illegal betting on the outcome of NASCAR races, betting on horseracing is legal. That's why we aren't NASCAR and will never be NASCAR. When legalized gambling is involved, a sport runs the risk of losing ultimate control of its activities to outside regulators. It's no surprise that the NFL and NBA fight so diligently against legalized wagering on their respective games. Like it or not, our sport will always be pervasively regulated by individual state governments. The USTA should and does attempt to achieve a high degree of integrity in racing, even when law relegates those efforts to being little more than suggestive. Still, as USTA members, we have the shared ability to effectuate clean, honest racing by utilizing the tools the Association provides. If Snidely Whiplash is still in your local race paddock, it's not the USTA's fault; rather, it's all of ours.

Chris E. Wittstruck, an attorney and Standardbred owner, is the founder and coordinator of the Racehorse Ownership Institute at Hofstra University, New York and a charter member of the Albany Law School Racing and Gaming Law Network.