



DECISION of the FEI TRIBUNAL

dated 28 September 2007

Positive Medication Case No.: 2006/02

Horse: CLASSIC H

FEI Passport No: SWE03077

Person Responsible: Mr Toni Hassmann, GER

Event: CSI-W Bordeaux, FRA, 3-5.02.2006

Prohibited Substances:

- (1) Betamethasone
- (2) Methylprednisolone

1. COMPOSITION OF PANEL

Mr Pierre Ketterer
Mr Ken E. Lalo
Prof. Dr. Jens Adolphsen

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

2.2 Summary information provided by Person Responsible (PR): The FEI Tribunal took into consideration all documents presented in the case file, as also made available by and to the PR, as well as all other evidence and testimonies presented at the oral hearing.

2.3 Oral hearing: On 3 September 2007 at the FEI Headquarters in Lausanne.

Present: The FEI Tribunal Panel

For the FEI:

Alexander McLin, General Counsel
Laetitia Zumbrunnen, Legal Counsel
Dr Frits Sluyter, FEI Veterinary Director, witness

For the PR:

Toni Hassmann, Person Responsible
Kai Bemann, Legal Counsel

Andrea Gölkel, Owner of the Horse, witness (by telephone)
Dr Hans Stihl, Treating Veterinarian, witness (by telephone)
Christoph Renfer, Interpreter

Observer
Fiona Paratte, FEI Legal Assistant

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:

Statutes 21st edition, effective 21 April 2004, ("**Statutes**"), Arts. 001.6, 057 and 058 and Statutes 22nd edition, effective 15 April 2007, ("**New Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 21st edition, effective 1 January 2005, Arts. 142, 146.1 and 174 ("**GR**") and General Regulations, 22nd edition, effective 1 June 2007, Arts. 142, 146.1 and 174 ("**New GR**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

Veterinary Regulations, 9th edition, effective 1 January 2002, revised April 2005 ("**VR**") and Annex IV (Prohibited Substances).

FEI Code of Conduct for the Welfare of the Horse.

3.2 Person Responsible: Mr Toni Hassmann

3.3 Justification for sanction:

GR Art. 146.2: "Any horse found to have a Prohibited Substance in any of its tissues, body fluids or excreta at an event [...] is automatically disqualified, together with the competitor [...], from all competitions at that event, [...] unless the Judicial Committee decides based on the evidence to terminate the proceedings of the case."

Subsequent to the adoption of the FEI Statutes, 22nd edition, effective 15 April 2007, the Judicial Committee is now referred to herein as the "Tribunal".

4. DECISION

4.1 Consideration of the evidence:

- a. Classic H (the "**Horse**") participated in CSI-W Bordeaux, FRA, from 3 to 5 February 2006 (the "**Event**"). The Horse was ridden by Mr Toni Hassmann who is the Person Responsible in accordance with GR

Article 142 (the "PR").

- b. The Horse was selected for sampling on 4 February 2006. Analysis of the urine sample no. FEI-7836 taken from the Horse performed by the approved central laboratory of the FEI, the Laboratoire des Courses Hippiques ("LCH"), in France, revealed the presence of betamethasone and methylprednisolone (Certificate of Analysis FEI-7836 dated 27 February 2006).
- c. On 17 March 2006 the PR submitted a request for a confirmatory analysis. The confirmatory analysis was carried out on urine at the Hong Kong Jockey Club ("HKJC") from 31 March to 11 April 2006 under the supervision of Dr Emmie N M Ho and Dr Terence S M Wan, and was witnessed by Mr Willis Chang, Manager, Security Operations of the HKJC. It confirmed the presence of betamethasone and methylprednisolone (Counter-Analysis Report dated 11 April 2006).
- d. Both substances are anti-inflammatory corticosteroids acting *inter alia* on the locomotor system (Medication Sub-Committee ("MSC") Report dated 21 April 2006) and accordingly are prohibited substances, when present together (VR Annex IV).
- e. The FEI Tribunal is satisfied that the laboratory reports reflect that the tests were accurately performed in an acceptable method and that the findings of LCH and HKJC are accurate.
- f. In his written explanation dated 15 June 2006 and at the hearing, the PR and his counsel complained that he and his counsel were not given the opportunity by the FEI to observe the identification and the opening of the B-sample. The FEI argued that under the Article 1022 VR effective at the time of the Event, the FEI was under no obligation to grant the Person Responsible the right to be represented at the B-sample testing procedure. This had been extensively debated within another case before the Court of Arbitration of Sport (CAS) which had determined that the same FEI Rules were "*fully compatible with the WADA Code*" and that these Rules do "*not provide the Person Responsible with the right to witness the analysis of the B sample. To compensate the voluntary absence of such a right, the FEI introduced safeguards which did not exist before. For instance [transferring the B sample to another laboratory than the one responsible for the A sample analysis]. The safeguards put in place must be considered as an alternative to the personal presence of the Person Responsible at the B sample testing.*"
- g. Regarding the right for the PR to be present or represented at the B-sample testing procedure, the Tribunal notes that the PR was notified by the FEI of the available dates to start the analysis. The FEI also invited the PR's counsel to indicate whether or not his client wished to be present or represented when the B-sample analysis would be carried out.
- h. In his letter of 28 March 2006, the PR's counsel informed the FEI that he and the PR could not be present at the B-sample opening in

such a short time. Furthermore they requested the FEI to fix a new date for the B-sample analysis on condition that the FEI inform them six weeks in advance.

- i. Due to the absence of designation of a witness by the PR, the FEI instructed the HKJC to perform the B-sample analysis.
- j. The Tribunal notes that the PR was duly informed of the possibility to appoint a witness and that he was granted sufficient time to inform the FEI of his decision. Considering the global activity of the PR, it was deemed acceptable to arrange for a representative in Hong Kong in the time that was available. The Tribunal deems that the allegation of the PR not to have waived his right to be present or represented at the B-sample testing procedure does not affect the regularity of the procedure.
- k. Furthermore, the fact that the B-sample testing procedure took place on a different date from the dates indicated by the FEI lead the Tribunal to the same conclusion.
- l. For the above mentioned reasons, the Tribunal decides that there has been no violation of the PR's procedural rights.
- m. The PR also argued that the FEI did not ensure that an independent witness was present to check the identity and soundness of the B-sample before the confirmatory analysis was performed. Although Mr Willis Chang was not independent in regard of the firm he was working with (Hong Kong Jockey Club), he was independent as to the sample analysis as he was not affiliated with the racing laboratory. Even though the FEI had no obligation in this sense, it ensured that an independent witness assisted with the identification and opening of the sample, and this person testified that the B sample showed no sign of tampering and was the corresponding sample.
- n. The FEI Tribunal is satisfied that the test results show the presence of the Prohibited Substances and that the accuracy of the testing methods or the test results and positive findings are not contestable. The FEI has thus sufficiently proven the objective elements of a doping offence.
- o. The establishment of the objective elements of a doping offence creates the presumption of guilt of the PR. The finding on analysis of a prohibited substance is presumed to be a deliberate attempt of the PR to affect the performance of the horse. The PR has the opportunity to seek to rebut this presumption, according to Article 174.6.2.2 GR.
- p. The PR explained that he is not the owner of the Horse and that the Horse was given to him on 19 December 2005 by the owning firm, "Avora Pferde GmbH". The Horse was not stabled with the PR but in Münster, at the PR's training location. After commencing training with this Horse, the PR noticed that the Horse was showing irregularities in the front and asked the owner whether the Horse

had already been treated for this problem and whether Dr Hans Stihl, veterinarian, could be contacted to treat the Horse. As the owner of the Horse, through Mrs Andrea Gölkel, managing director of Avora Pferde GmbH, answered that the Horse had not been treated before and that she agreed on the choice of the veterinary, the PR contacted Dr Stihl, who treated the Horse on 10 January 2006 with betamethasone for a hoof joint inflammation. Upon request of the PR, Dr Stihl recommended that the Horse should not compete within the following 10 days.

- q. Upon announcement of the positive findings of betamethasone and methylprednisolone, the PR conducted some research that led to the finding that the Horse had been stabled and trained on a farm in the USA before December 2005 and had been treated on 12 December 2005 by Dr Herbert Burns, who had been consulted by the trainer of Winley Farm for an allegedly negligible irregularity in movement. This is confirmed by Dr Burns' statement sent to the FEI on 10 July 2006. Mrs Gölkel, explained that she had not been informed of this treatment prior to the positive test results, either by the treating veterinarian at Winley Farm, or by the trainers. The PR assures that had he and Dr Stihl known of this treatment he would not have competed in Bordeaux on 3 February 2006 and would have waited longer before competing.
- r. The PR also argued that his Horse was submitted for another medication control in Spain on 12 February 2006 and that this result was negative. This has been confirmed by the FEI.
- s. Dr Sluyter provided testimony to the fact that methylprednisolone, being a depot preparation, was designed for an extended effect and therefore the detection time was of a long nature. He added that *"One of our laboratories once reported the detection of methylprednisolone 45 days after its administration, which is a long time. For this reason, we cannot completely exclude the possibility that intra-articular treatment of the horse in the USA, about 55 days prior to sampling, had an extended excretion profile due to the administration of another corticosteroid later in time (i.e. betamethasone), which made this horse actually test positive for two corticosteroids at the same time."*
- t. For the presence of the two substances, the Tribunal notes that the PR has produced written and oral evidence, and in particular the testimony of Dr. Stihl sent to the FEI on 25 July 2006, which are likely to demonstrate a possible causal link between the treatment and the result of the analysis.
- u. The PR has proved that it was not a deliberate attempt to affect the performance and that the findings are the result of a legitimate treatment of the Horse.
- v. Based on all the evidence submitted, the Tribunal considers that the PR has therefore successfully rebutted the presumption of intent.
- w. Nevertheless, the Tribunal deems that the PR acted with evident

negligence when he took over the ride from the USA by not making sufficient enquiries in order to have knowledge of all previous treatments given to the Horse, and by not asking for a statement from the US treating veterinarian in the absence of a stable book. The fact that this treatment was easily found out by the PR following the positive results, demonstrates that, with more care, this treatment could have been discovered upon acceptance of the Horse for competition at international events and definitely prior to the provision of any later treatment.

- x. The PR should always inform himself of all treatments given to a horse and ensure that they are announced upon arrival at an Event to the FEI veterinary delegate and that the relevant medication form is issued before the start of the competition.
- y. The Tribunal notes that, at the hearing, the PR recognized that he was duly informed that relational problems existed between the owner of the Horse and the trainer in the USA. It appears clearly that the PR made no sufficient control when he received his new horse. A proper control would have given the PR the opportunity to find out about the first treatment.
- z. Furthermore, the Tribunal comes to the conclusion that had the Horse not shown irregularities in the front hand at the beginning of January 2006, the PR would not have ensured that no treatment was given to the Horse prior to the Event.
- aa. The Tribunal considers that the PR, who is experienced in the sport and competes for many years at the highest level, has not successfully demonstrated that his behaviour was in accordance with the standard of care which must be demonstrated by a top international rider.
- bb. Ultimately, the PR is the person responsible for all actions relating to his Horse and he was responsible that the Horse would not compete with a prohibited substance in its body. The Tribunal, therefore, considers that the positive result is sufficient to establish that despite the explanations given, the PR was negligent by not having ensured that his Horse was competing drug-free at the Event.
- cc. In deciding the sanctions, the Tribunal has considered, on the one hand the doping violation, the PR's international status and the level of the Event and, on other hand, the types of substances involved, the PR's explanations and the PR's cooperation in the investigation.
- dd. While not impacting the present decision, the Tribunal highlights that the New General Regulations adopted by the FEI General Assembly and effective 1 June 2007 are not applicable to this present case and that the present case was decided under the previous Article 174 GR which limited the possible suspension in such cases to up to three months.

4.2 Disqualification

As a result of the foregoing, the FEI Tribunal has decided to disqualify the horse CLASSIC H and the PR from the Event and that all medals, points and prize money won at the Event must be forfeited in accordance with Article 174.6.2 GR.

4.3 Sanctions

As a consequence of the foregoing, the FEI Tribunal decides to impose on the PR the following sanctions, in accordance with GR Article 174:

- 1) The PR shall be suspended for a period of **(2) two months** to commence immediately and without further notice at the expiration of the period in which an appeal may be filed (30 days from the date of notification of the written decision) or earlier if the appeal is waived in writing by or on behalf of the PR.
- 2) The PR is fined **CHF 1'500.-**.
- 3) The PR shall contribute **CHF 1'000.-** towards the legal costs of the judicial procedure, and **CHF 750.-** towards the cost of the confirmatory analysis.

5. DECISION TO BE FORWARDED TO:

5.1 The person sanctioned: Yes

5.2 The President of the NF of the person sanctioned: Yes

5.3 The President of the Organising Committee of the event through his NF: Yes

5.4 Any other: Counsel of the PR

6. THE SECRETARY GENERAL OR HIS REPRESENTATIVE:

Date : 28 September 2007

Signature: [Signature]