



DECISION OF THE FEI TRIBUNAL

dated 28 July 2008

Positive Medication Case No.: 2008/04

Horse: FENWICK CADENZA

FEI Passport No: AUS01504

Person Responsible: Mrs Sue Sidebottom, GBR

Event: CEI 2* Al Asayl (UAE), 8 February 2008

Prohibited Substances:

Dexamethasone, Phenylbutazone, Oxyphenbutazone, Gamma-hydroxyphenybutaone, Triamcinolone Acetonide, 3-hydroxymepivacaine, Ethanol

1. COMPOSITION OF PANEL

Mr. Erik Elstad, Chairman
Mr. Pierre Ketterer
Mr. Alberto Hernàn Mendez Cañas

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 evidence and documents presented in the case file, as also made available by and to the PR.

2.3 Oral hearing: None: by correspondence.

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 22nd edition, effective 15 April 2007 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 22nd edition, effective 1 June 2007, Arts. 142, 145, 146.1 and 174 ("**FEI General Regulations**" or "**GR**").

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

The Equine Anti-Doping and Medication Rules ("**EADMCRs**"), effective 1st June 2006.

Veterinary Regulations, ("**Veterinary Regulations**" or "**VR**"), 10th edition, effective 1st June 2006, Art. 1013 and Annex III (the Equine Prohibited List).

FEI Code of Conduct for the Welfare of the Horse ("**Code of Conduct**").

3.2 Person Responsible: Mrs Sue Sidebottom, GBR

3.3 Justification for sanction:

GR Art. 146.1: "The use of any substance or method that has the potential to harm the horse or to enhance its performance is forbidden. The precise rules concerning Prohibited Substances and Medication Control are laid down in the EADMCRs."

EADMCRs Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Prohibited Substance is present in his or her Horse's body during an Event. Persons Responsible are responsible for any Prohibited Substance found to be present in their Horse's bodily Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Person Responsible's part be demonstrated in order to establish an anti-doping rule or medication control violation under Article 2.1."

4. DECISION

4.1 Consideration of the evidence:

- a. Fenwick Cadenza (the "**Horse**") participated in CEI 2* Al Asayl (UAE) on 8 February 2008 (the "**Event**"). The Horse was ridden by Mrs Sue Sidebottom who is the Person Responsible in accordance with GR Article 142 (the "**PR**").
- b. The Horse was selected for sampling on 8 February 2008. Analysis of the urine and blood sample no FEI 0057059 taken from the Horse, performed by the approved laboratory of the FEI, the Hong Kong Jockey Club Laboratory ("**HKJC**"), in Hong Kong, revealed the presence of **Dexamethasone**; **Phenylbutazone**

and two of its metabolites, **Oxyphenbutazone** and **Gamma-hydroxyphenylbutazone**; **Triamcinolone Acetonide**; **3-hydroxymepivacaine** and **Ethanol** (Test report no 08-0204 dated 25 February 2008).

- c. **Dexamethasone** is a synthetic gluco-corticosteroid with anti-inflammatory effect; **Phenylbutazone** and two of its metabolites, **Oxyphenbutazone** and **Gamma-hydroxyphenylbutazone**, are Non-Steroidal Anti-Inflammatory Drugs (NSAIDs) acting as analgesic and anti-inflammatory; **Triamcinolone Acetonide** is a corticosteroid having an anti-inflammatory effect; **3-hydroxymepivacaine** is a metabolite of mepivacaine, used as a local anaesthetic, and **Ethanol** is a disinfectant. The presence of two different corticosteroids and a Non-Steroidal Anti-Inflammatory Drug at the same time constitutes the case to be categorised in the Doping category (FEI Veterinary Department's Statement dated 3 March 2008). Accordingly these substances, when present together, are classified in the first section of the Equine Prohibited List (VR Annex III) as "Doping" Prohibited Substances.
- d. On 11 March 2008, further to receipt of the A sample result, the FEI Legal Department, pursuant to established procedure for cases including this type of substance, provided the PR with the opportunity to request a confirmatory analysis and a hearing.
- e. By fax dated 24 March 2008, the PR did not require a confirmatory analysis and did not request a hearing (also confirmed by fax dated 30 April 2008). The PR preferred to submit written explanations.
- f. The FEI Tribunal is satisfied that the laboratory report reflect that the test were accurately performed in an acceptable method and that the findings of HKJC are accurate. The FEI Tribunal is satisfied that the test results show the presence of the Prohibited Substances. The PR did not contest the accuracy of the testing methods or the test results and positive findings. The FEI has thus sufficiently proven the objective elements of a doping offence in accordance with EADMCRs Article 3.
- g. 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 eliminate or reduce the otherwise applicable period of ineligibility and other sanctions, establishing that he bears no fault and no negligence or no significant fault and no significant negligence, in accordance with EADMCRs Article 10.5.
- h. In his written explanation dated 31 March 2008 the PR states that she first rode the Horse on 18 January 2008 in a CEI 2* 100km Ladies Challenge Round I at Al Asayel, UAE. This race was

the first race in a series of 3 races for Ladies. She had previously no contact with the Horse. Following this first race, the PR enquired how the Horse was post race and she was informed by the trainer it would be routinely medicated.

- i. The PR remained in contact with the trainer, Ali Al Mehairi, in the run up to the 2nd round competition and was informed that the Horse had been medicated and had completed the advised withdrawal period and that it was in good shape.
- j. She did not specifically ask with what the Horse was medicated and did not discuss the withdrawal periods with the stable veterinarian.
- k. Finally, the PR does fully understand and accept that she is accountable for the consequences of positive testing and apologies for it.
- l. The PR provided the FEI Legal Department, on 30 April 2008 and on 24 May 2008, with Dr Russel Malton's written statements on the medication administered to the Horse as well as the recommended race withdrawal periods for each of them. In his last statement Dr Malton stated that two days prior to the race the Horse showed mild forelimb lameness a nerve block was carried out, but at that time it was not anticipated that the Horse would compete. Phenylbutazone was not administered to the Horse under Veterinary instruction, but the substance was dispensed in the stable for horses under veterinary treatment and it is possible that this substance has been given inadvertently by the stable staff to the Horse within the race withdrawal period.
- m. Dr Frits Sluyter, head of FEI Veterinary Department, considers, in his statement dated 5 June 2008, that there is still no explanation as to the presence of phenylbutazone and ethanol in the sample. He also considers that this may be indicative of a suboptimal functioning of stable management as it relates to treatment, resulting in the serious testing outcome.
- n. In a last statement dated 11 June 2008, Dr Russel Malton fully understands that mistakes were made in the decision to allow the PR to compete the Horse in the 100km CEI 2* endurance ride at Al Asayl, UAE on the 8 February 2008. He also recognised that the implications and likely consequences of recording such a positive test were greatly underestimated.

4.2 Analysis

- o. In this case the PR did not have her own horse for the Event. She rode the horse that she had borrowed in a previous competition, and rode the second race in a series of three races. The Horse is owned by H.H. Sh. Hamdan Bin Rashid, the trainer for the horse

is Ali Al Mehairi.

- p. In this case there has been given an explanation for some of the prohibited substances, but neither the PR, nor the owner of the Horse or his veterinarian can explain the presence of Phenylbutazone and Ethanol. It seems to be a result of some kind of treatment of the Horse by the stable staff.
- q. GR Art 142.2 provides that the competitor who rides shall normally be the PR. The same applies in cases of international competitions organized with horses provided by the host NF according to GR Art 116. The Event does not seem to have been arranged as an event with borrowed horses, but nevertheless the horse that the PR competed with was a horse provided by the host NF. She had only been riding the Horse in one previous competition.
- r. The case highlights once again the difficulty to address cases in which the competitor is not the owner of a horse. This is becoming problematic in view of a number of cases submitted to the FEI Tribunal, at present most commonly in endurance riding, see for instance case 2004/27 and 2005/60. In order to have a fair and equitable system of dealing with positive doping or medication cases, riders of borrowed horses (or other than self owned horses) should not stand to benefit the lack of clarity and certainty sometimes evidenced in these situations in which a horse is given to the custody of a competitor in close proximity to the event.
- s. The policy of the FEI is that the competitor is the primary person responsible for a horse ridden at an event. Although, in appropriate circumstances, others may also be responsible, this does not alter the primary responsibility of the rider. This policy is based on the premise that the rider is the sportsman who competes and stands to win at an event and is in the best position to ensure proper controls over a horse used by him or her at an event (even through third parties). Otherwise « the blame » may always be transferred to third parties such as stable owners, trainers, grooms, veterinarians or unknown parties.
- t. It is up to the competitor to ensure excellent stable management and proper controls over a horse used in international events to ascertain that they are not administered any prohibited substances either negligently or willfully. This has been stated time and time again in a multitude of varying cases in which was evidenced that third parties had actual control over the horses at issue. Similarly, it is up to a rider to ensure that borrowed horses are free from prohibited substances prior to being transferred to the control of the rider, even if this change of custody is accomplished right before the event.
- u. The vital policy of the FEI to ensure that horses are not doped

while competing in international events cannot be compromised due to the fact that riders ride borrowed horses. The transfer of responsibility between rider and owner cannot relieve a rider from responsibility, as a contrary position would jeopardize the crucial FEI policy that horses must compete free of prohibited substances. If a rider is not absolutely and positively convinced that a horse ridden at an international event does not have prohibited substances in its system, the rider should not agree to ride the horse at that event. The rider should assess the risk and also accept any unknown risks. This is in line with the FEI's strict liability policy in connection with doping cases.

- v. Having visited with some detail the policy issues, the FEI Tribunal has noted that the PR, in her statement of 31 March 2008, states that she fully understands and accepts that she is accountable for the consequences, and offers her sincere apologies for the embarrassment that any positive test brings to the FEI.
- w. Taken into account the testimony of Dr Russell Malton, the evidence in the case seems to demonstrate that the Horse most likely was under exclusive care of the owner's employees when the prohibited substances that are not explained in the case, were administered to the Horse. The Tribunal is therefore of the view that in this case the rider has acted negligently towards her responsibility as Person Responsible, but not herself deliberately administered any substance to the Horse to affect its performance.
- x. In deciding the sanctions the FEI Tribunal considered, on the one hand, the doping violation and types of substances involved as well as the conduct of the PR and the veterinarian of the horse, the level of the Event and, on the other hand, the PR's cooperation in the investigation. The Tribunal considers that the positive result is sufficient to establish that, despite the explanations given, the PR was negligent by not having ensured that the Horse was competing drug-free at the Event.

4.3 Disqualification

As a result of the foregoing, the FEI Tribunal has decided to disqualify the horse Fenwick Cadenza and the PR from the Event, and that all medals, points and prize money won at the Event must be forfeited, in accordance with EADMCR Article 9.

4.4 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 and EADMCRs Article 10:

- 1) The PR, Sue Sidebottom, shall be suspended for a period of **five (5) 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 1000.-**.

3) The PR shall contribute **CHF 1 000.-** towards the legal costs of the judicial procedure, .


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: No

FOR THE PANEL

THE CHAIRMAN Mr Erik Elstad
28 July 2008
(signed in his absence)

* * * RAPPORT DE RESULTAT DE LA COMMUNICATION (28. JUL. 2008 16:39) * * *

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CAUSE DE L'ERREUR
E-1) RACCROCHE OU ERREUR DE LIGNE
E-3) PAS DE REponse

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Pages : 3 + 7

By fax and by registered courier

28 July 2008

For the attention of Ms Sue Sidebottom

We kindly request the GBR- NF to send us an acknowledgement of receipt with a copy of the proof of receipt (by fax, by email or registered courier) confirming that the President of the Organising Committee of the mentioned Event has received the Tribunal's Decision once the appeal period has expired.

**RE: Equine Anti-Doping and Medication Control Rule Violation
Case: 2008/04**

Horse / Passport: FENWICK CADENZA / AUS01504

Person Responsible / NF: Sue Sidebottom / GBR

Event: CEI 2* 100km Al Asayl, UAE

Date: 08.02.2008

Prohibited Substances: Dexamethasone, Phenylbutazone,
Oxyphenbutazone, Gamma-hydroxyphenylbutazone, Triamcinolone
acetonide, 3-hydroxymepivacaine, Ethanol

Sample Bar Code No.: 0057059

President
HRH Princess Haya Bint Al Hussein