



DECISION of the FEI TRIBUNAL

dated 10 August 2007

Positive Medication Case No.: 2007/08

Horse: CARRIERE ZWEI

FEI Passport No: GER26757

Person Responsible: Ms Pia-Luise Aufrecht, GER

Event: CSI 3* Affalterbach (GER), 19-22.10.2006

Prohibited Substance:

Testosterone

1. COMPOSITION OF PANEL

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

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 9 July 2007 in Lausanne FEI Headquarters.

Present: The FEI Tribunal Panel

For the FEI:

Mr Alexander McLin, General Counsel
Ms Laetitia Zumbrunnen, Legal Counsel
Mr Frits Sluyter, FEI Veterinary Director, witness (by telephone)

For the PR:

Ms Pia-Luise Aufrecht, Person Responsible
Dr Plewa, Counsel of the PR

Ms Kati Paakkolanvaara, Groom of the PR, witness
Dr Marc Koene, Equine Specialist, witness (by telephone)
Two interpreters

Observers

Mr Hans-Werner Aufrecht, Father of the PR
Mr Gert-Jan Bruggink, Partner of the PR
Ms Lies De Backer, FEI Veterinarian

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, revision effective May 2006, ("**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 June 2006, Arts. 142, 146.1 and 174 and General Regulations, 22nd edition, effective 1 June 2007, Arts. 142, 146.1 and 174 ("**GR**").

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

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

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

FEI Code of Conduct for the Welfare of the Horse.

3.2 Persons Responsible: Ms Pia-Luise Aufrecht

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."*

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. Carriere Zwei (the "**Horse**") participated at CSI 3* Affalterbach, Germany, from 19 to 22 October 2006 (the "**Event**"). The Horse was ridden by Ms Pia-Luise Aufrecht who is the Person Responsible in accordance with GR Article 142 (the "**PR**").
- b. The Horse, a mare, was selected for sampling on 22 October 2006. Analysis of the urine sample no. FEI-0020903 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 Testosterone at a concentration of 394 ± 12 ng/ml (Certificate of Analysis 0020903 dated 22 November 2006).
- c. On 31 January 2007 the PR submitted a request for a confirmatory analysis. The confirmatory analysis was carried out on urine at LCH from 12 to 14 February 2007 under the supervision of Mrs Mylène Roche, Senior Analyst, and was witnessed by Dr Marc Machnik, Director of Horse Doping Analysis at the Institute of Biochemistry in Cologne, at the request of the PR. It confirmed the presence of Testosterone at a concentration of 425.5 ± 17.7 ng/ml (Counter-Analysis Report dated 14 February 2007).
- d. Testosterone is an anabolic steroid (Certificates of Analysis 0020903 dated 22 November 2006 and 14 February 2007, and Veterinary Department's Statements dated 20 December 2006 and 20 February 2007) and an endogenous substance in horses which is prohibited when its threshold level is higher than the relevant ratio allowed. The threshold level of Testosterone for mares is 55 ng/ml. As specified in the first section of the Equine Prohibited List (VR Annex III), the presence of Testosterone at a concentration higher than this threshold level is considered a "Doping" Prohibited Substance.
- 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 are accurate. The FEI Tribunal is satisfied that the test results show the presence of the Prohibited Substance at a concentration higher than the permitted threshold level for the Horse. 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.
- f. 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, in accordance with EADMCRs Article 10.5.

- g. The PR presented through counsel certain evidence which was made available to the Tribunal along with the FEI evidence on 14 May 2007.
- h. Additionally, the PR requested an oral hearing in this case. The PR was offered a hearing on one of the pre-set monthly dates set by the Tribunal, either in person or by teleconference. This was not accepted by PR's counsel due to apparent conflict with prior appointments. Eventually a hearing was scheduled and held in Lausanne on 9 July 2007.
- i. In her written explanations dated 4 and 30 April 2007, as confirmed and expanded upon at the hearing, the PR stated that she has been competing internationally for some 17 years and that during the period from 1990 and 2006 her horses had been tested several times, always ensuing in negative results. She mentioned, as an example, that another horse with whom she participated in the 2006 World Cup Final tested negative.
- j. The PR explained that all veterinary examinations and treatments are documented meticulously, in a stable book, complying with the recommendation of the German National Federation. The PR added that, when employing feed supplements, she assures herself that they do not contain any prohibited substance and that she consults her veterinarian in regard to their use. Nevertheless, at the hearing, the PR demonstrated that the feed additives given to the Horse and containing or stimulating production of prohibited substances were not listed in the stable book, a copy of which was provided to the Tribunal, since only medication is listed.
- k. Research conducted by the PR during and after the "B sample" testing led to the finding that the last veterinary treatment of the Horse had been 24 days before the Event and that this treatment could not lead to an increase of the Testosterone level.
- l. As an attempt at explanation, the PR provided the supposition that her mare could have suffered from gynaecological illnesses, producing Testosterone endogenously. The PR did however not produce any evidence of her mare being ill, such as, at the very least, an ultrasound supporting such suppositions. Furthermore, certain articles provided, mentioning endogenous production of Testosterone in mares, could not explain the findings which revealed concentration which is some seven times higher than the permitted threshold for mares.
- m. As a further attempt at explanation, the PR also made some general references to lack of stable security and possible manipulation by third parties. Lack of stable security is not an

excuse in doping cases and the PR is to ensure excellent stable management and proper security over horses used in international events in order to make sure that no prohibited substances are administered either negligently or willfully. The PR's responsibility as laid down in the Veterinary Regulations and the General Regulations has been approved by the CAS in various decisions.

- n. The PR has the burden of proof to convince the Tribunal by "a balance of probability" that the presumption of guilt is rebutted, in accordance with EADMCs Articles 3.1 and 10.5. The Tribunal concludes that the general unsupported statements regarding possible intervention by third parties or gynaecological illnesses of the Horse do not meet this required standard of proof.
- o. As another more serious and supported explanation, the PR testified that upon agreement with Dr Hans Georg Stihl, the stable veterinarian, the Horse was given feed additives named "Equistro Energy Boosters", "Traumel" and "Equine Anabolic". The latter is a muscle-builder and energizer, composed of DHEA (dehydroepiandrosterone), Creatine, Pregnenolone and Gamma Oryzanol, stimulating the body to produce growth hormones and Testosterone. The PR testified that Dr Stihl *"had stated explicitly that none of these supplementary feeds was able to increase the testosterone level"*.
- p. The PR argued that Dr Stihl recommended "Equine Anabolic" when she asked him what she could give to the Horse to assist it as it showed stress symptoms and did not eat when competing at shows. As she is not an expert and therefore was "not informed about pharmacological details", she testified that she had mentioned her concern about the name of the product, to which Dr Stihl had answered that the name was misleading and that there would be no infringement of the doping regulations with this product.
- q. The PR testified that the producer of "Equine Anabolic" went out with a campaign explaining that this additive did not cause a prohibited testosterone level and that this was confirmed by Dr Stihl. The PR testified that since this case has been reported, this information was no longer available on the producer's website.
- r. The PR explained that due to the questionable name of the product she had also consulted Dr Björn Nolting, Veterinarian of the German Jumping Team, who, as she and Ms Kati Paakkolanvaara, the groom of a different horse stabled at the same place and whose horse was attended to by Dr Nolting, recall, told her that "Equine Anabolic" would not test positive. To this statement, which has also been testified to at the hearing by both the PR and Ms Paakkolanvaara, Dr Nolting answered that he *"did not remember a situation where [the PR] ever asked [him] concerning a product 'Equine Anabolic'"*

concerning – if it would test positive in a possible doping test or not". Dr Nolting added that *"I do not use the product in my daily practice and I have no experience whether it is testing positive or how long before competition a supply has to be stopped"*. Dr Nolting further added that *"the products are not listed on the German market and that [he is] well aware of the doping problem and the very difficult situation concerning the duration in the body"*.

- s. The PR found out that several trot racing horses, that had been given the product, tested positive to it.
- t. Dr Frits Sluyter, Head of the FEI Veterinary Department, testified, in his statement dated 18 April 2007, that *"if one gives a horse which may be subject to testing additives which are labelled 'equine anabolic', one is asking for regulatory problems"*. Dr Sluyter testified both in the statement submitted and during the hearing (by telephone) that the product given to the Horse contained gamma-oryzanol, which is included in the Equine Prohibited List as a medication "B" substance. Dr Sluyter further testified that only the presence of two hormone precursors (pregnenolone and DHEA), which are both involved in endogenous testosterone, suggested taking a risk when giving to a competition horse. Dr Sluyter, nevertheless, added that it was impossible to judge whether such a level of Testosterone, more than six times the threshold level for mares, was due to this feed additive or to the administration of Testosterone given by other means.
- u. The PR provided a statement and testimony from Dr Marc Koene, a specialist in gynaecological illnesses of horses, who stated that *"many horses seem to get the 'supplement', only a few test positive."* He explained that only one in twenty horses would have its level of testosterone increased as a result of this supplement. *"This is due to the very individual steroid synthesis in the horse, which is poorly understood and documented"*.
- v. On the high level of testosterone found in the bodily sample, Dr Klug, from the University of Veterinarian Science in Hannover, argued that *"a mare having such a high level of testosterone inevitably would show highly visible manners of a stallion such as mating behaviour"*. Dr Hoppen, from the Tierärztliche Hochschule in Hannover, stated that *"With the [...] preparation ('Equine Anabolic') urinary testosterone concentration above 400 ng/ml can be expected, particularly after using the food additive for several consecutive days"*.
- w. The Tribunal accepts that the PR relied on Dr Stihl's statement and that the use of "Equine Anabolic" was not personally intended to enhance performance. Based on all the evidence submitted and the lack of sufficient research as well as on the testimonies of Dr Koene and Dr Hoppen, it concludes that the PR met her burden of proof and rebutted the presumption of guilt in accordance with EADMCRs Article 10.5 given that it

appears plausible that "Equine Anabolic" could have in certain circumstances been responsible for the elevated testosterone level.

- x. Nevertheless, the Tribunal considers that the PR acted with gross negligence and disregard to the risks of using doping substances, by providing clearly marked additives, with the suspicious name of "Equine Anabolic", that contained prohibited substances and having potential to cause production of Testosterone, by not listing the substance in the stable book and by not receiving written advices from renowned veterinarians especially when dealing with a product of such name. Ultimately the PR is the person responsible for actions relating to her Horse, including for her choice of personnel and treating veterinarian, and she is responsible that her 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 grossly negligent by not having ensured that her Horse was competing drug-free at the Event.
- y. In deciding the sanctions the FEI Tribunal considers, on the one hand, the doping violation and the fact that the substance involved is Testosterone, as well as the gross negligence of the PR, who is experienced in the sport and has competed for many years at the highest level, and, on the other hand, the fact that this is viewed as a negligent (be it gross negligence) action and the PR's first rule violation.
- z. In assessing costs the Tribunal considers that the frontal hearing requiring the travel of the Tribunal panel has not added much beyond what the parties submitted in their written statements and what a hearing by teleconference could have evidenced.
- aa. While not impacting the present decision, the Tribunal highlights that in the decision of the Judicial Committee of the FEI dated 11 November 2003 regarding the horse Rusty 47 evidence was provided regarding administration of Testosterone Propionate by Dr Stihl that had not been reported to either the rider in that case or to Dr Nolting (who also then acted as the veterinarian of the German NF).

4.2 Disqualification

As a result of the foregoing, the FEI Tribunal decides to disqualify the horse CARRIERE ZWEI and the PR from the Event and that all medals, points and prize money won at the Event must be forfeited, in accordance with EADMCRs Article 9.

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 and EADMCRs Article 10:

- 1) The PR shall be suspended for a period of **six (6) 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 2,500.-**.
- 3) The PR shall contribute **CHF 2,500.-** 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: Dr Plewa, Counsel of the PR

6. THE SECRETARY GENERAL OR HIS REPRESENTATIVE:

Date : 10 August 2007

Signature: 