



DECISION of the JUDICIAL COMMITTEE of the FEI

dated 9 May 2007

Positive Medication Case No.: 2007/09

Horse: KAVIAR MURY MARAIS Z

FEI Passport No: ITA09260

Person Responsible: Mr Umberto Vighi, ITA

Event: CSI 1* Manerbio, ITA

Prohibited Substances:

- (1) Flunixin
- (2) Phenylbutazone
- (3) Oxyphenbutazone (metabolite of Phenylbutazone)
- (4) Methocarbamol

1. COMPOSITION OF PANEL

Mr Erik Elstad
Mr Patrick Boelens
Mr Leonidas Georgopoulos

(The Panel previously included Dr Jens Adolphsen who was replaced by Mr Boelens due to professional commitments.)

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

2.2 Summary information provided by Person Responsible (PR): The Judicial Committee took into consideration all documents presented in the case file, as also made available by and to the PR.

2.3 Oral hearing: On 30 April 2007 in Lausanne, FEI Headquarters.

Present: The Judicial Committee Panel

For the FEI:

Alexander McLin, General Counsel
Laetitia Zumbrunnen, Legal Counsel

For the PR:

Umberto Vighi, Person Responsible

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.

General Regulations ("**GR**"), 21st edition, effective 1 June 2006, Arts. 142, 146.1 and 174.

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

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

FEI Code of Conduct for the Welfare of the Horse.

3.2 Persons Responsible: Mr Umberto Vighi

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."

4. DECISION

4.1 Consideration of the evidence:

- a. Kaviar Mury Marais Z (the "**Horse**") participated in CSI 1* Manerbio (ITA) from 24 to 26 November 2006 (the "**Event**"). The Horse was ridden by Mr Umberto Vighi who is the Person Responsible in accordance with GR Article 142 (the "**PR**").
- b. The Horse was selected for sampling on 26 November 2006. Analysis of the urine sample no. FEI-0021335 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 Flunixin, Phenylbutazone, Oxyphenbutazone and Methocarbamol (Certificate of Analysis 0021335 dated 18 December 2006).

- c. Flunixin, Phenylbutazone and Oxyphenbutazone, a metabolite of Phenylbutazone, two non steroid anti-inflammatory drugs (NSAIDs) and Methocarbamol, a muscle relaxant (Certificate of Analysis 0021335 dated 18 December 2006), are substances, when present together, specified in the first section of the Equine Prohibited List (VR Annex III) as "Doping" Prohibited Substances.
- d. The Judicial Committee is satisfied that the laboratory report reflects that the tests were accurately performed in an acceptable method and that the findings of LCH are accurate. The Judicial Committee 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.
- e. 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.
- f. In his explanation the PR states that he is an amateur rider, competing at an international level for a long time. The horse Kaviar Mury Marais Z is born in 1999 and was competing in classes for young horses at the Event.
- g. The PR considers the Horse to be promising, but it has some problems with its back. To keep the Horse in training it was regularly treated by his veterinarian, Dr. Michel Heyvaert, who had been coming from Belgium to the PR's stable in Italy every month since September 2006. The Horse was treated by Dr. Heyvaert on 15 November 2006, 9 days before the show. This course of treatment was apparently necessary to treat stiffness resulting from temporary paralysis that the Horse had suffered further to vaccination at an early age. The PR knew that the veterinarian gave the Horse some injections, but did not ask what substances were administered. The PR showed the veterinarian his competition program and asked him if he could compete in Manerbio. The PR stated that Dr. Heyvaert said it could be on the limit, but that it was permissible.
- h. When the PR was notified about the positive findings he sought information from Dr. Heyvaert about the treatment and substances administered to the Horse on 15 November 2006. Dr. Heyvaert told him that the treatment included the Prohibitive Substances Flunixin, Phenylbutazone and Methocarbamol, which were the substances later found in the analysis. The veterinarian declined to give this

information in writing and apparently did not want to give testimony in this case seemingly out of concern for his reputation. The PR was very upset about this. In his explanation to the panel during the hearing, the PR said that he accepts full responsibility for what has happened; he accepts the positive findings and did not ask for a confirmatory analysis. He said that since this was a low level show, with classes for young horses, he was not careful enough in asking what was given to the Horse, in calculating withdrawal time and in contacting the FEI Veterinary Delegate for the issuance of a Medication Form 1 upon arrival at the Event, even though he had done it before on other occasions.

- i. The Judicial Committee accepts the PR's explanation and that the positive findings are the result of a legitimate treatment of the Horse and that, therefore, the PR has successfully rebutted the presumption set forth by Article 10.5.2 EADMCRs. However, the Panel of the Judicial Committee is of the opinion that the PR was negligent as he did not inform himself properly with respect to the treatments administered to his Horse and their related withdrawal times. Although it is understandable that the PR relied on the veterinarian that had treated the Horse, it is ultimately the PR's responsibility to ensure that the Horse does not participate at an Event with prohibited substances within its systems. Furthermore, the treating veterinarian should have been aware of the fact that the administered substances contained forbidden substances with an unpredictable detection time when administered together. The PR should always declare to the FEI Veterinary Delegate any treatment administered to a horse in proximity to an event, for the issuance of the appropriate authorization to compete at the event.
- j. In deciding the sanctions the Judicial Committee considered, on the one hand, the doping violation and types of substances involved as well as the conduct of the PR and his veterinarian and, on the other hand, the PR's amateur "status", the level of the Event and the PR's cooperation in the investigation. The PR was negligent by not having ensured that his Horse was competing drug-free at the Event. The PR's responsibility for the welfare of the horse is the same, regardless of the relative importance of the show.

4.2 Disqualification

As a result of the foregoing, the Judicial Committee has decided to disqualify the horse Kaviar Mury Marais Z 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 Judicial Committee 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 **two (2) 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 1'000.-**.
- 3) The PR shall contribute **CHF 2'000.-** 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

6. THE SECRETARY GENERAL OR HIS REPRESENTATIVE:

Date : 9 May 2007

Signature: Bred