



DECISION of the FEI TRIBUNAL

dated 12 November 2007

Positive Medication Case No.: 2007/10

Horse: RIVANO

FEI Passport No: USA10929

Person Responsible: Mr Charlie Jayne, USA

Event: CSI 2* Wellington, USA, 31.01. – 04.02.2007

Prohibited Substance:

Naproxen

1. COMPOSITION OF PANEL

Mr Patrick A. Boelens
Mr Erik Elstad
Mr Alberto Hernán 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 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 ("**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.

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 Person Responsible: Mr Charlie Jayne

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 New Statutes, the Judicial Committee is now referred to herein as the "Tribunal".

4. DECISION

4.1 Factual Background

- a. Rivano (the "**Horse**") participated in CSI 2* Wellington, USA, from 31 January to 4 February 2007 (the "**Event**"). The Horse was ridden by Mr Charlie Jayne who is the Person Responsible in accordance with GR Article 142 (the "**PR**").
- b. The Horse was selected for sampling on 1 February 2007. Analysis of the blood and urine sample no. FEI - G01029 taken from the Horse performed by the approved Equine Drug Testing and Research Laboratory ("**EDTRL**"), in Ithaca, USA, revealed the presence of naproxen (Analysis Report FEI G01029 dated 20 February 2007). No confirmatory analysis was requested by the PR.
- c. Naproxen is a Non-Steroidal Anti-Inflammatory Drug (NSAID) (Veterinary Department's Statement dated 5 March 2007) and accordingly is a substance specified in the second section of the Equine Prohibited List (VR Annex III) as "Medication Class A" Prohibited Substance.

- d. The FEI Tribunal is satisfied that the laboratory report reflects that the tests were accurately performed in an acceptable method and that the findings of EDTRL are accurate. The FEI Tribunal is satisfied that the test results show the presence of the Prohibited Substance. 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 written explanation dated 27 March 2007 the PR states that he is a young rider of 21 years old and a full time student at University. He has been riding all of his life and competing at an international level for several years, and started to ride professionally for his father at his family farm recently before the Event. He explains that because he is a full time student he does not take part in any of the day to day care or management of any of the horses that he rides or that his father trains.
- g. The PR mentions that at the Event he just had time to arrive from University and compete and that he did not even walk the competition course. The PR specifies that the Horse is not stabled at his barn and that his owner, Mrs Rachel Spencer, is responsible for his care, custody and control, and she prepares the Horse for the show ring.

4.2 The Person Responsible

- h. Under Article 142 GR, effective at the time of the Event, *"[t]he Person Responsible shall be the competitor who rides or drives the horse during an event, but the owner and other support personnel [...] may be regarded as additional Persons Responsible if they are present at the event or have made a relevant decision about the horse."*
- i. The PR argues that he became a member of the FEI when he was a junior and that he understood at that time that he was not the PR for the horses he competed on. He states that he *"simply did not know that [his] age had anything to do with [his] status as a "Person Responsible" for the horses [he] competed on."*

- j. The PR should be aware of the FEI Rules and Regulations when competing at an international level and is therefore supposed to know that by reaching the age of 18, he was no longer considered a minor and therefore became the PR according to Art. 142 GR. The fact that the United States Equestrian Federation's ("**USEF**") Rules may differ from the FEI Rules and Regulations on this matter is considered as irrelevant.

4.3 The Notification

- k. The PR explains that when he finished his round on the Horse, he left the arena, got off the Horse, handed him to his groom and went to talk to his trainer, who is his father, Alex Jayne. He assures that he was not aware that his Horse had been selected for sampling until later and that no one talked to him about it.
- l. Ms Carolyn Camp, Testing Technician at the Event, provided testimony as to her notification to Charlie Jayne. She states that she approached the PR as he left the riding arena, informed him that his Horse had been selected for a drug test, that the PR "acknowledged" her and continued to walk on his Horse out of a narrow exit area. According to Dr Glenn Gillard's testimony, Testing Veterinarian at the Event, one of his other drug testers was present at the time of the notification of the PR and confirms Ms. Camp's statement. The Testing Technician added that she followed the PR over to where his father and groom were waiting, and started to make note of the Horse's colour and markings on the Equine Sample Identification Document until the PR and his father had finished talking. At that point the PR left the group and the Testing Technician introduced herself again to the father of the PR who directed her to the owner of the Horse as the PR and person who could answer questions about the Horse. During all this time, the Testing Technician assures that she was wearing her credentials and carrying the obvious drug testing black bag.
- m. The Testing Technician explained that it was a very busy show, with thousands of horses and riders, and that it is very common practice in these kinds of events that a representative is nominated to witness the sampling procedure. In the present situation, the groom witnessed the blood sampling and the owner witnessed the urine sampling and also signed the documents appropriately. The Testing Technician and Testing Vet were in no doubt that the PR had been correctly notified and that he had been represented, as is often the case because he is busy riding other horses.

- n. On their side, the PR and his father argue that, while the USEF Rules and the FEI Rules differ on the issue of the responsible party, trainers being the Persons Responsible in the absence of substantial evidence to the contrary under the USEF Rules, neither the PR nor his father were aware of those differences on the day the Horse was tested.
- o. The Tribunal is of the opinion that a PR who competes at international competitions under the FEI Rules and Regulations should be aware of these rules, even when differing from the national ones that are effective for the national event taking place at the same venue as the international event.
- p. The Tribunal is furthermore of the opinion that the notification to the PR, followed by a discussion with the trainer and the owner of the Horse, is sufficient notification in the specific circumstances of this case. The groom and the trainer also have a certain obligation to advise the PR regarding the doping test. One cannot expect officials in the turmoil of the event to chase the persons responsible and confirm their identity. The people responsible for horses leaving the arenas must have certain responsibility to be acquainted with the sampling procedures and inform the persons responsible by mobile phone or otherwise, whereupon the persons responsible should report to the testing box.
- q. The Tribunal accepts the Testing Technician's statement that she informed the PR, while he was leaving the competition arena, that the Horse had been selected for sampling. The PR should then have been aware of the procedures to be followed according to the FEI Rules and Regulations. The Tribunal accepts the fact that the sampling procedure was executed in the presence of the Horse's owner which guarantees that the sampling procedure was executed according to the FEI Rules and Regulations.

4.4 The Prohibited Substance

- r. Research conducted by the PR and the owner of the Horse led to the finding that on 30 January 2007, Dr Timothy R. Ober, treating veterinarian of Mrs Spencer, dispensed a bottle of naproxen pills to her for use in treating another horse that she owns. This is confirmed by the statement of Dr Ober, dated 21 March 2007. The owner of the Horse mentions that she knows naproxen is a Prohibited Substance and assures that the Horse was not treated with anti-inflammatory medications, especially as he had been suffering from ulcers during the summer of 2006 and that this medicine might worsen the state of the Horse. The owner of the Horse provides the explanation that one of her grooms either confused the Horse's feed bucket with the

bucket of the horse that was being treated or, that naproxen was inadvertently put in the Horse's feed.

- s. Dr Frits Sluyter, Head of the Veterinary Department of the FEI, provided testimony as to the probability of the finding of naproxen in the Horse due to negligence of the Horse's owner's employee. He stated that it could have resulted in a positive test result, and he considers the negligent handling of a substance, known to be prohibited, as irresponsible.
- t. It is the responsibility of the PR to establish a sound system allowing his team to control the stable management of horses that are competing at an international level (even a low level event) and ensure that these horses are not administered medication intended for other horses stabled at the same location.
- u. The fact that a groom might have confused the Horse's feed bucket with the bucket of a horse that was being treated is no legitimate excuse to dismiss the charges, although the Tribunal accepts the rebuttal of the presumption of intentional doping.
- v. The Tribunal concludes that the PR was negligent in not ensuring that the personnel taking care of the Horse established sufficient precautions to avoid confusion of feed buckets and accidental contamination of the Horse with prohibited substances. The Panel 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.
- w. In deciding the sanctions the FEI Tribunal considered, on the one hand, the doping violation and the type of substance involved as well as the conduct of the PR and the Horse's owner and, on the other hand, the PR's amateur "status", the level of the Event and the PR's cooperation in the investigation.

4.5 Disqualification

As a result of the foregoing, the FEI Tribunal has decided to disqualify the horse RIVANO 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.

4.6 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 **3 (three) 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 750 .-** 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: Counsel of the PR

6. THE SECRETARY GENERAL OR HIS REPRESENTATIVE:

Date : 12 November 2007

Signature: 