



DECISION of the FEI TRIBUNAL

dated 15 July 2008

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Positive Medication Case No.: 2008/11

Horse: CARLOS BOY

FEI Passport No: GER22605

Person Responsible: Mr Ken Berkeley, USA

Event: CSIO 5* Wellington, FL (NC), USA, 5-9 March 2008

Prohibited Substance: Boldenone

1. COMPOSITION OF PANEL

Mr Pierre Ketterer
Mr Erik Elstad
Mr Philip O'Connor

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, 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 ("**FEI 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.

3.2 Persons Responsible: Mr Ken Berkeley

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. Carlos Boy (the "**Horse**") participated in CSIO 5* Wellington, from 5 to 9 March 2008 (the "**Event**"). The Horse was ridden by Mr Ken Berkeley who is the Person Responsible in accordance with GR Article 142 (the "**PR**").
- b. The Horse was selected for sampling on 9 March 2008. Analysis of the urine and blood sample no. FEI G 09269 taken from the Horse performed by the approved laboratory of the FEI, the Equine Drug Testing and Research Laboratory ("**EDTRL**"), in the USA, revealed the presence of Boldenone (Test Report G 09269 dated 9 April 2008).
- c. Boldenone is an Anabolic Steroid having an anabolic effect (FEI Veterinary Department's Statement dated 6 May 2008) and accordingly is a substance classified in the first section of the Equine Prohibited List (VR Annex III), as a "Doping" Prohibited Substance.
- d. On 13 May 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. Furthermore, the FEI gave the PR notice that he was provisionally suspended as of 13 May 2008 until further notice in accordance with EADMCRs Article 7.2 and provided him with the opportunity to request a preliminary hearing.
- f. Following the preliminary hearing that was held on 14 May 2008, the FEI Tribunal decided not to lift the provisional suspension effective as of 13 May 2008 and to maintain it for a period of two (2) months (until 13 July inclusive). The FEI Tribunal considered that the PR acted with negligence in using an illegal substance without making sure the Horse was clean before competing at the Event.
- g. During this preliminary hearing, the PR informed the FEI that he waives his right to the B-analysis. In accordance with EADMCRs Article 7.1.4, the A-sample is therefore used as evidence of the rule violation.
- h. 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 the 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.
- i. The establishment of the objective elements of a doping offence creates the presumption of guilt of the PR. 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.
- j. In his written explanation dated 23 May 2008, the PR states that he has been a professional rider and trainer since 1986.
- k. He explains that the Horse had been treated on 5 and 12 November 2007 by Dr David Adma-Castrillo with a series of Equipoise (Boldenone Undecylenate), in order to improve a poor body condition. This is confirmed by the statement of Dr David Adma-Castrillo, dated 21 May 2008, who treated the Horse on those days. This veterinarian adds that he was also giving the Horse since June of 2007 :
 - Intraarticular injections of hocks and stifles ;
 - Intraarticular /periarticular injections of lumbosacral and sacroiliac joints ;

- Intraarticular injections of fetlocks joint and back ;
 - Intravenous infusion of tiludronate.
- l. Dr David Adma-Castrillo states also that "a period greater than 90 days was taken into consideration for administration of the medication prior to FEI sanctioned competitions in March 2008".
 - m. Dr Frits Sluyter, head of the FEI Veterinary Department, testifies, in his statement dated 3 June 2008, that "anabolic steroids have a prolonged detection profile". Dr Frits Sluyter adds that the FEI does not provide advice as to the detection time for anabolic steroids.
 - n. The FEI Tribunal is convinced, after consideration of all the evidence, of the possible causal link between the treatment with a series of Equipoise and test results. The PR has therefore successfully met its burden of proof under EADMCRs Article 10.5, in regard to the administration of the substance Boldenone, by proving how Boldenone entered the Horse's system.
 - o. Nevertheless, The Tribunal deems that the PR acted with evident negligence by not making sufficient enquiries in order to ensure that the Horse was competing drug free. The fact that the treatment at the origin of the positive result was easily found out by the PR demonstrates that with more care this treatment could have been avoided.
 - p. The Tribunal has repeatedly expressed that it is the responsibility of competitors to ensure that their horses do not have any prohibited substances in their systems while competing at international events. The PR should always inform himself of all medication given to horses ridden by him and ensure that they do not contain any prohibited substances.
 - q. Consequently, the Tribunal considers that the PR acted with negligence by providing treatment that contained Boldenone, which is included in the Equine Prohibited List as a Doping substance. 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.
 - r. In deciding the sanctions the FEI Tribunal considers, on the one hand, the doping violation, the fact that the substance involved is Boldenone, the negligence of PR and the fact that the PR is experienced in the sport and has competed for many years at international level, and, on the other hand, the fact that this is the PR's first rule violation and the PR's cooperation in the investigation.

4.2 Disqualification

As a result of the foregoing, the FEI Tribunal has decided to disqualify the horse Carlos Boy 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 **three (3) months**. Taking into account the fact that the PR has been provisionally suspended as from 13 May 2008, the suspension period will run until and including 13 August 2008.
- 2) The PR is fined **CHF 2'000.-**.
- 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

6. THE SECRETARY GENERAL OR HIS REPRESENTATIVE:

Date : 15 July 2008

Signature:


Philippe Burnand