



INTERIM DECISION of the FEI TRIBUNAL

dated 3 October 2008

Positive Medication Case No.: 2008/20

Horse: COSTER

FEI Passport No: GER19770

Person Responsible: Mr. Christian Ahlmann

Event: Games of the XXIX Olympiad, Beijing 2008
8 – 21 August, Hong Kong

Prohibited Substance

Capsaicin

1. COMPOSITION OF PANEL

Mr Ken Lalo
Mr Pierre Ketterer
Mr Philip O'Connor

2. ORAL HEARING OF 26 SEPTEMBER 2008

Present:

The FEI Tribunal Panel

For the FEI:

Mr Xavier Favre-Bulle, Outside Legal Counsel
Ms Marjolaine Viret, Outside Legal Counsel
Mr Philippe Burnand, Legal Counsel
Ms Catherine Bollon, Legal Coordinator
Dr Paul Farrington, DVM, Witness
Dr Terence S.M Wan, Witness (by transcript of the Case 2008/27)

For the PR:

Mr Christian Ahlmann, Person Responsible
Mr Andreas Kleefich, Counsel for the PR
Mr Frank Andexer, Counsel for the PR
Dr Ulf Waltz, Counsel for the PR
Mr Ahlmann's father
Ms Michaela Meyering, Groom/Witness
Dr Laurent Bigler, Witness (by transcript of the Case 2008/27)
Prof Dr Thomas Tobin, Witness (by transcript of the Case 2008/27)

3. SUMMARY OF THE CASE AND GROUNDS FOR THE INTERIM DECISION

1. Mr Christian Ahlmann (the "**PR**") has been provisionally suspended from competition by the FEI at the 2008 Olympic Games, on 21 August 2008.
2. At a hearing held on 21 August 2008 a Preliminary Panel of the FEI decided to maintain the provisional suspension until "*the final decision of the case by the FEI Tribunal*", permitting, however, extension or reduction by the FEI Tribunal based on further explanation and evidence to be submitted "*in the course of the proceedings*".
3. A hearing in this case was held at FEI Headquarters on 26 September 2008 (the "**Hearing**").
4. The Tribunal received evidence of positive results for Capsaicin for both the A-Sample and the B-Sample taken from Cöster (the "**Horse**") on 17 August 2008, during the 2008 Olympic Games.
5. The FEI argued that Capsaicin is a Prohibited Substance according to Annex III of the FEI Veterinary Regulations, 10th Edition, effective 1 June 2006. The FEI contended it is both a substance that can have a hypersensitising effect, and as such a Doping substance, and also a substance that can have a pain relieving effect, and as such a Medication A substance.
6. At the Hearing the PR explained that he had used the product Equi-Block on the back of the Horse on a daily basis and as a normal routine. He confirmed that the substance had not been used as a hypersensitising agent on the Horse's front legs. The PR had apparently started using the substance four weeks before the Olympic Games as the Horse suffered lumbago during the CSI 5* Cannes (12 June 2008) event.
7. Favouring a speedy hearing, the parties did not request to hear the expert evidence of Dr Terence Wan, Dr Laurent Bigler and Dr Thomas Tobin, and requested that the transcript of the testimonies provided by these expert witnesses during the hearing of the Rufus case (2008/27) be made part of the record.
8. The PR and the FEI requested an opportunity to submit further pleadings, indicating that they did not have sufficient time to respond to evidence and pleadings, including experts' statements, provided by both parties, before the Hearing.
9. At the conclusion of the Hearing, the Tribunal allowed the FEI and the PR to file by 20 October 2008 their final submissions. The Tribunal indicated that a decision is expected to be issued by 31 October 2008.
10. The PR requested that, effective immediately and until the final decision in this case is issued, the provisional suspension be lifted. The PR argued that this was required in the PR's opinion, since: (i) the use of the prohibited substance in the manner testified to by the PR constituted, at worst, a medication control violation of a Medication A substance and clearly not a Doping case, (ii) the provisional suspension serves no legitimate purpose, (iii) the irreparable harm incurred by the PR as a criminal prosecution was opened against him in Germany concerning the alleged presence of blister on the legs of the Horse and (iv) based on the expected competition schedule of the PR

with major events with potentially large prize money coming up during the next weeks, the PR is likely to incur grave harm if the provisional suspension is not lifted with immediate effect, thus causing the balance of interests of the affected parties to lean in favour of the PR.

11. The FEI argued that the provisional suspension of the PR must remain in effect until the Tribunal's final decision is rendered, since: (i) the positive analytical results of both the A-Sample and the B-Sample indicate the likelihood of success on the merits of the case, (ii) a suspension is likely to be imposed on the PR in the final decision and any harm that the PR might incur from being suspended from competition now rather than later is unlikely to be material, given that any time spent provisionally suspended would be set off against a period of suspension decided in the final decision, (iii) the balance of interests of the affected parties leans in favour of the FEI, and (iv) the Tribunal can issue its decision very soon after the final pleadings by the parties are submitted so that the duration of the provisional suspension of the PR is likely to be limited.
12. In regard to the balance of interests of the affected parties the FEI argued that the rationale behind provisionally suspending athletes is not only to ensure a level playing field during an event where they have tested positive to a prohibited substance, but also to protect the image of the sport from being tarnished by the participation in competition of PRs facing contemporaneous proceedings against them for use of prohibited substances in regard to which they are facing potential sanctions.
13. The Tribunal is of the opinion that the appropriate test for deciding whether a provisional suspension should be lifted is the traditional test for assessing the use of preliminary measures during a pending legal proceeding, namely (i) the likelihood of success on the merits of the case, (ii) whether irreparable harm will result from the imposition of the measures, and (iii) the balance of interests of the affected parties.
14. Based on evidence presented to date and pending any additional evidence, the Tribunal is of the opinion that the likelihood of success by the FEI on the merits of this case, at least in regard to a Medication Class A control rule violation, does not require the immediate lifting of the provisional suspension.
15. The Tribunal accepts the FEI's position that permitting the PR to compete while having been charged with an anti-doping or a medication control rule violation at the Olympic Games in proximity to the Games is likely to do immeasurable harm to the image and future of equestrian sports by suggesting that the offense is not sufficiently serious to warrant a sustained suspension.
16. The Tribunal accepts the FEI's position that, in this case, the interests of the sport's well-being outweigh those of the PR, as the case is considered in the context of numerous other cases which have shed light on the widespread use of Capsaicin and related substances, which, taken together, and stemming from the Olympic Games which are in the spotlight of the entire IOC movement, sponsors, organisers, media and others, have potentially serious implications for the reputation and future of equestrian sports and the protection of horse welfare.
17. The Tribunal accepts the FEI's position that to allow the PR to return to competition in the current context is disproportionately lenient and

inappropriate to meaningful efforts at fighting doping and medication control rule violations.

4. INTERIM DECISION

For the reasons stated, the Tribunal issues the following interim decision in this case:

- a. The provisional suspension of the PR is not to be lifted and it will remain in effect until the Tribunal's final decision is rendered in this case.
- b. The PR is to provide the FEI by the close of business on 30 September 2008 with a summary of the particulars of the criminal prosecution opened in Germany.
- c. The FEI is to provide the PR with the transcript of the testimonies provided by the expert witnesses, Dr Terence Wan, Dr Laurent Bigler and Dr Thomas Tobin, during the hearing of FEI case 2008/27, by the close of business on 6 October 2008.
- d. This Hearing may be continued, at the request of either party. Such a request for a continued hearing (either by teleconference or in person) is to be submitted by either party by the close of business on 13 October 2008 and will then take place at a time to be decided by the Tribunal, which is likely to be between 13 and 20 October.
- e. The PR and the FEI are allowed to file by 20 October 2008 their final closing briefs.
- f. The Tribunal is expected to issue a final decision in this case by 31 October 2008.

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 Any other: PR's Counsel

FOR THE PANEL



**THE CHAIRMAN Mr Ken Lalo
Signed in his absence on 3 October 2008**