



DECISION of the FEI TRIBUNAL

dated 10 October 2008

Positive Medication Case No.: 2008/21

Horse: CHUPA CHUP

FEI Passport No: GER26246

Person Responsible: Mr Bernardo Alves

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

Prohibited Substance: Capsaicin

1. COMPOSITION OF PANEL

Mr Ken Lalo
Mr Patrick Boelens
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 duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR, as well as all testimonies, submissions and documents presented during the oral hearing.

2.3 Oral hearing: On 5 September 2008, in presence.

Present:
The FEI Tribunal Panel

For the FEI:
Mr Philippe Burnand, Counsel
Mr Mikael Rentsch, Counsel
Ms Catherine Bollon, Legal Coordinator
Dr Paul Farrington, FEI Expert Witness

For the PR:
Mr Bernardo Alves, Person Responsible
Ms Monika Gattiker, Counsel
Mr Oswald, Intern
Dr Ulf Waltz, Assistant to Counsel
Mr N. Pessoa, Translator for the PR
Dr P. Cronau, PR Expert Witness
Ms Key Neathan, Groom/Witness

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 ("**GR**"), 22nd edition, effective 1 June 2007, Arts. 142, 146.1 and 174.

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

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

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

FEI Code of Conduct for the Welfare of the Horse.

IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad, Beijing 2008, Art. 15.

The FEI Regulations for Equestrian Events at the Olympic Games (22nd ed.) ("**FEI OG Reg**"), effective for the 2008 Beijing Olympic Games (Hong Kong), Arts 614, 615 and Annex G.

3.2 Person Responsible: Mr Bernardo Alves

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."*

EADMCR 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. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Person Responsible's part be demonstrated in order to establish an anti-doping rule or medication control violation under Article 2.1."*

4. DECISION

4.1 Factual Background

1. CHUPA CHUP (the "**Horse**") participated in the Games of the XXIX Olympiad, Beijing 2008, from 8 to 21 August 2008 in Hong Kong (the "**Event**"). The Horse was ridden by Mr Bernardo Alves (the "**PR**").

2. During the Event, the Horse was granted three authorizations for the use of medication not listed as prohibited under FEI Regulations (Medication Form 3): (i) on 6 August 2008, for Lysomuril by means of Nebulisation for respiratory disease; (ii) on 17 August 2008, for Isolec for dehydration after travel through intravenous administration; and (iii) on 18 August 2008, for Ringer Fluid for dehydration after travel through intravenous administration.
3. The Horse was selected for sampling on 18 August 2008, following the Team Jumping Final – Round 2/Individual 3rd Qualifier.
4. Analysis of the blood sample no. FEI- 0069351 taken from the Horse, performed by the approved FEI laboratory, the Hong Kong Jockey Club Racing Laboratory (“**HKJC**”), in Hong Kong, under the supervision of Jenny K Y Wong, Chemist, and Dr Terence S M Wan, Head of the Racing Laboratory and Chief Racing Chemist, revealed the presence of Capsaicin (Test Report dated 21 August 2008).
5. The Prohibited Substance detected is a Capsaicinoid, which can be used either for pain relief or for hypersensitisation (Veterinarian Statement dated 21 August) and, accordingly, is classified as a “Prohibited Substance” under the Equine Prohibited List (VR Annex III; the “**Equine Prohibited List**”), either in the class “Medication A” or in the class “Doping”.
6. No request had been made for the use of Capsaicin on the Horse, and no medication form had been supplied for this substance.

4.2 The Preliminary Hearing

7. The presence of the Prohibited Substance, the possible rule violation and the consequences involved were duly notified to the PR on 21 August 2008.
8. The notification of 21 August included a notice that the PR was provisionally suspended and granted the opportunity to be heard at a preliminary hearing before the FEI Tribunal.
9. The PR confirmed that he wished the preliminary hearing to be held.
10. The preliminary hearing took place on 21 August 2008 and the preliminary decision was rendered and communicated to the PR on the same day. The PR was informed that the preliminary panel had decided to maintain the provisional suspension until the final decision of the case by the FEI Tribunal, subject to review depending on the explanations and evidence that might be submitted by the PR.
11. In its preliminary decision, the preliminary panel found that *“it was established to my satisfaction that the substance found by the laboratory was a Prohibited Substance, being both a substance with a hypersensitizing effect and as such a doping substance and a pain relieving effect and as such a Medication A substance”*.

12. The preliminary panel considered the PR's and his groom's explanations at the hearing that they had used "*the product Equi-Block DT on the fetlock of the horse's front legs on daily basis and as a normal routine*" and not as a hypersensitizing agent and that "*the substance has been used for a long time and the horse has been tested in several big events without having tested positive*" (Preliminary Decision). The PR and his groom further explained that they were confident that the substance was legal, that they were now aware that the substance had a pain relieving effect and as such a Prohibited Substance and therefore accepted that there are reasons for imposing a provisional suspension (Preliminary Decision).
13. In light of the above, and considering that the FEI policy is to impose provisional suspension in doping, and in medication A cases at major events such as the Olympic Games, the preliminary panel refused to lift the provisional suspension.

4.3 The B-Sample Analysis

14. In the notification of 21 August (Annex IV "B-Sample analysis"), the PR also received notice that the B-Sample analysis would be carried out at the HKJC. The PR was informed of his right to attend or be represented at the identification and opening of the B-sample, which was scheduled to take place on Saturday 23 August 2008 at 10:00 am.
15. On 21 August, the PR returned the Annex IV "B-Sample analysis" Form completed and signed, acknowledging that the B-Sample analysis would be performed as described and indicating that he did not wish to be present or represented at the identification and opening of the B-Sample.
16. The B-Sample analysis of the blood sample was carried out as scheduled on 23 August 2008 at HKJC under the supervision of under the supervision of Gary N W Leung, Racing Chemist, and David K K Leung, Racing Chemist.
17. The identification and opening was witnessed by Matthew Leung, Chief Investigator in the Security Department of the Hong Kong Jockey Club. In his witness statement, Matthew Leung certified that the blood B-Sample container "*shows no sign of tampering and that the identifying numbers appearing on the sample (two blood tubes) to be tested by the Racing Laboratory of the Hong Kong Jockey Club corresponds to that appearing on the collection documentation accompany the samples*" and that he had also witnessed the opening of the sample (Witness Statement dated 23 August 2008)
18. The B-Sample analysis confirmed the presence of Capsaicin (Test Report dated 25 August 2008).
19. On 26 August 2008, the FEI was informed that the PR had appointed a Legal Counsel.
20. The results of the B-Sample analysis were notified to the PR on 27 August 2008 through his NF and his Counsel.

4.4 The Final Hearing

21. By the same notice of 27 August 2008, the PR was informed that a Final Hearing has been scheduled for 5 September 2008. The PR was given a time limit until 3 September to submit any written explanations or documentary evidence.
22. The PR filed various submissions both before and after the hearing, including summary statements in a brief of 26 September 2008. These included written and oral testimonies (also by reference to evidence presented in parallel proceedings before the Tribunal relating to other riders) of Dr Laurent Bigler of the University of Zurich, of Dr Peter F Cronau and of Prof Dr Thomas Tobin.
23. The FEI filed various submissions both before and after the hearing, including summary statements in a brief of 12 September 2008. These included written and oral testimonies of Dr Wan and Dr Paul Farrington, DVM.
24. The Tribunal accepted all the evidence and briefs filed in this case, including the items filed at and following the hearing.
25. The Tribunal accepted Dr Farrington, Dr Bigler, Prof Tobin, Dr Cronau and Dr Wan as expert witnesses.
26. Immediately at the end of the hearing on 5 September 2008 the Tribunal lifted the PR's provisional suspension, but the suspension was reinforced by the Tribunal on 8 September 2008 based on a "protest" filed by the FEI.

4.5 Preliminary Procedural Arguments

27. The PR argued that the short deadlines in this and in the other cases related to the Event make it very difficult to properly deal with these cases.
28. The PR further argued that the FEI disclosed the laboratory documentation only on 19 September 2009 and that it was not possible, due to apparent shortage of time and unavailability, to have these documents, which provided information on the validity of the test, assessed by Dr. Bigler. The PR had to maintain his arguments contesting the validity of the test method and the correctness of the result based only on Dr. Bigler's reports previously submitted in this case, including on 19 September 2008.
29. The Tribunal is of the opinion that the FEI, in its fight against doping, must be able to prosecute cases rapidly. A delay in the process may have severe consequences to the future of the sport. This should, of course, in no way jeopardize the PR's due process rights. The Tribunal is of the opinion that the PR had more than ample opportunity to present his case. The PR had a strong defense team, apparently exchanged information with the defense teams of the riders in the other cases related to the Event, presented substantial expert testimony from a number of expert

witnesses and other evidence, presented his case during a lengthy hearing and submitted various filings following the hearing including a brief a number of weeks after the hearing. All these have been accepted and considered by the Tribunal.

30. One should not confuse the PR's due process rights with an opportunity to delay or prolong proceedings or to present additional irrelevant information or evidence.

4.6 Jurisdiction

31. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GR, EADMCR and the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad, Beijing 2008 and FEI OG Reg.

4.7 The Person Responsible

32. The PR is the person responsible for the Horse, in accordance with GR Art. 142, as he was the rider of the Horse at the Event.

4.8 The Decision

4.8.1 The Positive Finding

33. The Tribunal is satisfied that the laboratory reports relating to both the A-Sample and B-Sample reflect that the analytical tests were accurately performed in an acceptable method and that the findings of HKJC are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of Capsaicin, a Prohibited Substance. The PR initially contested the accuracy of the testing methods or the test results and positive findings, but has changed his position on this point during the final hearing, indicating through counsel that he does "*not contest the analytical results*".
34. According to EADMCR Art. 3.2.1, FEI-listed laboratories "*are presumed to have conducted Sample analysis and custodial procedures in accordance with the FEI Standard for Laboratories*". The PR may rebut this presumption by establishing that a departure from the FEI Standard for Laboratories occurred. The Tribunal accepts the FEI's position that, in this context, establishing means proving, and not merely suggesting by way of conjectures and suppositions.
35. In his submission of 3 September 2008, the PR admitted that "*it cannot be contested that the substance might have been present in the blood sample of the Horse*". In the PR submission of 5 September 2008, the PR did not challenge the analytical procedure as such, but merely submitted that the validity of the method could not be discussed in all aspects at that, therefore, only general doubts about the method were being raised.
36. More detailed doubts as to the method used by the HKJC were made by the PR following the hearing, primarily supported by the reports of Dr Bigler. In Dr Bigler's report of 19 September 2008 it was claimed that the test was performed with expired Capsaicin used as reference standard, that the HKJC violated basic scientific

rules when performing the tests and that, under Swissmedic and under Food and Drug Administration (FDA) regulations, and that a laboratory working under ISO-17025 guidelines and using an expired reference standard risks to lose its accreditation.

37. Dr Wan demonstrated, with detailed reasons and supportive scientific data, that the accusations regarding the alleged use of an expired reference material, the alleged lack of analytical data, alleged lack of internal standard, alleged lack of validation of the reference material, alleged inadequacy of the limit of detection and alleged problem of contamination were without merit and must be disregarded. The Tribunal accepts that the evidence provided by Dr Wan in his written statement (dated 12 September 2008) demonstrated that HKJC's findings are entirely reliable.
38. The FEI has thus sufficiently proven the objective elements of an offence in accordance with EADMCR Art. 3.

4.8.2 Doping or Medication Rule Violation

39. In his report attached to the Veterinarian Statement dated 21 August 2008, the FEI Veterinarian, member of the Veterinary Commission, states that Capsaicin is the active component of chilli peppers, and, as such, *"it is an irritant for all animals and can produce a sensation of burning in any tissue with which it comes into contact"*. In human medicine, it can be used for pain relief, sometime in connection with a local anaesthetic to reduce the pain of application, the rationale of this treatment being that *"the nerve endings are overwhelmed by the heat effect to the extent that they cannot continue to transmit other pain sensations until the effect of the capsaicin subsides."*
40. The Veterinarian Report further states that Capsaicin *"is not a normal nutrient for the horse"* and may be used medicinally by topical application in three ways: 1.) to reduce the pain of arthritic joints and soft tissues; 2.) on the digital nerves into the foot to desensitise those nerves in horses with foot pain; 3.) to the front of the legs, *"to produce a burning sensation to unduly sensitise the limb(s) to touching poles to make the horse more careful in its jumping efforts thus improving performance"*.
41. As the Veterinarian Report comments, use under hypothesis 1 and 2 would have required a Medication Form 1 but *"the Veterinary Commission would advise the Ground Jury against allowing the horse to compete further"*. Thus, these two cases would fall under Prohibited Substance Medication Class A *"due to their possible improvement in performance by the relief of pain"*. Use under hypothesis 3 would fall under Prohibited Substance "Doping" under hypersensitising agents.
42. The FEI argued that the presence of Capsaicin can establish either a doping or a medication rule violation. The FEI's position was that the FEI need only to establish the presence of the substance. Since the substance is both a substance with hypersensitising qualities as well as a pain reliever, its presence qualified as both doping and medication.

43. The Equine Prohibited List defines "*SUBSTANCES AND METHODS PROHIBITED IN-COMPETITION PROHIBITED SUBSTANCES (DOPING)*" as:

"Agents, cocktails or mixtures of substances that may affect the performance of a horse; masking agents; substances with no generally accepted medical use in competition horses; substances which are usually products prescribed for use in humans or other species; agents used to hypersensitise or desensitize the limbs or body parts, including but not limited to:

Hypersensitising or sensitizing agent (organic or inorganic or other substances likely to have been applied to body parts or to tack to influence performance)."

44. The FEI argued that Capsaicin qualified as a "*hypersensitising or sensitizing agent*" under the Equine Prohibited List. The FEI argued that it is sufficient that the prohibited substance is "*likely*" (or "*susceptible*") to have been applied to body parts to influence performance. The FEI argued that the hypersensitising nature and effects of Capsaicin had been confirmed by Dr Terence Wan and Dr Farrington.
45. According to the FEI, the Legal Department's notification of 21 August 2008 stated that both an equine anti-doping rule and a medication control rule had been violated by the PR and that the case was not prosecuted as an alternative offence – doping or medication A, but as a cumulative violation of the EADMCR.
46. The Tribunal does not accept the FEI's position on this point and concludes that the FEI has not met its burden of proof regarding a doping violation for a number of reasons.
47. EADMCR Art. 3.1 states that "*[t]he FEI shall have the burden of establishing that an anti-doping rule violation or medication control rule violation has occurred.*" This Article uses the word "OR" and not "AND". In its brief the FEI indicated that it has established that both a doping and a medication rule violation have occurred. This contradicts the wording of EADMCR Art. 3.1.
48. The FEI had initiated the case as both a doping and a medication case. The initial papers making the FEI's claim rely on Dr Farrington's statement. Dr Farrington testified that in the absence of Head of Veterinary Department the Commission also evaluated and decided on the prosecution of the case. Dr Farrington's statement suggests that an actual use of the prohibited substance as hypersensitising agent is required to make it an anti-doping rule violation. This is also supported by the wording in the Equine Prohibited List which states that to be a doping substance the substance should be an agent "*used to hypersensitise or desensitize the limbs or body parts*" and that a "*hypersensitising or sensitizing agent*" is a substance which is "*likely to have been applied to body parts or to tack to influence performance*". The words "*used to*" and "*likely to have been applied*" suggest that the FEI has to prove more than the mere existence of the substance.

The Tribunal is of the opinion that this is particularly so when the same substance has, based on the evidence of the FEI itself, legitimate therapeutic qualities and constitutes also a medication A substance. As the "prosecutor", the FEI has to be specific in the claims made and prove all required elements of the violation.

49. There is no indication in the Equine Prohibited List or EADMCR that the presence of the substance already implies the use as a hypersensitising agent. In other words, the wording of the provision drafted by the FEI provides no assumption regarding the use of the substance. The Tribunal accepts that these rules have to be strictly interpreted and against the party that enacted them; namely, the FEI.
50. Dr Farrington clearly stated that there was no proof of a hypersensitisation of the Horse's legs, even though the legs of all horses including the Horse had been checked by the Event officials after each competition round. At the hearing Dr Farrington pointed out the vast experience of the veterinarians involved in these controls. Dr Farrington did indicate, however, that the boot checks would only detect the most obvious cases of hypersensitisation but would not detect without further checks all hypersensitisation cases. The Tribunal is of the opinion that based on the present wording of the Equine Prohibited List and the EADMCR some additional evidence is required to make this a doping rather than a medication A case, although not having any findings in the boot checks is not in itself an indication that no hypersensitisation had taken place, but only another factor to be considered.
51. The Tribunal cannot accept that Capsaicin can also be considered as a medication B substance.

4.8.3 Strict Liability

52. The Tribunal notes that in any sport, and in the Olympic sports following the IOC guidelines, competing with a prohibited substance above a permitted threshold level, if any, is not permissible since it is assumed that this may affect the principles of fair play, equality and promotion of equal and fair conditions in the conduct of international events. These principles, which require the assurance of a level playing field for competitors, are also paramount principles established by the FEI. In the equestrian sports the same principles apply not only in regard to the human athletes but also in regard to their partners, the horses.
53. The FEI has a strict liability policy in regard to competing with prohibited substances present in the horse's system at international events. This strict liability or no-fault system means that no intention is required in order to establish a doping or a medication rule violation. The mere presence of a prohibited substance in the horse's system is sufficient. Additionally, the FEI is not required to demonstrate any competitive advantage to the PR resulting from the presence of the drug. This system of strict liability has been reconfirmed time and again and it must prevail when sporting fairness to all competitors is at stake.

54. The strict liability regime has been confirmed on numerous occasions, both by the CAS and by the Swiss Federal Supreme Court. The underlying idea is that imposing on international federations a heavy burden (and in fact impossible to discharge) to prove for what purpose and with what effects a substance has been used in a particular case would make the fight against doping excessively difficult; see e.g. CAS 95/141, *C v FINA*, 22 April 1996, in Digest of CAS Awards I, § 13: "[...] if for each case the sports federations had to prove the intentional nature of the act (desire to dope to improve one's performance) in order to be able to give it the force of an offence, the fight against doping would become practically impossible". This fundamental principle has been stressed again in the Swiss Federal Supreme Court's decision in the Old Cat matter. Decision of the Swiss Federal Supreme Court dated 23 August 2007, *Kurt Schafflützel and Paul Zöllig v FSC*, 5C.248/2006 (reported in ATF 134 III 193).
55. In regard to medication of horses, the FEI policy does not only intend to ensure a level playing field but has the additional policy consideration of ensuring that the welfare of the horse is maintained and that horses compete only when they are physically fit and capable of competing. Unlike the human athlete, the partner – the horse is not capable of verbally expressing its feelings and it is vital for the image and progress of the sport to ensure that the horse's welfare is strictly maintained.
56. Therefore, and since the substance is part of the medication A list and not a threshold substance, assumptions regarding the meaning of the concentration detected and its effects on the Horse are irrelevant as to the decision that there has been a rule violation by the PR. The FEI has thus sufficiently proven the objective elements of a medication rule violation in accordance with EADMCR Art. 3.

4.8.4 Elimination or Reduction of Sanctions

57. The establishment of the objective elements of a doping or medication 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 EADMCR Art. 10.5.
58. The PR contended that he had been using the product Equi-Block DT, containing Capsaicin, on the fetlocks of the Horse's front legs on a daily basis as a typical care product and not as a hypersensitising agent. This was identified and stated as of the time of the preliminary hearing. According to the PR, the product had been used for a long time and the Horse had been tested in several major events without testing positive. In his Submission of 5 September 2008, the PR stated that the product was used daily "*at period of shows and at home on days with strenuous work for prevention*", including before and upon arrival at the Event.
59. The PR argued that Equi-Block DT was a typical care product and that its use would not be against the welfare of the horse, but would

actually assist the horse's health and condition. The PR stated that Equi-Block was a well known easily available product for horses, commonly available at international shows and has been commonly used by riders, including the PR, for many years.

60. The PR maintained that the positive finding was likely to be the result of the combination of the use of Equi-Block together with food contamination and the contamination through McNasty (anti-chew spray) used on the Horse's bandages, fly spray or other contaminants.
61. The PR showed a video at the hearing of 5 September 2008 and produced testimonies by the PR, by the groom, by Alvaro de Miranda and by Athina Onassis in an effort to establish that the Horse had the habit of vigorously chewing and licking his bandages, therefore consuming the McNasty spray containing Capsaicin which had been applied on them also during the Event.
62. The Tribunal accepts that the PR met its burden of proof to establish that the positive finding is the result of the use of Equi-Block DT by the PR or his groom on the Horse's legs. The Tribunal finds the other argued possibilities for the positive finding to be purely speculative and not convincing. These are not enough to carry the burden of proof which lies with the PR in this matter. The Tribunal notes, however, that even had the Tribunal been convinced of such possible other sources of the positive finding, the PR's case would not have been aided in any way.

4.8.5 Negligence

63. The different forms of the product "Equi-Block" are described as "*the number one equine topical pain reliever*", respectively as working "*wonders on horses suffering from debilitating diseases as well as pain stemming from old injuries*". For Equi-Block, the manufacturer even issued a warning that the product "*can literally block pain completely. Do not use on a horse that is to race, train, perform, etc. if your animal has just sustained a serious sprain, strain or soft tissue injury. Rest and ice are still the best remedies*" (Package description and information notice on Equi-Block products and Capsaicin).
64. The PR claimed that the concentration of Capsaicin contained in Equi-Block was not sufficient to produce any therapeutic effect. Dr Cronau in his statement of 4 September 2008 expressed the view that only a concentration in the range of 44 times the concentration of Equi-Block DT Formula could have a therapeutic effect. This opinion was contradicted by the testimony of Dr Farrington who stated that Capsaicin was a very potent substance and that the concentrations contained in Equi-Block did have a pain relieving effect, that may even endanger the horse by covering up injuries.
65. Nevertheless, at the hearing, Dr. Farrington and Dr. Cronau agreed that the therapeutic effect of capsaicin depended on the amount used and concentration of the substance and that there is hardly any scientific evidence about the concentrations required for a therapeutic effect.

66. In the present case, the package description and information notice on Equi-Block explicitly mentioned that Equi-Block contains Capsaicin. The Package highlights in large letters that it is a "Pain Reliever". The manufacturer's repeated warnings as to the powerful effects of the product and the risks for the horse's health if the product was misused without consulting a veterinarian should have prompted the PR to apply extra caution. The indication that "*the FDA has approved Capsaicin*" for various treatments was another sign which should have alerted the PR that he was using a medication (package description and information notice on Equi-Block products and Capsaicin).
67. In addition, the fact that the manufacturer indicated that the product would allegedly not test positive should have rang alarm bells with the PR that he was potentially dealing with prohibited substances and should make further enquiries. It has been communicated to the riders that they should not rely on manufacturers' claims that use of their product would be permissible under federations' regulations.
68. Therefore, it would have been up to the PR to make the necessary enquiries before using the Equi-Block products.
69. The PR argued that the elective testing upon arrival at the Event should have revealed the Prohibited Substance. This is completely irrelevant as it was highlighted that the purpose of the elective testing was to screen the horses for the most common and legitimate medications (some 66 substances) as assistance to the team veterinarians and PRs, and not to provide riders who practice self-medication with any guarantee that they would not test positive to any prohibited substance. Capsaicin was not among the substances tested (see the guidelines for Post-Arrival Elective Testing published on the FEI website for the Olympics Games).
70. It was highlighted by Dr. Farrington in response to various questions that a product such as Equi-Block can have legitimate therapeutic uses in between competitions.
71. According to GR Art. 142 and Tribunal decisions, the PR is responsible for all matters relating to his or her mount, including competing on horses which are "drug free" (or getting advance authorization to a certain specified approved treatment). Procedures aimed at ensuring that such information is fully disclosed must be established by all competitors and the expectation is that competitors that compete at the highest levels of the sport should have an established system that would prevent even an inadvertent unauthorized medication of a horse participating at international events. The PR was negligent in using Equi-Block on the Horse's legs even if such use may only have been to assist circulation of blood, as claimed by the PR. Based on the testimonies at the hearing of both the PR and Mr Nelson Pessoa, the Brazilian team does not seem to have established proper measures to fully control and in a centralized manner all products and substances used by team members and ensure that no prohibited substances be used.
72. The PR has been unable to discharge his burden of proof that he

bore no fault and no negligence for the violation. The PR's behavior evidences negligence that can only partially reduce the sanctions against him but not eliminate them altogether.

4.9 Disqualification

73. The Tribunal considers that a medication control rule violation in connection with an in-competition testing at an event automatically leads to the disqualification of all results of the PR and Horse combination. The Tribunal highlights that the CAS had expressed its view, on a number of occasions, that disqualification is appropriate even where there is no fault of the rider.

74. As a result of the foregoing, the Horse and the PR are disqualified from the Event and all medals, points and prize money won at the Event are forfeited, in accordance with EADMCR Art. 9 and FEI OG Reg Article 623 Section 7.2.

4.10 Sanctions

75. The PR argued in regard to sanctioning that the PR's record and reputation are impeccable. The PR competed internationally for 18 years, his horses have passed many tests without a positive result (with the exception of one discontinued case from 2004 which is not considered legally as a positive) and he exercises good stable management. The PR cooperated in the investigation. The PR already sustained the hardship of not being able to compete in the individual show jumping final at the Event. The PR was provisionally suspended following the positive finding and an additional suspension would unduly harm him. As a result of such provisional suspension the PR missed the qualification for the final of the Global Champions Tour since he could not compete at the CSI 5* in Arezzo and missed the World Breeding Jumping Championships for Young Horses (18 – 21 September 2008) in Lanaken. The PR's brief indicated that the PR *"has learned his lesson and will be more careful in future"*.

76. The PR, including through the testimony of Prof Tobin, further argued that any damage to horse sport is solely the fault of the FEI by claiming that severe doping cases were at issue, rather than medication cases resulting from therapeutic use or contamination, by permitting the laboratory to report minuscule amounts that have no influence on the horse and by permitting the laboratory to report a newly detectable substance used by the entire horse community for legitimate therapeutic reasons without giving a clear pre-warning to riders.

77. An example was provided that in the United States, the Drugs and Medications Guidelines of the United States Equestrian Federation (USEF) expressly mention Capsaicin among the "Forbidden substances". It is claimed that such specificity had to be included by the FEI.

78. The FEI argued that in determining the sanctions the Tribunal should have regard to the nature of the substance involved which is not only a pain relieving substance, but also an agent that can be used for hypersensitisation purposes. The FEI also argued that

the Tribunal should take into account the fact that the offence was committed at the Olympic Games where the duty of care of each PR must be at its highest and that this case comes in the context of numerous other cases which have shed light on the widespread use of Capsaicin and related substances, all of which, taken together, have serious implications for the reputation of equestrian sport and the protection of horse welfare.

79. The Tribunal notes that as a medication A offence, the period of ineligibility can be up to one year for a first violation (EADMCR Art. 10.2).
80. The Tribunal was directed by both parties to various precedents. The Tribunal notes that many of these precedents are not relevant as they relate to other substances, to amateur riders, to minors, to instances in which the source of the substance had been identified, to a legitimate therapeutic usage of the substance or to other differentiating circumstances.
81. The Tribunal accepts that any precedents must be applied with caution and with clear regard to the exact circumstances in each case and to the Tribunal's interpretation of the evidence and impression from the PR and witnesses providing testimony.
82. The FEI's efforts to reinforce its policy to eradicate anti-doping and medication rule violations in the interest of the equestrian sport (ensuring a level playing field between competitors) and the welfare of the horse are also to be taken into account by the Tribunal.
83. In considering the sanctions to be given to the PR in this case, the Tribunal takes into account the followings: (i) the fact that the PR is an experienced sportsman and that the behavior of anyone at the top of the sport and particularly at the Olympic Games must be faultless since the eyes of the world focus on performances at such events; (ii) the nature of the substance involved which is not only a pain relieving substance, but also an agent that can be used for hypersensitisation purposes; and (iii) the fact that the sources of the presence of the substance argued by the PR indicate severe negligence of the PR by using a "pain relieving" substance, including at the Event, on the fetlocks of the Horse's forelegs, without checking whether it contains any prohibited substances.
84. On the other hand and in mitigation, the Tribunal also considers: (i) the fact that there have been no "maintained" cases by the FEI against the PR, prior to the present case; (ii) the hardship already caused to the PR; (iii) the identification and evidence produced by the PR, as early as during the preliminary hearing, regarding the sources of the presence of the substance ;and (iv) the substance is a newly detectable substance which is often used by riders also for legitimate therapeutic reasons."

85. As a consequence of the foregoing, the FEI Tribunal decides to impose on the PR the following sanctions, in accordance with GR Art. 174 and EADMCR Art. 10:

- 1) The PR shall be suspended for a period of **Three and One-Half (3.5) months** (namely, 105 days) which period has commenced on the date of the application of the provisional suspension, 21 August 2008;
- 2) The PR is fined **CHF 1,750.-**; and
- 3) The PR shall contribute **CHF 2,500.-** towards the legal costs of the judicial procedure. This takes into account the fact that the proceedings in this case were further complicated by the numerous intermediary filings by the PR and the inconsistent filings, on the one hand presenting the source of the substance and on the other hand continuing to maintain alternative and contradicting positions further complicating these proceedings.

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 Organizing Committee: Yes; the IOC

5.4 Any other: PR's Counsel

FOR THE PANEL



THE CHAIRMAN Mr Ken Lalo

(signed in his absence on 10th October 2008)