



DECISION of the FEI TRIBUNAL

dated 8 January 2008

Positive Medication Case No.: 2007/22

Horse: SOFT TOUCH

FEI Passport No: IRL03530

Person Responsible: Ms Eliza Preston, IRL

Event: CIC 1* Ballygraffan (IRL), 27-28.04.07

Prohibited Substances:

- (1)** Phenylbutazone
- (2)** Oxyphenbutazone
- (3)** 4-Methylaminoantipyrine
- (4)** N-Butylscopolammonium

1. COMPOSITION OF PANEL

Dr Alberto Hernán Mendez Cañas
Mr Ken E. Lalo
Mr Erik Elstad

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, 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 Persons Responsible: Ms Eliza Preston

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. Soft Touch (the "**Horse**") participated in CIC 1* Ballygraffan, Ireland, from 27 to 28 April 2007 (the "**Event**"). The Horse was ridden by Ms Eliza Preston who is the Person Responsible in accordance with GR Article 142 (the "**PR**").
- b. The Horse was selected for sampling on 28 April 2007. Analysis of the urine sample no. FEI-0022800 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 Phenylbutazone, Oxyphenbutazone, 4-Methylaminoantipyrine and N-Butylscopolammonium (Certificate of Analysis 0022800 dated 22 May 2007).
- c. On 25 July 2007 the PR submitted a request for a confirmatory analysis. The confirmatory analysis was carried out on urine at LCH from 5 to 8 September 2008 under the supervision of Pascal Maciejewski and Yves Moulard, Senior Analysts, and was witnessed by A. Domergue, administrative at LCH, at the request of the FEI. It

confirmed the presence of Phenylbutazone, Oxyphenbutazone, 4-Methylaminoantipyrine and N-Butylscopolammonium (Counter-Analysis Report dated 6 September 2007).

- d. Phenylbutazone and Oxyphenbutazone, a metabolite of Phenylbutazone, are prohibited substances being Non Steroidal Anti-Inflammatory Drugs (NSAIDs). 4-Methylaminoantipyrine, a metabolite of Dipyrone is an analgesic, and N-Butylscopolammonium is an antispasmodic (Certificate of Analysis 0022800 dated 22 May 2007 and Veterinary Department's Statements dated 13 July and 24 September 2007). These substances are, when present together, specified in the first section of the Equine Prohibited List (VR Annex III) as "Doping" Prohibited Substances.
- e. On 28 April 2007, a Medication Form 1 has been submitted by the PR requesting an authorisation to participate in the Event after the treatment of the Horse on 25 April 2007 with Buscopan (Dipyrone) for a mild spasmodic colic. The Medication Form 1 has been accepted by the Veterinary Official and the President of the Ground Jury on 28 April 2007. It therefore explains the presence of Dipyrone and N-Butylscopolammonium. No Medication Form has been submitted in relation to Phenylbutazone, which is specified in the second section of the Equine Prohibited List (VR Annex III) as a "Medication Class A" Prohibited Substance.
- f. The FEI Tribunal is satisfied that the laboratory reports reflect that the tests were accurately performed in an acceptable method and that the findings of LCH are accurate. The FEI Tribunal 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 an offence in accordance with EADMCRs Article 3.
- g. The establishment of the objective elements of an offence creates the presumption of guilt of the PR. The finding on analysis of prohibited substances 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 eliminate or reduce the otherwise applicable period of ineligibility and other sanctions, establishing that she bears no fault and no negligence or no significant fault and no significant negligence, in accordance with EADMCRs Article 10.5.
- h. In her written explanation dated 28 September 2007, Mrs Caroline Preston, the mother of the PR, stated that her daughter, Eliza, has been competing for three years at FEI Events, two of which in the Junior ranks, is eighteen years of age and not primarily responsible for the welfare of the

Horse and that therefore she wished to be deemed responsible for the matter. Mrs Preston explained that she is a qualified Lawyer and an Officer of the Court and that she would not seek to mislead the FEI, nor any organisation, and would not allow anyone to obtain an unfair advantage by doing so.

- i. Mrs Preston explained that, following a trip to England, the Horse had been a little off his food and that the Veterinarian, Jennifer White, had detected increased gastric activity and had prescribed 30mls of Buscopan by intravenous injection on 25 April 2007. This is confirmed by the veterinary statements dated 26 April 2007 and 3 August 2007. In the latest statement, Dr White specified that she came on 25 April 2007 to treat another horse for cut and swelling of the right hind leg with Neomycin-Penicillin, Diurizone and Phenylbutazone.
- j. Dr White explained in her statements that, before administering the substance to the Horse, his competition plans were discussed and authorization was given from the Preston team to treat the Horse accordingly. Mr Ken Mahon, employed by the Preston family, has contacted Eventing Ireland to withdraw the Horse from the competition. He was told that provided they disclosed the treatment, the Horse could compete. Approval was given by Mr Howard Whelan, who eventually signed the Medication Form 1 on 28 April 2007.
- k. Mrs Preston suggested that Phenylbutazone entered the Horse's body through traces of the substance that were in the bucket used to feed the other injured horse. In their written statements, Mr John Preston, father of the PR, and Mr Mahon explained that neither of them, Mr Mahon feeding the horses in the morning and Mr Preston in the evening, washed buckets after feeds. Mr Preston added that in order to do some mucking he very often moves the horses around the stable in order to have an empty stall and that it is possible that he moved the Horse into the stall of the horse that had been treated with Phenylbutazone.
- l. In her letter dated 7 December 2007 the PR confirmed that she accepted her Mother's statements as her defence, and that these have been made on her behalf and she added that the Horse had never been lame and she had no explanation for the presence of the substances, Phenylbutazone and Oxyphenbutazone, other than that suggested by her Mother.
- m. Dr Frits Sluyter, Head of the FEI Veterinary Department, stated that the treatment of 25 April 2007 with Buscopan and the positive test result on 28 April 2007 for this substance made sense. As for the explanation provided for the presence of Phenylbutazone, Dr Sluyter argued that "it

cannot be verified from the test result whether this is the actual scenario or whether the horse Soft Touch was treated with bute for a veterinary condition." Dr Sluyter added that, from a veterinary perspective, the case should only be followed up for the presence of Phenylbutazone and that the fact that withdrawal of the Horse was initially considered but not done in the end is a valid point.

- n. 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."
- o. The PR's mother argues that her daughter had no part in the feeding of the Horse as she was just eighteen years old and a full time student and that in these circumstances, she, the mother, should be the Person Responsible.
- p. The Tribunal does not accept this view. The PR has been competing for three years at international events. She has reached the age of eighteen and is no longer a minor. According to Art. 142 GR she is the Person Responsible.
- q. It is the PR's obligation to know the FEI Rules and Regulations when competing at an international level and the PR was therefore supposed to know that she must have kept her Horse under strict veterinary control to avoid the presence of prohibited substances. The fact that the PR is a full time student is not relevant. Amateur riders frequently have various activities other than riding, but those activities should not be considered as a way to avoid their sport duties.
- r. Mrs Caroline Preston could be an additional PR according to the FEI rules, GR Art 142. However, Mrs Caroline Preston was not put on notice as a defendant in this case and, therefore, no findings or sanctions are decided against her.
- s. The Tribunal finds that the Medication Form 1 submitted by the PR on 28 April 2007 properly explains the presence of Dipyron and N-Butylscopolammonium and that there is no case to answer in regard to those substances. The present case should therefore be viewed only in regard to the presence of Phenylbutazone and its metabolite, Oxyphenbutazone, which are "Medication Class A" Prohibited Substances that, when found in a horse competing at a competition at the level of the Event and as a "first offence", result in an administrative sanction. In regard to Phenylbutazone and its metabolite, the Tribunal accepts that the prohibited substances could have entered the Horse's systems in the way the PR has suggested, but finds that the PR has acted negligently by not ensuring proper stable

management procedures. The Tribunal considers that the positive result is sufficient to establish that despite the explanations given, the PR was negligent by not having ensured that her Horse was competing at the Event without the presence of Phenylbutazone and its metabolite in its body fluids.

- t. In deciding the sanctions the FEI Tribunal considered, on the one hand, the negligence of the PR and the stable personnel and, on the other hand, the substances involved (Phenylbutazone and Oxyphenbutazone), the PR's amateur "status", the level of the Event and the PR's cooperation in the investigation. It also considered PRs' sanctions in similar cases, involving first time "offenders" at events of comparable level and involving Phenylbutazone, which are a fine plus costs, but without suspension, under the FEI administrative sanctioning process.

4.2 Disqualification

As a result of the foregoing, the FEI Tribunal has decided to disqualify the Horse Soft Touch 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 10.2:

- 1) The PR is fined **CHF 750.-**.
- 2) The PR shall contribute **CHF 1'000.-** towards the legal costs of the judicial procedure, and **CHF 750.-** towards the cost of the confirmatory analysis.

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 : *8 January 2008* Signature: *[Signature]*