



DECISION of the FEI TRIBUNAL

dated 22 December 2008

Positive Medication Case No.: 2008/23

Horse: CAMIRO

FEI Passport No: NOR 02096

Person Responsible: Mr Tony Andre Hansen NOR

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

Prohibited Substance: Capsaicin

1. COMPOSITION OF PANEL

Mr Philip O'Connor
Mr Ken E. Lalo
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 and following the oral hearings.

2.3 Oral hearing: On 26 September 2008 and on 8 November 2008, in presence.

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 Carolin Fischer, Legal Counsel
Ms Catherine Bollon, Legal Coordinator
Dr Paul Farrington, DVM, Witness
Dr Terence S.M. Wan, Witness (by teleconference)
Dr John H. Vine, Witness (by teleconference)

For the PR:

Mr Tony Andre Hansen, Person Responsible
Mr Morten Steenstrup, Counsel for the PR
Dr Ulf Walz, Counsel for the PR
Ms Anita Kleppe, Groom, Witness
Prof Dr Thomas Tobin, Witness
Prof Steven A. Barker, Witness (by teleconference)
Mr Sylve Söderstrand, Chef d'Equipe, Witness (by teleconference)
Mr Peter Myhre, Veterinarian

For the Norwegian Equestrian Federation (NOR-NF):

Mr Trond Asmyr, Vice President

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, updated with modifications approved by the General Assembly, effective 1 June 2007 and with modifications approved by the Bureau, effective 10 April 2008.

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 Tony Andre Hansen

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. CAMIRO (the "**Horse**") participated at the Games of the XXIX Olympiad, Beijing 2008, from 8 to 21 August 2008 in Hong Kong (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr Tony Andre Hansen (the "**PR**").
2. The Horse was selected for sampling on 18 August 2008, following the Team Jumping Final.
3. Analysis of the urine sample no. FEI-0069350 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, Chief Racing Chemist and Head of the Racing Laboratory, revealed the presence of Capsaicin (Test Report dated 21 August 2008).
4. The Prohibited Substance detected is Capsaicin which can be used either to reduce pain and stiffness in soft tissues or by topical application to the front of the legs for hypersensitising action (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".
5. 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

6. The presence of the Prohibited Substance, the possible rule violation and the consequences involved were duly notified to the PR on 21 August 2008.
7. 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.
8. The PR confirmed that he wished the preliminary hearing to be held.
9. The preliminary hearing took place on 21 August 2008 before Prof. Dr. Jens Adolphsen. 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.
10. In its preliminary decision, the preliminary panel stated that the presence of Capsaicin was evidenced to its satisfaction.
11. The PR provided no explanations at the preliminary hearing for the presence of the Prohibited Substance and gave no reasons why the provisional suspension should be lifted.
12. In light of the above, and considering the FEI policy 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

13. 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.
14. The PR acknowledged that the B-Sample analysis would be performed as described in the notice and indicated that he would be represented at the identification and opening of the B-Sample by Dr Jonas Tornell, Team Veterinarian.
15. The B-Sample analysis was carried out on 23 August 2008 at HKJC under the supervision of Dr Emmie N M Ho, Racing Chemist, and Mr David K K Leung, Racing Chemist, while the witness, Dr Jonas Tornell, Team Veterinarian for the Swedish Equestrian Federation, representing the PR, was

present.

16. In his witness statement, Dr Tornell certified that the urine B-Sample container "*shows no signs of tampering and that the identifying numbers appearing on the sample to be tested by the Racing Laboratory of the Hong Kong Jockey Club corresponds to that appearing on the collection documentation accompany the sample*" and that he had also witnessed the opening of the sample (Witness Statements dated 23 August 2008).
17. The B-Sample analysis confirmed the presence of Capsaicin (Test Report dated 25 August 2008).
18. The results of the B-Sample analysis were notified to the PR on 27 August 2008 through his NF.

4.4 The Final Hearings

19. A Final Hearing has been scheduled for and was held on 26 September 2008, at the FEI headquarters in Lausanne.
20. At the hearing the Tribunal heard preliminary and other arguments of the parties and examined certain evidence. The Tribunal also heard the witnesses presented by the parties: the PR himself and his groom, on behalf of the PR, and Dr Farrington, on behalf of the FEI.
21. At the Hearing both the PR and the FEI argued that they need additional time to exchange witness documents and that at this hearing they would not be able to examine the various expert witnesses. The parties agreed that an additional hearing be held for the purpose of providing additional evidence and, in particular, examining and cross examining the expert witnesses.
22. The additional hearing was held on 8 November 2008, at the FEI headquarters in Lausanne.
23. At the additional hearing the Tribunal heard further arguments and witnesses and examined further evidence, some of which has been presented for the first time during the hearing. In particular, a large part of the additional hearing was utilised to hear the expert witnesses of the parties in a manner which was accepted by both parties and allowed all such witnesses to hear one another and provide comments to each other's expert testimony. Such expert witnesses were Dr Tobin (present) and Prof Barker (by teleconference), on behalf of the PR, and Dr Wan (by teleconference) and Dr Vine (by teleconference), on behalf of the FEI.

24. The parties have filed numerous pleadings, statements and correspondence as detailed on Annex 1 attached to this decision.
25. The Tribunal accepted all the evidence and briefs filed in this case, including the items filed at and following the hearing. The Tribunal considered that the parties had more than ample opportunity to examine and react to each others evidence and arguments and that the Tribunal's consideration of all of the evidence presented in this case did not prejudice any of the parties.
26. The Tribunal has noted the respected opinions of various experts and has taken them into consideration. Surprisingly, the claims put forward on behalf of the PR (whether he approved or not is unknown) included a claim that one expert "misled the Tribunal..." and another that expert evidence was "not trustworthy". Both claims are regarded as being unusual and are rejected.
27. One salvo by Dr Walz indicated that he would litigate in certain circumstances namely "... if there is the slightest sign of sample manipulation". The Tribunal detects no lack of bona fides in any expert witness and regards the innuendo as quite regrettable.
28. The Tribunal notes that the parties have submitted extensive briefs and evidence in this matter (with hundreds of pages filed).

4.5 Jurisdiction

29. 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.

4.6 The Person Responsible

30. 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.

4.7 The Decision

4.7.1 The Positive Finding

31. The FEI introduced the laboratory reports relating to both the A-Sample and B-Sample and evidence of Dr Wan and Dr Vine regarding the test procedures as evidence that the analytical tests were accurately performed in an acceptable method and that the findings of HKJC were accurate.

32. 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.
33. The PR raised certain doubts as to the method used by the HKJC making various arguments, primarily supported by the testimony of Dr Bigler, as to flaws in the analytical process. Dr Walz argued based on his knowledge in other FEI cases and further supported by Dr Bigler that the testing method was a flawed in-house method and that the only manner to substantiate such a flawed system was to confirm the results by conducting the B sample analysis in a different laboratory. The Tribunal determines that none of these claims have been substantiated by the PR and his witnesses.
34. Dr Wan demonstrated, with detailed reasons and supportive scientific data, that the arguments 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. This was supported by Dr Vine. The Tribunal accepts that the HKJC's findings are entirely reliable.
35. The PR also argued that the FEI breached the WADA Code, since it did not allow the B sample analysis to be conducted in a different laboratory and did not allow the witnessing analyst to be present during the analysis procedure. The PR argued that allowing the witnessing analyst to be present only for identification and opening of the sample deprived the PR of possibly his only opportunity to evidence that the analytical process was flawed. This, the PR argued, was especially unfair in view of some witnesses in other cases being permitted by the laboratory to be present during the entire analysis of the B sample. The PR argued that other minimum requirements of the WADA Code, relating to matters such as laboratory procedures and security during testing, lack of internal standards, using an in-house method and not providing the entire analytical data, had been breached.
36. The Tribunal refers to Article 16 of the WADA Code which allows the FEI to establish and implement separate anti-doping rules for animals, including appropriate testing procedures and a list of approved laboratories. The PR did

not evidence a departure from the EADMCR which apply in this case.

37. The FEI Tribunal is satisfied that the test results evidence the presence of Capsaicin, a Prohibited Substance. The Tribunal is therefore satisfied that the FEI has sufficiently proven the objective elements of an offence in accordance with EADMCR Art. 3.

4.7.2 Doping or Medication Rule Violation

38. The evidence of Dr Paul Farrington, the FEI Veterinarian, member of the Veterinary Commission, and others confirmed that Capsaicin, a substance found in chilli peppers, is an irritant for all animals and can produce a sensation of heat in tissues with which it comes into contact. In human medicine, it can be used as a deep heat rub producing a temporary relief from aches and pains. It can also produce a strong localised effect in the form of a burning sensation.

39. Dr Farrington's report further stated that Capsaicin could be used in two ways: 1.) "[b]y topical application to reduce pain and stiffness in soft tissues"; or 2.) "[b]y topical application to the front of the leg(s) 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".

40. Dr Farrington's report further stated that no medication form had been supplied for Capsaicin. Had such a request been made *"the Veterinary Commission would advise the Ground Jury against allowing the horse to compete further if this treatment was required"*.

41. Dr Farrington concluded that the use under the first hypothesis would constitute medication Class A *"due to the possible improvement in performance by the relief of pain"*, while use under the second hypothesis would constitute doping as a hypersensitising agent. Dr Farrington indicated that he could not state the purpose of the application from the laboratory result.

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 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 desensitise 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 Wan and Dr Farrington.
45. The FEI further argued that Dr Farrington's initial report was not meant to provide any legal classification of the offence and rule violation and that it was limited to an expert opinion regarding the pharmacological aspects of Capsaicin. The FEI argued that from a procedural point of view, the pharmacological opinion of Dr Farrington in his initial report of 21 August 2008 has no legal consequences as such and that it was then a matter for the FEI and its Legal Department to decide whether and how to prosecute the offence and initiate the case.
46. 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.
47. 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.
48. 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.

49. 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 desensitise 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.

50. 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.

51. 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.

52. The Tribunal thus concludes that while evidence was furnished that Capsaicin has the potential to sensitise, any

such specific claim in this instance is quite unproven and is dismissed.

53. The Tribunal cannot accept that Capsaicin can also be considered as a medication B substance. As demonstrated by Dr Farrington, inter alia by reference to the studies of the Committee for Veterinary Medicinal Products of The European Agency for the Evaluation of Medicinal Products (EMA) as well as VR on Herbal or Natural Medicinal Products, Capsaicin can in no way fall within the definition of the Prohibited Substances of Medication Class B. The list of substances of Medication Class B which is set out in the Equine Prohibited List is exhaustive and Capsaicin is not covered by it.

4.7.3 Contamination of the Sample

54. The PR argued that he and his team have not used the substance on the Horse and, therefore, if the analytical result is accurate, the presence of the substance can only be explained by contamination of the sample or of the Horse's environment.

55. The Tribunal makes it clear that neither the concentration of Capsaicin nor its origin is of any relevance for a medication control rule violation under the current wording of EADMCR Art. 2.1. The exception in EADMCR Art. 2.1.3 does not apply as Capsaicin is not a threshold substance and no extenuating circumstances had been defined in the Equine Prohibited List for environmental contamination by this substance. Furthermore, the mere presence of the substance in the sample is sufficient to prove a rule violation under EADMCR Article 2.1.2.

56. Relying on the evidence of his expert witnesses, the PR argued that one such possible contamination was that of the sample itself from the HKJC instruments used to conduct the analysis which had been contaminated by the positive Capsaicin samples in the other cases at the Event. The PR argued that since the laboratory did not use an internal standard it could not eliminate the possibility that Capsaicin was detected as a result of contamination.

57. The PR's groom testified that the MCP stewards were not wearing gloves during the collection of the urine sample. The Tribunal considers that the videos provided by the FEI are not conclusive to support or oppose such evidence. The statements of the MCP Stewards testifying that gloves were worn are accepted by the Tribunal.

58. The Tribunal accepts the testimonies of Dr Wan and Dr Vine that the conjectures of Dr Bigler, Prof Dr Tobin and Prof

Barker regarding possible sources of contamination of the sample or the Horse are purely hypothetical. These are not enough to carry the burden of proof which rests with the PR in this matter.

59. Prof Barker argued that only the free form and not the conjugated form was present in the urine sample and therefore the assumption should be that the conjugation study had not been conducted or was negative. Prof Barker argued that the positive from the free form did not evidence that the substance had been through the body of the Horse, but merely in the sample.
60. The FEI's position was that the conjugation study was irrelevant. Nevertheless, the conjugation study was made available after the hearing despite the PR's refusal to sign a non-disclosure agreement. The Tribunal is surprised that after basing the case during the second hearing to a large extent on the lack of a conjugation study, the PR refused to accept such evidence. Its late timing could have been taken into account as to costs and is not a reason to disallow its admission. The conjugation study supports the positive result and shatters PR's main argument presented at the second hearing. The conjugation study evidences that the substance passed through the Horse's system.
61. The statistics mentioned by the FEI regarding the positives from the Event are worthy of repeating: 64 horses were tested at the Event, as well as 20 at the Paralympics. In total, 6 tested positive at the Event: 5 with Capsaicin or related substances (all in jumping) and 1 with Felbinac (Dressage). In three of the Capsaicin cases, the PRs affirmed that they have used Equi-Block containing Capsaicin. Only in this and in one other case the source of the substance has not been identified. Additionally, feed was purchased by some riders or teams from the official provider at the Event without a positive finding. Contamination of only 2 jumping horses from among 84 horses tested is most unlikely and provides additional support to the FEI's expert witnesses that have testified that the possible contamination is purely hypothetical.

4.7.4 Strict Liability

62. The PR argued that a threshold must be introduced for Capsaicin in accordance with the interpretation of Swiss Law and the European Convention on Human Rights. The PR claimed that Capsaicin was unknown in horse medicine and specifically for FEI veterinarians and that the FEI laboratories have not searched for it previously. The PR argued that Capsaicin was not specifically listed on the FEI's Equine Prohibited List. The PR further argued that screening

level of detection had to be established to ensure that no findings were made in regard to analytical detection levels and irrelevant concentrations of Capsaicin. No scientific work on this substance was made to support the required levels of detection or effects of the substance. Threshold levels were of particular importance in regard to Capsaicin which is a common food (chili) and environmental contaminant. The PR brought substantial evidence to support these ideas, and in particular relied on the testimony of Prof Dr Tobin. The PR also referred to the recent move by Svensk Gallop away from zero tolerance for all substances. The PR concluded that sanctioning a PR in these circumstances and without any support that the detected substance at the detected quantities could have any affect on the Horse's performance did not comply with Swiss Law and with the European Convention on Human Rights.

63. 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. 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).

64. 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. The violation was proven to the "comfortable satisfaction" of the Tribunal as specified in EADMC Art. 3.1 and in accordance with FEI OG Reg Art. 626 Section 9.1 and 9.2.

4.7.5 Elimination or Reduction of Sanctions

65. 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 EADMCR Art. 10.5.
66. Under the FEI judicial system, the competitor 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.
67. The PR, a most experienced international Show Jumping rider, testified that he was assisted by professionals and took measures to ensure that no prohibited substances could enter the Horse's system.
68. The PR testified that neither he nor any of his team had given the prohibited substance to the Horse. The PR did not provide an explanation as to the presence of the substance in the Horse's sample. The PR merely argued that the test or analytical result was faulty or that the sample had been contaminated. These arguments have been dealt with above and have not been proven to the satisfaction of the Tribunal.
69. Wide ranging propositions were put forward by the PR and his witnesses as to possible sources of contamination including foodstuffs provided for visiting horses, grass in exercise area, some contaminants from the hands of well wishers who patted the horse, or indeed the paint or like substance on stable doors. Stable security has been called into question as was the possibility of environmental contamination. All wide ranging claims advanced without satisfactory substantiation are rejected as they fall short of the intent of EADMCR Art. 10.5. Speculations and suppositions do not adequately comply with the rule.
70. EADMCR Art. 10.5.1 states that "*the Person Responsible must also establish how the Prohibited Substance entered the Horse's system in order to have the period of Ineligibility and other sanctions eliminated*". EADMCR Art.

10.5.2 uses similar language in regard to a reduction of the sanctions. This is a mandatory language using the term "*must*".

71. The Tribunal accepts the FEI's position that, under the clear language of EADMCR Art. 10.5, in order for the PR to prove that he bears no fault and no negligence, he must demonstrate how the substance entered the Horse's system. To hold otherwise would allow every person responsible to benefit from a reduction or elimination of sanctions even without establishing the source of the substance, rendering the whole concept meaningless. While elaborate, the explanations furnished by the PR are mere speculations.
72. The PR has not established how the substance entered the Horse. Under consistent CAS case law, the PR must demonstrate the concrete source of the presence of the prohibited substance, as the aim of the requirement is to provide a factual basis for the Tribunal to assess the PR's degree of fault or negligence. The PR cannot simply argue that many causes other than intentional administration are possible in theory. CAS 2004/A/602, L. v. FISA, 25 November 2004, summarised in CAS Newsletter n° 3/2005, p. 19 s., 20: "*The balance of probability standard means that the athlete alleged to have committed an anti-doping rule violation bears the burden of persuading the judging body that the occurrence of a specified circumstance is more probable than its non-occurrence. [...] proof that [it] is scientifically possible is not proof that it did actually occur*".
73. 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).
74. The PR cannot therefore benefit from either EADMCR Art. 10.5.1 or EADMCR Art. 10.5.2.

4.8 Disqualification

75. 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.

76. 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 626 Section 9.1 and 9.2.

4.9 Consequences to the Norwegian Jumping Team

77. According to EADMCR Appendix 1 and GR Art. 101, the term "Event" refers to: "the complete meeting, Show, Championship or Games".

78. The Tribunal concludes that EADMCR Article 9 read in conjunction with GR Art. 101 means that the results of PR and Horse combination obtained in both the Individual Jumping Competition and Team Jumping Competition shall be annulled.

79. The Tribunal is also of the opinion that the FEI OG Reg Art. 626 Section 9.2 is in conformity with EADMCR Article 9 as it provided that in such case "*the rider's results in all competitions will be annulled*".

80. Accordingly and pursuant to FEI OG Reg Art. 626 Section 9.1 and EADMCR Art. 11, a consequence of the disqualification of the PR is the subtraction of the PR's result from the Norwegian Jumping Team and the replacement with the results of the next applicable Norwegian Jumping Team member.

81. The Tribunal concludes that the results of the Norwegian Jumping Team must be recalculated not taking into account the results achieved by the PR and Horse combination, in accordance with EADMCR Art. 11 and FEI OG Reg Art. 626 Section 9.1.

4.10 Sanctions

82. The PR argued in regard to sanctioning that the PR's record and reputation are impeccable. The PR competed internationally for many years without a positive result and he exercises good stable management.

83. The PR, including through the testimony of Prof Dr 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, by permitting the laboratory to report miniscule 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. While these arguments were not accepted by the Tribunal to relieve the PR from any liability, they are taken into account by the Tribunal in determining the applicable sanctions in this case.

84. The Tribunal notes the caution to Riders, trainers and others at VR Annex VIII (from June 2006) containing as it does the warning that analytical techniques in testing laboratories are becoming more refined.
85. 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, and a very potent one at that, 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.
86. The FEI further argued that 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 were also to be taken into account by the Tribunal.
87. 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).
88. The Tribunal highlights 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.
89. In considering the sanctions to be given to the PR in this case, the Tribunal takes into account the following: (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 potent pain relieving substance, but also an agent that can be used for hypersensitisation purposes; (iii) the fact that the source of the presence of the substance has not been established by

the PR; (iv) the fact that the actions taken by the PR to control all possibilities of contamination and actions taken following the positive finding to reveal its source were not at the same level as established by other PRs at the same or similar events; and (v) in regard to costs, the fact that the PR contributed to the prolongation of this case and, in particular, efforts to refuse acceptance of evidence argued by the PR's team during the second hearing to be of vital importance.

90. On the other hand and in mitigation, the Tribunal also considers: (i) the impeccable record and reputation of the PR; (ii) the hardship already caused to the PR including the loss of an Olympic medal; and (iii) the substance has not been previously detected in the context of FEI events and is often used by riders also for legitimate therapeutic reasons.

91. 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 **Four and One-Half (4.5) months** (namely, 135 days) which period has commenced on the date of the application of the provisional suspension, 21 August 2008;
- 2) The PR is fined **CHF 3,000.-**;
- 3) The PR shall contribute **CHF 8,000.-** 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: Yes; the IOC

5.4 Any other: PR's Counsel

FOR THE PANEL



THE CHAIRMAN Mr Philip O'Connor

Case 2008/23 CAMIRO - Annexe 1

Date	From	To	Submitted by...	What
DOCUMENTS SUBMITTED PRIOR TO FIRST HEARING (26 SEPTEMBER 08)				
21.08.2008	FEI	Secretary General NOR-NF	Fax	Notification Letter
21.08.2008	FEI	Secretary General NOR-NF	Fax	Notif. Of Prelim Decision
27.08.2008	FEI	Secretary General NOR-NF	Fax	Notif. Of B-Sample Results
01.09.2008	Mr Steenstrup	FEI	Fax	
03.09.2008	FEI	Morten Steenstrup	Fax	
08.09.2008	Morten Steenstrup	FEI	Fax	
11.09.2008	Odd Walther Moi (PR counsel)	FEI	Fax	
11.09.2008	Odd Walther Moi	FEI	Fax	
12.09.2008	FEI	Morten Steenstrup	Fax + Email	
12.09.2008	Odd Walther Moi	FEI	Fax	
16.09.2008	Morten Steenstrup	Kentucky Equine Research Inc	Fax	forwarding PR Submission of 21 September 08
22.09.2008	FEI	Tribunal/FEI	Email	September 08
24.10.2008	FEI	Tribunal/PR	Email	FEI's Skeleton Argument of 24 September 08
24.09.2008	Mr Steenstrup	Tribunal/FEI	courrier	Letter to FEI Tribunal of 24 September 08
DOCUMENTS SUBMITTED AT THE 26 SEPTEMBER 08 HEARING				
26.09.2008	Dr. Jármy Miklós	FEI	Fax	Statement submitted by FEI at 26 September 08 hearing
26.09.2008	Dr Cronau; Dr Barker	Mr Steenstrup		Statements submitted by PR's counsel at 26 September 08 hearing
DOCUMENTS SUBMITTED BETWEEN FIRST AND SECOND (8 NOVEMBER 08) HEARINGS				
30.09.2008	Morten Steenstrup	FEI	Email	Request list of 30 September 08
06.10.2008	Morten Steenstrup	FEI	Email	Additional request list of 6 October 08
08.10.2008	FEI	Tribunal	Email	Forwarding lab documents provided to Mr Steenstrup
08.10.2008	FEI	Tribunal	Email	FEI's answer to the PR's requests of 8 October 08
Date	From	To	Submitted by...	What

14.10.2008	FEI				FEI's Letter to the ribunal of 14.10.08 (submitted to Panel in file prior to the 8 November 08 hearing)
14.10.2008	Mr Steenstrup			Tribunal	By email to Legal Dpt By Email to FEI
15.10.2008	FEI			Tribunal	Email
20.10.2008	Mr Steenstrup			FEI	By Email
20.10.2008	FEI			Tribunal	By Email
23.10.2008	FEI			Tribunal	Email
23.10.2008	FEI			Tribunal	Email
23.10.2008	FEI			Panel	Email
29.10.2008	FEI			Panel	By Email
03.11.2008	FEI			Lawyers	Email
04.11.2008	Morten Steenstrup			FEI	Email
04.11.2008	FEI			Tribunal	Email
06.11.2008	FEI			Tribunal	Email
06.11.2008	FEI			Tribunal	Email
06.11.2008	FEI			Tribunal	Email
06.11.2008	FEI			Tribunal	Email
Date	From	To	Submitted by...		
					What

06.11.2008	FEI		Tribunal		Mr Steenstrup's reply to Mr Favre-Bulle's reply	Email	
06.11.2008	FEI		Lawyers		Forwarding message from Panel	Email	
06.11.2008	FEI		Tribunal		Forwarding Mr Steenstrup's reply to Panel's message	Email	
06.11.2008	FEI		Tribunal		Forwarding Mr Favre-Bulle's comments on Mr Steenstrup's reply to Panel message	Email	
07.11.2008	FEI		Tribunal		Forwarding Mr Steenstrup's reply to Mr favre-Bulle's comments	Email	
DOCUMENTS SUBMITTED AFTER 2ND HEARING (8 NOVEMBER 08)							
11.11.2008	FEI		Tribunal		Forwarding message from Mr Favre-Bulle	Email	
12.11.2008	FEI		Tribunal		Forwarding Mr Steenstrup's reply to Mr favre-Bulle's email of 11.11.08	Email	
12.11.2008	FEI		Lawyers		Message from Panel	Email	
18.11.2008	FEI		Tribunal		Forwarding correspondence between mr Favre-Bulle and Dr Walz to the Panel	Email	
18.11.2008	FEI		Tribunal		Forwarding Mr Steenstrup's comments on 18.11 correspondence	Email	
18.11.2008	FEI		Tribunal		Forwarding Mr Favre-Bulle's comments on 18.11 correspondence	Email	
18.11.2008	FEI		Tribunal		Mr Steenstrup's reaction on 18.11 correspondence	Email	
19.11.2008	FEI		Tribunal		Message from Mr Favre-Bulle	Email	
20.11.2008	FEI		Tribunal		Dr Wan's letter of 20 November 08 to the Panel	Email	
20.11.2008	FEI		Tribunal		Forward of documents received from HKJC regarding conjugation studies	Email	

25.11.2008	FEI		Tribunal		Email	Mr Steenstrup's reaction to Mr Favre-Bulle e-mail 19.11.08 and Mrs Viret e-mail 20.11.08 with a statement of prof Barker
25.11.2008	FEI		Tribunal		Email	Mr Favre-Bulle's reply to Mr Steenstrup's email 25.11.2008
28.11.2008	FEI		Tribunal		Email	Forwarding Mr Steenstrup's letter to Tribunal with its two enclosures
28.11.2008	FEI		Tribunal		Email	Mr Favre-Bulle's reply to Mr Steenstrup's letter of 28.11.2008.