



## **DECISION of the FEI TRIBUNAL**

**dated 22 September 2008**

**Positive Medication Case No.:** 2008/24

**Horse:** MYTHILUS

**FEI Passport No:** USA40714

**Person Responsible:** Ms Courtney King-Dye

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

**Prohibited Substance:** Felbinac

### **1. COMPOSITION OF PANEL**

Mr Ken E. 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 7 September 2008, in presence.

Present: The FEI Tribunal Panel

For the FEI:

Philippe Burnand, Legal Counsel  
Mikael Rentsch, Legal Counsel  
Catherine Bollon, Legal Coordinator  
Dr Paul Farrington, DVM, Witness  
Dr Terence S.M. Wan, Witness (by teleconference)

For the PR:

Ms Courtney King-Dye, Person Responsible  
Mr Andrew C. Temkin, Esquire, Counsel for the PR  
Dr Richard D. Mitchell, DVM, Witness (by teleconference)

Dr David Casimir, Ph.D., Witness (by  
teleconference)

For the United States Equestrian Federation:

Ms Sonja S. Keating, Esquire, Counsel

Observer:  
PR's husband

### **3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

#### **3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:**

Statutes 22<sup>nd</sup> edition, effective 15 April 2007 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations ("**GR**"), 22<sup>nd</sup> 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**"), 10<sup>th</sup> edition, effective 1<sup>st</sup> 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 (22<sup>nd</sup> ed.) ("**FEI OG Reg**"), effective for the 2008 Beijing Olympic Games (Hong Kong), Arts 614, 615 and Annex G.

#### **3.2 Person Responsible:** Ms Courtney King-Dye

#### **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. 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. MYTHILUS (the "**Horse**") participated at the Games of the XXIX Olympiad, Beijing 2008 (Olympic Games), from 8 to 21 August 2008 in Hong Kong (the "**Event**"), in the discipline of Dressage. The Horse was ridden by Ms Courtney King-Dye (the "**PR**").
2. The Horse was selected for sampling on 19 August 2008, upon the Dressage Individual Grand Prix Freestyle.
3. Analysis of the urine sample no. FEI- 0069194 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 Dr W H Kwok and Dr Terence S M Wan revealed the presence of Felbinac (Test Reports dated 21 August 2008).
4. The Prohibited Substance detected is a non-steroidal anti-inflammatory drug (NSAID) used to reduce inflammation and pain and, accordingly, is classified as "Prohibited Substances" under the Equine Prohibited List (VR Annex III) "Medication A" (Veterinarian Statement dated 21 August 2008 and attached report).
5. During the Event, the Horse was granted five authorizations for the use of medication not listed as prohibited under FEI Regulations (Medication Form 3): (i) on 31 July 2008, for Gentamicin through intravenous administration for a respiratory disease, (ii) on 1 August 2008, for Adequan / Legend through intravenous administration for "joint maintenance", (iii) on 1 August 2008, for Vit B12 / Saline / Acupuncture through intramuscular administration for "muscle soreness", (iv) on 2 August 2008, for LRS through intravenous administration, for "atrial fibrillation – presumed electrolyte imbalance", and (v) on 19 August 2008, for Genta Spray, through topical application for Dermatitis.
6. On 2 August, while riding the Horse, the PR became concerned of the Horse's welfare. The PR contacted Dr Mitchell, Veterinarian for the US Olympic Dressage Team, who concluded, after an examination of the Horse, that the

Horse was in atrial fibrillation, a cardiac condition. This diagnosis was confirmed by the veterinarians at the Olympic Games Veterinary Hospital (the "**Hospital**") through electrocardiogram and diagnostic ultrasound. Other tests were also performed on the Horse. In these tests coupling gels were used.

7. On 3 August, the Horse was granted an authorization of emergency treatment (Medication Form 1) to treat the atrial fibrillation condition. The Horse was administered Quinidine through oral administration in order to attempt to convert the Horse's heart to normal rhythm. The Quinidine tablets were not available at the Hospital and were brought from the Hong Kong Jockey Club Veterinary Hospital (one tablet was not in the manufacturer's package but in a labeled plastic bag; it had to be used due to shortage of this medication). Following treatment, the Horse was considered by the Veterinary Commission as fit for participation at the Event.
8. No request had been made for the use of Felbinac on the Horse, and no medication form had been supplied for this substance.

#### **4.2 The Preliminary Hearing**

9. The presence of the Prohibited Substances, the possible anti-doping rule violation and the consequences involved were duly notified to the PR on 22 August 2008.
10. The notification of 22 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.
11. On 22 August 2008, the PR returned Annex III "Provisional Suspension and Preliminary Hearing" confirming that she wished the preliminary hearing to be held by a conference call and that she would be assisted by Mr James Wolf, Chef de Mission for the United States Equestrian Federation ("**USEF**"), Mr John Long, Secretary General for the USEF, Ms Sonja S. Keating, Esquire, USEF Counsel, Dr Richard D. Mitchell, Veterinarian for the US Olympic Dressage Team and Dr Timothy R. Ober, Veterinarian for the US Olympic Show Jumping Team.
12. The preliminary hearing took place as scheduled on 22 August 2008 and the preliminary decision was rendered and communicated to the PR through her NF in Hong Kong by e-mail 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.

13. In its preliminary decision, the preliminary panel stated that the test report from the HKJC showed a positive test result for the Prohibited Substance Felbinac and that the analysis had not been contested by the PR.
14. The preliminary panel considered the PR's explanations at the preliminary hearing, whereby the PR *"has no explanation to how the Prohibited Substance can have entered her horse's system. She has stated that this substance is not allowed in the United States and maybe not in UK, but it is sold in countries in Asia, like Beijing China and Japan. She had no knowledge of the substance before she got to know it during this case. She has not herself administered the substance to her horse"* (Preliminary Decision).
15. The preliminary panel further considered the PR's request to lift the provisional suspension or, alternatively, that the preliminary decision should not be published before the final decision if the provisional suspension is maintained.
16. Having considered the PR's position, the preliminary panel agreed that the circumstances of the case made it difficult to clarify how the Prohibited Substance entered the Horse's system. The preliminary panel stressed, however, that it is the PR's personal duty to ensure that no prohibited substance is present in her Horse's body during an event (EADMCR Art. 2.1.1) and that the presence of a prohibited substance constitutes a medication control rule violation, without an intent, fault or negligence on the PR's part having to be established.
17. In light of the above, and considering that the FEI policy is to impose provisional suspension in doping and in medication cases at major events such as the Olympic Games, the preliminary panel refused to lift the provisional suspension.

### **4.3 The B-Sample Analysis**

18. In the notification of 22 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 her 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.
19. On 22 August, the PR returned Annex IV "B-Sample analysis" Form completed and signed, acknowledging that

the B-Sample analysis would be performed as described and indicating that she would be represented at the identification and opening of the B-Sample by Mr Wolf and by Mr Long.

20. The B-Sample analysis was carried out as scheduled at HKJC under the supervision of Dr Francis P W Tang and Mr David K K Leung, while Mr Wolf and Mr Long were present at the identification and opening of the B-Sample.

21. In their witness statement, Mr Wolf and Mr Long certified that the urine B-Sample container "*show no signs of tampering and that the identifying numbers appearing on the urine sample 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 they had also witnessed the opening of the sample (Witness Statement dated 23 August 2008).

22. The B-Sample analysis confirmed the presence of Felbinac (Test Report dated 25 August 2008).

23. The results of the B-Sample analysis were notified to the PR on 27 August 2008 through her NF.

#### **4.4 The USEF Joinder**

24. The USEF requested to join the proceedings on the issue of the potential disqualification of the US Dressage Team that has won 4<sup>th</sup> place at the Team Dressage competition at the Event, should there be a finding against the PR. The USEF filed a brief dated 3 September 2008.

25. The USEF claimed that it has standing to intervene in this matter under GR Art. 170, indicating that it has a legitimate interest in protecting the results obtained by the US Dressage Team including the two "innocent" members of that Team.

26. While this is not technically an appeal, the FEI did not object to the joinder of the USEF and the Tribunal accepts that the USEF has a legitimate interest and should be allowed to participate and argue its case regarding the potential disqualification of the US Dressage Team.

#### **4.5 The Final Hearing**

27. In the notice of 27 August 2008, the PR was informed that a Final Hearing has been scheduled for 7 September 2008. The PR was given a time limit until 3 September to submit any written explanations or documentary evidence.

28. In its brief dated 3 September 2008 and during the hearing

held on 7 September, the PR made the following main arguments:

- a. The exception contained in EADMCR Art. 2.1.3 to a medication rule violation in case of an environmental contamination should apply.
- b. Even if the Tribunal finds that there was a medication rule violation under EADMCR Art. 2.1, there was no fault and no negligence by the PR or her support personnel and, therefore, under EADMCR Art. 10.5, the PR should not be sanctioned.

29. Written and oral testimonies on behalf of the PR were submitted by the PR, by Dr Richard D. Mitchell, DVM, by Dr David Casimir, Ph.D., accepted as an expert witness, and through numerous written statements of USEF officials, riders and others relating primarily to the PR's reputation, impeccable record and her care for the welfare of her horses.

30. The USEF participated at the hearing through counsel, and presented its legal arguments regarding the potential disqualification of the US Dressage Team – should there be a finding against the PR, providing oral arguments to supplement the brief filed on its behalf in this matter.

31. Written and oral testimonies on behalf of the FEI were submitted by Dr Paul Farrington, DVM and by Dr Terence S.M. Wan, Head of the Racing Laboratory & Chief Racing Chemist at the Hong Kong Jockey Club, accepted as an expert witness.

#### **4.6 Additional Evidence Following the Final Hearing**

32. The Tribunal allowed, at the agreement of the parties, both Dr Casimir and Dr Wan to be present (by teleconference) during each others oral testimony and react to such testimony. Additionally, at the conclusion of questioning by the parties and after finalization of that stage in the proceedings, Dr Wan requested to complete certain items in his testimony after Dr Casimir has already dropped off the line. The Tribunal allowed such testimony, reconnecting Dr Casimir into the proceedings. The parties were not granted additional time to provide evidence following the hearing.

33. Nevertheless, on 11 September 2008 Dr Wan submitted a written statement completing his testimony and reacting to Dr Casimir's written report filed on or about 3 September 2008. The PR objected to the introduction into evidence of this late statement, indicating that it violates the PR's due process rights and the rules governing these procedures and further indicating that the PR accepted, albeit with great difficulties and sacrifices, the FEI's speedy processes following

the Event and that the FEI should not be permitted in these circumstances to deviate from its own procedures.

34. The Tribunal does not admit Dr Wan's late statement dated 11 September 2008 into evidence, as such statement is untimely. The Tribunal is also of the opinion that even had it allowed this statement into evidence, such statement would not have caused the Tribunal to alter its decision in this case.

#### **4.7 Jurisdiction**

35. 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.

#### **4.8 The Person Responsible**

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

#### **4.9 The Decision in regard to the PR**

##### **4.9.1 The Positive Finding**

37. 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 Felbinac, a Medication A Prohibited Substance. The PR did not contest the accuracy of the testing methods or the test results and positive findings. The FEI has thus sufficiently proven the objective elements of a doping offence in accordance with EADMCR Art. 3.

38. In his report attached to the Veterinarian Statement dated 21 August 2008, Dr Paul Farrington, the FEI Veterinarian, member of the Veterinary Commission, stated that Felbinac is usually used as a topical medication to reduce inflammation and pain, but that he was *"not aware of its widespread use in veterinary medicine as other licensed products are available for use in horses"*.

39. Dr Farrington testified that the Horse had undergone various authorized treatments duly covered by medication forms while residing at the Olympic stables, but that no request had been made for the use of Felbinac and no medication form had been supplied for this substance. The Veterinarian Report further stated that *"if such request had been made to the Veterinary Commission permission for its use would not have been granted due to the pain killing and anti-*



*inflammatory properties which would have a direct effect on performance”.*

40. The Tribunal notes that the Horse had undergone several treatments by the US Dressage Team Veterinarian and also at the Hospital, in close collaboration with the Veterinary Commission. The treatments were concluded some two weeks before the testing, and none of the medication forms submitted covered the use of Felbinac.

#### **4.9.2 Environmental Contamination**

41. The PR argued that the exception to a medication rule violation in case of an environmental contamination, referenced in EADMCR Art. 2.1.3, should apply in this case. The PR argued that as neither the PR nor her support personnel administered the substance to the Horse, the substance must have entered the Horse through environmental contamination. The PR argued, based on Dr Casimir's testimony, that the finding must be a result of an environmental contamination since the concentration found was roughly 14 nanograms (ng/mL), a biologically insignificant trace amount of the drug. The PR also argued that since the PR and her team has not used Felbinac, knowingly or accidentally, and since the US team had proper controls to ensure no accidental contamination, the only plausible explanation could be an environmental contamination, possibly at the Hospital, at which the Horse had been treated. One such possible explanation expressed by the PR and her witnesses was the use of an ultrasound gel containing Felbinac as a coupling agent by the Hospital's staff. The PR and Dr Mitchell testified that Felbinac, which is not approved for use in the US and therefore not sold in the US, is a very common medication in the Far East and used clinically in China. The PR argued that Felbinac in its topical compound format is easily absorbed through the skin and through that enters the muscles and bloodstream. Dr Wan, testifying on behalf of the FEI, accepted that accidental contact of Felbinac with a horse's skin could result in a positive finding.

42. The Tribunal notes that, under the express language of EADMCR Art. 2.1.3, its application as an exception to the rule violation of EADMCR Art. 2.1, is conditional on the environmental contaminants being listed or specific criteria established for them in the Equine Prohibited List. Since no such list or criteria which includes or covers Felbinac has been established to date in the Equine Prohibited List, the exception under EADMCR Art. 2.1.3 does not apply. The Tribunal therefore concludes that a medication rule violation under EADMCR Art. 2.1 was established by the FEI.

### **4.9.3 No Wrongdoing by the PR – Strict Liability**

43. The PR argued that the nature of the substance and the minimal concentration found were such that she did not gain any competitive advantage and that, additionally, the finding did not constitute any maltreatment of the Horse. Under such circumstances, the PR argued that there should not be any motivation or reason to disqualify or sanction her.
44. 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.
45. The FEI has a strict liability policy in regard to competing with prohibited substances present in the horse's systems 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 systems 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.
46. 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.
47. 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.

### **4.9.4 Elimination or Reduction of Sanctions**

48. 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 she bears no fault and no negligence or no significant fault and no significant negligence, in accordance with EADMCR Art. 10.5.

49. 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.
50. The PR, an international Dressage rider, testified that she believes that the welfare of the horse must be paramount at all times. Numerous statements filed by other competitors, USEF officials and others confirmed that the PR has a reputation for honesty and fair play and that she has no record of any disciplinary measures taken against her.
51. Dr Mitchell testified that the US team implemented strict measures to ensure that no prohibited substances enter the bodies of the team horses, either knowingly or accidentally. All foods, supplements and medications were strictly controlled, supplements and medications were all brought from the US, horses were tested on numerous occasions and at every test event, riders documented and advised of every product used on their horses, considerable time prior to the Event no product or medication was used without the specific pre-authorization by Dr Mitchell and a special security guard continuously supervised the US horses at the Event. Dr Mitchell testified that before this case no team horse of his has ever tested positive.
52. Both Dr Mitchell and the PR tried to demonstrate these strict controls by referring to an event in Germany a number of weeks before the Olympic Games at which the Horse injured its back. A vet of another team suggested rubbing a certain medication on the Horse. The PR called Dr Mitchell in the US and Dr Mitchell did not authorize any treatment and insisted that the PR should only use ice on the Horse's back, an advice which has been followed by the PR.
53. The PR and Dr Mitchell testified that before the finding they have never heard about Felbinac and that they did not know this medication. The Horse has been tested some 50 or

more times and has never tested positive and the Horse has not been treated with any anti-inflammatory drug at or before the Event.

54. The PR testified that neither she nor any of her group has given the prohibited substance to the Horse. Following the positive finding the PR and the USEF have tried to find the cause of any accidental application or contamination. Substances used have been rechecked and every possible source revisited. Immediately following the positive finding the USEF requested from the FEI all substances used on the Horse at the Hospital but these have not been provided. The PR argued that while the exact cause of the positive finding has not been discovered by her, she has done everything in her power to discover it. By ruling out all other possibilities, only an environmental or accidental contamination was left as a possibility, therefore, EADMCR Art. 10.5 should apply and the otherwise applicable period of ineligibility and other sanctions must be eliminated, as the PR bears no fault and no negligence.

55. Dr Wan testified that the Hospital applies strict controls and no contamination at the Hospital was possible. Dr Wan further testified that the concentration detected did not support contamination at the Hospital some two weeks before the sample was taken. This concentration could result from therapeutic use some 10 to 14 days before the test or contamination with small quantities shortly before the sample was taken. Dr Wan testified that contamination at the Hospital some two weeks before the test was the least likely explanation.

56. In his letter of September 11 2008 Dr Wan stated that other than therapeutic use or environmental exposure there is also a third possibility for the finding, namely someone knowingly or unknowingly using directly or momentarily on the Horse an easily-available over-the-counter product such as tape or plaster that contained a small amount of Felbinac. This letter was not accepted as evidence in this case, as untimely. Nevertheless, even this third possibility does not shed light on this case and would not have altered the Tribunal's decision in this case.

57. 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*". 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 she bears no fault and no negligence, she

must demonstrate how the substance entered the Horse's system. While elaborate, the explanations furnished by the PR are still mere speculations.

58. The PR argued that it would not be right if a person responsible "inventing" a source of a prohibited substance would benefit from a reduction of sanctions, while the PR that has done no wrongdoing and made every conceivable effort to find the source of the prohibited substance but could not find it would not benefit from such an elimination or reduction of sanctions.

59. The Tribunal is of the opinion that the clear language of EADMCR Art. 10.5 requires that the PR demonstrate how the substance entered the Horse's system in order for the PR to prove that she bears no fault and no negligence. The Tribunal is in a position to evaluate whether a person responsible is lying or not and an argument that lying could be easy is not a valid argument. 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. However, similar arguments will be taken into account by the Tribunal in determining the applicable sanctions in this case.

#### **4.10 Disqualification**

60. 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.

61. 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.

#### **4.11 Disqualification of the US Dressage Team**

62. The USEF argued that the US Dressage Team cannot be disqualified under the Olympic Regulations. The USEF argued that the FEI OG Reg Article 623 Section 7.1 only provides for disqualification in the event of a doping violation and not in the event of a medication control rule violation.

63. Furthermore, the USEF argued that the FEI OG Reg Article 623 Section 7.1 does not permit the disqualification of the US Dressage Team based on a positive test several days after the end of the Team Dressage competition.

64. The USEF argued that the EADMCR authorize elimination or reduction of any team sanction in the event the PR can demonstrate that she bears no fault and no negligence for the medication control rule violation. The USEF therefore argued that the Tribunal cannot disqualify the US Dressage Team under EADMCR Art. 11, as this would constitute a sanction against the PR and the US Dressage Team in a case in which sanctions must be eliminated under EADMCR Art. 10.5.1.
65. The USEF argued that the FEI OG Reg are in conflict with EADMCR and should therefore be disregarded pursuant to GR Article 100.8, the FEI OG Reg being part of the Sport Rules and subject to the provisions of the GR and the EADMCR.
66. The USEF argued that according to GR Art. 174.1 a disqualification would not be appropriate in the present case, considering that it was not established that the US Dressage Team gained an unfair advantage or that any other competitor in the Team Dressage Competition was materially disadvantaged.
67. As reflected above, in the present case, it has been established that, according to EADMCR Art. 2, a medication control rule violation occurred. No intention is required in order to establish the objective elements of a medication offence. The mere presence of a prohibited substance in the Horse's system is sufficient.
68. The FEI is not required to demonstrate any competitive advantage to the PR resulting from the presence of the prohibited substance as the intent and competitive advantage issues are only taken into consideration in the determination of the sanctions imposed.
69. The system of strict liability has been reconfirmed time and again and the CAS has repeatedly expressed its view that disqualification is the conventional consequence of breach without respect to whether or not the amount of the substance that was detected could have affected or was intended to affect the performance. Furthermore, according to GR Article 174.4, the disqualification is appropriate "*when it is specified in the Statutes, GRs or Sport Rules*".
70. The Tribunal considers that the argument of the USEF that the FEI OG Reg Art. 623 Section 7.1 only provides for disqualification in the event of a doping violation is not relevant for the reason that the principle of strict liability applies, according to the GR and the EADMCR, to both a doping violation and a medication control rule violation and

that this provision makes reference to "positive doping test" and not to "Doping Violation".

71. According to the principle of strict liability, the Tribunal deems that the EADMCR Art. 10.5.1 and 10.5.2 should not be read as authorizing the Tribunal to eliminate the disqualification in the event the PR demonstrates that she bears no fault and no negligence or no significant fault and no significant negligence for the medication control rule violation. Disqualification is not a sanction under the EADMCR; it is merely a measure to level the playing field. Hence, even if all sanctions are eliminated the disqualification is automatic and must remain.
72. Pursuant to EADMCR Art. 9 and the principle of strict liability, the Tribunal considers that this medication control rule violation in connection with an in-competition testing at the Event automatically leads to the disqualification of all results of the PR and Horse combination obtained at the Event with all resulting consequences. According to EADMCR Appendix 1 and GR Article 101, the term "Event" refers to: "the complete meeting, Show, Championship or Games".
73. The Tribunal concludes that EADMCR Art. 9 read in conjunction with GR Art. 101 means that the results of PR and Horse combination obtained at both the Individual Dressage Competition and the Team Dressage Competition are annulled. In case of a conflict between the EADMCR and the FEI OG Reg, the GR and EADMCR prevail, as argued also by the USEF in one of its alternative arguments.
74. The Tribunal is of the opinion that the FEI OG Reg Art. 623 Section 7.2 is in conformity with EADMCR Art. 9 as it provided that in such case "*the rider's results **in all competitions** will be annulled*".
75. Accordingly and pursuant to FEI OG Reg Art. 623 Section 7.1 and EADMCR Art. 11, the consequence of the disqualification of the PR is the annulment of the PR's result and the resulting US Dressage Team disqualification.
76. Based on the detailed analysis, the Tribunal concludes that the US Dressage Team is disqualified from the Team Dressage Competition and that all medals, points and prize money won at this Competition must be forfeited, in accordance with EADMCR Art. 11 and FEI OG Reg Art. 623 Section 7.1.

#### **4.12 Sanctions**

77. In considering the sanctions to be given to the PR in this case, the Tribunal takes into account the fact that the PR is

an experienced sportswoman 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.

78. Nevertheless and while the burden to establish that there has not been fault or negligent remains that of the PR, the Tribunal finds the evidence of the PR and the US Dressage Team Vet to be credible and believes that neither the PR nor anyone on her behalf or related to the USEF has knowingly administered the medication to the Horse. The Tribunal further accepts the PR's and USEF arguments that they have done almost everything in their power to ensure that no rule violation shall occur.

79. In deciding the sanctions, the Tribunal also considers the type of Medication A substance involved and its therapeutic applications, the fact that the same substance may not be considered as a doping substance, the specific circumstances relating to the Horse's "hospitalization" in Hong Kong and the possibility of contamination, the excellent stable management practiced by the US team and measures placed to try and ensure that no horse with prohibited substances participate at the Games, the efforts made by the PR and the USEF to determine the source of the positive finding, the impeccable record and reputation of the PR, the PR's cooperation in the investigation and the hardship already caused to the PR and the fact that the US Dressage Team has already lost its Olympic placing as a result of the positive finding.

80. 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 **One (1) month** which has commenced on the date of the application of the provisional suspension, 22 August 2008, and ended on 21 September 2008;
- 2) The PR is fined **CHF 1,000.-**; and.
- 3) The PR shall contribute **CHF 1,000.-** towards the legal costs of the judicial procedure.

## **5. DECISION TO BE FORWARDED TO:**

**5.1 The person sanctioned:** Yes


**5.2 The President of the NF of the person sanctioned:** Yes

**5.3 The President of the Organising Committee:** Yes; the IOC



**5.4 Any other:** PR's Counsel and NF's Counsel

**FOR THE PANEL**



**THE CHAIRMAN Mr Ken Lalo**

(signed in his absence on the date first above written)