



DECISION of the FEI TRIBUNAL

dated 12 March 2008

Positive Medication Case No.: 2007/27

Horse: MAGNUM 68

FEI Passport No: GER27682

Person Responsible: Mr Peter Baumann, GER

Event: CEI 3* Ermelo, NED, 15-17.06.2007

Prohibited Substance:

Testosterone

1. COMPOSITION OF PANEL

Mr Pierre Ketterer
Prof Dr Jens Adolphsen
Mr Ken E. Lalo

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, 22nd edition, effective 1 June 2007, Arts. 142, 146.1 and 174 ("**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 1st 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: Mr Peter Baumann

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. Magnum 68 (the "**Horse**") participated in CEI 3* Ermelo from 15 to 17 June 2007 (the "**Event**"). The Horse was ridden by Mr Peter Baumann who is the Person Responsible in accordance with GR Article 142 (the "**PR**").
- b. The Horse was selected for sampling on 16 June 2007. Analysis of the urine sample no. FEI-0034686 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 Testosterone (Certificate of Analysis 0034686 dated 17 July 2007).
- c. On 20 August 2007 the PR submitted a request for a confirmatory analysis, dated 19 August 2007. The confirmatory analysis was carried out on urine at LCH from 2 to 9 October 2007 under the supervision of Mrs Mylène Roche, Senior Analyst, and was witnessed by Dr Frédéric Balssa, Quality Manager at LCH, at the request of the PR. It confirmed the presence of Testosterone (Counter-Analysis Report dated 9 October 2007).
- d. Testosterone is an anabolic steroid (Veterinary Department's

Statements dated 26 July 2007 and 18 October 2007) and an endogenous substance in horses which is prohibited when its threshold level is higher than the relevant ratio allowed. The threshold level of Testosterone for geldings is 20 ng/ml. As specified in the first section of the Equine Prohibited List (VR Annex III), the presence of Testosterone at a concentration higher than this threshold level is considered a "Doping" Prohibited Substance.

- e. 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 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 EADMCRs Article 3.
- f. 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 EADMCRs Article 10.5.
- g. In his written explanation dated 24 August 2007, the PR states that he has been an occupational rider and trainer for 25 years and that he is working in Germany and abroad with numerous results in shows, racing, breeding and endurance events.
- h. He explains that the Horse was kept at his stables since April 2007 because his owner could not keep this gelding with other horses of mixed sex due to his behaviour. He certifies that no injections, drugs, medicines or ointments were given to the Horse by him or by his stable personnel, except for regular inoculation and anthelmintics. This is confirmed by the grooms of the Horse, Andrea Arnold and Jennifer Lenze (statements dated 22 and 23 August 2007) and by the owner of the Horse, Annette Nothhaft (statement dated 21 August 2007).
- i. Upon receipt of the notification of the positive results, the Horse was brought to the Andrology of the University of Hanover in Germany for a comprehensive investigation. Blood and urine tests were sampled as well as an ultrasonic analysis of the kidneys. The test results show that testosterone was not detectable.

- j. Dr Juliette Mallison, Veterinarian and President of the German Endurance Society, provided a statement dated 1 November 2007, in which she clarifies that, the PR was part of the "Ariat" Endurance Team in 2007 which was sponsored by two "animal feed firms that were putting new "Performance feeds" onto the horse-sport market. These feeds contained rice-bran, or rice-meal. From one of the firms, he was also given an additional feed supplement which contained rice-oil with Gamma Oryzanol, which according to the firm's catalogue was "doping free". She added that "no research has been carried out on the effect of feeding Rice-products in horses and on the possible effect on testosterone production".
- k. In an undated statement, Mrs Ulrike Pottrick, member of the "Ariat" Endurance Team together with Peter Baumann, states that in spring 2007, she and the PR got in contact with the feed companies "Scharenberger Mühle" and "Lexa" for sponsorship. The Horse had been fed "Muscle Protect I" from the Scharenberger Mühle company, containing as its basis rice fodder flour, and "MuscAlgen" from the Lexa Company. Mrs Pottrick mentions that, when speaking with a spokesperson of the Lexa Company after the positive results, the woman had "admitted that the positive doping result could emerge because of "MuscAlgen".
- l. In his explanation dated 11 November 2007, the PR explains that, as he never gave his Horse any medication with doping substance, he replaced the Horse's feed after the Event with oats, barley, minerals and hay. The PR states that he took part at the CEI 3* Topolcianky in Slovakia, in which the Horse came in 30 minutes before the second horse, received the Best Condition award and recovered in an extremely short time. In order to check the level of Testosterone in the Horse, the PR asked the Official Veterinarian to take blood and urine samples from the Horse but the veterinarian could not do so as he had no available doping kit. The PR then took himself samples from the Horse, at his own cost, and sent the samples to the Doping Institute of Geesthacht, Germany, which did not find an abnormal threshold of testosterone (LADR GmbH Medizinisches Versorgungszentrum Analysenbericht).
- m. The PR submitted testimonies from four different persons (3 Veterinarians and a competitor) acknowledging the good care of horses by and the professionalism of the PR, with the welfare of the Horse being more important to the PR than his personal success.
- n. The PR also informs the FEI that a student of veterinary medicine will write her doctoral thesis, starting in early

2008, together with the TIHO Hannover, Veterinarian Analyse Center Geesthacht VAZ, on the effect which the ingestion of Gamma-Oryzanol could have on the endogenous production of Testosterone in horses.

- o. In his written explanation dated 18 October 2007, the PR also mentions that he knows that *"doping control can be taken at any time during/after competitions"* and that *"If I would have given a forbidden substance to the horse it would have been better to finish in midfield"*. He added that *"No money is to be made with endurance sport"* and that *"the only possibility to earn money within the endurance sport is to successful start with the horse on long distance [...] on international level to sell the horse after. There is no chance of selling the horse if there is a doping case existing about the results. In this case I would annihilate the only chance to earn money with this sport."* The PR specifies that this is what happened with the Horse, as a buyer intended to buy the Horse and withdrew from the contract *"because she doubts the efficiency of the horse due to the doping accusation"*.
- p. In a statement dated 14 December 2007, Ian Williams, Director of the FEI Endurance Department, confirms that *"for Trainers, Riders and Owners, whose horses compete in similar competitions to those detailed by Mr Baumann, the recognised way to obtain a financial return from producing/competing Endurance Horses is to bring on a horse through the various *Levels of competition and to then sell the animal to an interested party. The value of the horse being directly linked to the competition performances and results. [...] It would seem strange that a rider or trainer who wished to avoid the possibility of the MCP process would actively compete to take one of the first three places knowing that it would be very likely that a test would be undertaken."*
- q. Dr Frits Sluyter, head of the FEI Veterinary Department, states that *"Gamma oryzanol is on the FEI list as a Medication B substance and is therefore prohibited. The product is also included in a number of feed additives. However, there is as yet no scientifically reported link between administration of Gamma oryzanol and an elevated endogenous production of testosterone, resulting in a sample testing positive for this substance."* Dr Frits Sluyter adds that it is, nevertheless, impossible to judge whether the level of Testosterone found to be present in the liquids of the Horse was due to this feed additive or to the administration of Testosterone given by other means.
- r. The PR testifies that the producer of "MuscAlgen" mentioned

on the packaging of this feed that it is doping-free. The PR testifies that since this case has been reported, the same producer acknowledged the problem and admitted the possibility that its product can be at the origin of the positive test.

- s. The FEI Tribunal is convinced, after consideration of all the evidence, of the possible causal link between feed and test result. The PR has therefore successfully met its burden of proof under Article 10.5 EADMCRs, in regard to the administration of the substance Testosterone, by proving how Testosterone entered the Horse's system.
- t. While it appears that the PR was required to give the Horse the feeds of the firms which sponsored the Endurance Team of which the PR was a member, this does not alter the primary responsibility of the PR to ensure that the Horse was competing drug free. The Tribunal has repeatedly expressed that it is the responsibility of competitors to ensure that their horses do not have any prohibited substances in their systems while competing at international events. The PR should always inform himself of all feeds given to horses ridden by him and ensure that they do not contain any prohibited substances.
- u. Consequently, the Tribunal considers that the PR acted with gross negligence by providing feed that contained Gamma Oryzanol, which is included in the Equine Prohibited List as a Medication Class B substance, and having potential to affect the production of Testosterone, and by not clearing this product with his veterinarian before using it. The Tribunal therefore considers that the positive result is sufficient to establish that despite the explanations given, the PR was grossly negligent by not having ensured that his Horse was competing drug-free at the Event.
- v. In deciding the sanctions the FEI Tribunal considers, on the one hand, the doping violation, the fact that the substance involved is Testosterone, the gross negligence of PR and the fact that the PR is experienced in the sport and has competed for many years at its highest level, and, on the other hand, the fact that this is the PR's first rule violation and the PR's cooperation in the investigation.

4.2 Disqualification

As a result of the foregoing, the FEI Tribunal has decided to disqualify the horse MAGNUM 68 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:

- 1) The PR shall be suspended for a period of **five (5) months** to commence immediately and without further notice at the expiration of the period in which an appeal may be filed (30 days from the date of notification of the written decision) or earlier if the appeal is waived in writing by or on behalf of the PR.
- 2) The PR is fined **CHF 1'500.-**.
- 3) 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 : 12 March 2008

Signature: 