



## **DECISION of the FEI TRIBUNAL**

**dated 11 February 2008**

**Positive Medication Case No.:** 2007/37

**Horse:** RUBA Z

**FEI Passport No:** CAN01936

**Person Responsible:** Mrs Wendy Southam, CAN

**Event:** CIC 3\* Hamilton, USA, 7-9.09.2007

**Prohibited Substance:**

Phenylbutazone

**1. COMPOSITION OF PANEL**

Dr Alberto Hernán Mendez Cañas  
Mr Erik Elstad  
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 took into consideration all 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 22<sup>nd</sup> edition, effective 15 April 2007, ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 22<sup>nd</sup> edition, effective 1 June 2007, Arts. 142, 146.1 and 174 ("**GR**").

The Equine Anti-Doping and Medication Rules ("**EADMCRs**"),

effective 1 June 2006.

Veterinary Regulations ("**VR**"), 10<sup>th</sup> edition, effective 1<sup>st</sup> 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:** Mrs Wendy Southam

**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. Ruba Z (the "**Horse**") participated in CSI 3\* Hamilton, in the USA, from 7 to 9 September 2007 (the "**Event**"). The Horse was ridden by Mrs Wendy Southam who is the Person Responsible in accordance with GR Article 142 (the "**PR**").
- b. The Horse was selected for sampling on 9 September 2007. Analysis of the blood sample no. FEI-G11964 taken from the Horse performed by the Equine Drug Testing and Research Laboratory ("**EDTRL**"), in the USA, revealed the presence of Phenylbutazone (Analysis Report FEI G11964 dated 19 September 2007).
- c. Phenylbutazone is a Non-Steroidal Anti-Inflammatory Drug (NSAID) (Veterinary Department's Statement dated 26 September 2007) having an analgesic and anti-inflammatory effect and accordingly is a substance specified in the second section of the Equine Prohibited List (VR Annex III) as "Medication Class A" Prohibited Substance.
- d. Further to receipt of the A sample result on 26 September 2007, the FEI Legal Department, pursuant to established procedure for cases including this substance, provided the PR, through her NF, on 3 October 2007, with the opportunity to accept the administrative sanctions including:

- 1.1 "Disqualification from the event and forfeiture of all prizes and prize money won at the event with the horse in question; and
  - 1.2 Fine of CHF 1'000.- and
  - 1.3 Costs of CHF 500.-."
- e. The PR waived her right to a confirmatory analysis and refused to accept the administrative sanctions that were offered to her.
- f. The FEI Tribunal is satisfied that the laboratory report reflects that the test was accurately performed in an acceptable method and that the findings of EDTRL 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 medication control violation in accordance with EADMCRs Article 3.
- g. The establishment of the objective elements of a medication control violation for Medication Class A Prohibited Substances is subject to the consequences listed in Art. 10.2 EADMCRs.
- h. EADMCRs Art. 10.2 provides for a suspension of up to one (1) year for Medication Class A Prohibited Substances. A fine of up to CHF 15'000.- may also be imposed.
- i. The administrative sanctioning process has been established for Prohibited Substances having a lower potential to affect the performance of the horse, when it is a first offence and not a Major Event. The PR has the option to accept the administrative sanctions provided by the FEI which enables her to resolve the matter quickly and without a suspension. When the PR decides not to take advantage of this simple process and the case is submitted to the Tribunal, the Tribunal must decide the case according to the normal procedure, as has been notified to the PR. The benefit of the doubt given to the PR through the administrative sanction is no longer applicable.
- j. The establishment of the objective elements of a doping offence creates the presumption of guilt of the PR. The finding on analysis of a prohibited substance is presumed to be a deliberate attempt of the PR to affect the performance of the horse. The PR has the opportunity to seek to eliminate or reduce the otherwise applicable period of ineligibility and other sanctions, establishing that she bears no fault and no negligence or no significant fault and no significant negligence, in accordance with EADMCRs Article 10.5.
- k. In her explanation dated 15 October 2007, the PR states that she did not administer phenylbutazone to the Horse at any time before, during or after the competition. She specifies that she

does not use phenylbutazone on any of her horses and neither does she keep any at her barn at any time because she has owned 2 horses that suffered from colic as a result of phenylbutazone and that the consequences are too risky. She mentions as well that she has owned Ruba Z for 7 years and has competed with her for 6 years at an FEI level. She is an amateur rider and assures that she respects her Horse and would never administer a performance enhancing drug or painkiller to her Horse to compete, even if they were legal, and would withdraw her from a competition rather than hurt her, as she has already done previously. This is supported by the PR's husband's statement dated 16 October 2007.

- l. As an attempt to provide an explanation to the presence of the prohibited substance in her Horse, she mentioned that at the competition site she walked and hand grazed her Horse for a few hours. She wondered whether her Horse could have eaten or come into contact with something while grazing, that another horse had contaminated with phenylbutazone by, for example, spitting it out when administered through a paste.
- m. In following explanation dated 11 December 2007, the PR added that her Horse was stabled between two horses that were competing in the National show held at the same time that the Event, where phenylbutazone is allowed. The owner of the horse next to Ruba Z offered the PR some phenylbutazone to treat some swelling on the Horse, which she declined, explaining that she could not use any drugs.
- n. In his statements dated 1 November, 13 November and 19 December 2007, Dr Frits Sluyter, Head of the Veterinary Department of the FEI, stated that the list of treatments given to the Horse, provided by the PR, does not relate to the presence of phenylbutazone. He added that *"a horse testing positive for this substance as a result of grazing is not a realistic scenario; this substance is not one that is easily picked up from the outside environment"* but *"[s]ubstances that are on the market in a form for oral use can possibly lead to contamination issues through a malfunctioning of stable management; however, this does not diminish the responsibility of the PR that such contamination does not occur."*
- o. There has not been presented any other evidence for the presence of the prohibited substance than mentioned above. The Tribunal is in doubt if this meets the balance of probability as acquired in EADMC Article 3.1. To rebut the presumption of intent the standard of proof shall be by a balance of probability.
- p. On the other hand, the PR is quite clear on stating that she has not administered any prohibited substance to her Horse, and that she never uses phenylbutazone on her horses. She states that she has learned from earlier treatments on other horses that using this substance might cause colic. There is a

possibility that her Horse could have been contaminated by eating other horses' food. At the show, her Horse was stabled with two horses on each side that were competing in national classes where phenylbutazone was allowed, though she does not know either of them. There was an open grillwork between them, and she says that a horse could drop mouthfuls of feed into another horse's stall.

- q. The PR should be aware of the FEI Rules and Regulations when competing at an international level and it should therefore be known by the PR that she must keep her horses under strict veterinary control to avoid the presence of prohibited substances. That includes the responsibility of stable management that could lead to the mixing of horses' feed from one stall to another. It is the PR's duty to organize the stable management in a way that this can be avoided. The Tribunal has repeatedly expressed the view that it is the responsibility of competitors to ensure that their horses do not have any prohibited substances in their systems.
- r. After considering the evidence in the case, the Tribunal accepts the PR's statement that she did not deliberately administer the prohibited substance to her Horse. But the Tribunal finds that the PR was negligent by not having ensured that her Horse was competing drug-free at the Event.
- s. In deciding the sanctions the FEI Tribunal considered, on the one hand, the medication control violation and type of substance involved and, on the other hand, the PR's amateur "status", the level of the Event, the PR's cooperation in the investigation, and the fact that this offence is typically subject to administrative sanctions.

#### **4.2 Disqualification**

As a result of the foregoing, the FEI Tribunal has decided to disqualify the horse RUBA Z 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 **two (2) 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 500.-**.

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 of the event through his NF:** Yes

**5.4 Any other:** No

**6. THE SECRETARY GENERAL OR HIS REPRESENTATIVE:**

Date : *11 February 2008*

Signature: *[Handwritten Signature]*