



DECISION of the JUDICIAL COMMITTEE of the FEI

dated 11 September 2006

Positive Medication Case: 2005/60

Horse: HARMATAN DE LOZERE

FEI Passport No.: FRA09910

Person Responsible: Alice Beet, GBR

Event: CH-M-YR-J-E Bahrain (BRN), 17.12.2005

Prohibited Substances: Dexamethasone

1. COMPOSITION OF PANEL

Mr Ken E. Lalo
Mr Patrick A. Boelens
Mr Leonidas C. Georgopoulos

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: by Legal Department.

2.2 Summary information provided by Person Responsible (PR): The Panel took into consideration all documents presented in the case file, as also made available to the PR through her National Federation, including *inter alia* the written testimonies of Ms. Alice Beet, rider of the horse, Ms. Sue Broughton, Chef d'Equipe for the British Young Riders Team at the event, Mr. Adam Driver, the veterinarian who attended to the horse during the event, Dr. Fred Van de Linde, the veterinarian who attended to the horse while in Dubai and prior to the event, Dr. Derek Grantham, the British Young Rider Team veterinarian, Mr. Ismail Mohammed, the horse's regular trainer, and Dr. Frits Sluyter, Head of FEI Veterinary Department.

2.3 Oral hearing: None, by correspondence.

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

3.1 Articles of the Statutes/General Regulations/Veterinary Regulations which are applicable or have been infringed:

Statutes 21st edition, effective 21 April 2004 ("**Statutes**"), Arts. 001.6, 057 and 058.

General Regulations ("**GR**"), 21st edition, effective 1st January 2005, Arts. 142, 146.2 and 174.

Veterinary Regulations ("**VR**"), 9th edition, effective 1st January 2002, revised April 2005, Art. 1013 and Annex IV.

FEI Code of Conduct for the Welfare of the Horse, 2004.

3.2 Persons Responsible: Ms. Alice Beet

3.3 Justification for sanction:

GR Art. 146.2: "Any horse found to have a Prohibited Substance in any of its tissues, body fluids or excreta at an event [...] is automatically disqualified, together with the competitor [...], from all competitions at that event, [...] unless the Judicial Committee decides based on the evidence to terminate the proceedings of the case."

4. DECISION:

A. The Relevant Facts

- 1) The rider, Ms. Alice Beet (the "**PR**") with the horse, Harmatan de Lozere (the "**Horse**"), took part at the Young Riders World Championships for Endurance in Bahrain, on 17 December 2005 (the "**Event**").
- 2) The Horse was selected for sampling on 17 December 2005. Analysis of the urine sample no. BREEF064 taken from the Horse was performed by the approved central laboratory of the FEI, the Laboratoire des Courses Hippiques, France ("**LCH**"), and revealed the presence of Dexamethasone.
- 3) A confirmatory analysis was requested by the PR and performed by the FEI's approved reference laboratory, the Racing Laboratory of the Hong Kong Jockey Club ("**HKJC**"). Analysis of the urine confirmed the presence of Dexamethasone.
- 4) Dexamethasone is an anti-inflammatory corticosteroid acting *inter alia* on the locomotor system and is graded "2" by the Medication Sub-Committee of the FEI ("**MSC**"), as evidenced by the MSC Reports dated 2 February 2006 and 16 March 2006.

B. Jurisdiction

- 5) The Judicial Committee has jurisdiction over this matter pursuant to Articles 057 and 058 of the FEI Statutes.
- 6) Both the PR and the owner of the Horse are subject to the jurisdiction of the Judicial Committee. The PR was entered to ride the Horse and did compete with the Horse at an international Event conducted under FEI rules and the owner of the Horse has registered the Horse with the FEI as evidenced by the Horse's passport, had provided the Horse to the PR with the clear understanding that the Horse will participate at an FEI Event and has also cooperated in the process and submitted

evidence in this case. See also Statutes 002.4, 057.5, 057.7 and 058 and GR 116.5, 139,141, 142 and 165.

C. Analysis

- 7) The Panel is satisfied that the reports of LCH and HKJC reflect that the tests were accurately performed in an acceptable method and that their findings are accurate. The Panel is satisfied that the test results show the presence of the prohibited substance, Dexamethasone. 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.
- 8) In this case the PR did not have her own horse for the Event and, following several successes on borrowed horses, was allowed to ride the Horse at the Event.
- 9) During all pertinent times the Horse was owned by a company, Atlantic Endurance SARL (the “Owner”). This is supported by the FEI Passport issued to the Horse (Passport number FRA 09910) and the written testimony of Mr. Ismail Mohammed. The inconsistent statements of Dr. Fred Van de Linde are not sufficient to doubt the ownership as recorded on the FEI Passport.
- 10) This case is one in which neither the PR (the rider) nor the Owner were able to prove a specific reason for the positive test results. As stated by Dr. Frits Sluyter, Head of FEI Veterinary Department, after reviewing the written evidence provided on behalf of the PR and on behalf on the Owner: “Although the horse received multiple supportive treatments, none of these explain a positive test result for dexamethasone.”
- 11) The Owner, while providing full and complete statements, merely stressed that no wrongdoing was done by it or its staff. The Owner provided no evidence to show the reasons for the positive findings. The same applies to the PR and the British team personnel. Obscure statements made by the Owner’s staff or PR’s witnesses about possible willful intervention by third parties are of no relevance. Lack of stable security is not an excuse in doping cases and the PR is to ensure the security which shall assure no improper intervention with the Horse. The responsibility of the PR as laid down in the provisions of the VR (including Article 1005.2.4, 1013.6.3 and 1013.7) and the GR (Article 142.7) has been approved by the CAS: “*As the rider remains responsible for the supervision of his horse, a fault of the Person Responsible cannot be excluded just because of lack of stable security*” (Arbitration CAS 2000/A/275, *Luyckx v/ FEI*, 17 October 2000, para. 24; CAS 2000/A/313 *Bunn v/ FEI*, 19 June 2001, para. 45-47).
- 12) 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 rebut this presumption.
- 13) The PR, a 19-year old university student, provided lengthy written testimony evidencing her concern for the well-being of sport horses and a well-educated approach to endurance riding. It appears that the PR is knowledgeable of the required proper care and training of endurance horses before and during races. This is well supported by the testimonies of Ms. Sue Broughton, Chef d’Equipe for the British Young Riders Team at the Event, Mr. Adam Driver, the veterinarian who

attended to the Horse during the Event, Dr. Fred Van de Linde, the veterinarian who attended to the Horse while in Dubai and prior to the Event, Dr. Derek Grantham, the British Young Rider Team veterinarian, and Mr. Ismail Mohammed, the Horse's regular trainer.

- 14) The Panel accepts the words of Dr. Derek Grantham which describe the PR as "a sensible and dedicated rider." This description of the PR's general character seems supported by the entire evidence provided in the case file.
- 15) The evidence submitted is that the Horse was high-strung and quite excited. The evidence further confirms that the substance Dexamethasone does not operate to either excite or depress a horse and, therefore, would not have assisted the Horse at the Event and that an administration of a substance such as a steroid would cause the horse and PR to lose more than gain under the circumstances surrounding this specific Horse at the Event (written testimonies of Dr. Fred Van de Linde, Dr. Derek Grantham, PR, Ms. Sue Broughton and, Mr. Adam Driver). On the other hand, the evidence states that "Dexamethasone is a potentially dangerous substance and would not be used when there were no medical justifications for it" (written testimony of Dr. Fred Van de Linde).
- 16) This case highlights the difficulty to address cases in which the rider is not the owner of a horse. This is becoming increasingly problematic in view of the relatively high number of such cases which have been submitted to the FEI Judicial Committee, at present most commonly in endurance riding.
- 17) In order to have a fair and equitable system of dealing with positive doping/medication cases, riders of borrowed (or other than self owned horses) should not stand to benefit from the lack of clarity and certainty sometimes evidenced in these situations in which a horse is given to the custody of the rider only in close proximity to the event.
- 18) The current policy of the FEI, as specified in GR 142.3, is that the rider is the primary person responsible for the horse ridden at the event. Although, in appropriate circumstances, others may also be responsible, this does not alter the primary responsibility of the rider.
- 19) This policy is based on the premise that the rider is the sportsperson who competes and stands to win at an event and is in the best position to ensure proper controls over the horse used by him or her at an event (even if through third parties). Otherwise, the "blame" may always be transferred to third parties such as stable owners, grooms, veterinarians, trainers, horse owners or unknown third parties.
- 20) It is up to the rider to ensure excellent stable management and proper security over horses used in international events in order to ascertain that they are not administered any prohibited substances either negligently or willfully. This has been stated time and time again in a multitude of varying cases in which it was evidenced that third parties had actual control over the horses at issue.
- 21) Similarly, it is up to the rider to ensure that borrowed horses are free from prohibited substances prior to being transferred to the control of the rider, even if this change of custody is accomplished only minutes before an event.

- 22) This may be achieved by obtaining written statements from owners who agree to take full responsibility in the event any prohibited substances are later found, by taking custody over the horse sufficient time before an event and, if required, conducting blood tests to verify that the horse has no traces of prohibited substances, or by other means including refusal to ride borrowed horses altogether. The rider is in the best position to assess and monitor the risk based on familiarity with the owner, the owner's reputation and record, the stable management practiced before the transfer of custody and the relevancy and completeness of statements from the owner and his or her staff.
- 23) The vital policy of the FEI to ensure horses are not doped while competing in international events cannot be compromised due to the fact that riders ride borrowed horses. The transfer of responsibility between rider and owner, and even more so, unclear statements regarding whether responsibility lies with the rider and the rider's staff or with the owner and the owner's staff, cannot relieve the rider from responsibility, as a contrary position would jeopardize the crucial FEI policy that horses must compete free of prohibited substances.
- 24) In this case the Owner is a company and this highlights a further complexity.
- 25) If a rider is not absolutely and positively convinced that a horse ridden at an international event does not have prohibited substances in its systems, the rider should not agree to ride the horse at the event. The rider should assess the risk and also accept any unknown risks. This is in line with the FEI strict liability policy in connection with doping cases.
- 26) In this case the owner accepts no wrongdoing and provides no evidence regarding the administration of the prohibited substance to the Horse. The mere fact that the horse was under the custody of the Owner until a short time prior to the Event cannot serve, by itself, as clear evidence regarding the administration of any prohibited substance while under the Owner's custody, thereby allowing the PR to rebut the presumption of a deliberate attempt to affect the performance of the horse.
- 27) In its decision CAS 92/86, *W. v. FEI*, April 19, 1993, Digest of CAS Awards I 1986-1998, at page 164, the CAS concluded the following: *"the CAS was obliged to note that, apart from the various allegations summarized above, the appellant was not able to offer the slightest evidence that there was not a deliberate attempt to affect the performance of the horse. Nor did he seek to direct the hearing towards the question of possible legitimate treatment which might have been administered to the horse. Indeed, the appellant was content to allege that he was in good faith and that neither he nor the owners of the horse would have had any interest in administering a prohibited substance to the horse. [...] Purely and simply to admit such (moreover unproven) allegations would amount to emptying articles 177.5.2 and 177.5.3 of their substance, which would result in making any fight against doping futile."*
- 28) The PR had to ensure that the Horse participated at the Event free of any prohibited substances, including by either taking control of the Horse sufficiently prior to the Event or positively ensuring complete responsibility by the Owner and its staff that the Horse is absolutely clear of any drugs. If this could not have been completely assured under the circumstances, the PR should have refrained from riding the Horse, since competing in demanding endurance events with horses that

have prohibited substances in their systems may compromise the horses' health and has led on occasion to grave consequences. This also has a very negative impact on the sport as a whole. The PR stated at the end of her detailed written statement that "I have however learned from this experience and given the opportunity in the future I will take hands on control of diet and security for any horse that I have agreed to ride irrespective of the circumstances".

- 29) Having visited with some detail the policy issues, the Panel, while accepting that the PR is a knowledgeable and considerate rider and has the best of her mount as her primary concern, concludes that the PR was not able to rebut the presumption that the positive finding was a result of a deliberate attempt to affect the performance of the Horse (GR Art. 174.6.2.2). Therefore, the penalties provided for in GR Art. 174.6.2.1 are appropriate in this case.
- 30) The evidence further demonstrates clearly that the Horse was under the exclusive care of the Owner's employees until the Horse was remitted to the PR on the morning of the Event. Taking into account the testimony provided on behalf of the PR and the testimony provided by the Owner's support personnel, it is most likely that the prohibited substance entered the Horse's systems while under the custody and control of the Owner. The Panel is, therefore, of the view that this case falls under the provisions of GR Art. 116.5 and that the Owner should bear its part of the responsibility.
- 31) In view of the matters detailed above, and taking into account, on the one hand, the grade of the substance and the type of Event, and, on the other hand, the age of the PR, the fact that this is the PR's first offense and the written testimonies provided on behalf of the PR, the Panel decides on the sanctions detailed below. The Panel concludes that both the PR and the Owner are responsible for the positive finding under the GR 146 and the provisions of GR 116.5 and GR 142.
- 32) The Panel notes that NFs may assist their riders and especially team riders in providing best practices to be followed in the care of horses and in arrangements to borrow third party's horses in a manner that will decrease the possibility of a positive finding and clarify the sharing of responsibility between riders and owners.

D. Decision

As a consequence of the foregoing, the Panel decides as follows:

- 1) Disqualification of the Horse, Harmatan de Lozere, and the PR from the above Event and forfeiture of all prize money.
- 2) The PR shall be suspended for a period of three (3) 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.
- 3) The PR is also fined CHF 500.-.
- 4) The Owner is fined CHF 1,500.-.

- 5) The PR and the Owner shall contribute, in equal parts among them, CHF 1,200.- towards the legal costs of the judicial procedure and CHF 750.- for the confirmatory analysis.

Ken E. Lalo

[For the Judicial Committee]