



## **DECISION of the FEI TRIBUNAL**

**dated 13 October 2016**

**Positive Controlled Medication Case No.:** 2015/CM05

**Horse:** TRA FELIC

**FEI Passport No:** 103XD33/ESP

**Person Responsible/NF/ID:** Yoao Vitor Luis Araujo/10100760/ESP

**Support Personnel:** Marti Vilaregut Rifa

**Event:** CEIYJ2\* 120 – Lagoa de Antela (ESP)/2015\_CI\_1594\_E\_YJ\_01\_01

**Date:** 10 – 11 July 2015

**Controlled Medication Substances:** Diclofenac, Flunixin

### **I. COMPOSITION OF PANEL**

Dr. Armand Leone, one panel member

### **II. SUMMARY OF THE FACTS**

- 1. Memorandum of case:** By Legal Department.
- 2. Case File:** 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 and the Support Personnel.

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

- 1. Articles of the Statutes/Regulations which are applicable or have been infringed:**

Statutes 23<sup>rd</sup> edition, effective 29 April 2014 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2015, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2<sup>nd</sup> edition, 1 January 2012 ("IRs").

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 2<sup>nd</sup> edition, effective 1 January 2015.

FEI Equine Controlled Medication Rules ("ECM Rules"), 2<sup>nd</sup> edition, effective 1 January 2015.

Veterinary Regulations ("VRs"), 13<sup>th</sup> edition, effective 1 January 2015, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Mr. Yoao Vitor Luis Araujo (the "PR")

**3. Support Personnel (Owner):** Mr. Marti Vilaregut Rifa (the "Owner")

**4. Justification for sanction:**

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with the World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

ECM Rules Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Controlled Medication Substance is present in the Horse body during an Event without a valid Veterinary Form. Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's Samples, even though their Support Personnel will be considered additionally responsible under Articles 2.2 – 2.5 ECM Rules where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish a Rule violation under Article 2.1."

ECM Rules Art. 2.2.1: "It is each Person Responsible's duty, along with members of their Support Personnel, to ensure that no Controlled Medication Substance enters into the Horse's body and that no Controlled Medication Method is Used during an Event without a valid Veterinary Form. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the part of the Person Responsible, and/or member of his Support Personnel (where applicable), be demonstrated in order to establish a Rule violation for Use of a Controlled Medication Substance or a Controlled Medication Method. However, in accordance with the definition of Attempt, it is necessary to show intent in order to establish an ECM Rule violation for Attempted Use of a Controlled Medication Substance or a Controlled Medication Method."

ECM Rules Art. 2.5: "Administration or Attempted Administration of a Controlled Medication Substance"

Appendix 1 of the EADCMRs – Definition of Support Personnel: "Any coach, trainer, athlete, Horse owner, groom, steward, chef d'équipe, team staff, official, veterinarian, medical, or paramedical personnel assisting in any fashion a Person Responsible participating in or preparing for equine sports Competition. Veterinarians are included in the definition of Support Personnel with the understanding that they are professionals subject to professional standards and licences. An allegation that a veterinarian violated an EADCM Regulation will only be made where the factual circumstances surrounding the case indicate a likelihood that the veterinarian was involved in the violation."

#### **IV. DECISION**

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

##### **1. Factual Background**

- 1.1 TRA FELIC (the "**Horse**") participated at the CEIYJ2\* 120 in Lagoa de Antela, Spain, from 10 to 11 July 2015 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Yoao Vitor Luis Araujo, who is the Person Responsible in accordance with Article 118 of the GRs.
- 1.2 The Horse was selected for sampling on 10 July 2015.
- 1.3 Analysis of urine and blood sample no. 5538197 taken from the Horse at the Event was performed at the FEI approved laboratory, the UKAS Testing Laboratory, LGC, Fordham, United Kingdom ("**LGC**"). Analysis of the urine sample revealed the presence of Diclofenac and Flunixin.
- 1.4 The Prohibited Substances detected are Diclofenac and Flunixin. Diclofenac and Flunixin are non-steroidal anti-inflammatory drugs (NSAID) with anti-inflammatory and analgesic effects. Both substances are classified as Controlled Medication Substances under the Equine Prohibited Substances List.
- 1.5 No request had been made to administer Diclofenac and Flunixin to the Horse, and no Veterinary Form had been provided by the PR for the use of the substances on the Horse. Therefore, the positive finding for Diclofenac and Flunixin in the Horse's sample at the Event gives rise to a Controlled Medication Rule violation under the EADCMRs.

## **2. The Proceedings**

- 2.1 The presence of the Prohibited Substances following the laboratory analysis, the possible Rule violation and the consequences implicated, were officially notified to the PR and to Ganadera Can Cargol S.A., the owner of the Horse, through the Real Federación Hípica Española ("**ESP-NF**"), by the FEI Legal Department on 9 September 2015. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal. The FEI further granted a representative of Ganadera Can Cargol S.L. the right to participate in and/or be represented at the Preliminary Hearing.
- 2.2 In the Notification Letter, the PR was also informed that due to the fact that he had been held responsible for a Controlled Medication Rule violation in April 2015 (Case 2015/FT05 – TRA FELIC), the period of Ineligibility to be imposed on him shall be greater of: a) three months; b) one-half of the period of Ineligibility imposed for the first ECM Rule violation without taking into account any reduction under 10.6; or c) twice the period of Ineligibility otherwise applicable to the second ECM Rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6.

## **3. The B-Sample Analysis**

- 3.1 Together with the Notification Letter of 9 September 2015, the PR and Ganadera Can Cargol S.L. were also informed that they were entitled: (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 Neither the PR, nor Ganadera Can Cargol S.L., did request for the B-Sample to be analysed and accepted the results of the A-Sample analysis.

## **4. Written submissions by and on behalf of the PR**

- 4.1 On 17 September 2015, the ESP-NF submitted a joint statement by the PR and by the Owner, *i.e.*, Mr. Marti Vilaregut Rifa of Ganadera Can Cargol S.L. The individuals stated that three days prior to the Event they had detected pain in the Horse's back while giving it a massage. That they had after advice by a pharmacist purchased the product "VOLTADOL 11.6 mg/g" and used it on the Horse. Further, that they had no intention to enhance the Horse's performance, but merely to reduce the Horse's pain, which had persisted on the day following the administration of the product. That they had not thought of the possibility that the product used could be considered as "doping". Together with the statement the individuals further provided a picture of the product administered. The box of Voltadol 11.6 mg/g Gel

outlined that it contained "Diclofenaco dietilamina", *i.e.*, the substance Diclofenac.

## **5. Further proceedings**

- 5.1 On 21 October 2015, the FEI explained that from the explanations provided by and on behalf of the PR, it was not entirely clear who administered the product, and that neither the timing nor the quantity of the product used had been provided. The FEI therefore suggested that the PR/Owner clarified their statements.
- 5.2 Between 17 and 27 September 2015, the PR and the Owner provided additional statements. The Owner stated that from 3 to 5 July 2015 the Horse had trained the usual amount but with a new club and under a different format than before. That in the afternoon of 6 July 2015 he had detected some pain in the back of the Horse, and that the Horse had still been sore in the morning of 7 July 2015. Further, that after having purchased the product Voltadol 11.6 mg/g from the pharmacy, he had applied the product on 7 July 2015 at 10 am and 8 pm by massaging the affected area of the Horse, and twice more on 8 July 2015, once in the morning and once in the afternoon. That on 9 July 2015 the Horse had been travelling to the Event. Upon arrival the Horse had no longer been in pain, and that therefore the product had not been applied to the Horse anymore. Finally, he stated that it was him who had applied the product on the Horse, and that the PR had not intervened at all with the administration of Prohibited Substances to the Horse. The PR stated that he had always tried to improve the comfort of the Horse by changing its saddle; that he had installed a so-called "smart", which he suspected might have been too close to the Event. That it had been the Owner's decision to apply the product to the Horse, and that he therefore bore no responsibility. Finally, that he requested to be authorised to compete as soon as possible.
- 5.3 On 11 November 2015, the PR and the Owner explained that they, or their collaborators, had never used any product containing the substance Flunixin in general, or on the Horse. That the only product they normally used if necessary was Danilon, which however appears not to contain any Flunixin. Further, that they had in the forty (40) years they had been participating in the discipline of Endurance passed numerous doping controls, *i.e.*, without any positive findings, and that unfortunate circumstances had led to the positive finding in the case at hand. Finally, that they preferred to have the Horse suspended and to have the Provisional Suspension of the PR lifted, in order for the PR to be able to compete, as he had not been able to compete for nine (9) months.

## **6. Additional proceedings against the Owner**

- 6.1 On 10 December 2015, the FEI Legal Department officially notified the

Owner, as Support Personnel for the Horse, through the ESP-NF, of an alleged violation of Article 2.1 of the ECM Rules (The presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample) read together with Article 2.5 of the ECM Rules (Administration or Attempted Administration of a Controlled Medication Substance) and the possible consequences.

- 6.2 In December 2015 the Owner submitted a further statement explaining that he had never done anything to improve the efficiency of his horses, only taking good care, giving good feed and well-scheduled training. That he was not a speculator who tried to live of horses but a little breeder, who for over forty (40) years had been pioneer in Catalonia, organizing rides, including being involved in the 1992 Olympic Games Eventing proposal, and having had responsibilities for the 1992 World Championships in Vic. That he never sought for economic compensation, and that the prizes that athletes received in FEI rides, were nothing more than a questionable prestige. That this had to be taken into consideration when defining the sanction in the case at hand.

## **7. Provisional Suspension of PR**

- 7.1 On 15 April 2015, the FEI requested the lifting of the Provisional Suspension. The FEI explained that the case at hand was the second offence within a few months for the PR, who is a minor (15 years). Further, that the FEI had – in addition – opened proceedings against the Owner, who had admitted having applied the cream "Voltadol" to the Horse.
- 7.2 Furthermore, the FEI argued that based on the submissions made and the evidence submitted to date, the FEI was of the view that - a) considering the PR being a minor of only 15 years of age; b) it seemed that the Owner had committed the violation; and c) since the PR had already been suspended for seven (7) months – the prerequisites of Article 7.4.2 (ii) of the ECM Rules and/or potentially Article 7.4.2 (iii) of the ECM Rules might be fulfilled.
- 7.3 On 18 April 2016, the FEI Tribunal Chair – as no Hearing Panel had yet been appointed – decided to lift the Provisional Suspension of the PR with immediate effect, *i.e.*, as of 18 April 2016.

## **8. Written submission by the FEI**

- 8.1 On 8 July 2016, the FEI provided its Answer to the explanations of the PR, as well as its Answer to the explanations of the Owner.
- 8.2 With regards to the PR the FEI submitted in essence that:
- a) Article 3.1 of the ECM Rules made it the FEI's burden to establish all of the elements of the ECM Rule violation charged, to the

comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an ECM Rule violation under Article 2.1"*. Instead it was a "strict liability" offence, established simply by proof that a Controlled Medication Substance was present in the Horse's Sample. The results of the analysis of the A- Sample taken from the Horse at the Event confirmed the presence of Diclofenac and Flunixin, and together constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules. The PR did not dispute the presence of Diclofenac and Flunixin in the Horse's sample. Accordingly, the FEI has discharged its burden of establishing that the PR has violated Article 2.1 of the ECM Rules.

- b) Where a Controlled Medication Substance was found in a horse's sample, a clear and unequivocal presumption arose under the ECM Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the ECM Rules provided that a Person Responsible with no previous doping offence who violated Article 2.1 of the ECM Rules was subject to a period of Ineligibility of six (6) months, unless he was able to rebut the presumption of fault. And that to do this the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability) (i) How the Prohibited Substances entered the Horse's system; and (ii) that he bears No Fault or Negligence for that occurrence; or (iii) that he bears No Significant Fault or Negligence for that occurrence. If the PR failed to discharge this burden, the presumptive six-month ban under Article 10.2 of the ECM Rules applied. That, since the PR committed an ECM Rule violation in April 2015 (Case 2015/FT05 – TRA FELIC) Article 10.8.1 of the ECM Rules applied, where for a Person Responsible and/or member of the Support Personnel's second ECM Rule violation (within the previous 4 years), the period of Ineligibility shall be greater of: a) three months; b) one-half of the period of Ineligibility imposed for the first ECM Rule violation without taking into account any reduction under 10.6; or c) twice the period of Ineligibility otherwise applicable to the second ECM Rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6.
- c) The ECM Rules stipulate, and the jurisprudence of the Tribunal and CAS was very clear: it was a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proved how the substance entered into the Horse's system. The FEI submitted in this context that the PR must provide clear and convincing evidence that proved how the Diclofenac and Flunixin have entered the Horse's system. In the FEI's opinion, the PR through the Owner has given a convincing explanation of how the Diclofenac entered into the Horse's system by the application of the cream, *i.e.*, the product Voltadol 11.6 mg/g, containing that substance. However regarding the presence of Flunixin, the FEI contended that the PR has not given any

plausible explanation of such presence. The FEI was therefore not satisfied that the PR has fulfilled the requirement of Article 10.4 of the ECM Rules, of how the Prohibited Substances entered into the Horse's system. The FEI argued that this requirement did not apply to minors, but that if the minor can give a plausible explanation it was an advantage for the evaluation of the PR's degree of fault.

- d) Regarding the degree of Fault and Negligence by the PR for the rule violation, the FEI argued that, the starting point of any evaluation was the "personal duty" of the PR following from Article 2.1.1 of the ECM Rules, *i.e.*, his personal duty to ensure that "*no Controlled Medication Substance is present in the Horse's body*".
- e) The FEI argued that it has been stated in several cases that the PR cannot rely on any other person to perform this duty. In CAS jurisprudence it was clear that "*the duty of caution or due-diligence is non-delegable.*" (CAS 2013/A/3318 Stroman v. FEI para 71).
- f) Further, in referring to a CAS decision (CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI), the FEI argued that what the PR did not do was as fatal (lack of knowledge regarding the administration of a Prohibited Substance) as what the PR did do. The CAS Panel in the Glenmorgan decision (CAS 2014/A/3691 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI) endorsed the following:

*"it is not unreasonable to expect of the rider that, even if he has had no previous experience with the horse, to request inspection of the medical and nutritional records prior to the event. In so doing the PR serves as an independent "controller" of the condition of the horse and acts in the horse's welfare" (para. 210). The Appellant did no such thing. He has not claimed that he requested to see the medical or nutritional records of the horse (or made any inquiry to the groom); he has merely said that upon his request the owner confirmed that the horse was free of medication. To take such statement at face value manifestly falls far short of an acceptable standard of care (para. 50, Royal des Fontaines)."*
- g) Moreover, the FEI argued that, through the FEI Clean Sport programme and in particular the "*Athletes Guide*" it had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. That it should be noted that in the Glenmorgan decision CAS had stated that the Athlete's Guide "*contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form*" describing the Athlete's Guide as "*required reading*".
- h) Furthermore, the CAS panel in that case further endorsed the rationale behind the FEI's policy of making the Athlete/Rider the Person Responsible, stating (at para 57) the following:

*"No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent (the FEI) put it in its skeleton argument*

*"The FEI believes that making the rider responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It is strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay apprised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse".*

*The Sole Arbitrator respectfully agrees".*

- i) In light of the stated CAS jurisprudence, the FEI submitted that making the PR prima facie responsible for the condition of the Horse while competing, subject to his ability to prove he bears No (Significant) Fault or Negligence for the rule violation was a reasonable and justifiable stance.
- j) In the case at hand, the FEI found that the PR has acted negligent. The PR should have made some basic enquiries with the trainer/owner to check if any Prohibited Substance had been administered to the Horse prior to the competition in question. The FEI further argued that, considering that the PR was a minor, that the Owner has already admitted the rule violation and that there was no obligation for the minor to establish how the substance entered the Horse's body, the FEI found that the PR has acted with No Significant Fault and Negligence.
- k) Finally, the FEI stated that it wished that the PR educated himself with regard to anti-doping rules for the future, given that he has already committed two ECM Rule violations. Considering that the PR has been Provisionally Suspended for almost seven (7) months, the FEI did not seek to suspend the PR any further. The FEI respectfully submitted that the final period of Ineligibility should be six (6) months, and that all Provisional Suspension should be credited against the final period of Ineligibility.
- l) Regarding fines and costs, the FEI requested that the Tribunal fined the PR in the amount of 1'500 CHF, and ordered the PR to pay 1'000 CHF legal costs that the FEI has incurred in these proceedings.

8.3 With regard to the Owner the FEI submitted in essence that:

- a) Article 3.1 of the ECM Rules made it the FEI's burden to establish all of the elements of the ECM Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. *"It is not necessary that intent,*

*fault, negligence or knowing Use be demonstrated in order to establish an ECM Rule violation under Article 2.1".* Instead it was a "strict liability" offence, established simply by proof that a Controlled Medication Substance was present in the Horse's Sample. The results of the analysis of the A- Sample taken from the Horse at the Event confirmed the presence of Diclofenac and Flunixin, and together constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules.

- b) As owner of the Horse, the Owner qualified as member of the Support Personnel in accordance with the definition outlined in the EADCMRs since he has been "*assisting in any fashion a Person Responsible participating in or preparing for equine sports*" and could therefore be considered as an additional Person Responsible for the Horse. According to Article 2.2.1 ECM Rules "*It is each Person Responsible's personal duty, along with members of their Support Personnel, to ensure that no Controlled Medication Substance entered into the Horse's body and that no Controlled Medication Method is Used during an Event without a valid Veterinary Form*".
- c) The Owner admitted that he has administered the Prohibited Substance Diclofenac and treated the Horse with it two days prior to the competition, wherefore Article 2.5 of the ECM Rules, *i.e.*, Administration, should be applied, "Providing, supplying, supervising, facilitating, or otherwise participating in the Use or Attempted Use by another Person of a Prohibited Substance or Prohibited Method." The Owner did not dispute the presence of Diclofenac and Flunixin in the Horse's Sample and has admitted the violation. Accordingly, the FEI respectfully submitted that it had discharged its burden of establishing that the Owner has violated Articles 2.1 and 2.5 of the ECM Rules.
- d) Where a Controlled Medication Substance was found in a horse's sample, a clear and unequivocal presumption arose under the ECM Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the ECM Rules provided that a Person Responsible and/or his Support Personnel with no previous doping offence who violated Article 2.1 of the ECM Rules was subject to a period of Ineligibility of six (6) months, unless he was able to rebut the presumption of fault. And that to do this the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability) (i) How the Prohibited Substances entered the Horse's system; and (ii) that he bears No Fault or Negligence for that occurrence; or (iii) that he bears No Significant Fault or Negligence for that occurrence. If the Owner as additional Person Responsible failed to discharge this burden, the presumptive six-month ban under Article 10.2 of the ECM Rules applied.
- e) The ECM Rules stipulated, and the jurisprudence of the Tribunal and

CAS was very clear: it was a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR/and or his Support Personnel proved how the substance entered into the Horse's system. The FEI submitted in this context that the Owner as additional PR must provide clear and convincing evidence that proved how the Diclofenac and Flunixin have entered the Horse's system. The FEI was of the opinion that the Owner has given a convincing explanation of how the Diclofenac entered into the Horse's system by the application of the cream containing that substance. However regarding the presence of Flunixin, the FEI contended that the Owner has not given any plausible explanation of such presence. He was rather questioning the Flunixin presence since he never used such a product on any of his horses. The FEI was therefore not satisfied that the Owner has fulfilled the requirement of Article 10.4 of the ECM Rules, of how the Prohibited Substances entered into the Horse's system, wherefore no reduction under Articles 10.4 and 10.5 of the ECM Rules could be applied.

- f) Regarding the degree of Fault and Negligence by the Owner for the rule violation, the FEI argued that, the starting point of any evaluation was the "personal duty" of the Support Personnel following from Article 2.1.1 of the ECM Rules, *i.e.*, his personal duty to ensure that "*no Controlled Medication Substance is present in the Horse's body*", without a valid Veterinary Form.
- g) Moreover, the FEI argued that, through the FEI Clean Sport programme and in particular the "*Athletes Guide*" it had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. That it should be noted that in the Glenmorgan decision CAS had stated that the Athlete's Guide "*contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form*" describing the Athlete's Guide as "*required reading*".
- h) Furthermore, the FEI argued that, as the Owner had been training horses for over forty (40) years, he is an organiser and has been well involved in the sport of endurance, and that the FEI could therefore expect that the Owner should act with utmost caution when he uses an unknown product. That even if the pharmacist recommended that cream, it was up to the Owner to check the ingredients. That the cream clearly stated Diclofenac, which could be found on the internet or on the FEI database as Prohibited Substance for horses in competition. That the Owner had used the product without any further investigation. Moreover, the FEI argued that, as the Owner was the owner of the Horse also in the earlier case 2015/FT12, he had to at least have been aware of such violation and should therefore have been extra careful if using unknown products. The FEI was of the opinion that the Owner has been negligent in his behaviour whilst using the product and thus considered to be at fault for the rule violation, where a period of Ineligibility of six (6) months should apply.

- i) With regard to fines and costs, the FEI requested that the FEI Tribunal fined the Owner in the amount of 1'500 CHF, and ordered the Owner to pay 1'500 CHF legal costs that the FEI has incurred in these proceedings.

## **9. Further proceedings**

- 9.1 On August 2016, the Owner further submitted that he accepted his mistakes, but that the sanction suggested by the FEI was much higher than his fault for the rule violation, and thus not fair. Further that the PR and the Horse were suspended for about eleven (11) months, and that they had not been given the permission to compete. That, given that the PR was a junior, one year without competing was a long time for such a rider.
- 9.2 With regard to the Prohibited Substance Flunixin, the Owner explained that he did not have this substance in his facilities, and therefore it had been impossible that it might have been used there. Furthermore, that the horses were located in several stables with free access during the Event. That the horses had therefore been exposed to be victims of any act of sabotage. Moreover, that the amount of the Flunixin found in the Horse's sample would not improve the performance of a horse.
- 9.3 Finally that he believed that FEI's economic and sporting sanctions were clearly abusive, and that the costs for the licensing and registration documentation for both, horses and riders, to participate in FEI competitions were quite high. That these competitions offered prestige but no prize, and that therefore sanctions (both period of Ineligibility and monetary sanctions) should not be so high.
- 9.4 On 31 August 2016, the FEI submitted its Response to the explanations of the Owner. To start with the FEI, in referring to Article 118 of the GRs and to Article 2.2.1 of the ECM Rules, argued that the rules were clear of whom the Person Responsible was and what that person's responsibilities were. The FEI further clarified that the PR had been provisionally suspended for a total of seven and a half (7.5) months, *i.e.*, from 9 September 2015 until 18 April 2016, and not as alleged by the PR for over eleven (11) months. Further that in accordance to the FEI Database the PR competed thereafter, and that he last competed on 2 July 2016.

## **10. Jurisdiction**

The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and ECM Rules.

## **11. The Person Responsible**

Despite the fact that the PR was under eighteen (18) years when his entry was submitted he is the Person Responsible for the Horse, in accordance with Articles 118.3 and 118.4 of the GRs, as he had competed with the Horse at the Event.

## **12. The member of the Support Personnel**

The Owner, as owner of the Horse, qualifies as a member of the Support Personnel for the Horse, in accordance with the EADCMRs (Annex 1 – DEFINITIONS "Support Personnel").

## **13. The Decision**

- 13.1 As stated in Article 2.1.2 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A-Sample where the PR and the Owner waive analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the LGC are accurate. The Tribunal is satisfied that the test results evidence the presence of Diclofenac and Flunixin in the sample taken from the Horse at the Event. Neither the PR nor the Owner did contest the accuracy of the test results or the positive finding. Diclofenac and Flunixin are classified as Controlled Medication Substances under the Equine Prohibited Substances List. The presence of Diclofenac and Flunixin during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 13.2 The FEI has therefore established an Adverse Analytical Finding, and has sufficiently proven the objective elements of an offence, for both, the PR and the Owner, as Support Personnel, in accordance with Articles 2.1 of the ECM Rules.
- 13.3 Regarding the member of the Support Personnel, the Tribunal holds that the FEI has, in addition, discharged its burden of establishing that the Owner has violated Article 2.5 of the ECM Rules. The Tribunal finds that the statements by the Owner, supplemented by the statements of the PR, with regard to the application of the product Voltadol 11.6 mg/g containing Diclofenac to the Horse, on the days prior to the Event, establish sufficient proof for a violation of Article 2.5 of the ECM Rules by the Owner.
- 13.4 In cases brought under Article 2.1 of the ECM Rules a strict liability principle applies as described in Articles 2.1.1 of the ECM Rules. Once an ECM Rule violation has been established by the FEI, the PR and the member of Support Personnel have the burden of proving that they bear

"No Fault or Negligence" for the rule violation as set forth in Article 10.4 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the ECM Rules.

- 13.5 However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 or 10.5 of the ECM Rules, the PR – except in the case of a minor, as it is the case in the case at hand - and the member of Support Personnel must first establish how the Controlled Medication Substance entered the Horse's system. This element is a prerequisite to the application of Article 10.4 or 10.5 of the ECM Rules.
- 13.6 To start with the Tribunal takes note of the PR's and Owner's explanations on how the Diclofenac had entered the Horse's system and was still present in the Horse's system during the Event, namely by application of the product Voltadol 11.6 mg/g containing Diclofenac to the Horse, on the days prior to the Event, in order to the Horse's back pain. The Tribunal takes further note that neither the PR nor the Owner have provided any explanations on how the Flunixin entered the Horse's system. The Tribunal therefore finds that neither the PR nor the Owner have established - on a balance of probability, as required under Article 3.1 of the ECM Rules - how the Flunixin had entered the Horse's system. The Tribunal therefore finds that the Owner has not fulfilled the requirement of Articles 10.4 and 10.5 of the ECM Rules, of how the Prohibited Substances entered into the Horse's system. Thus no reduction under Articles 10.4 and 10.5 of the ECM Rules is applicable to the Owner.
- 13.7 In the case of the PR, in a second step the Tribunal needs to examine the question of "No Fault or Negligence" or "No Significant Fault or Negligence" for the rule violation. To start with the Tribunal finds that in order for No Fault of Negligence to apply, the PR has to establish that he did not know or suspect, and could not have reasonably known or suspected that the Horse's system contained a Controlled Medication Substance. The Tribunal however finds, that the PR, according to this own statements, was aware that the Owner had applied a cream to the Horse. In the Tribunal's view he could therefore have known, or at least suspected that the cream might contain (a) Controlled Medication Substance(s). The PR nonetheless accepted that risk when riding the Horse during the Event, without making any further inquiries on the product, and potentially requesting a Veterinary Form for its use.
- 13.8 However, while the Tribunal finds that the PR has been negligent with his personal duty of care in assuring that no Controlled Medication Substance was present in the Horse's system during an event without a valid Veterinary Form, it agrees with the FEI, that the PR's negligence has not been significant. The Tribunal finds that the PR's negligence, when viewed in the totality of the circumstances, was not significant in relation to the rule violation. According to the PR's explanations it has been the Owner's decision to apply the product to the Horse, and the Owner has admitted the rule violation. Finally, the Tribunal takes into consideration that the PR is a Minor in the meaning of the EADCMRs and GRs.

- 13.9 Regarding the PR's sanction, the Tribunal takes note that the case at hand concerns a second ECM Rule violation of the PR within a short timeframe, *i.e.*, within a few months. Pursuant to Article 10.8.1 of the ECM Rules, the period of Ineligibility for a Person Responsible's second ECM Rule violation (within the previous 4 years) shall be greater of: a) three months; b) one-half of the period of Ineligibility imposed for the first ECM Rule violation without taking into account any reduction under 10.6; or c) twice the period of Ineligibility otherwise applicable to the second ECM Rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6.
- 13.10 In considering the first ECM Rule violation and the administrative sanction accepted by the PR for that rule violation, and the Tribunal's finding that the PR has established that he bore No Significant Fault or Negligence for the present ECM Rule violation, the Tribunal imposes a period of Ineligibility of six (6) months on the PR.
- 13.11 With regard to the Owner, the Tribunal finds that, even if the Owner were able to establish how the Flunixin entered the Horse's system, which is not the case, the Tribunal would still find that the Owner has not established that he bears "No (Significant) Fault or Negligence" for the rule violation.
- 13.12 The Tribunal holds that the Owner was at fault in performing his duties as owner, and thus a member of Support Personnel, for several reasons. In accordance with Article 2.2.1 of the ECM Rules, the Tribunal considers that – next to the PR – it is also the Owner's personal duty – as a member of Support Personnel – to ensure that no Controlled Medication Substance is present in the Horse's body during an event without a valid Veterinary Form.
- 13.13 The Owner did however not take any steps to ensure that no Prohibited Substance came to be present in the Horse's system during an event without a valid Veterinary Form. He merely relied on the recommendations of a pharmacist. Following its previous decision, the Tribunal finds that the duty of care expected of an owner of a Horse is however much higher. Such person, prior to applying a product containing a Prohibited Substance to a horse, has to take necessary steps to verify that such product does not contain any Prohibited Substances. In the case at hand, the Owner has not taken any such steps. By simply checking the label of the product and comparing it against the FEI Prohibited Substances List, the Owner would have known that the product contained a Controlled Medication Substance. In the view of the Tribunal such a basic step can be expected even more so by someone who has been in the sport for a long time, such as the Owner in the case at hand.
- 13.14 Accordingly, the Tribunal finds that the Owner has acted at fault in performing his duties as owner of the Horse. The Tribunal therefore comes to the conclusion that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.

## 14. Disqualification

For the reasons set forth above, the Tribunal disqualifies the Horse and the PR combination from the Competition and all medals, points and prize money won must be forfeited, in accordance with Article 9 of the ECM Rules.

## 15. Sanctions

- 15.1 Regarding the Owner, in accordance with Article 10.2 of the ECM Rules, the period of Ineligibility for a violation of Article 2.1 and for a violation of Article 2.5 of the ECM Rules shall be six (6) months.
- 15.2 Regarding the PR, as a result of the foregoing, the period of Ineligibility imposed on the PR shall be six (6) months. The Tribunal takes note that the PR has been provisionally suspended from 9 September 2015 until and including 18 April 2016, *i.e.*, over seven (7) months. The Tribunal takes also note that the FEI accepted, and the Tribunal finds, that the period of Provisional Suspension shall be credited against the period of Ineligibility imposed. Furthermore, the Tribunal finds that, given that the PR was provisionally suspended for a period of time longer, than the final suspension imposed by the Tribunal, a lower fine is warranted.
- 15.3 The FEI Tribunal imposes the following sanctions on the PR and on the Owner in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:
- 1) The PR shall be suspended for a period of **six (6) months**. The period of Provisional Suspension, effective from 9 September 2015, the date of imposition of the Provisional Suspension, to 18 April 2016, the date of the lifting of the Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore no further period of Ineligibility shall be imposed on the PR.
  - 2) The **Owner** shall be suspended for a period of **six (6) months** to be effective immediately and without further notice from the date of the notification. Therefore, the Owner shall be ineligible **through 12 April 2017**.
  - 3) The **PR** is fined **five hundred Swiss Francs (CHF 500,-)**.
  - 4) The **Owner** is fined **one thousand five Swiss Francs (CHF 1'500,-)**.
  - 5) The **PR** shall contribute **one thousand Swiss Francs (CHF 1'000,-)** towards the costs of the judicial procedure.
  - 6) The **Owner** shall contribute **one thousand five Swiss Francs (CHF 1'500,-)** towards the costs of the judicial procedure.

- 15.4 No Person Responsible or member of the Support Personnel who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the ECM Rules). Under Article 10.11.2 of the ECM Rules, specific consequences are foreseen for a violation of the period of Ineligibility.
- 15.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 15.6 In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

**V. DECISION TO BE FORWARDED TO:**

- a. The persons sanctioned: Yes**
- b. The President of the NF of the persons sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

**FOR THE PANEL**



---

**One member panel, Dr. Armand Leone**