



DECISION of the JUDICIAL COMMITTEE of the FEI

dated 23 January 2006

Positive Medication Case: 2004/46

Horse / Passport: MARY 64 / GER11387

Person Responsible: Michael Freund, GER

Event: CH-M-A 4 Kecskemet, HUN, 4-8.08.2004

Prohibited Substance: Valerenic Acid

1. COMPOSITION AND FORMAT OF PANEL AND HEARING

Panel of the Judicial Committee:

Mr Ken E. Lalo

Mr Erik Elstad

Mr Philip O'Connor

Present at the hearing on 23 January 2006:

For the FEI:

- Alexander McLin, Head of the FEI Legal Department

- Annie Cormier, FEI Legal Counsel

For the Person Responsible:

- Michael Freund, Person Responsible

- Dr Dietrich Plewa, Attorney

- Dr Bernhard Pötsch, Medical Doctor

- Thorsten Zarembowicz, Groom

2. APPLICABLE PROVISIONS

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

General Regulations ("**GR**"), 20th edition, revision April 2001, Arts. 142, 146.2 and 174.

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

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

3. DECISION

- a. The horse Mary 64 and its driver Mr. Michael Freund (the “PR”) had participated at the World Driving Championship in Hungary during August 2004 (the “Event”). Mary 64 had been tested at the Event. It was accepted by the parties that the test results of both the “A” and “B” samples evidenced that Mary 64 had valerenic acid in its systems while participating at the Event.
- b. The Judicial Committee held a hearing in this case on 29 June 2005 and at that time recommended that the parties conduct controlled tests in order to determine whether valerenic acid may be found in horses’ systems as a result of the consumption of certain plants from the *Centranthus ruber* family. During several months following the initial hearing the parties engaged in certain tests to examine the issue.
- c. The Judicial Committee resumed the hearing on 23 January 2006 in Frankfurt.
- d. The Judicial Committee has noted the following:
 1. The evidence of the PR, as well as that of his groom, Mr. Thorsten Zarembovic, present at the Event, as well as technical evidence of various experts, namely Dr. Bernhard Pötsch, MD; Pr. Dr. J. Kamphues, Hannover Veterinary Institute; Pr. Dr. W. Schänzer, Cologne Biochemistry Institute; Pr. Dr. Wolfgang Wetsching; Dr. Kovalcsikné; Dr. Kalmár Éva; Dr. John R. Porter; Dr. Frédéric Sluyter, Head of the FEI Veterinary Department; Dr. A.M. van den Top; literature provided by Dr. Yves Bonnaire, Director of the Laboratoire des Courses Hippiques, Paris, France; Prof. Dr. Manfred Coenen, Hannover Institute for Animal Nutrition; Dr. Miklós Jármay, Veterinary Faculty, Szent István University, Hungary; Prof. Dr. Jenő Bernáth, DSc, former President of the Medicinal and Aromatic Plant Section of the International Federation of Pharmacists, Faculty of Horticultural Sciences, Corvinus University, Budapest, Hungary; Dr. Sabine Aboling, Hannover Botanical Institute, Germany.
 2. That there appears to be certain conflicting information to be derived from such evidence.
 3. That over the period of the Event, Mary 64 was allowed to graze in an area adjacent to the stables, while held by the groom, morning and evening.
 4. That the plant, apparently *Centranthus ruber*, was found subsequently at the location where the horse had grazed.
 5. That *Centranthus ruber* can contain valerenic acid, being the prohibited substance identified in the “A” and “B” samples.
 6. There is a body of opinion which indicates that test results may vary not only by reason of varying levels of intake of the plant, as one would expect, but also by reason of the relevant time of year as it relates to the life cycle of the plant and possibly also the latitude at which the plant in question has grown.

7. The results of the detailed tests carried out separately by the FEI and by the PR, at the recommendation of the Judicial Committee. The Judicial Committee expressed regret that all such tests were not the subject of full cooperation and coordination between the PR and the FEI, as envisioned by the Judicial Committee in its interim decision.
 8. The exhaustive research engaged in by the PR and his advisors in his efforts to answer the question as to how the substance valerianic acid was present in Mary 64's systems.
- e. In addition, the Judicial Committee has considered the legal arguments put forward by the parties.
 - f. The Judicial Committee considered the General Regulations (20th Edition) of the FEI ("**GR**"), which were applicable at the time of the Event, and in particular GR Article 146.2, which contains a proviso stating that a disqualification shall apply where a prohibited substance is present in a horse at the given event "unless the Judicial Committee decides based on the evidence provided to terminate the proceedings of the case".
 - g. The Judicial Committee accepts that the proviso should have a narrow interpretation and be applied in exceptional cases, such as one involving procedural errors which undermine the validity of the case results. The Judicial Committee is of the view that, based on the evidence presented, there are exceptional circumstances presented in this case.
 - h. The Judicial Committee found this to be an extremely difficult case to assess in light of the varying technical advice furnished to it. Accordingly, a majority of the Judicial Committee, Messrs. Elstad and O'Connor, decided, based on the evidence supplied on both days of the hearing that the proviso in GR 146.2 shall be applied, and therefore the Judicial Committee hereby directs that the proceedings in this case be terminated.
 - i. The panel member, Mr. Lalo, had reservation as to the application of the above rule in the present circumstances.
 - j. The Judicial Committee imposes no costs on either party.
 - k. The Judicial Committee would like to express its appreciation to the detailed research initiated by the parties and the exceptional presentations made by Dr. Plewa on behalf of the PR and by Alex McLin on behalf of the FEI.

4. DECISION TO BE FORWARDED TO:

4.1 The Person Responsible: Yes

4.2 The Secretary General of the NF of the Person Responsible: Yes

4.3 The President of the Organising Committee of the event through his NF: Yes

5. THE SECRETARY GENERAL OR HIS REPRESENTATIVE ON BEHALF OF THE PANEL OF THE JUDICIAL COMMITTEE:

Date :

Signature: