



## **DECISION of the FEI TRIBUNAL**

**dated 24 October 2007**

**Positive Medication Case No.:** 2006/58

**Horse:** TELLO

**FEI Passport No:** NED40584

**Person Responsible:** Mr Alan Waldman, USA

**Event:** CH-M-YHorses-S Lanaken Final 6 Years Old, BEL, 14-17.09.2006

**Prohibited Substances:**

- (1) Naproxen
- (2) Flunixin

### **1. COMPOSITION OF PANEL**

Mr Erik Elstad  
Prof Dr Jens Adolphsen  
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 evidence and documents presented in the case file and at the hearing, as also made available by and to the PR.

**2.3 Oral hearing:** By telephone conference on 8 October 2007.

Present: The FEI Tribunal Panel

For the FEI:

Alexander McLin, General Counsel  
Laetitia Zumbrunnen, Legal Counsel

For the PR:

Alan Waldman, Person Responsible

Observers:

Fiona Paratte, FEI Legal Assistant  
Nanja Van Dam, wife of the PR  
Rachel Croft, friend of the PR

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

#### **3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:**

Statutes 21<sup>st</sup> edition, revision effective May 2006, ("**Statutes**"), Arts. 001.6, 057 and 058 and Statutes 22<sup>nd</sup> edition, effective 15 April 2007, ("**New Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 21<sup>st</sup> edition, effective 1 June 2006, Arts. 142, 146.1 and 174 ("**GR**") and General Regulations, 22<sup>nd</sup> edition, effective 1 June 2007, Arts. 142, 146.1 and 174 ("**New 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**"), 10<sup>th</sup> edition, effective 1 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 Alan Waldman

#### **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."

Subsequent to the adoption of the New Statutes, the Judicial Committee is now referred to herein as the "Tribunal".

### **4. DECISION**

#### **4.1 Consideration of the evidence:**

- a. TELLO (the "**Horse**") participated in CH-M-YHorses-S Lanaken Final 6 Years Old, Belgium, from 14 to 17 September 2006 (the "**Event**"). The Horse was ridden by Mr Alan Waldman who is the Person Responsible in accordance

with GR Article 142 (the "**PR**").

- b. The Horse was selected for sampling on 17 September 2006. Analysis of the urine sample no. FEI-001722 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 naproxen and flunixin (Certificate of Analysis 0017220 dated 5 October 2006).
- c. On 10 January 2007 the PR submitted a request for a confirmatory analysis. The confirmatory analysis was carried out on urine at LCH from 23 to 29 January 2007 under the supervision of Mrs Murielle Jaubert, Senior Analyst, and was witnessed by Mr Philippe Plou, Head of the Technical Division of LCH, at the request of the PR. It confirmed the presence of naproxen and flunixin (Counter-Analysis Report dated 29 January 2007).
- d. Both substances are Non Steroidal Anti-Inflammatory Drugs (NSAIDs) (Certificate of Analysis 0017220 dated 29 January 2007 and Veterinary Department's Statement dated 28 February 2007) and accordingly are substances, when present together, specified in the first section of the Equine Prohibited List (VR Annex III) as "Doping" Prohibited Substances.
- 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 Substances. 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 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, in accordance with EADMCRs Article 10.5.
- g. In his written explanation dated 12 March 2007, the PR states that he has been living in the Netherlands for the last 7 years as a horse breeder, dealer and part-time rider. He mentions that he manages over 250 young horses and that he competes about once a month at regional horse shows and usually at two to three small international shows a year. The Lanaken competition is a good test for him to evaluate how his young horses are progressing.



- h. The PR states that he did realize his responsibility of checking and double checking his horses' treatment programme before and at a competition but that he *"never had the need to worry about this because [he] never take[s] chances, break[s] the rules or cheat[s]"*.
- i. Research conducted by the PR led to the finding that the Horse had suffered from colic on 7 September 2006 and had therefore been administered 10 ml of finadyne (flunixin 50mg/ml). This is confirmed by the statement of Dr J. Hofma, dated 12 September 2007, who treated the horse on that day. The PR added that he was also giving the Horse a joint supplement, lubrisyn. The PR stated that he has learnt after the positive finding that this supplement may change the Horse's metabolism and prolong the excretion time of medicines.
- j. In order to explain the presence of naproxen in the Horse, the PR provided the possible explanation that, as he was taking Aleve (naproxen) two to four times a day to treat chronic inflammatory neck and back pain (statement of Dr Robert F. Steinberg dated 25 June 2007), the Horse might have been in contact with it. As the PR never took the medicine to the stables and ingested it only when he was at the hotel, he excluded the administration of a pill to the Horse and argued that the Horse could have been in contact with the substance through the PR's perspiration or urination in the Horse's stall. In his written statement, the PR asserted that he had been urinating five or six times a day in the stall of the Horse (during his oral testimony the PR mentioned that he urinated some twenty times a day at this stall) as the restrooms were far away and the Horse was the first one in the line of stalls.
- k. Dr Frits Sluyter, Head of the FEI Veterinary Department and Dr Richard L. Hilderbrand, Science Director of the US Anti-Doping Agency, provided statements as to the plausibility of a horse testing positive to naproxen after having ingested straw on which a human taking naproxen had urinated.
- l. Dr Sluyter testified in his statements dated 22 March and 6 June 2007 that *"there are conflicting reports in the case file regarding the amount of unchanged naproxen that is excreted by a human being after its use. Contamination of the straw in the box with the parent drug was necessary for the explanation of the PR to be considered as valid. No research is available to indicate whether or not a positive analytical test can result from the ingestion by a human of naproxen, subsequent urination in straw, and subsequent ingestion of the contaminated straw by the horse. [...] for the presence of naproxen no scientific valuable explanation has been given."* He added that it is rather unprofessional of a rider to urinate in the stable where the Horse resides.

- m. Dr Hilderbrand, as an expert witness, stated that, based on the information provided and on a number of assumptions such that:
1. *The use of naproxen by the trainer had been ongoing for a number of days;*
  2. *The horse had access to the straw for the same number of days;*
  3. *That the trainer had a routine habit of urinating in the straw bedding each day; and*
  4. *That the horse would eat the contaminated straw;*
- he "can not exclude the possibility that the horse is positive with naproxen as a result of ingestion of straw bedding contaminated with the drug from a trainer that has been urinating in the stall." He justifies his point of view by the fact that naproxen is primarily excreted as the parent drug (not metabolized) in both man and horse and that a human would excrete 85 to 90 percent of the dose unchanged (which is not corroborated by an article, *Negligible excretion of unchanged ketoprofen, naproxen, and probenecid in urine, Pharm Sci. 1980 Nov; 69(11):1254-7*, stating that 60 to 85% is excreted). Therefore, in Dr Hilderbrand's analysis, "very little intake of urine soaked bedding would be required to be detectable in urine collected from the horse for a drug screen." In conclusion, he stated that "I will not say that I think the explanation is likely, but based on my evaluation I personally can't exclude the explanation based on the intake of naproxen by the man."
- n. For the presence of flunixin, the FEI Tribunal notes that the PR's evidence and arguments were well-documented. The FEI Tribunal is nevertheless convinced, after consideration of all the evidence, of the possible causal link between treatment 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 flunixin, by proving how flunixin entered the Horse's system. However the Tribunal is of the opinion that the PR was negligent as he did not inform himself properly with respect to the treatments administered to the horse and their related withdrawal times. Although it is understandable that the PR relied on the veterinarian that had treated the horse, it is ultimately the PR's responsibility to ensure that the horse does not participate at an Event with prohibited substances within its systems. Furthermore, the PR should always declare to the FEI Veterinary Delegate any treatment administered to the horse in proximity to an event, for the issuance of the appropriate authorization to compete at an event. The FEI Tribunal also notes that the FEI Veterinary Department is currently conducting research on the withdrawal time of certain substances which is to be published in due course and may contain new information.



- o. The PR's explanation regarding the presence of the Prohibited Substance, naproxen, raises doubts. The PR explained at the hearing that he may have urinated in the Horse's box about 20 times during the event. The PR's doctor had prescribed the use of Aleve on 7 March 2006 with the instruction to take the medicine two to four times a day to reduce inflammation. The PR stated that he was still using the medicine during the event, six months later, taking three to four pills twice a day. He explained that he did this without consulting his doctor further, because the medication helped him. In his statement he explained that he was unable to sleep the night before the Event because of the pain, and that he has not been riding for almost a year because of his back problems. He specified that he is still using Aleve, and stated that despite this he had never heard of the substance naproxen before this case started. He explained that the straw that Tello was bedded on at the Event was not changed during the Event, but that fresh straw was added daily. He stated that Tello was bedded on shavings while at home as he tends to eat too much straw.
- p. No other evidence for the presence of the Prohibited Substance naproxen has been presented. It seems rather unlikely that "the positive analytical test can be the result from ingestion by a human of naproxen, subsequent urination on straw, and subsequent ingestion of the contaminated straw by the horse" – see Dr Sluyter's testimony dated 6 June 2007. Even if the Tribunal accepts the story of the PR about taking the medicine for his back problems, that he has urinated in the box several times during the event and that it is not possible to exclude the possibility that this can have contaminated the bedding, the Tribunal concludes that the PR has not met the balance of probability that is required according to EADMCRs Article 3.1. Indeed, under EADMCRs Article 10.5, a PR may seek to eliminate or reduce a sanction based on certain exceptional circumstances, and in order to do so he must establish, by a balance of probability, how a prohibited substance entered the given horse's system. While an explanation has been proffered in this case, and while the evidence does not exclude the possibility of the causal link between that explanation and the positive test result to naproxen, this evidence is nevertheless insufficient to meet the requisite standard of proof. In other words, the evidence is insufficient to make it more likely than not that the chain of events described by the PR were responsible for the presence of naproxen in the Horse.
- q. In deciding the sanctions the FEI Tribunal considered, on the one hand, the doping violation and types of substances involved, as well as the conduct of the PR and his veterinarian and, on the other hand, the PR's "amateur status" as an international rider, the level of the Event and

the PR's cooperation in the investigation. Each of the two Prohibited Substances is classified as "Medication Class A" on the Equine Prohibited List, but when present together in the Horse they fall into the "Doping" category. The concentrations of the two substances are not determined because they are not threshold substances. The detection of naproxen by itself would have placed the case in the "Medication Class A" category.

#### **4.2 Disqualification**

As a result of the foregoing, the FEI Tribunal has decided to disqualify the horse TELLO 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 **(6) six 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 1'000.-**.
- 3) The PR shall contribute **CHF 500.-** 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 : 24 October 2007

Signature: [Signature]