



DECISION of the FEI TRIBUNAL

dated 2 April 2009

Positive Medication Case No.: 2009/01

Horse: NIRVANA

FEI Passport No: BEL42437

Person Responsible: Mr Eric Van Santfoort

Event: CSI5*, Brussels, BEL

Prohibited Substances: Phenylbutazone, Oxyphenbutazone, Procaine

1. COMPOSITION OF PANEL

Mr. Ken E. Lalo
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 duly took into consideration all evidence, submissions and 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 22nd edition, revision effective 15 April 2007, updated 21 November 2008 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23rd edition, effective 1 January 2009, Arts. 118, 143.1 and 169 ("**GRs**") (former version: General Regulations, 22rd edition, effective 1 June 2007, Arts. 142, 146.1 and 174).

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

The Equine Anti-Doping and Medication Control Rules ("**EADMCR**"), 1st edition 1 June 2006, updated with modifications by the General Assembly, effective 1 June 2007 and with modifications approved by the Bureau, effective 10 April 2008.

Veterinary Regulations ("**VR**"), 10th edition, effective 1st June 2006, Art. 1013 and seq. and Annex III (the Equine Prohibited List).

FEI Code of Conduct for the Welfare of the Horse.

3.2 Person Responsible: Mr Eric Van Santfoort

3.3 Justification for sanction:

GR Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes, in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Medication Control Rules."

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 Factual Background

1. NIRVANA (the "**Horse**") participated at the CSI 5* in Brussels, Belgium, on 27 November 2008 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr Eric Van Santfoort, who is the Person Responsible in accordance with GR Art. 118 (the "**PR**").
2. The Horse was selected for sampling on 29 November 2008.
3. Analysis of the urine sample no. FEI-87218 taken from the Horse performed by the approved central laboratory of the FEI, the Laboratoire des Courses Hippiques ("**LCH**"), in France, under the supervision of Yves Bonnaire, Director of the Laboratory, revealed the presence of Phenylbutazone, Oxyphenbutazone and Procaine (Certificate of Analysis dated 22 December 2008).
4. The Prohibited Substances detected are Phenylbutazone and Oxyphenbutazone, which are NSAIDs (non-steroidal anti-inflammatory drugs) with analgesic and anti-inflammatory effects and, accordingly, are classified as "Prohibited Substances" under the Equine Prohibited List (VR Annex II, the "Equine Prohibited List"), in the class "Medication A". Oxyphenbutazone is considered as a

metabolite of Phenylbutazone when found in the same sample.

5. The third Prohibited Substance detected is Procaine, which is a local anaesthetic with local anaesthesia effects. Procaine is classified as a "Prohibited Substance" under the Equine Prohibited List (VR Annex II, the "Equine Prohibited List"), in the class "Medication A". Procaine could be present from antibiotic administration (see Veterinary Statement by Dr. Andrew Higgins, BVetMed MSc PhD FIBiol MRCVS, Member of the FEI Veterinary Committee, dated 11 January 2009 ("Annexe 5" to Notification Letter dated 22 January 2009)).
6. According to the Veterinary Statement provided by Dr. Andrew Higgins, BVetMed MSc PhD FIBiol MRCVS, Member of the FEI Veterinary Committee ("Annexe 5" to Notification Letter dated 22 January 2009), despite the presence of at least two Prohibited Substances, the case should be prosecuted as "Medication A" Prohibited Substances under the Equine Prohibited List (VR Annex II, the "Equine Prohibited List").
7. No request had been made for the administration of Phenylbutazone, Oxyphenbutazone or Procaine to the Horse, and no medication form had been supplied for any of these substances.

4.2 The proceedings

8. The presence of the Prohibited Substances, the possible rule violation and the consequences involved were duly notified to the PR on 22 January 2009.

4.3 The B-Sample Analysis

9. Together with the Notification Letter of 22 January 2009, the PR also received notice that the B-Sample analysis would, upon request by the PR, be carried out at the LCH. The PR was informed of his right to attend or be represented at the identification and opening of the B-Sample.
10. The PR did not request the B-Sample analysis to be carried out.

4.4 The further proceedings

11. On 9 February 2009, the PR submitted a written statement including a document entitled "Rapport de Consultation Orthopedique Cheval "NIRVANA" by the veterinarian, Dr. Sébastien Havel.
12. By an email addressed to the BEL-NF dated 17 February 2009, the FEI Legal Department drew the attention to the fact that a hearing could be requested by the PR until 22 February 2009. This email has been forwarded to the PR by the BEL-NF on 17 February 2009.

13.Despite the reminder by the FEI Legal Department, no hearing has been requested by the PR.

14.The Tribunal accepted the statements and evidence filed in this case.

4.5 Jurisdiction

15.The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EADMCRs.

4.6 The Person Responsible

16.The PR is the person responsible for the Horse, in accordance with GR Art. 118, as he was the rider of the Horse at the Event.

4.7 The Decision

17.The Tribunal is satisfied that the laboratory report relating to the A-Sample reflects that the analytical tests were performed in an acceptable method and that the findings of the LCH are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of Phenylbutazone, Oxyphenbutazone and Procaine, which are Prohibited Substances, in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive finding.

18.The FEI has thus sufficiently proven the objective elements of an offence in accordance with EADMCR Article 3. The Prohibited Substances, also when present together, are "Medication A" class substances.

19.In doping and medication cases there is a strict liability as described in EADMCR Article 2.1.1. When a positive case has been proven by the FEI, the PR has the burden of proof to show that he bears No Fault or No Negligence for the positive findings, EADMCR Article 10.5.1, or No Significant Fault or No Significant Negligence, EADMCR Article 10.5.2.

20.The PR explained that the prohibited substances have been administered to the Horse to allow recovery and "*not as a cheating attempt offending any sport or equity rule...*". The PR explained and brought evidence to support a ligament injury to the Horse on 1 September 2008. As a result, the Horse underwent surgery on 9 September 2008. The Horse was kept at the clinic until 17 September 2008 and then boxed until 15 October 2008. The Horse started progressive work following that time.

21.The PR explained that he noticed painful areas and swelling around the scar on 8 November 2008, whereupon the Horse was injected

20 cc of Phenylbutazone followed by injections of 10 cc of Phenylbutazone during each of the following four days. This was combined with injections of 25 cc of "pen 30" each, for eight days.

22. The PR accepted that he took – as he defines it - a "wrong step" but claims that the Horse returned to normal work, was fit to compete and that he would not jeopardize the Horse's health and well being.
23. According to EADMCR Article 9 disqualification from the event is automatic when there is a positive finding.
24. In deciding the sanctions, the FEI Tribunal considers the substantial medical treatment and administration of a number of Prohibited Substances to the Horse days before the Event, without a declaration of such treatment, which evidences negligence on the part of the PR. These also raise questions regarding the welfare of the Horse, even if there has been no supported attempt to gain an unfair competitive advantage at the Event. The Event is an important FEI event of a high class. The Tribunal finds that the PR was negligent in participating with a Horse at the Event following administration of the Prohibited Substances during the days in proximity to the Event.
25. On the other hand and in mitigation, the FEI Tribunal takes into consideration the types of substances involved, being "Medication A" substances, the supported explanation for the positive findings which stem from a legitimate medical treatment of the Horse, the participation in the investigation of the case and the amateur "status" of the PR.
26. According to Article 173.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

4.8 Disqualification

27. As a result of the foregoing, the FEI Tribunal decides to disqualify the Horse 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.

4.9 Sanctions

28. As a consequence of the foregoing, the FEI Tribunal decides to impose on the PR the following sanctions, in accordance with GR Article 169 and EADMCRs Article 10:

- 1) The PR shall be suspended for a period of **three (3) months** to commence immediately and without further notice from the date of the notification.

- 2) The PR is fined **CHF** 1,000.-
- 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

FOR THE PANEL

A handwritten signature in blue ink, appearing to read "Ken Lalo", is centered on the page. The signature is written in a cursive style.

THE CHAIRMAN Mr Ken E. Lalo