



## DECISION of the FEI TRIBUNAL

dated 19 May 2009

**Positive Medication Case No.: 2009/02**

**Horse:** AZURRA

**FEI Passport No:** UAE40910

**Person Responsible:** Khalifa Ghanim AL MARRI

**Event:** CEI 3\*, 120km, Dubai, UAE

**Prohibited Substances:** Boldenone

### 1. COMPOSITION OF PANEL

Mr. Erik Elstad, Chairman  
Mr. Patrick A. Boelens  
Dr. Alberto Hernán Mendez Cañas

### 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 22<sup>nd</sup> edition, revision effective 15 April 2007, updated 21 November 2008 ("Statutes"), Arts. 1.4, 34 and 37.

At the time of the Event General Regulations, 22<sup>nd</sup> edition, effective 1 June 2007, Arts. 142, 146.1 and 174; as of 1 January 2009: General Regulations, 23<sup>rd</sup> edition, effective 1 January 2009, Arts. 118, 143.1 and 169 ("GRs").

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

The Equine Anti-Doping and Medication Control Rules ("EADMCR"), 1<sup>st</sup> 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"), 10<sup>th</sup> edition, effective 1 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:** The rider, Khalifa Ghanim Al Marri, is a minor, under 18 years of age, and his father and trainer, Ghanim Al Marri, is considered to act as his representative, GR Art. 142.4.3. According to GR Art. 142.4.4 the minor remains the Person Responsible (the "PR"). See also below 4.4 paragraph 15 about who is considered as the PR in this case.

### **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. AZURRA (the "Horse") participated at the CEI 3\*, 120km, in Dubai, United Arab Emirates, on 6 December 2008 (the "Event"), in the discipline of Endurance. The Horse was ridden by Khalifa Ghanim Al Marri ("the Rider"), who was under 18 years of age at the time of competition.
2. The Horse was selected for sampling on 6 December 2008.
3. Analysis of the urine sample no. FEI-0084377 taken from the Horse performed by the approved laboratory of the FEI, the Hong Kong Jockey Club Racing Laboratory ("HKJC"), in Hong Kong, under the supervision of Dr. Jenny Ka Yan WONG, Chemist, and Dr. Terence

See Ming WAN, Chief Racing Chemist (Head of Racing Laboratory), revealed the presence of Boldenone (Test Report no. 08-1307 dated 14 December 2008).

4. The Prohibited Substance detected is Boldenone, which is an anabolic steroid which improves appetite, weight gain, strength and vitality, in simple words "Body Building". Boldenone is long acting and there is a threshold for Boldenone for entire male horses. The Horse in question is however female (see Veterinary Statement by Dr. Andrew Higgins, BVetMed MSc PhD FIBiol MRCVS, Member of the FEI Veterinary Committee, dated 17 January 2009 ("Annexe 5" to Notification Letter dated 26 January 2009 and Statement dated 27 February 2009 by the same)). Boldenone is classified as "Prohibited Substance" under the Equine Prohibited List (VR Annex II, the "Equine Prohibited List"), in the class of "*Medication A*". Accordingly, the case is classified as "Medication Control" rule violation.
5. No request had been made for the administration of Boldenone to the Horse, and no medication form had been supplied for the substance.
6. The PR was subject to an Anti-doping procedure in the beginning of the year 2008 (Case 2008/03 - LITTLE JOE FOX). Reason for this procedure was a positive finding of the horse LITTLE JOE FOX, ridden by the PR during the CEIJY3\* 120km in Boudthib, UAE, on 9 February 2008. The prohibited substance found in the horse LITTLE JOE FOX was Triamcinolone acetonide, which had been qualified as Medication A prohibited substance. The PR was suspended for one month, and the horse for 12 months. Further, the decision imposed a fine of CHF 1.500,- on the PR and costs of CHF 1.250,- (see Decision of the FEI Tribunal dated 29 July 2008).

#### **4.2 The proceedings**

7. The presence of the Prohibited Substance, the possible rule violation and the consequences involved were duly notified to the PR on 26 January 2009.

#### **4.3 The B-Sample Analysis**

8. Together with the Notification Letter of 26 January 2009, the PR also received notice that the B-Sample analysis would, upon request by the PR, be carried out at the HKJC. The PR was informed of his right to attend or be represented at the identification and opening of the B-Sample.
9. In its letter dated 2 February 2009 the UAE Equestrian and Racing Federation requested that the B-sample analysis be performed at the Laboratoire des Courses Hippiques (LCH). According to the current FEI policy however, the B-Sample is analyzed in the same laboratory as the A-Sample. Accordingly, the B-Sample was

performed in the HKJC. The Federation was informed about this in an e-mail from the FEI on 3 February 2009.

- 10.The B-Sample analysis was carried out on urine on 10 February 2009 at the HKJC under the supervision of Mrs. Nola Hua YU, Chemist, and David Kwan Kon LEUNG, Racing Chemist, while Mr. Jacky Tsang witnessed the opening of the B Sample.
- 11.In his witness statement, Jacky Tsang certified that the urine B-Sample container "*shows no signs of tampering*" and "*that the identifying number appearing on the urine sample to be tested by the Racing Laboratory of the Hong Kong Jockey Club corresponds to that appearing on the collection documentation accompany the sample*" (Witness Statement dated 10 February 2009).
- 12.The B-Sample analysis confirmed the presence of Boldenone (Test Report dated 16 February 2009).
- 13.The results of the B-Sample analysis were notified to the PR on 2 March 2009.

#### **4.4 The further proceedings**

- 14.In an e-mail of 2 February 2009 by Hallvard Sommerseth, Head of the Veterinary Department in UAE, the FEI was informed that the PR's father, Ghanim Al Marri, had appointed Mr. Mohammed Bin Jafla as the Person Responsible in this case due the fact that the rider was under 18 years old. This was also certified by the UAE Equestrian and Racing Federation in its letter of 2 February 2009. This nomination was made after the Event and not when the entry to the competition was made according to GR Article 142.4.1. In a form dated 30 November 2008 the Rider's father, Ghanim Al Marri was nominated as the representative for the minor rider (page 11 of the Case File). As stated under paragraph 3.2, the FEI Tribunal considers the rider as the PR and his father as his representative according to GR Article 142.4.3 and Article 142.4.4.
- 15.Mohammed Bin Jafla was the one who treated the Horse with the Prohibited Substance. On 24 March 2009, the UAE, on behalf of the PR, submitted a written statement by Mohammed Bin Jafla dated 14 March 2009.
- 16.According to this statement, Mohammed Bin Jafla joined the Fazaa Stables, which is the owner of the Horse, at the end of last season (2008) as a supervisor to take care of some new young mares, one of them AZURRA. The Horse suffered from weakness and loss of weight after a colic operation and gastric ulcers. The Horse was treated with EQUI-GAN, rested and gained some weight. It was then put into training by the trainer Ghanim Al Marri and entered some races.

17.This happened three to four months before the actual Event in December 2008, but Mohammed Bin Jafla states that he did not know how long the detection time for this substance was and that he had forgotten about the medication when the Horse was transferred to the trainer. Further, that if he had known at the time of the competition that the substance was still in the Horse's body fluids he would have informed the trainer and the veterinarian. Mohammed Bin Jafla also states that he takes the full responsibility for the situation in which he has brought the Rider.

18.The PR did not request a Hearing.

19.The Tribunal accepted the statements filed in this case.

#### **4.5 Jurisdiction**

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

#### **4.6 The Decision**

21.The Tribunal is satisfied that the laboratory reports relating to the A-Sample and the B-Sample reflect that the analytical tests were performed in an acceptable method and that the findings of the HKJC are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of Boldenone, which is a Prohibited Substance, 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.

22.The FEI has thus sufficiently proven the objective elements of an offence in accordance with EADMCR Article 3. The Prohibited Substance is a "Medication A" class substance.

23.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. No such proof has been presented to The FEI Tribunal's satisfaction.

24.In an e-mail of 26 January 2009 Hallvard Sommerseth, Veterinarian, Head of the Veterinary Department of UAE, former chairman of the FEI Endurance Committee, states: *For your kind information, in this country, the rider is mostly a person who knows nothing about the horse he/she is riding. PRs should be trainers and/or stable veterinarians, something I have mentioned before to the FEI when we renewed the GR, Art 188.4.*

25.The rider has himself not said anything about his knowledge of the

treatment of the Horse, but the FEI Tribunal assumes on the background of Mr. Sommerseth's statement that the rider only rode the horse in the competition without having special knowledge of the Horse's medical history. This was also the situation in the earlier case, 2008/03 mentioned above under point 4.1, paragraph 6. As explained in the following, the FEI Tribunal does not accept this as No Fault or No Negligence, or No Significant Fault or No Significant Negligence according to EADMCR Article 10.5.1 and 10.5.2.

- 26.GR Article 142.2 provides that the competitor who rides shall normally be the PR. The same applies in cases of international competitions organized with horses provided by the host NF according to GR Article 116. The actual Event does not seem to have been arranged as an event with borrowed horses, but nevertheless the Horse was a horse provided by the host NF and was owned by the "Fazaa Endurance Team".
- 27.The case highlights once again the difficulty to address cases in which the competitor is not the owner of a horse or rides it regularly. This is becoming problematic in view of a number of cases submitted to the FEI Tribunal, at present most commonly in endurance riding, see for instance case 2008/4 (FENWICK CADENZA) and the previous case with the PR, case 2008/03 (LITTLE JOE FOX). In order to have a fair and equitable system of dealing with positive doping or medication cases, riders of borrowed horses or other than self owned or trained horses should not stand to benefit the lack of clarity and certainty sometimes evidenced in these situations in which a horse is given to the custody of a competitor in close proximity to the event.
- 28.The policy of the FEI is that the competitor is the primary person responsible for a horse ridden at an event. Even if in appropriate circumstances, others may also be regarded as responsible, this does not alter the primary responsibility of the rider. 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 a horse used by him or her at an event (even through third parties). Otherwise « the blame » may always be transferred to third parties such as stable owners, trainers, grooms, veterinarians or unknown parties.
- 29.It is up to the competitor to ensure excellent stable management and proper controls over a horse used in international events 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 was evidenced that third parties had actual control over the horses at issue. Similarly, it is up to a 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 right

before the event.

- 30.The vital policy of the FEI to ensure that horses are not doped while competing in international events cannot be compromised due to the fact that riders ride horses they hardly know. The transfer of responsibility between rider and owner cannot relieve a rider from responsibility, as a contrary position would jeopardize the crucial FEI policy that horses must compete free of prohibited substances. If a rider is not absolutely and positively convinced that a horse ridden at an international event does not have prohibited substances in its system, the rider should not agree to ride the horse at that event. The rider should assess the risk and also accept any unknown risks. This is in line with the FEI's strict liability policy in connection with doping cases.
- 31.In the present case, Mr. Mohammed Bin Jafra has admitted to have treated the Horse with the Prohibited Substance. This treatment is regarded as a legitimate treatment, but the Horse should not have been entered into an international competition before it was free from Prohibited Substances. Mr. Mohammed Bin Jafra is not registered with the FEI and the FEI has no jurisdiction over him.
- 32.According to EADMCR Article 9 disqualification from the event is automatic when there is a positive finding.
- 33.In deciding the sanctions, the FEI Tribunal takes into consideration that this was the second time the PR competed with a horse that proved positive for Prohibited Substances after the competition. In the previous case the PR was suspended for one month, fined CHF 1,500 and had to contribute to the costs.
- 34.On the other hand and in mitigation, the FEI Tribunal takes into consideration that the PR still is a minor, that he is not a professional rider and that his father was his trainer and the trainer of the Horse. The Prohibited Substance is long lasting in the Horse's fluids and the trainer was not informed about the treatment.
- 35.According to GR Article 173.4, the present decision is effective from the day of written notification to the persons and bodies concerned.

#### **4.7 Disqualification**

- 36.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.

#### **4.8 Sanctions**

- 37.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 EADMRs Article 10:

- 1) The PR shall be suspended for a period of **120 (one-hundred-and-twenty) days** to commence immediately and without further notice from the date of the notification.
- 2) The PR is fined **CHF 2,500.-**
- 3) The PR shall contribute **CHF 1,000.-** towards the legal costs of the judicial procedure and **CHF 750,-** for 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

## FOR THE PANEL



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**THE CHAIRMAN Mr Erik Elstad**