



**DECISION of the FEI TRIBUNAL**

**dated 22 October 2010**

**Positive Medication Case No:** 2010/05

**Horse:** KANEBO

**FEI Passport No:** MEX01558

**Person Responsible:** Bucci Piergiorgio

**Additional Person Responsible:** Giancarlo Cardone

**Event:** CSIO5\*, Ghantoot, Abu Dhabi, UAE

**Prohibited Substances:** Capsaicin; Nonivamide

**1. COMPOSITION OF PANEL**

Prof. Dr Jens ADOLPHSEN

**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, as well as the evidence and arguments presented during and following the oral hearing.

**2.3 Oral hearing:** 22 July 2010 – Geneva.

**Present:**

For the PR: Mr. Piergiorgio Bucci, Person Responsible  
Dr. Sebastian Janka, Counsel for the PR  
Dr. Alexander Birnstiel, Counsel for the PR  
Mr. Giancarlo Cardone, Additional Person Responsible  
Mr. Dario Choi, Interpreter

For the FEI: Ms Lisa F. Lazarus, General Counsel  
Ms Carolin Fischer, Legal Counsel

### **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, effective 15 April 2007, updated 19 November 2009 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updated 1 January 2010, 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**"), 11<sup>th</sup> edition, effective 1 January 2009, Art. 1013 and seq. and Annex II (the "Equine Prohibited List").

FEI Code of Conduct for the Welfare of the Horse.

#### **3.2 Person Responsible:** Piergiorgio Bucci **Additional Person Responsible:** Giancarlo Cardone

#### **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."

GR Art. 118 para. 3: "The Person Responsible shall be the Athlete who rides or drives the Horse during an Event, but the Owner and other support personnel including but not limited to grooms and veterinarians may be regarded as additional Person Responsible if they are present at the Event or have made a relevant Decision about the Horse."

## 4. DECISION

### 4.1 Factual Background

1. KANEBO (the "Horse") participated at the CSIO 5\* in Gantoot, Abu Dhabi, UAE, on 2-6 February 2010 (the "Event") in the discipline of Jumping. The Horse was ridden by Piergiorgio Bucci, who is the Person Responsible in accordance with GRs Art. 118 (the "PR").
2. The Horse was selected for sampling on 6 February 2010.
3. Analysis of the urine sample no. FEI-5502103 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("HKJC"), by Mr. Wai Him KWOK, Chemist, under the supervision of Mr. Terence See Ming WAN, Head of Racing Laboratory. The analysis revealed the presence of Capsaicin and Nonivamide (Test Report no 10-0262 dated 23 February 2010).
4. The Prohibited Substances detected are Capsaicin and Nonivamide. Capsaicin and Nonivamide are both Capsaicinoids with an analgesic and irritant effect and are therefore "Prohibited Substances" under the Equine Prohibited List (VR Annex II, the "Equine Prohibited List"), in the class of "Doping". The presence of Capsaicin and Nonivamide in the Horse's sample thereby constitutes an *Anti-Doping* rule violation.
5. No request had been made to administer Capsaicin and Nonivamide to the Horse, and no medication form had been submitted for any of these substances.

### 4.2 The Proceedings

6. The presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the PR by the FEI Legal Department on 24 March 2010.
7. 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.
8. The PR did not request a Preliminary Hearing.

### 4.3 The B-Sample Analysis

9. Together with the Notification Letter of 24 March 2010, the PR also received notice that he was entitled to the performance of a B-Sample confirmatory analysis on the positive A-sample. The PR was also informed of his right to attend or be represented at the identification and opening of the B-Sample.

10. The PR confirmed on 1 April 2010 that he wished for the B-Sample analysis to be performed.
11. The B-Sample Analysis was performed on urine on 27 April 2010 at the HKJC by Mr. Colton Ho Fai Wong, Chemist, under the supervision of Mr. David Kwan Kon Leung, Racing Chemist.
12. The PR did not attend the opening and identification of the sample but sent a representative, Dr. Oscar Ghizzoni, Consultant in Environmental and Forensic Chemistry, to the Laboratory. Therefore, Dr. Ghizzoni witnessed the opening and identification of B-Sample no. 5502103.
13. In his witness statement, Dr. Ghizzoni certified that the sealed "B" Sample container "*shows no signs of tampering*" and "*that the identifying number appearing on the sample to be tested by the Hong Kong Jockey Club corresponds to that appearing on the collection documentation accompanying the sample*". Dr. Ghizzoni further noted that he had requested "the racing chemist to be allowed to assist the entire procedure of analysis on sample B" but that he had not been allowed to assist (Witness Statement dated 27 April 2010).
14. The B-Sample Analysis of the urine confirmed the presence of Capsaicin and Nonivamide (Test Report N° 10-0569 dated 1 May 2010).
15. The results of the B-Sample Analysis were notified to the PR on 6 May 2010 through the Italian Equestrian Federation (ITA).

#### **4.4 The Further Proceedings**

16. On 25 May 2010, the PR submitted his first explanations, through his Legal Counsels, Dr. Alexander Birnstiel and Dr. Sebastian Janka. According to the PR's explanations, Mr. Giancarlo Cardone was a new groom and the facts underlying this case took place at the first Event he worked for the PR. Mr. Cardone treated the Horse's back during the Event without asking the PR for permission because the Horse's back was stiff. The alleged treatment was with a white muscle relaxant cream which the new groom only subsequently learned contained a Prohibited Substance. The PR claimed that the groom had put the muscle relaxant into the tack box due to a misunderstanding, and without his knowledge. The PR further explained that the muscle relaxant had been given to him by his former veterinarian, about three and a half years before, and that it was usually only used at home, on horses that were not competing. The PR further emphasized that the cream was only applied to alleviate the stiffness and had not been applied to the legs of the Horse with the intention to hypersensitize them, as the specific Prohibited Substance can be also used. To support this allegation, the PR

reported that the Horse had undergone a boot check at the Event without any unusual results reported. During the course of the proceedings, the PR requested the production of these boot check results. In response, the FEI confirmed that there was nothing unusual about the Horse's boot check but such fact had no relevance to these proceedings.

17. As to the background of the administration of the muscle relaxant by Mr. Cardone the PR explained that he had moved, with his entire stable, from Italy to Holland, where a new support team had to be formed. That as a consequence of the move, there has been a language barrier both between him and the new, Dutch team members, as well as amongst the team members. That therefore, his former stable manager, speaking Dutch, had instructed the new Dutch speaking stable manager, with himself only having been involved in the most important matters. The PR further explained that Mr. Cardone did not understand Dutch either, and therefore also encountered language barriers with the other team members. That Mr. Cardone did not know that he was administering a prohibited product, and that neither himself nor Mr. Cardone intended to apply Prohibited Substances, or to enhance the performance of the Horse.
18. Following the PR's submission of 21 June 2010, the FEI formally notified Mr. Cardone of the case against the PR under the EADMCRs. By means of the Notification Letter, Mr. Cardone was informed of the PR's allegations and that, as a consequence of the allegations, he would be considered an Additional Person Responsible ("Additional PR") in the present case in accordance with Article 118 para. 3 of the GRs. The Notification Letter of 21 June 2010 included notice that Mr. Cardone was entitled to submit written explanations, and that he had the right to request a hearing. Mr. Cardone himself did not submit any explanations in writing, and did not himself request a hearing.
19. Also on 21 June 2010, the FEI invited the PR to submit further explanations and evidence establishing how the Prohibited Substances had entered into the Horse's system.
20. The PR, on 30 June 2010, submitted a statement by Mr. Cardone. In this statement, Mr. Cardone provided more details about the facts underlying this case. He explained that the Horse had been intravenously administered vitamins by the official veterinarian on the day prior to the "Nations Cup", 5 February 2010. That the next day, he noticed that the Horse had "a slight muscular stiffness that was not serious enough to require the intervention of the veterinarian." That on 7 February 2010, since the Horse was still demonstrating signs of the stiffness, he decided to give it a back massage with "a muscle relaxing cream" he had found in the tack box. Mr. Cardone testified that his only objective was to give the Horse some relief. The PR did not provide any further

explanations or submit any additional evidence by the advised deadline.

21. The FEI responded to the PR's submission on 12 July 2010 arguing that despite its request to provide further details and proof in order to establish how the Prohibited Substance had entered into the Horse's body, uncertainty remained with regard to that question. In particular, the FEI highlighted that the PR did not provide any details about the cream, such as its name or a list of the active ingredients - regarding the product allegedly administered by Mr. Cardone, or of the concrete timing and means of its application. The FEI further pointed out that the sample in question had been taken from the Horse on 6 February 2010, and that according to the statement of Mr. Cardone, the alleged treatment only took place on 7 February 2010. Further, that no information had been provided by the PR to establish the relationship between the alleged treatment by Mr. Cardone and the positive finding for Capsaicin and Nonivamide. The FEI thus took the position that the PR had not established, as required under Article 10.5 of the EADMCRs, how the Prohibited Substances had entered into the Horse's system.
22. In response to the PR's explanation regarding the challenges resulting from his stable move and the building of a new team in the Netherlands, the FEI maintained that such transitions cannot compromise the PR's duty to ensure that no Prohibited Substances are administered to his Horses. That according to the strict liability concept adopted by the FEI, the rider is the Person Responsible and is as such responsible for any rule violation. The FEI emphasized that the PR's responsibilities also include responsibility for the stable management, as well as for the acts and omissions of the PR's support personnel. Further, an example of competent stable management would be to restrict access to products containing Prohibited Substances to veterinarians, or if necessary, to stable personnel with adequate knowledge, experience and skills to properly use the products. The FEI further stressed that in light of the strict liability concept, it did not matter whether or not the PR, or his support personnel, intended to use the Prohibited Substances, or even knew about their use. This has been well-established by the applicable case law.
23. With respect to the actual use or application of the Prohibited Substances, i.e. the alleged application on the back of the Horse rather than on its legs, the FEI responded that the mere presence of the Prohibited Substances constitutes an anti-doping rule violation, independent of the actual means of application. In this context, the FEI referred to the decision by the Court of Arbitration for Sport (CAS) in the matter of Christian Ahlmann (CAS 2008/A/1700 & CAS 2008/A/1710), by which the CAS had definitively classified Capsaicin as a Doping Prohibited Substance, irrespective of where it is used on the Horse. Notably, this CAS

decision reversed the earlier FEI Tribunal decision which classified Capsaicin as a Medication A Prohibited Substance. Therefore, the FEI's position was that the PR had not established that he bore no fault or no negligence for the anti-doping rule violation.

24. In his submission of 20 July 2010, the PR alleged that Mr. Cardone had been confused as to the dates referred to by him. According to the PR, the scheduling of the Event would have been unusual. That Mr. Cardone had meant to state that he had treated the Horse with the muscle relaxant on the day of the competition, prior to the Horse being tested. The PR further submitted a statement by Dr. Ghizzoni on the use of creams containing Capsaicin, including a list of 23 topical preparations containing Capsaicin.
25. The Final Hearing took place in Geneva on 22 July 2010. During the Hearing, the PR produced an unlabeled white opaque plastic bottle which he represented contained the Prohibited Substances which were detected in the Horse's system. The FEI argued that the bottle as such, without any further information as to its contents, such as no independent laboratory analysis, no listed ingredients, no evidence of purchase, and no veterinary prescription had zero evidentiary value. The Tribunal therefore ordered, with agreement from the parties, that the content of the bottle be analysed in the UK based FEI accredited laboratory Horseracing Forensic Laboratory (HFL).
26. Mr. Cardone, assisted by an interpreter, testified with respect to the circumstances leading to the administration of the "white cream". Mr. Cardone explained that he was employed by the PR since January 2010 and had worked "on call" in Italy for several international riders prior to starting with the PR. That he had been aware, prior to starting working with the PR, that Anti-Doping Rules existed that applied to Equestrian Event. That, for the Event in Abu Dhabi, he had been accredited, and had also received an accreditation card, for which he had to sign. Upon questioning, Mr. Cardone explained that it was the former groom who had worked for the PR for some time who had put the white cream into the tack bag for the Event and not him. With respect to the details of the treatment, Mr. Cardone confirmed that he had been confused, while drafting his statement, because of the unusual scheduling of the Event. He confirmed that the competition after which the Horse had been MCP tested had taken place on Saturday, 6 February 2010. That the boot and bandage control had taken place after the Horse had competed on Saturday, and that the Horse had not competed on Sunday. Referring to the "white cream", Mr. Cardone confirmed that he had found the bottle in the tack box of the Horse, and that he had recognized it – despite being unlabelled - due to its shape. That he had used the product, prior to the competition of Saturday, in order to "help" the Horse since the PR had told him that it was not "100% fit". Mr. Cardone explained never having applied this

product to a horse before, but that he had seen other grooms doing so at the stables and that at his knowledge, there was only one unlabelled bottle like the one produced by the PR. Mr. Cardone further stated that the PR had not given him any particular explanations, especially as how to act in accordance with the necessary prudence required in international competitions, and that he had only been informed by the PR that he had to consult the veterinarian before giving medication to a horse.

27. The question was raised whether Mr. Cardone was bound by the FEI Rules. The FEI argued that Mr. Cardone had been accredited to the Event, that he accepted that accreditation and relied on it in order to perform services for the PR, and that therefore, like other members of the Support Personnel, he was bound by the FEI Rules, including the EADMCRs.
28. In light of the fact that the PR did not submit a statement and therefore there was no testimony properly before the Tribunal, the FEI declined to examine him. The PR then provided an oral statement explaining that when he had learnt about the positive case, he had started investigations, and had finally given the white bottle to a friend of his, who is a chemical analyst, to analyse the content of the bottle. That his friend had confirmed that the bottle's content contained capsaicin. That there had been problems with the light during the Event, prior to the Thursday evening competition, and that therefore, the Horse remained in the warm-up area for about an hour, reason for which it had a stiff back on Friday, 5 February 2010.
29. When questioned by the Tribunal, the PR was not willing to disclose the name of the veterinarian from whom he had received the white bottle. He further had no explanation as to why the bottle, despite it being in his possession for three (3) years, appeared to still be half-full. The FEI then argued that even if the PR had convinced the Tribunal how the Prohibited Substances had entered the Horse's body, the PR had acted grossly negligent with respect to the rule violation.
30. The FEI summarized its position by referring to the CAS decision in the Christian Ahlmann case, stating that Capsaicin, independent of its actual use, was classified as Doping. That Capsaicin, as also decided by the CAS in the Ahlmann case, would be impossible to detect in a boot check, and that therefore the boot check was irrelevant in the present case. That the use of Capsaicin during the Olympic Games was considered by CAS as "gross negligence", and that the use of this substance after the Ahlmann decision had to be considered as even worse insofar as the PR could have had knowledge of the position and could have prevented its use. In fact, the FEI contended that the wide discussion in the equestrian community after the Ahlmann case is further evidence that the PR should have been on notice and



taken greater care with regards to the stable management of his horses.

31. Following the Final Hearing, the content of the bottle produced during the Final Hearing was analysed by HFL. The analysis results confirmed that the cream in the bottle contained the two Prohibited Substances detected in the Horse's sample, Capsaicin and Nonivamide, also known as Pseudocapsaicin. The results of the HFL analysis were notified to the PR and the Tribunal by the FEI Legal Department on 23 August 2010.

#### **4.5 Jurisdiction**

32. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EADMCR. With respect to the Additional PR, the Tribunal has jurisdiction insofar as the Additional PR had been accredited to the Event in question, and therefore had been bound by the FEI Rules during the period of the Event. The Tribunal is composed as a one-member panel, in accordance with the Internal Regulations of the FEI Tribunal, and the PR has agreed to the one member panel.

#### **4.6 The Person Responsible**

33. The PR is the Person Responsible for the Horse, in accordance with Article 118 of the GRs, as he was the rider of the Horse at the Event.

#### **4.7 The Additional Person Responsible**

34. Mr. Cardone is an Additional Person Responsible for the Horse in accordance with Article 118 paragraph 3 of the GRs, as will be detailed below.

#### **4.8 The Decision**

35. The Tribunal is satisfied that the laboratory reports relating to the A- and B-Sample analysis reflect that the analytical tests were performed in an acceptable manner and that the findings of the HKJC are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of Capsaicin and Nonivamide, 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.
36. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 of the EADMCRs. The Prohibited Substances found in the sample are classified as "Doping" Prohibited Substances.
37. In Doping and Medication cases, there is strict liability as described in Article 2.1.1 of the EADMCRs. 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 as set forth in Article 10.5.1 of the EADMCRs, or "No Significant Fault or No Significant Negligence," as set forth in Article 10.5.2 of the EADMCRs.

38. In order to benefit from any elimination or reduction of the applicable sanction under Article 10.5 of the EADMCRs, the PR must establish how the Prohibited Substances entered the Horse's system. In determining whether the PR had fulfilled his above obligation to establish - by a balance of probabilities - how the Prohibited Substances entered the Horse's system, the Tribunal considers the evidence provided by the PR throughout the procedure. The Tribunal is of the opinion that the main pieces of evidence are the statement by Mr. Cardone and the test results by HFL of the analysis of the white product contained in the bottle submitted by the PR. The Tribunal considers that the above evidence - by a balance of probabilities - establishes that the white cream was indeed used on the Horse by Mr. Cardone prior to the Event, and that this use had led to the positive test results. The Tribunal therefore considers that the PR - however at a minimum level - has fulfilled his obligation under Article 10.5 of the EADMCRs to establish how the Prohibited Substance entered into the Horse's system.
39. The Tribunal therefore turns to the question of "No Fault or No Negligence" or "No Significant Fault or Negligence" for the rule violation. The Tribunal considers that the PR has acted with gross negligence with regards to his stable and staff management. Precisely, the PR did not manage properly the move of his stable to Holland, in particular did he not take sufficient measures that the members of his team - speaking different languages - understand each other sufficiently, and that he himself equally understands the members of his team. Furthermore, the PR, as witnessed by Mr. Cardone, did not sufficiently instruct his newly arrived groom about the details of the FEI Anti-Doping Rules, and the prudence and caution they required. The Tribunal has expressed repeatedly his concern that Persons Responsible have to ensure that all precautions are taken to be certain that their horses participate in international competitions without Prohibited Substances in their systems. With respect to the unlabelled, white bottle, the Tribunal considers it as highly negligent that the bottle, containing Capsaicin, was kept at the PR's stable, without any indication of its content, i.e. Prohibited Doping Substances. Moreover, the Tribunal finds it entirely unacceptable that the PR, as confirmed by Mr. Cardone, took the unlabelled bottle to the Event, keeping it accessible to anybody, amongst others Mr. Cardone. Finally, the Tribunal is of the opinion that the PR - after the anti-doping cases resulting from positive Capsaicin samples during the 2008 Olympic Games - had sufficient means and possibilities to inform himself about the substance Capsaicin, and the implications its actual use could have. However, the Tribunal

finds that the PR has failed to take the appropriate measures to avoid both the intended as well as the unintended use of Capsaicin on his horses. Overall, the Tribunal comes to the conclusion that the PR bears gross negligence for the rule violation. As mitigating factors, the Tribunal takes into account that the PR had admitted that he had made a mayor mistake, both with respect to the organization of his stable as well as with respect to the communication and formation of his support personnel.

40. With respect to Mr. Cardone, the Tribunal finds that he may be considered as Additional PR in accordance with Article 118 para. 3 of the GRs as he was the groom of the Horse at the Event and made a relevant decision about the Horse, which was to use the product containing the Prohibited Substances. The Tribunal is further of the opinion that Mr. Cardone is bound by the FEI Regulations due to the fact that he is registered with the FEI. With regard to the Fault or Negligence by the Additional PR, the Tribunal thinks that he should have been – at a minimum – more attentive and reflected about his actions on the Horse, in particular the application of the muscle relaxant to the Horse. In particular, being new at the stable, the Additional PR should have consulted the PR or his fellow grooms on the application of any substance – during an international event – on the Horse. The Tribunal considers however in favour of the Additional PR that he had been insufficiently instructed and trained by the PR, and that there had been a language barrier between the Additional PR and the other grooms of the PR's team. The Tribunal further takes into consideration that the main responsibility is lying with the PR insofar that he took an unlabelled white bottle containing Capsaicin to the Event.
41. Accordingly, the Tribunal finds that the PR and Additional PR have acted negligently in performing their duties as competitor and groom, as Person Responsible and Additional Person Responsible respectively.
42. According to Article 9 EADMCR, disqualification from the Event is automatic when there is a positive finding.
43. 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.

#### **4.9 Disqualification**

44. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR from the Event and all medals, points and prize money won at the Event must be forfeited, in accordance with Article 9 EADMCR.

#### 4.10 Sanctions

45. The FEI Tribunal has decided to impose the following sanctions on the PR, in accordance with Article 169 GRS and Article 10 EADMCR:
- 1) The PR shall be suspended for a period of **eighteen (18) months** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective since 24 March 2010, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible to participate in FEI activities through 23 September 2011.
  - 2) The Additional PR shall be suspended for a period of **three (3) months** to be effective immediately and without further notice from the date of the notification. Therefore, the Additional PR shall be ineligible to participate in FEI activities through 21 January 2011.
  - 3) The PR is fined **CHF 2,500.-**.
  - 4) The PR shall contribute **CHF 3,000.-** towards the legal costs of the judicial procedure.

#### 5. DECISION TO BE FORWARDED TO:

- 5.1 The persons sanctioned: Yes
- 5.2 The President of the NF of the persons 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 Jens Adolphsen