



## **DECISION of the FEI TRIBUNAL**

**dated 2 December 2011**

**Positive Controlled Medication Case No.:** 2011/CM06

**Horse:** TIBURON

**FEI Passport No:** 103EM97

**Person Responsible:** Francisco Javier Alvarez Aranda / ESP (minor)

**Event:** CEI1\*-80km – Procuna, ESP

**Prohibited Substances:** Phenylbutazone, Oxyphenbutazone, Flunixin (Controlled Medication Substances)

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

Mr. Hernan Mendez Canas (one member panel)

### **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, effective 15 April 2007, updates effective 1 January 2011 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2011, Arts. 118, 143.1, 161.2(v) and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007, updated 1 February 2008.

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCM Regulations**"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2011.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2011.

Veterinary Regulations ("**VRs**"), 12<sup>th</sup> edition, effective 5<sup>th</sup> April 2010, updates effective 1 January 2011, 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:** Francisco Javier Alvarez Aranda

**3.3 Justification for sanction:**

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)"

ECM Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Controlled Medication Substance* is present in the *Horse's* body during an *Event*. *Persons Responsible* are responsible for any *Controlled Medication Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 - 2.7 ECM Rules where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish a *Rule* violation under Article 2.1."

## 4. DECISION

### 4.1 Factual Background

1. TIBURON (the "**Horse**") participated at the CEI1\*-80km - in Procuna (ESP), on 26 March 2011 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Francisco Javier Alvarez Aranda, who is the Person Responsible in accordance with Article 118 of the GRs (the "**PR**"). At the time when the entry to the Event was submitted, the PR was under 18 years of age.
2. The Horse was selected for sampling on 26 March 2011.
3. Analysis of the urine and blood sample no. FEI-5504608 taken from the Horse at the Event was performed at the FEI approved laboratory, the Horseracing Forensic Laboratory ("**HFL**"), in Newmarket (UK), by Ms. Ruth Schiller, Senior Chemist, under the supervision of Mr. Clive Pearce, Sport Service Manager. The analysis of the sample revealed the presence of Phenylbutazone,

Oxyphenbutazone and Flunixin in the urine sample, and the presence of Phenylbutazone and Flunixin in the blood sample (Certificate of Analysis 67186 dated 7 April 2011).

4. The Prohibited Substances detected are Phenylbutazone, Oxyphenbutazone and Flunixin. Phenylbutazone and Flunixin are non-steroidal anti-inflammatory drugs (NSAID), predominantly used as anti-inflammatory and analgesic. Oxyphenbutazone, a metabolite of Phenylbutazone, is a non-steroidal anti-inflammatory drug (NSAID) with anti-inflammatory and analgesic effects. All three substances are classified as Controlled Medication Substances under the FEI Equine Prohibited Substances List.
5. No request had been made for the use of Phenylbutazone, Oxyphenbutazone and Flunixin on the Horse, and no medication form had been supplied for these substances.
6. Under the present ECM Rules, cases of Controlled Medication Substances are to be prosecuted under the so-called "Administrative Procedure" (also referred to as "Fast-Track"), provided that the prerequisites of Article 8.3.1 of the ECM Rules are fulfilled. However, the case at hand is not eligible for the Administrative Procedure insofar as more than one Controlled Medication Substance had been detected in the Horse's sample.

#### **4.2 The Proceedings**

7. The presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the PR, through the Real Federacion Hipica ESPAÑOLA ("ESP-NF"), by the FEI Legal Department on 30 May 2011. Together with the Notification Letter, the PR and the ESP-NF were also requested to indicate the representative of the PR, as nominated in accordance with Article 118.4.1 of the GRs.

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

8. Together with the Notification Letter of 30 May 2011, the PR received notice that he was entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The PR was also informed of his right to attend or be represented at the B-Sample analysis, and to request that the B-Sample be analysed in a different Laboratory than the A-Sample.
9. The PR declined to exercise his right to have the B-Sample confirmatory analysis performed.

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

10. By email of 6 June 2011, the ESP-NF submitted a completed FEI Questionnaire on behalf of the PR, as well as a veterinary statement by Dr. Francisco Requena Domenech, Spain. In the Questionnaire, it was stated that the PR was represented by Mr. Javier Silva Laguna, owner and trainer of the Horse. It was further explained that the Horse had suffered from a spasmodic colic with high intestinal motility, had a heart rate of 70 and was very agitated. That therefore, the Horse had been treated, by Dr. Requena Domenech, on 20 and 21 March 2011, in Sevilla, Spain. That specifically, on 20 March 2011, Buscapina compositum at a dose of 20ml, Finadyne at a dose of 8ml, and Buasyl at a dose of 15ml had been administered. Further that on 21 March 2011, the Horse had received the same doses of Finadyne and Butasyl. That considering the state of the Horse, the above treatment had been necessary because it was an emergency. The completed Questionnaire further indicated that the PR did not know that the treatment could be considered doping and could remain in the Horse's system six (6) days afterwards, that he had competed at the Event since the Horse was well again, and that he had not inquired with his veterinarian about the impact of his treatment on competing. That furthermore, the veterinarian had not been told that the Horse would be taking part in the Event. Dr. Requena Domenech, in his statement, confirmed the treatment as detailed above.
11. By email of 2 November 2011, the FEI requested clarification from the ESP-NF as to who had completed the information in the FEI Questionnaire. The FEI further requested that the PR's representative acknowledged that he was informed about the proceedings, and that he agreed to provide the information contained in the Questionnaire.
12. By email of 18 November 2011, the ESP-NF submitted a signed statement by Mr. Silva Laguna. Mr. Silva Laguna explained being the PR's representative, and confirmed that he was the owner of the Horse. Mr. Silva Laguna further stated that he had completed the FEI Questionnaire, and that he agreed to the information provided by Dr. Requena Domenech.

#### **4.5 Jurisdiction**

13. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and ECM Rules.

##### **1.1 The Person Responsible**

14. The PR is the Person Responsible for the Horse, in accordance with Articles 118.3 and 118.4.4 of the GRs, as he was the rider of the Horse at the Event.

## 1.2 The Decision

15. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of HFL are accurate. The Tribunal is satisfied that the test results evidence the presence of Phenylbutazone, Oxyphenbutazone and Flunixin in the sample taken from the Horse at the Event. Phenylbutazone, Oxyphenbutazone and Flunixin are classified as Controlled Medication Prohibited Substances on the FEI Equine Prohibited Substances List. The PR did not contest the accuracy of the test results or the positive findings.
16. The FEI has thus established an *Adverse Analytical Finding*, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the ECM Rules.
17. In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the ECM Rules. Once a positive case has been established by the FEI, the PR has the burden of proving that he bears "No Fault or Negligence" for the positive findings as set forth in Article 10.4.1 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.4.2 of the ECM Rules.
18. However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 of the ECM Rules, the PR must first establish how the Prohibited Substances entered the Horse's system. This element is a prerequisite to the application of Article 10.4 of the ECM Rules. With regard to the standard of proof to be met by the PR, Article 3.1 of the ECM Rules, second sentence, stipulates that the PR has to establish "*specified facts or circumstances*" "*by a balance of probability*".
19. The Tribunal finds that the PR, through the statement by Dr. Requena Domenech, has established how the Prohibited Substances, detected in the Horse's sample taken on 26 March 2011, entered into the Horse's system. In fact, the treatments of 20 and 21 March 2011 contain both Flunixin as well as Phenylbutazone as active substances. Further, Oxyphenbutazone is a metabolite of Phenylbutazone and would therefore usually be detected in a horse's body after the administration of Phenylbutazone. In the understanding of the Tribunal, the three substances would also still be detectable 6 (six) days after administration, i.e. also on the date of sampling. The Tribunal therefore finds that the PR has established how the Prohibited Substances entered into the Horse's system. Consequently, the Tribunal has to address the question of whether or not the PR has demonstrated that he bore "No Fault or Negligence" or "No Significant Fault or Negligence" for the positive findings as required by ECM Rules Articles 10.4.1 and 10.4.2 in order to eliminate or reduce the sanctions. The PR in this context explained

that he did not know that the treatment would be detectable as long as six (6) days after the Event. It also follows from the information provided that the PR had not educated himself about the consequences of the treatment. The ECM Rules however require that the Person Responsible ensures "*that no Controlled Medication Substance is present in the Horse's body during an Event*", ECM Rules Article 2.1. The choice of the word "ensure" establishes that the responsibility of Persons Responsible is very broad. Persons Responsible need to take a variety of actions, such as for example following the horse's health history on a regular basis, educating themselves, their veterinarians and anyone else in charge of the care and well-being of the horse about the administration of Prohibited Substances to the horse prior to the Competition. Furthermore, according to Annex XIII (III) of the FEI Veterinary Regulations, Persons Responsible have to keep an FEI Medication Logbook in which the date, the substance and dosage of any treatment with any substance from the FEI Prohibited Substances List is recorded. The record must also clearly identify the person who administered the substance. The Tribunal therefore finds that the PR did not establish that he bears "No Significant Fault or Negligence" for the rule violation. No reduction of the otherwise applicable sanctions may therefore be granted.

20. According to ECM Rules Article 9, a violation of the ECM Rules in connection with a test conducted at a Competition automatically leads to the Disqualification of the result of the Person Responsible and Horse combination obtained at that Competition.
21. According to Article 168.4 of the GRs, this Decision is effective from the day of written notification to the persons and bodies concerned.
22. In deciding the sanctions the FEI Tribunal considered the PR's amateur "status", his age, the level of the Event and the PR's cooperation in the investigation.

### **1.3 Disqualification**

23. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR combination from the Competition and all medals, points and prize money won at the Competition must be forfeited, in accordance with Article 9 ECM Rules.

### **1.4 Sanctions**

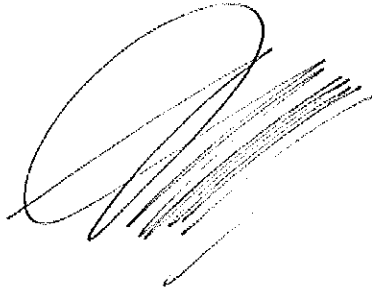
24. Under the applicable ECM Rules, the sanction for an Adverse Analytical Finding for a Controlled Medication Substance is an Ineligibility period of up to two (2) years. The FEI Tribunal therefore imposes the following sanctions on the PR, in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:

- 1) The PR shall be suspended for a period of eight (8) months to be effective immediately and without further notice from the date of the notification. Therefore, the PR shall be ineligible through 1 August 2012.
- 2) The PR is fined **CHF 1.000.-**.
- 3) The PR shall contribute **CHF 500.-** towards the legal costs of the judicial procedure.

**2. DECISION TO BE FORWARDED TO:**

- 2.1 **The person sanctioned: Yes, through his representative**
- 2.2 **The President of the NF of the person sanctioned: Yes**
- 2.3 **The President of the Organising Committee of the Event through his NF: Yes**
- 2.4 **Any other: No**

**FOR THE PANEL**



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**THE CHAIRMAN, Mr. Hernan Mendez Canas**