



DECISION of the FEI TRIBUNAL

dated 8 November 2011

Positive Anti-Doping Case No.: 2011/BS06

Horse: WADIST VAN ST ANNEKE **FEI Passport No:** UAE/ 102YQ64

Person Responsible: Arif Ahmed / UAE

Event: CSI3*-W – Dubai, UAE

Prohibited Substance: Boldenone (Banned Substance)

1. COMPOSITION OF PANEL

Prof. Dr. Jens Adolphsen, Chair
Mr. Ken Lalo, member
Mr. Pierre Ketterer, member

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

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

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2011, Arts. 118, 143.1 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**"), 1st edition, effective 5 April 2010, updates effective 1 January 2011.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 1st edition, effective 5 April 2010, updates effective 1 January 2011.

Veterinary Regulations ("**VRs**"), 12th edition, effective 5th 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: Arif Ahmed

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, in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Medication Control Rules."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned 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 below where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1."

4. DECISION

4.1 Factual Background

1. WADIST VAN ST ANNEKE (the "**Horse**") participated at the CSI3*-W – in Dubai (UAE), from 6 to 8 January 2011 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr. Arif Ahmed, who is the Person Responsible in accordance with GRs Article 118 (the "**PR**").
2. The Horse was selected for sampling on 7 January 2011. According to the Medication Control Form of 7 January 2011, the Horse is a non-castrated male horse.
3. Analysis of the urine sample no. FEI-5505001 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("**HKJC**"), in Hong

Kong (China), by Mr. Colton Ho Fai Wong, Chemist, under the supervision of Mr. Terence See Ming Wan, Chief Racing Chemist, Head of Racing Laboratory. The analysis of the sample revealed the presence of free and conjugated Boldenone at a concentration of 0.027 microgram per millilitre (Test Report n 11-0090 dated 21 January 2011).

4. The Prohibited Substance detected is Boldenone. Boldenone is an anabolic steroid used for behavioral modification and for muscle growth. An international threshold level exists for Boldenone in male horses (other than geldings), which is 0.015 microgram free and conjugated Boldenone per milliliter in urine. If Boldenone is detected in a stallion's sample at a level above the 0.015 microgram threshold, it is classified as a Banned Substance under the FEI Equine Prohibited Substances List.

4.2 The Proceedings

5. The presence of the Prohibited Substance following the laboratory analysis, the possible rule violations and the consequences implicated, were officially notified to the PR, through the United Arab Emirates Equestrian and Racing Federation ("UAE-NF"), by the FEI Legal Department on 21 February 2011. 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.
6. The PR did not request a Preliminary Hearing.

4.3 The B-Sample Analysis

7. Together with the Notification Letter of 21 February 2011, the PR also 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.
8. The PR declined to exercise his right to have the B-Sample confirmatory analysis performed.

4.4 The Further Proceedings

9. By email of 24 February 2011, the PR, through the UAE-NF, explained that he had been participating in show jumping competitions since he was a teenager, both in the UAE as well as in European countries. That the Horse had been "... put on Antibiotics as our vet prescribed, for a whole months", because it had been very sick and had lost a lot of muscle mass. That he had administered two shots of the medication, at least four months prior to the competition, and that he did not know that the

substance would remain in the Horse's system for such a long period of time.

10. On 2 March 2011, the PR, through the UAE-NF, submitted a statement by Dr. Arnaud Robert, the Horse's Veterinarian, who explained that he had treated the Horse in August 2010, for severe difficulty breathing and high temperature. The Veterinarian administered painkillers, antibiotics and clenbuterol through intravenous injections.
11. By email of 25 May 2011, the FEI informed the PR that the explanations provided at that stage were not sufficient to fulfill the requirements for eliminating or reducing the otherwise applicable period of suspension of two (2) years as foreseen for the presence of Banned Substances. The PR was therefore provided with a new deadline to supplement his explanations.
12. By email of 27 May 2011, the PR explained having performed an online study on the drug Decco, a hormone that he had understood to help muscle formation. That one dose had been given intramuscularly, months before getting ready for the Competition.
13. Following request by the PR, on 6 October 2011 the FEI repeated that the information provided by the PR regarding the alleged treatment was not specific enough, and that no supporting evidence had been supplied for the allegations.
14. On 11 October 2011, the PR submitted further explanations, using the FEI Questionnaire for Persons Responsible that had been sent to him with the Notification Letter. The PR now explained that he is the owner of the Horse, and that he had given two shots by intramuscular route, dose of 5 ml, of the hormonal drug Boldenone, at least three (3) to four (4) months prior to the Competition. That the Horse had lost all his muscles and that the product had been given out of fear of losing the Horse. That he had had no intent to enhance the Horse's performance, and that he regretted his mistakes and would consult a veterinarian in the future before using any drugs.
15. On 14 October 2011, the FEI replied in writing to the PR's explanations. The FEI argued that in light of the fact that the PR had neither provided any specific time of administration of the Prohibited Substance, nor the concentration of the doses administered to the Horse, it was impossible to unequivocally decide whether the alleged administration by the PR had caused the positive test result. That given the PR's admission of the administration, and insofar as the United States Equestrian Federation ("USEF") had published a detection time for Boldenone of 82 days, the FEI was however inclined to accept that the PR had established by a balance of probability how the substance had entered the Horse's system. Whereas the FEI further acknowledged the PR's collaboration and the fact that he regretted the rule violation, it also contended that

the PR's actions could only be qualified as grossly negligent. The FEI highlighted that under the FEI Rules, in particular Article 2.1.1 of the EAD Rules, the PR is responsible for what the Horse ingests, what the Horse is administered and the conditions in which the Horse is kept. Further, that considerable efforts and resources had been invested in the past years in athlete education and prevention of violations. That a specific campaign had been launched following the 2008 Olympic Games, the "Clean Sport Initiative", and that this initiative included, among other things, a) a revised, clearer system of rules for Prohibited Substances, distinguishing clearly between doping ("Banned Substances") and medication ("Controlled Medication Substances"), as well as a revised Prohibited Substances List with substance names explicitly listed in alphabetical order; b) a specific website, "FEI Clean Sport", dedicated exclusively to horse doping and medication, with a user-friendly "Prohibited Substances Database" where athletes can check the exact status of a substance by typing in its name. The FEI underlined that this Prohibited Substances database is also available in applications for iPhones, iPads, Ipod touch, and Android Smartphones; c) the publication of information booklets in addition to the rules, such as the FEI "Athlete's Guide to the Equine Anti-Doping & Controlled Medication Regulations", which has also been translated into Arabic and contains clear and athlete-friendly guidance, so that each rider can easily understand his or her basic duties. The FEI underlined that despite the information available to the PR, he had administered Prohibited Substances to the Horse himself, without the necessary veterinary background and knowledge. That in light of Article 2.1 of the EAD Rules, according to which it is not necessary that intent be demonstrated to establish an EAD Rule violation under EAD Rules Article 2.1, it was insufficient for the PR to simply argue that he did not intend to enhance the Horse's performance. The FEI therefore argued that no reduction of the two-years period of Ineligibility should be granted.

16. Following the FEI's submission, the PR did not submit any further explanations or evidence within the given deadline.

4.5 Jurisdiction

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

4.6 The Person Responsible

18. The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he was the rider of the Horse at the Event.

4.7 The Decision

19. 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 the HKJC are accurate. The Tribunal is satisfied that the test results evidence the presence of evidence the presence of Boldenone above the international threshold in the samples taken from the Horse at the Event. Provided Boldenone is detected in a stallion's urine sample at a level above the 0.015 microgram threshold, it is classified as a Banned Prohibited Substance by the FEI Prohibited Substances List. The PR did not contest the accuracy of the test results or the positive findings.
20. 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 EAD Rules. Due to the strict liability principle applicable in anti-doping and medication cases involving a positive finding, it does not matter whether the PR had intended the rule violation. Therefore, the PR's argument that he did not intend to dope the Horse, does not have any influence on the establishment of the rule violation.
21. In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD 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 10.5.1 of the EAD Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5.2 of the EAD Rules.
22. However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.5 of the EAD Rules, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a prerequisite to the application of Article 10.5 of the EAD Rules. With regard to the standard of proof to be met by the PR, Article 3.1 of the EAD Rules, second sentence, stipulates that the PR has to establish "*specified facts or circumstances*" "*by a balance of probability*".
23. The Tribunal is of the opinion that the PR has not provided the FEI with clear and concise information about the administration procedure of the substance. The PR explained that he had given two shots by intramuscular route, dose of 5 ml, of the hormonal drug Boldenone, at least three (3) to four (4) months prior to the Competition. In another explanation, the PR named the drug "Decca" as a drug that had been administered to the Horse months before the Competition. Reflecting on the detection time of 82 days for the substance present in the Horse, the Tribunal is of the opinion that the PR has – by a very narrow margin – met the balance of probability test regarding the administration procedure of the substance detected.

24. According to EAD Rules Article 10.1, a violation of the EAD Rules occurring during or in connection with an Event may lead to Disqualification of all of the Person Responsible's individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all consequences, including forfeiture of all medals, points and prizes. The Tribunal is of the opinion that in the present case, Art. 10.1 has to be applied as the PR has ridden the Horse in several Competitions at the Event.
25. Concerning the length of the suspension the PR was unable to demonstrate that he bears no fault or negligence for the EAD Rule violation or no significant fault or negligence. The PR's actions can only be qualified as grossly negligent. In the present case the Tribunal is, therefore, unable to reduce the Ineligibility period according to Art. 10.5.1 or Art. 10.5.2 the otherwise applicable sanction, even though the PR has cooperated with the FEI and regrets the rule violation.
26. According to Article 168.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

4.8 Disqualification

27. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR combination from all results obtained in the Event. All medals, points and prize money won at the Event must be forfeited, in accordance with Article 10.1 EAD Rules.

4.9 Sanctions

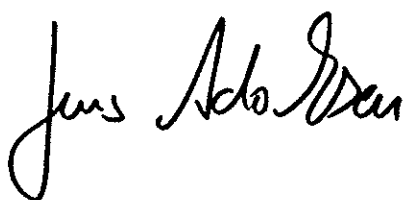
28. Under the newly promulgated EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year Ineligibility period. The FEI Tribunal therefore imposes the following sanctions on the PR, in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:

- 1) The PR shall be suspended for a period of **two (2) years** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective from 21 February 2011 to 8 November 2011, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible through 20 February 2013.
- 2) The PR is fined **CHF 2500.-**.
- 3) The PR shall contribute **CHF 1000.-** 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 black ink, reading "Jens Adolphsen". The signature is written in a cursive style with a large initial 'J'.

THE CHAIRMAN, Prof. Dr. Jens Adolphsen