

**DECISION of the FEI TRIBUNAL**

**dated 15 February 2012**

**Positive Equine Controlled Medication Case No.:** 2010/08

**Horse:** LOOPING 33      **FEI Passport No:** GER 18598

**Person Responsible:** Jürgen Krackow / AUT

**Event:** CSI3\*, Linz-Ebelsberg, AUT; 13 - 16 May 2010

**Prohibited Substance:** Flunixin (Controlled Medication Substance)

**1. COMPOSITION OF PANEL**

Mr. Ken E. Lalo, Chair (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 and at the oral hearing, as also made available by and to the PR.

**2.3 Oral hearing:** 14 July 2011 – Lausanne, Switzerland

**Present:**

The FEI Tribunal

For the PR: Mr. Jürgen Krackow, PR  
Dr. Friedrich-Wilhelm Lehman, Counsel for the PR  
Ms. Helga Berrenrath, Witness  
Ms. Gudrun Schweiger, Witness (by phone)  
Ms. Helga Mc Grew-Walter, Interpreter

For the FEI: Ms Lisa F. Lazarus, General Counsel  
Ms Carolin Fischer, Legal Counsel  
Mr. Paul Greenwood, Head of Investigations, QUEST;  
Equestrian Community Integrity Unit; Witness

### 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, updated 1 February 2008.

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

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

Veterinary Regulations ("**VRs**"), 12<sup>th</sup> edition, effective 5<sup>th</sup> April 2010, 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: Jürgen Krackow

#### 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."

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. LOOPING 33 (the "Horse") participated at the CSI3\* in Linz-Ebelsberg, AUT, from 13 to 16 May 2010 (the "Event"), in the

discipline of Jumping. The Horse was ridden by Mr. Jürgen Krackow, who is the Person Responsible in accordance with GRs Article 118 (the "PR").

2. The Horse was selected for sampling on 15 May 2010.

3. Analysis of the blood sample no. FEI-5500424 taken from the Horse at the Event was performed at the FEI approved laboratory, the HFL Sport Science, in Fordham (UK) ("HFL"), by Mr. Gavin Beamon, Scientist, under the supervision of Mr. Steve Maynard, Director of HFL. The analysis of the blood sample revealed the presence of Flunixin (Certificate of Analysis n° 60742 dated 31 May 2010).

4. The Prohibited Substance detected is Flunixin. Flunixin is a non-steroidal anti-inflammatory (NSAID) drug, predominantly used for musculoskeletal conditions. Flunixin is categorized by the FEI as a Controlled Medication Substance.

5. No request had been made for the use of Flunixin on the Horse, and no medication form had been supplied for this substance.

#### **4.2 The Proceedings**

6. 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 Austrian Equestrian Federation ("AUT-NF") by the FEI Legal Department on 12 July 2010. In the Notification Letter, the PR was also informed that in accordance with Articles 10.2 and 10.6 of the ECM Rules, and due to the fact that he had been held responsible in 2007 for a Medication Control rule violation (Case 2007/46 – LOOPING 33), the period of Ineligibility to be imposed on him would be at the discretion of the Hearing Panel, who may impose increased penalties, if so warranted.

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

7. Together with the Notification Letter of 12 July 2010, 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. On 29 August 2010, the PR, through his legal counsel Dr. Friedrich-Wilhelm Lehmann, submitted his explanations. In his submission, the PR contended that neither he nor his team had given any Prohibited Substances to the Horse. That a third, unknown person must have administered the Flunixin to the Horse, without his or his team's knowledge. As background of his contentions, the PR explained that he had moved from Germany to Austria five years ago. That upon arrival in Austria, he had obtained the Austrian citizenship, due to his outstanding sports performance. That, however, many Austrians, in particular competitors, had not welcomed him warmly, and that he had experienced envy and jealousy. The PR further alleged that already in 2007, a third person had mixed some white powder into the feed of the Horse, and that in 2008, the Horse had suffered from a Mercury intoxication, allegedly caused by one of the PR's competitors. That since then, the Horse had developed an intolerance to Flunixin and Phenylbutazone, and that some third unknown individual, knowing the Horse's intolerance to Flunixin, must have administered Flunixin to the Horse at the Event, in order to weaken it and to diminish its performance. That the same individual that had administered the Flunixin to the Horse must have also anonymously initiated the MCP test of the Horse of 15 May 2010. The PR further contended in this context that there was a lack of stable security at the Event, and that also his Support Personnel could enter the stable without being checked. That on the day of the competition of 15 May 2010, the Horse had been found in its stable by the groom in a "bad condition", and that he had to stop the competition after the fourth obstacle because of the Horse's apathy. Lastly, the PR stated having made a report to the public prosecutor in Austria because of the incident. In support of his allegations, the PR provided witness statements by the Horse's veterinarian, Ms. Monika Frey; a witness statement by Ms. Anja Mayer, groom of the Horse; by Ms. Anna Krackow, the PR's wife; by Ms. Gudrun Schweiger, assistant of the PR; and Ms. Astrid Trunner, physical therapist. Details of the statements will be addressed below to the extent they are deemed relevant.

10. By letter of 25 November 2010, the FEI requested the PR to submit supporting evidence for his allegations of criminal actions, as well as information and evidence for the procedure initiated with the public prosecutor. The PR was also informed that at the end of November 2010, the case was referred to the Equestrian Community Integrity Unit ("ECIU") for an independent investigation.

11. On 18 January 2011, the PR submitted the report he had made to the police department in Linz, Austria, dated 4 January 2011. In his report, the PR stated that regarding the first alleged incident in 2007, where some white powder was found in the Horse's feed, he had not been able to exclude unintentional contamination.

Regarding the alleged 2008 incident, the mercury poisoning of the Horse, the PR stated that by the time he had realised that the mercury poisoning could have only been caused by an attack by a third person, too much time had gone by and it was impossible to retain any proof for the suspected attack on the Horse by an unknown individual. With regard to the case at hand, the PR acknowledged that he had reported the incident very late to the Police, and explained that he did not want to accuse anybody of wrongdoing before being sure of the facts. The PR mentioned other possible individuals that may have wanted to harm him by the alleged wrongful administration of Flunixin to the Horse.

12. On 8 April 2011, following a request by the PR, the FEI submitted to the PR the documents related to his 2007 Medication Control Rule violation, also involving LOOPING as well as the same Prohibited Substance as in the present case, Flunixin.

13. By further submission of 20 May 2011, the PR claimed that he had accepted the sanctions offered to him in regard of the 2007 Controlled Medication Rule violation under the so called Administrative Procedure as an administrative act, but that the acceptance of the sanctions did not include any affirmative determination of his liability for the rule violation. The PR further stated that on its way to the 2007 Event, the Horse had been hurt during the transport and had therefore been treated with findyne paste orally. That the veterinarian at the FEI control had been informed and declared that the horse was allowed to compete, and that only afterwards, the PR had learnt that a Medication Form was required for the treatment. Together with his submission the PR provided photos of the alleged mercury poisoning of the Horse in 2008.

14. By further submission of 29 June 2011, the PR alleged that he had found that his former blacksmith, Mr. Johann Struber, had administered Flunixin to the Horse during the Event. In this context, the PR explained that he had dismissed Mr. Struber in 2008, due to his bad performance at the time, and that Mr. Struber had knowledge of the Horse's intolerance to Flunixin. That he had met Mr. Struber at a competition in Austria at the beginning of June 2011, where the two men had an oral argument. That in the course of the argument, Mr. Struber had admitted having administered Flunixin to the Horse at the Event in May 2010. The PR further contended that Ms. Helga Berrenrath, Chief Editor of the internet TV magazine "Zeit für Pferde", whom he was supposed to meet during the Event, had accidentally overheard the entire argument between him and Mr. Struber, and that Ms. Schweiger had overheard parts of the argument. Together with his submission, the PR submitted pictures of the venue where the alleged argument had taken place, as well as excerpts from internet sources reporting about the case of the PR, and a statement by Ms. Gabriele Morbitzer, former consultant for Show Jumping in Austria.

15. By letter of 11 July 2011, counsel for the PR explained that Mr. Struber had been the official blacksmith at the Event. That – even if he had not acted as official blacksmith – Mr. Struber could have easily walked into the stables, since he was well known in the community. Further, counsel for the PR submitted Wikipedia excerpts about Flunixin, as proof that Flunixin may be administered orally. Also attached to the letter was a notice to the PR by the AUT-NF, informing the PR that the Horse had tested negative during an anti-doping test performed in Linz (AUT) on 24 October 2010. Further, by email of the same date, counsel for the PR requested that the hearing – scheduled to take place on 14 July 2011 – be postponed, pending the investigations by the Austrian police into charges filed by the PR, following the argument with Mr. Struber, against Mr. Struber, for serious material damage and animal abuse. Together with the request, counsel for the PR attached a copy of his charges against Mr. Struber, filed on 30 June 2011 with the prosecutor's office in Linz. On 12 July 2011, the FEI informed the PR that the Tribunal had decided to hold the hearing, but that the Tribunal may decide to await the further development of the proceedings in Austria before issuing its decision.

16. On 12 July 2011, the FEI submitted a statement by Mr. Paul Greenwood, Head of Sports and Corporate Integrity Monitor Quest. Mr. Greenwood explained that within his role at Monitor Quest, he manages the ECIU, which undertakes independent investigations regarding allegations to integrity matters at FEI Events. That the ECIU had been mandated for the matter in question, and had contacted the police officer in charge of the case of Mr. Struber. That, while he could not discuss the matter with the ECIU, the police officer had confirmed that the case file had been sent to the Prosecutor, with the remark that no concrete evidence was found. Mr. Greenwood further explained that the ECIU had investigated into the allegation by the PR about the anonymous report of the Horse to the officials at the Event. That the ECIU had learnt from the Veterinary Delegate of the Event that the Veterinary Commission had received a hint by a third person, who had claimed that the Horse had been lame a couple of weeks prior to the Event. That the informant had anonymously contacted the ECIU, and stated that he had attended the Event as spectator, and had not had any dealings with either the PR or the Horse, either positive or negative. That the informant had further confirmed that he knew that the Horse had been lame a couple of weeks prior to the Event, and that in light of this lameness, it was remarkable how the Horse jumped and moved at the Event. According to Mr. Greenwood, the ECIU's investigations had not identified any connection between the informant and the PR. Further, the informant had apparently not acted with malicious intention towards the PR, but rather seemed to be an individual with genuine concern for the welfare of horses. Mr. Greenwood stated that the informant did not correspond to any of the individuals mentioned by the PR in his submissions, including Mr. Struber, and

that enquiries by the ECIU had not shown any link between the informant and the individuals named by the PR. Lastly, Mr. Greenwood concluded that no reliable evidence had been discovered to support the PR's contention of a malicious doping attack on the Horse by any third person. Together with his statement Mr. Greenwood submitted results by the Horse obtained on 6 May 2010 at the CSI3\* in Lamprechtshausen, where the horse placed 26th. Regarding the alleged lack of stable security, Mr. Greenwood submitted invoices for security services of the Event in the amount of EUR 3,740.96, as well as an excerpt from the Veterinary Report at the Event, according to which an effective stable security system had been in place preventing unauthorised persons from entering the stable area.

17. By an email of 13 July 2011, counsel for the PR submitted a statement by Dr. Klaus Will who explained that the company Intervet Deutschland GmbH had the compound finadyne paste in its product line, and that 1g of finadyne paste contained 83mg of Flunixin-Meglumin.

18. On 14 July 2011, the Final hearing took place. During the Final hearing, the PR as well as Ms. Berrenrath, Ms. Schweiger and Mr. Greenwood provided testimony. Furthermore, excerpts of an interview with the testing veterinarian Dr. Lorenz, which had not been produced earlier, were read out. Amongst others, the PR testified about his past and present relationship to Mr. Struber, as well as about the argument he had with Mr. Struber on 5 June 2011 in Lamprechtshausen. Upon question, the PR explained that at the time when the Horse had suffered from the mercury intoxication, Mr. Struber was still his blacksmith, and was therefore aware of the sensitivity of the Horse to Flunixin. The PR further explained not having seen Mr. Struber at the Event in 2010, but assumed that he must have been present. Regarding the question as to the Horse's reaction to the administration of Flunixin, the PR explained that the Horse would immediately react in an apathetic way, as if it were about to start a colic, and that his body was entirely focused on the reaction. That, on the day of the competition, the Horse seemed lazy to him, and that he had not been sure whether the Horse was "fit". That however after the fourth jump, he had realised that the Horse was not well, and had therefore dropped out of the course. Ms. Berrenrath testified during the hearing that she had been assisting the PR for a couple of years in questions related to the press, that she has been working at WDR in Cologne for more than 25 years, and that WDR had broadcast more than three programs about the PR. That she is further working together with the PR for the development of her bitless bridles. That she had been to Lamprechtshausen before, and knew the premises; that she did not know Mr. Struber personally, but that the name and the person were known to her. Ms. Berrenrath further provided testimony of the argument between Mr. Struber and the PR, details of which will be addressed below insofar as considered relevant. Mr. Greenwood of the ECIU

testified during the hearing that he had spoken twice on the phone to the anonymous source that had reported the Horse to the officials of the Event and that the anonymous source did not have any connections or relationship to the PR or to any of the individuals referred to by the PR in his written submissions. Counsel for the PR contested the statement by the ECIU based on the argument that the ECIU was relying on an anonymous source, and that he did not have the possibility to put any questions to the individual having made the anonymous report. At the closing of the hearing, the Tribunal decided to postpone its decision for some weeks in order to allow the PR to provide further input regarding the results of the criminal proceedings.

19. Following the hearing of 14 July 2011, by email of 29 August 2011, the FEI, following request by the Tribunal, asked for a further update about the criminal proceedings in Austria, and invited the PR to submit respective explanations and documentation.

20. In the absence of a response by the PR to the email of 29 August 2011, on 21 December 2011, the Tribunal again invited the PR to update the FEI and the Tribunal about the criminal proceedings in Austria, at the latest by 31 December 2011. The Tribunal stated that it would render its decision in the beginning of 2012.

21. By an email of 3 January 2012, counsel for the PR informed the FEI that he had only received the Tribunal's letter on the same day, and requested an extension of the given deadline. Following the request, the deadline was extended until 13 January 2012.

22. By an email of 11 January 2012, counsel for the PR explained that despite several requests to the prosecutor's office in Linz, he had not received any further documentation by the prosecutor. That at the end of October 2011, the prosecutor's office had refused handing out the file since they were required for further investigations, and that a decision of the case would be taken at the beginning of February 2012. Further, on 13 January 2012, counsel for the PR submitted a translation of the statement by Ms. Berrenrath which he had submitted to the Austrian prosecutor's office. In her statement, Ms. Berrenrath confirmed having overheard the argument between Mr. Struber and the PR at the event in June 2011, and provided testimony of her recollection of the details of the argument.

23. On 1 February 2012, counsel for the PR submitted several further statements and documents related to the criminal proceedings against Mr. Struber in Austria, amongst others a statement by the PR and Ms. Berrenrath, made in October 2011 at the Criminal Investigation Department in Austria and letters by counsel for the PR addressed to the public prosecutor's office in Austria. Further part of the submission is a letter by the public



prosecutor's office of October 2011, informing counsel for the PR that the public prosecutor's office has not yet received the relevant case file, pending investigation by the State Office of Criminal Investigation.

#### **4.5 Jurisdiction**

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

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

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

#### **4.7 The Decision**

26. The Tribunal is satisfied that the laboratory report relating to the A-Sample reflects that the analytical tests were performed in an acceptable manner and that the findings of the HFL are accurate. The Tribunal is satisfied that the test results evidence the presence of Flunixin in the sample taken from the Horse at the Event. Flunixin is classified as a Controlled Medication Prohibited Substance by the FEI Prohibited Substances List. The PR did not contest the accuracy of the test results or the positive findings.

27. The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with ECM Rules Article 3.

28. In Doping and Medication cases, a strict liability principle applies as described in ECM Rules Article 2.1.1. 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 ECM Rules Article 10.4.1, or "No Significant Fault or Negligence," as set forth in ECM Rules Article 10.4.2.

29. However, in order to benefit from any elimination or reduction of the applicable sanction under ECM Rules Article 10.4, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a prerequisite to the application of ECM Rules Article 10.4. With regard to the standard of proof to be met by the PR, ECM Rules Article 3.1, second sentence, stipulates that the PR has to establish "specified facts or circumstances" "by a balance of probability".

30. The Tribunal is of the opinion that in the very specific circumstances of this case, which are unique and supported by the

status of the proceedings with the state prosecutor and the evidence provided by the PR and his witnesses, the PR succeeded in establishing by a "balance of probability" how the Flunixin entered the Horse's system; namely, through a sabotage action of a third party at the time of the Event, of which the PR only learnt after the Event. The Tribunal would like to highlight in this context that it does not have any objections to the investigation process as undertaken by the ECIU, in particular it is acceptable for the ECIU to work with an anonymous source. The Tribunal considers that for the sake of independent and comprehensive investigations, the work with sources that wish to remain anonymous is acceptable, and oftentimes unavoidable, in order to protect the identity of the respective witness or source.

31. Regarding the question of whether the PR has established that he bears "No Fault or Negligence" or "No Significant Fault or Negligence" for the ECM Rules violation, and is entitled to an elimination or reduction of the otherwise applicable sanctions by virtue of ECM Rules Article 10.4.1 or Article 10.4.2, the Tribunal concludes that there is sufficient evidence regarding sabotage, and that therefore the PR bears "No Fault or Negligence" for the rule violation, and ECM Rule Article 10.4.1 applies. The Tribunal therefore decides not to impose a suspension on the PR. The Tribunal holds however that the PR did not comply timely with the Tribunal requests for information, and has not sufficiently assisted the judicial process, and that he shall therefore contribute to the legal costs of the judicial procedure.

32. With regard to the first anti-doping violation of the PR, the Tribunal holds that the case had been closed at the time by the acceptance by the PR of the administrative sanctions offered, and that the PR should have duly informed himself at the time regarding the legal consequences of such violation.

33. 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. Given the Tribunal's finding of "No Fault or Negligence" for the rule violation and in accordance with ECM Rules Articles 10.1. and 10.1.1., the Tribunal is not disqualifying the PR's other individual results obtained at the Event.

34. According to GRs Article 168.4, the present decision is effective from the day of written notification to the persons and bodies concerned.

#### **4.8 Disqualification**

35. 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 ECM Rules Article 9.

#### **4.9 Sanctions**

36. Under the currently applicable ECM Rules, the sanction for an Adverse Analytical Finding for a Controlled Medication Substance for second offenders is at the discretion of the Hearing Panel, which shall in every case render increased penalties for multiple violations. However, given the unique circumstances of this case, the FEI Tribunal, in accordance with Article 169 of the GRs and ECM Rules Articles 10.2 and 10.4.1 and 10.6, decides as follows:

- 1) The PR shall contribute **CHF 3,000.-** towards the legal costs of the judicial procedure.
- 2) No sanctions are imposed on the PR.

#### **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 Panel, Ken E. Lalo**