



DECISION of the FEI TRIBUNAL

dated 23 November 2011

Positive Anti-Doping Case No.: 2011/BS12

Horse: FREDDY 67

FEI Passport No: GER20045

Person Responsible: István Kovács (HUN)

Event: CAI-A/WQ, Fabiansébéstyen, (HUN)

Prohibited Substance: Boldenone (Banned Substance)

1. COMPOSITION OF PANEL

Mr. Pierre Ketterer, Chair
Mr. Ken E. Lalo, member
Mr. Erik Elstad, 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; 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 22nd edition, effective 15 April 2007, updated 19 November 2009 ("**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 ("**EADCMRs**"), 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 5 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: István Kovács

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)."

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. FREDDY 67 (the "**Horse**") participated at the CAI-A/WQ, Fabiansébéstyen, (HUN) from 28 April 2011 to 1 May 2011 (the "**Event**"), in the discipline of Driving. The Horse's carriage was driven by Mr. István Kovács, who is the Person Responsible in accordance with Article 118 of the GRs (the "**PR**").
2. The Horse was selected for sampling on 28 April 2011. According to the Medication Control Form of 28 April 2011, the Horse is a castrated male horse.
3. Analysis of the urine and blood samples no. FEI-5505708 taken from the Horse at the Event was performed at the FEI approved laboratory, the HFL Sport Science ("**HFL**"), by Mr. Simon Biddle,

Senior Scientist, under the supervision of Mr. Steve Maynard, Director. The analysis of the urine sample revealed the presence of Boldenone (Certificate of Analysis 67720 dated 13 May 2011).

4. The Prohibited Substance detected is Boldenone. Boldenone is an anabolic steroid with the potential for causing behavioural modification and an increase in muscle growth. Boldenone can be endogenously produced in stallions. Whereas a threshold applies to Boldenone detected in male horses other than geldings, the presence of any quantity of Boldenone in a gelding's bodily system is prohibited. Boldenone in a gelding's system is classified as a *Banned Substance* under the *FEI Equine Prohibited Substances List*. Therefore, the positive finding of Boldenone in the Horse's sample constitutes an *Anti-Doping* rule violation.

4.2 The Proceedings

5. The presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the Consequences implicated, were officially notified to the PR by the FEI Legal Department on 8 June 2011, through the Hungarian Equestrian Federation ("HUN-NF"). 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. On 16 June 2011, the PR requested a Preliminary Hearing, through the HUN-NF.
7. The Preliminary Hearing took place on 17 June 2011. Prior to the Preliminary Hearing, the PR submitted the completed FEI Questionnaire for PRs. According to the Questionnaire, the Event in question was the first category A Event that the PR participated in, as in the past the PR had only participated category C Events. During the Preliminary Hearing, Dr. István Soós, representative for the PR, explained that the PR was an amateur Driver, who, together with his brother, had about ten (10) horses, and Dr. István Soós stated that he had not treated the Horse with Boldenone. Dr. Soós further explained that he and the PR had been surprised by the positive test result. Lastly, that he was the treating veterinarian for the PR's company, but that insofar as he was living at a distance of about 100km away from the PR, he did not know whether the Horse had been treated by another veterinarian.
8. Following the Preliminary Hearing, the Provisional Suspension was maintained by the Preliminary Hearing Panel.

4.3 The B-Sample Analysis

9. Together with the Notification Letter of 8 June 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.

10. The PR confirmed on 17 June 2011 that he wished for the B-Sample analysis to be performed in a different laboratory than the A-Sample analysis.
11. The B-Sample analysis was performed on the urine from 28 to 30 June 2011 at the Laboratoire des Courses Hippiques in Paris, France ("LCH"), a FEI-accredited laboratory, under the supervision of Dr. Yves Bonnaire, Director of LCH.
12. The PR did not attend the B-Sample analysis and did not request that his representative be present during the analysis. Therefore, Dr. Paul-Marie Gadot, Head of LHC Department, at France Galop, witnessed the opening and identification of B-Sample no. 5505708.
13. In his witness statement, Dr. Gadot 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 Laboratoire des Courses Hippiques (L.C.H) corresponds to that appearing on the collection documentation accompanying the sample"*.
14. The B-Sample Analysis of the urine confirmed the presence of Boldenone (Certificate of Counter Analysis N° 5505708 dated 30 June 2011).
15. The results of the B-Sample Analysis were notified to the PR on 20 July 2011, through the HUN-NF.

4.4 The Further Proceedings

16. In the absence of any explanations by the PR within the deadlines following the Notification of the B-Sample results, by email of 28 August 2011, the FEI inquired with the HUN-NF whether any further explanations or evidence would be provided.
17. By further email to the HUN-NF of 13 October 2011, the FEI asked for confirmation that the PR had been duly notified of the B-Sample results and to further confirm that the PR had not provided any information or explanation, as nothing had been received so far by the FEI.
18. By email of 14 October 2011, the HUN-NF explained that the PR and the veterinarian had been immediately informed following the Notification of the B-Sample results. That the HUN-NF had called the PR and the veterinarian in the morning, and had been told that there would not be any changes or additions to the

explanations provided during the Preliminary Hearing.

19. By email of the same date, the FEI suggested that Mr. Kovács sign a statement that he was aware of the case against him. Further that insofar as he was the PR, and as he did not attend the Preliminary Hearing, it was important for him to understand the explanations provided by Dr. István Soós and to make sure that he was informed of the process.
20. In the absence of a response by the PR, on 10 November 2011, the FEI Tribunal panel appointed to decide the case addressed the PR stressing that as a Driver, he was the PR for the rule violation, and that under the FEI EAD Rules, any sanctions for the rule violation would be imposed on him. The Tribunal panel exceptionally granted a final deadline for the PR to take a position on the case against him.
21. By letter of 15 November 2011, the PR explained that he had not used any Prohibited Substances on the Horse. That he had never thought about doping the Horse since even though it was old, it was in good shape, and that insofar as it was a Gelderland horse and therefore restless by nature, it would have been useless to use steroids on the Horse. That apparently, Boldenone was not accessible on the Hungarian market and that he would have put his job at risk if he had used Prohibited Substances in the Horse. The PR concludes that the Horse must have been doped without his knowledge, by a third unknown person.

4.5 Jurisdiction

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

4.6 The Person Responsible

23. The PR is the Person Responsible for the Horse, in accordance with GRs Article 118.3, as he drove the Horse's carriage at the Event.

4.7 The Decision

24. 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 manner and that the findings of both the HKJC and the LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Boldenone in the Sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings. Boldenone is classified as a *Banned Substance* under the *FEI Equine Prohibited Substances List*.
25. The FEI has thus established an *Adverse Analytical Finding*, and

has thereby sufficiently proven the objective elements of an offence in accordance with EAD Rules Article 3.

26. In Doping and Medication cases, a strict liability principle applies as described in EAD 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 EAD Rules Article 10.5.1, or "No Significant Fault or Negligence," as set forth in EAD Rules Article 10.5.2.
27. However, in order to benefit from any elimination or reduction of the applicable sanction under EAD Rules Article 10.5, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a prerequisite to the application of EAD Rules Article 10.5. With regard to the standard of proof to be met by the PR, EAD Rules Article 3.1, second sentence, stipulates that the PR has to establish "*specified facts or circumstances*" "*by a balance of probability*".
28. In this context, the Tribunal takes note that the completed Questionnaire provided by the PR did not contain any explanation or evidence regarding the source of the Prohibited Substance Boldenone and that the source of the substance was further not established in the course of the further proceedings. Furthermore, the PR did not present in his letter of 15 November 2011 any evidence regarding the alleged administration of the Prohibited Substance by a third party. The Tribunal therefore holds that the PR has not established by a "*balance of probability*" how the Prohibited Substance entered the Horse's system.
29. Accordingly, the Tribunal does not have to address the question whether any elimination or reduction of the otherwise applicable sanctions by virtue of EAD Rules Article 10.5.1 or Article 10.5.2 should be applied.
30. According to EAD Rules Article 9, a violation of the EAD 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.
31. 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

32. 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 must be forfeited, in accordance with EAD Rules Article 9.

4.9 Sanctions

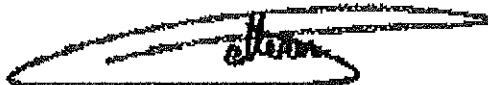
33. Under the currently applicable EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year Ineligibility period. The FEI Tribunal therefore imposes the following sanctions on the PR, in accordance with Article 169 GRs and EAD Rules Article 10:

- 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 8 June 2011 to 23 November 2011, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible through 7 June 2013.
- 2) The PR is fined **CHF 1,000.-**.
- 3) The PR shall contribute **CHF 500.-** towards the legal costs of the judicial procedure, as well as **CHF 1,000,-** as costs of the B-Sample 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



THE CHAIRMAN, Pierre Ketterer