



DECISION of the FEI TRIBUNAL

dated 21 July 2011

Positive Anti-Doping Case No.: 2010/12

Horse: RAKETA III KORAL

FEI Passport No: HUN 40322

Person Responsible: Norbert Kákonyi / HUN

Event: CAI-A 2, Fabiansébéstyén, HUN

Prohibited Substance: Boldenone (Banned Substance)

1. COMPOSITION OF PANEL

Mr. Ken E. Lalo, Chair
Mr. Erik Elstad, 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, updated 19 November 2009 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23rd 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**"), 1st edition, effective 5 April 2010.

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

Veterinary Regulations ("**VRs**"), 12th edition, effective 5th 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: Norbert Kákonyi

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. RAKETA III KORAL (the "**Horse**") participated at the CAI-A 2, Fabiansébéstyén, HUN, from 29 April 2010 to 2 May 2010 (the "**Event**"), in the discipline of Driving. The Horse's carriage was driven by Mr. Norbert Kákonyi, who is the Person Responsible in accordance with GRs Article 118 (the "**PR**").
2. The Horse was selected for sampling on 30 April 2010.
3. Analysis of the urine and blood sample no. FEI-5502737 taken from the Horse at the Event was performed at the FEI approved laboratory, the Horseracing Forensic Laboratory ("**HFL**") in New Market, UK, by Mr. Simon Biddle, Senior Scientist, under the supervision of Mr. Steve Maynard, Director of the Laboratory. The analysis of the urine sample revealed the presence of Boldenone (Certificate of Analysis 60672 dated 26 May 2010).
4. The Prohibited Substance detected is Boldenone. Boldenone is an

anabolic steroid causing muscle growth and behavioural modification. It can be endogenously produced in stallions. Whereas a threshold applies to Boldenone detected in samples of 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 sample is categorized by the FEI as a *Banned Substance*. Therefore, the finding of Boldenone in the Horse's sample constitutes an *Anti-Doping* rule violation.

4.2 The Proceedings

5. By letter dated 7 June 2010, the FEI informed the PR of the positive finding for Boldenone and invited him to officially inform the FEI of the gender of the Horse and – if applicable – the date of castration and the name of the veterinarian who had performed the castration.
6. By email of 28 June 2010, the Hungarian Equestrian Federation ("**HUN-NF**") explained on behalf of the PR that the Horse had been castrated seven (7) to eight (8) years ago by a veterinarian called Dr. Árpád Túri, and that the PR has purchased the Horse a few years ago, as a gelding.
7. On 20 July 2010, the HUN-NF wrote to the FEI stating that according to the PR, the Horse had always shown stallion-like behaviour in the stables and that therefore, the PR believed that the positive results must be due to an improper castration or cryptorchism. The HUN-NF requested that examinations be performed on the Horse to clarify the exact cause of the positive test.
8. By letter of 28 July 2010, the FEI informed the PR that his request for the follow-up tests was granted, but that the PR would be responsible for all expenses associated with such tests.
9. The PR, the HUN-NF and the FEI agreed that various tests would be performed on the Horse in order to exclude the possibility that, despite its castration, it was still endogenously producing Boldenone. On 30 July 2010, the Horse was therefore sent to the Veterinary Faculty of the Szent István University in Úllő, Hungary, where an hCG stimulation test and an oestrone sulphate test were performed. Dr. Miklós Jármy, FEI Veterinarian, attended the examination and verified the Horse's identity. The samples were sent to Vet Med Labor GmbH in Ludwigsburg, GER ("**PraxisLab**"), for analysis. According to the analytical data provided by PraxisLab with respect to the hCG test, the total testosterone was 0.03ng/ml before hCG administration, and 0.02ng/ml afterwards. With regards to the oestrone sulphate test, PraxisLab reported that the Horse demonstrated a testicular oestrone sulphate plasma concentration of 0.18ng/ml.
10. On 17 August 2010, Dr. Jármy took urine and blood samples from the Horse at the PR's stable in a calm and quiet environment. The

samples were sent to the HFL. HFL performed a routine screening protocol for FEI Prohibited Substances on the samples. No Prohibited Substances were detected by HFL in the samples.

11. The results of the tests performed on the Horse were communicated to the PR by the FEI Legal Department together with the Notification Letter of 26 October 2010. In the Notification Letter, the PR was further informed of the presence of the Prohibited Substance in the samples taken from the Horse at the Competition, the possible rule violation and the consequences implicated.
12. The Notification Letter further included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
13. A Preliminary Hearing took place on 3 November 2010. The PR explained that he was not familiar with the substance Boldenone, and that it was impossible to purchase that substance on the Hungarian market. The PR stated that he had purchased the Horse in Hungary in 2007, "as a gelding", and that it behaved very well in its home stable, but showed rather stallion-like behaviour on the competition grounds. Following the Preliminary Hearing, the Provisional Suspension was maintained by the Preliminary Hearing panel.

4.3 The B-Sample Analysis

14. Together with the Notification Letter of 26 October 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.
15. The PR confirmed on 4 November 2010 his request for a B-Sample analysis to be performed at a different laboratory than HFL.
16. The B-Sample analysis was performed on urine from 16 to 18 November 2010 at the FEI approved laboratory Laboratoire des Courses Hippiques ("**LCH**") in Paris, France, by Mr. Philippe Plou, Senior analyst, under the supervision of Mr. Yves Bonnaire, Director of LCH.
17. The PR did not attend the B-Sample analysis and did not send a representative to the Laboratory on his behalf. Therefore, Mr. Frédéric Balssa, Quality Manager at LCH, witnessed the opening and identification of B-Sample no. 5502737.
18. In his witness statement, Mr. Balssa 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 LCH corresponds to that appearing on the collection documentation accompanying the sample”.

19. The B-Sample analysis of the urine confirmed the presence of Boldenone (Certificate of Counter Analysis N° 5502737 dated 18 November 2010).

20. The results of the B-Sample Analysis were notified to the PR on 25 November 2010 through the HUN-NF.

4.4 The Further Proceedings

21. On 4 November 2010, the PR submitted answers to the FEI Questionnaire. He repeated that whereas in its home stable, the Horse did not show any “stallion like behavior”, it did so on competition grounds, starting at the first competition after the castration.

22. On 15 November 2010, the PR submitted his explanations through his counsel Dr. Bösze László. The PR explained that when he purchased the Horse in 2007, he knew that it had not been gelded under clinical circumstances, but at its home stable; that he had not administered any Boldenone to the Horse, and that administering a substance with stimulating effect, such as Boldenone, to a Dressage horse would be contra-indicated; and that he did not know before the case at hand that badly castrated geldings may potentially endogenously produce Boldenone. The PR contended that given the above, the reason for the positive test result of the Horse must be an improper castration of the Horse. Lastly, and in reliance on various FEI rules addressing stable security, the PR alleged that security issues at the Event may have lead to the positive finding.

23. Together with his submission, the PR requested the lifting of the Provisional Suspension. By email of 15 November 2010, the FEI informed the PR that the request to lift the Provisional Suspension had been forwarded to the FEI Tribunal. On 24 November 2010, the FEI confirmed to the PR potential dates for a Second Preliminary Hearing. By email of 25 November 2010, the HUN-NF explained that there must have been a misunderstanding insofar as the PR had not requested a Second Preliminary Hearing.

24. By email of 21 January 2011, and having received the B-Sample analysis results, the PR confirmed that he did not wish to submit anything further in addition to his submission of 15 November 2010.

25. The FEI responded to the PR’s submissions on 27 January 2011. The FEI argued that the PR had not presented any evidence such as scientific documentary proof for the alleged bad castration of the Horse. That to the contrary, the further tests performed on

the Horse in July and August 2010 clearly indicated the inability of the Horse to produce endogenous Testosterone, which could be potentially metabolized in the Horse's body into Boldenone. Together with its submission, the FEI produced a Veterinary Statement by Dr. Graeme Cooke, Director FEI Veterinary Department, who explained that it was highly unlikely that Boldenone would be detected alone in a cryptorchid's urine without Testosterone. With regards to the alleged stable security issue, the FEI contended that the PR had not provided any specific explanation as to how the alleged stable security issues could have possibly led to the positive finding for Boldenone. The FEI therefore argued that the PR had failed to establish how the Prohibited Substance had entered the Horse's systems. Regarding the PR's fault or negligence for the rule violation, the FEI underlined that under the FEI anti-doping system, it was the Persons Responsible's duty to ensure that no Prohibited Substances are present in his or her horse's system. The FEI stressed that the PR had not reported having taken any precautions to ensure that the Horse was free of Prohibited Substances at the time of the competition. That moreover, despite having noticed the Horse's alleged stallion-like behaviour on the competition grounds, he had not inquired into any potential problems that could arise from a bad castration. Lastly, relying on Veterinary Regulations Article 1005.2.4 and GRs Article 118.6, the FEI argued that any lack of stable security would not release the PR from his responsibility as a rider and a competitor. In conclusion, the FEI contended that the PR had not established that he bore No Fault or No Negligence or No Significant Fault or No Significant Negligence for the rule violation.

26. The PR has not responded to the FEI's responses to the PR's submissions.

4.5 Jurisdiction

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

4.6 The Person Responsible

28. The PR is the Person Responsible for the Horse, in accordance with GRs Article 118.3, as he was the driver of the Horse's carriage at the Event.

4.7 The Decision

29. 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 HFL and LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Boldenone, which is classified as a Banned Prohibited Substance, 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.

30. 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. The Tribunal notes that the "preliminary" examination of the Horse as offered by the FEI to the PR prior to the official notification of the positive case, is not obligatory under the FEI rules. Only in cases of an *"Atypical Finding"*, as defined in EAD Rules Article 7.2, is the FEI obliged to conduct "further investigations", whereas in this case, no investigations would have been necessary. However, the Tribunal acknowledges that the FEI proceeded here with an abundance of caution given that this case was one of the first under the new EAD Rules and that such caution was for the benefit of the PR.
31. 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.
32. 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*".
33. The Tribunal is not convinced by the PR's allegation that the Horse continued to endogenously produce Testosterone or Boldenone. Neither the hCG nor the oestrone sulphate test performed on the Horse, designed to detect cryptorchism following a bad castration, revealed any signs of cryptorchism. The PR did not present any evidence with regards to the alleged improper castration of the Horse. The PR did not contest the test results of the July and August 2010 examinations performed on the Horse. The Tribunal further accepts that Boldenone is generally not detected on its own in a cryptorchid's urine, without Testosterone being detected at the same time. The Tribunal holds that the PR did not explain how the alleged lack of stable security could have led to the positive test result. The Tribunal therefore decides that the PR has not established by a "*balance of probability*" how the Prohibited Substance entered the Horse's system.
34. 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.

35. A substantial delay in this case is attributable to the "preliminary" examination of the Horse, in agreement with the HUN-NF and the PR and in an effort to provide the PR with substantial assistance in supporting his case in view of the new EAD Rules that had entered into force. Any delays in the prosecution of the case have not jeopardized the PR's position with regards to the outcome of this case.
36. 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.
37. 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

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

4.9 Sanctions

39. 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 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 26 October 2010 to 21 July 2011, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible to participate in FEI activities through 25 October 2012.
 - 2) The PR is fined **CHF 2,000.-**.
 - 3) The PR shall contribute **CHF 2,000.-** towards the legal costs of the judicial procedure, as well as **EUR 525,00.-** 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

A handwritten signature in blue ink, appearing to read "Ken Lalo", with a long horizontal flourish extending to the right.

THE CHAIRMAN, Ken E. Lalo