



DECISION of the FEI TRIBUNAL

dated November 17, 2008

Positive Medication Case No.: 2008/12

Horse: THOMAS EDISON

FEI Passport No: USA11391

Person Responsible: Mr Charlie JAYNE

Event: CSI 4*-W Wellington, FL (USA)

Prohibited Substances:

- (1) Naproxen**
- (2) Desmethylnaproxen (metabolite of Naproxen)**

1. COMPOSITION OF PANEL

Prof Dr Jens Adolphsen, Investigating Member of the Panel
Mr Pierre Ketterer, Member of the Panel
Mr Patrick Boelens, Member of the 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 dully took into consideration all evidence, submissions and documents presented in the case file, and at the hearing as also made available by and to the PR.

2.3 Oral hearing: on 5 September 2008

Present: The FEI Tribunal Panel

For the FEI:

Mr Philippe Burnand, Legal Counsel
Ms Catherine Bollon, Legal coordinator
Dr Lies de Backer, Veterinarian

For the PR:

Mr Charlie Jayne, Person Responsible
Ms Monika Gattiker, PR's Legal Counsel
Mr Alex Jayne, PR's father

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:

Statutes 21st edition, revision effective May 2006, ("**Statutes**"), Arts. 001.6, 057 and 058 and Statutes 22nd edition, effective 15 April 2007, ("**New Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 21st edition, effective 1 June 2006, Arts. 142, 146.1 and 174 ("**GR**") and General Regulations, 22nd edition, effective 1 June 2007, Arts. 142, 146.1 and 174 ("**New GR**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

The Equine Anti-Doping and Medication Rules ("**EADMCRs**"), effective 1 June 2006.

Veterinary Regulations ("**VR**"), 10th edition, effective 1st June 2006, Art. 1013 and Annex III (the Equine Prohibited List).

FEI Code of Conduct for the Welfare of the Horse.

3.2 Persons Responsible: Mr Charlie Jayne

3.3 Justification for sanction:

GR Art. 146.1: "The use of any substance or method that has the potential to harm the horse or to enhance its performance is forbidden. The precise rules concerning Prohibited Substances and Medication Control are laid down in the EADMCRs."

EADMCRs Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Prohibited Substance is present in his or her Horse's body during an Event. Persons Responsible are responsible for any Prohibited Substance found to be present in their Horse's bodily Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Person Responsible's part be demonstrated in order to establish an anti-doping rule or medication control violation under Article 2.1."

4. DECISION

4.1 Consideration of the evidence:

- a. Thomas Edison (the "**Horse**") participated in CSI 4*-W Wellington, FL (USA) from 12 to 16 March 2008 (the "**Event**"). The Horse was ridden by Mr Charlie Jayne who is the Person Responsible in accordance with GR Article 142 (the "**PR**").
- b. The Horse was selected for sampling on 13 March 2008. Analysis of the blood and urine sample no. FEI G 09267 taken from the Horse performed by the approved Equine Drug Testing and Research Laboratory ("EDTRL"), in Ithaca, USA, under the supervision of Thomas F. Lomangino, Laboratory Director, revealed the presence of Naproxen and Desmethylnaproxen (metabolite of Naproxen) (Certificates of Analysis dated 9 April and 15 May 2008).
- c. On 27 May 2008 the PR submitted a request for a confirmatory analysis. The confirmatory analysis was carried out on 6 June 2008 at Equine Drug Testing and Research Laboratory ("EDTRL"), in Ithaca, USA, under the supervision of Thomas F. Lomangino, Laboratory Director and was witnessed by Mr Alex Jayne, PR's father, at the request of the PR. It confirmed the presence of Naproxen and Desmethylnaproxen (metabolite of Naproxen) (Counter-Analysis Report dated 10 June 2008).
- d. Naproxen and Desmethylnaproxen, a metabolite of Naproxen, are Non-Steroidal Anti-Inflammatory Drugs (NSAID) having an anti-inflammatory effect and accordingly are substances, when present together, classified in the first section of the Equine Prohibited List (VR Annex III) as Medication Class A Prohibited Substances (Veterinary Department's Statements dated 15 May and 25 June 2008).
- e. The FEI Tribunal is satisfied that the laboratory reports reflect that the tests were accurately performed in an acceptable method and that the findings of EDTRL are accurate. The FEI Tribunal is satisfied that the test results show the presence of the Prohibited Substances Naproxen and Desmethylnaproxen. The PR did not contest anymore the accuracy of the testing methods or the test results and positive findings.
- f. Indeed, the PR's father, who did witness the B sample analysis, comments in the witness statement dated 5 June 2008 that "the blood tubes did not arrive as sent and witnessed. Tubes left Florida taped together. Arrived here in plastic bags".

- g. After FEI inquiry, and according to the statements of Dr Glenn P Gillard, Testing Veterinarian for the USEF & FEI Drugs and Medication Program, and Ms Lynda LeCorgne, testing technician, it is the PR's groom, Currie Geffken, who witnessed the complete procedure, blood and urine sampling. Mr Alex Jayne was not there for the collection sample and his Witness Statement was the result of confusion between the A and B samples (blood and urine) collection. Consequently, the testing method and the test results have been done correctly which has been accepted and recognised by the PR, in particular at the hearing held on 5 September 2008.
- h. The FEI has thus sufficiently proven the objective elements of a medication control rule violation in accordance with EADMCRs Article 3.
- i. As this is the PR second offence within the last five years, he may not benefit from the Administrative Proceedings offered by the FEI with medications of this type.
- j. The establishment of the objective elements of a medication control rule violation creates the presumption of guilt of the PR. The finding on analysis of a prohibited substance is presumed to be a deliberate attempt of the PR to affect the performance of the horse. The PR has the opportunity to seek to eliminate or reduce the otherwise applicable period of ineligibility and other sanctions, establishing that he bears no fault and no negligence or no significant fault and no significant negligence, in accordance with EADMCRs Article 10.5.
- k. In his written explanation dated 8 July 2008, the PR states that since his case in November 2007, he is doing all medication himself. He now keeps a very detailed log of all vet work and medication given. He explained that he rode the Horse on Wednesday morning and the Horse was sound. He rode him a second time Wednesday and again Thursday morning. There was no question that the Horse was sound. He showed the Horse on the Sunday and he never had any second thoughts. He states that neither him, nor any member of his team gave the Horse the Prohibited Substances. He had no idea how the Horse may have been contaminated.
- l. Research conducted by the PR led to the finding that the Horse was, at the Event, in stall number B-100. Directly behind him was a trainer from Minnesota, Ms Kim Barone, whose horses stand in stall B-108 and B-109. Kim Barone horses were showing at WEF in non FEI classes under USEF

rules. Both horses were given the drug Naproxen. Such drug was mixed in the horses' evening feed. Despite strict instruction given to Ms Kim Barone's groom, Ms Kim Barone witnessed having seen her groom "tapping the feed buckets on the top of the back stall wall to empty the bucket of the leftover feed." According to the PR, this explains the contamination which was completely accidental.

- m. Drs Frits Sluyter and Lies De Backer, FEI Veterinary Department, stated that although not impossible, the supposition of the Horse testing positive due to contamination of the box after cleaning the bucket of another horse that was treated with Naproxen seems very unlikely. Indeed, and according to Dr Sluyter and De Backer, "the concentration of naproxen that the horse could ingest in this manner would most likely not exceed the Screening limit of Detection used by the laboratory."
- n. Dr Keith Merritt, D.V.M. from Merritt & Associates Equine Hospital, Illinois, USA, did object to Drs Frits Sluyter and Lies De Backer statement and do consider that a horse could ingest enough drugs from contamination. He also confirmed that the only thing that separate FEI from non-FEI horses was a stall wall in which a groom could empty feed tubs over and that Thomas Edison will eat anything that is put in front of him.
- o. In the hearing held in Lausanne on 5 September 2008 the PR did confirm that neither him, nor any member of his team gave the Horse the Prohibited Substances. The PR still argued that the positive testing is the result of a contamination by Ms Kim Barone's horses, which were given Naproxen and which stand directly behind the Horse. At the same hearing, Dr Lies De Backer, FEI Veterinary department, who was called as an expert witness, did not exclude that such contamination may have occurred.
- p. Finally, the FEI filed, at the Tribunal request, an additional expert statement from Dr A. Kent Allen, D.V.M., Chairman of the USEF Equine Drugs and Medication Committee and USEF Veterinary Committee and member of the FEI Veterinary Committee, on the 19 September 2008. According to such statement, Dr A. Kent Allen concludes that the feed, not the urine contamination, the PR has proposed is possible. If medicated feed was dumped into the stall this could account for the low level of naproxen that was detected. According to Dr A. Kent Allen "This is one of the difficulties in this country (USA) with a much more liberal medication rule than what the FEI allows that cross contamination can (rarely) happen. Obviously it is up to the PR to account for what is ingested by their horse and in

competitions where the FEI compound is stringently observed that is much easier. However this secure arrangement is not possible all the time and is not observed at all levels of FEI competition.”

- q. It should also be mentioned that the PR’s lawyer did first contest the filing of this additional expert statement by an e-mail dated 20 September 2008, as she did not recall of such Tribunal request. The FEI Legal Department was ready to withdrawn such expert’s statement if it should have wrongly understood the Tribunal hearing’s conclusion. However, by an additional e-mail dated 22 September 2008, the PR’s lawyer did not object anymore to the provision of Dr A. Kent Allen expert statement.
- r. The PR presented an affidavit of Ms Kim Barone dated 17 September 2008. Ms. Kim Barone has sworn under oath the facts that the PR has already presented at the oral hearing (See above l.).
- s. The PR could prove to the degree of a balance of probability (Art. 3.1 EADMCRs) that he bears no fault and no negligence. He has proven a possible contamination of his horses at the horse show in Wellington.
- t. The Tribunal wants to highlight that it is not understandable and acceptable to stable horses that compete under FEI rules in the same stables with horses that compete under much more liberal national medication rule. These organisational problems should be solved in the future.

4.2 Disqualification

As a result of the foregoing, the FEI Tribunal has decided to disqualify the Horse and the PR from the Event and that all medals, points and prize money won at the Event must be forfeited, in accordance with EADMCRs Article 9.

4.3 Sanctions

As the PR met the balance of probability test, no further sanction is to be imposed on the PR.

The PR shall contribute **CHF.- 1’500** towards the legal costs of the judicial procedure and **CHF.- 750** towards the costs of the confirmatory 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: PR's Counsel

FOR THE PANEL

A handwritten signature in black ink, appearing to read "Jens Adolphsen". The signature is written in a cursive style with a large initial 'J'.

**THE CHAIRMAN Prof Dr Jens Adolphsen
17 November 2008**