

DECISION of the FEI TRIBUNAL

dated 15 February 2012

Positive Anti-Doping Case No.: 2011/BS13

In relation to Cases: 2011/BS02; 2011/BS03; 2011/BS07; 2011/BS10

Horses:	TRIASSIC	FEI Passport No: USA42516
	HELLOW	FEI Passport No: UAE102TD98
	OCEAN EL DAHMAN	FEI Passport No: 102OB73
	ARMINS ZULU	FEI Passport No: 102MC97

Support Personnel: Mr. Ali Salman Al Sabri

Events: CEI2* 120km, Dubai; 18.12.2010
UAE; CEI2* 120km, Dubai, UAE; 04-05.02.2011
CEI3* 160km, Abu Dhabi, Al Wathba, UAE; 12.02.2011

Prohibited Substance: 17 - alpha -hydroxyprogesterone hexanoate (HPC)

1. COMPOSITION OF PANEL

Mr. Erik Elstad, Chair
Mr. Patrick A. Boelens
Dr. Alberto Hernán Mendez Cañas

2. SUMMARY OF THE FACTS

- 2.1 Memorandum of case:** By Legal Department.
- 2.2 Summary information provided by Support Personnel:** 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 Support Personnel.
- 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; 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, updated 1 January 2010, Arts. 118, 143.1 and 169 ("**GRs**"); General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2011, Arts. 118, 143.1 and 169.

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 and Controlled Medication 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; FEI Equine Anti-Doping Rules, 1st edition, effective 5 April 2010, updates effective 1 January 2011.

Veterinary Regulations ("**VRs**"), 12th edition, effective 5th April 2010, Art. 1013 and seq. and Annex II (the "Equine Prohibited List"); Veterinary Regulations, 12th edition, effective 5th April 2010, updates effective 1 January 2011, Art. 1013 and seq. and Annex II.

FEI Code of Conduct for the Welfare of the Horse.

3.2 Support Personnel: Mr. Ali Salman Al Sabri

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: "Persons Responsible and their Support Personnel shall be responsible for knowing what constitutes an EAD Rule violation and the substances and methods which have been included on the Equine Prohibited Substances List and identified as Banned Substances.

Where Banned Substances or Banned Methods are involved, the following shall constitute EAD Rule violations:

[.....]

2.2 Use or Attempted Use of a Banned Substance or a Banned Method

2.2.1 It is each Person Responsible's personal duty, along with members of their Support Personnel, to ensure that no Banned Substance enters into the Horse's body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the part of

the Person Responsible, or member of his or her Support Personnel (where applicable), be demonstrated in order to establish an EAD Rule violation for Use of a Banned Substance or a Banned Method.

EADCMRs Annex 1 – DEFINITIONS

"Support Personnel. Any coach, trainer, athlete, Horse owner, groom, steward, chef d'équipe, team staff, official, veterinarian, medical, or paramedical personnel assisting in any fashion a Person Responsible participating in or preparing for equine sports Competition. Veterinarians are included in the definition of Support Personnel with the understanding that they are professionals subject to professional standards and licenses. An allegation that a veterinarian violated an EADCM Regulation will only be made where the factual circumstances surrounding the case indicate a likelihood that the veterinarian was involved in the violation."

4. DECISION

4.1 Factual Background

1. The horses TRIASSIC and HELLOW, both geldings, participated at the CEI2* 120km in Dubai (UAE) on 18 December 2010 (the "**Event**"), in the discipline of Endurance. The Horse OCEAN EL DAHMAN competed at the CEI2* 120km in Dubai (UAE) from 4-5 February 2011, and the horse ARMINS ZULU competed at the CEI3* 160km in Abu Dhabi, Al Wathba, on 12 February 2011.
2. TRIASSIC, HELLOW, OCEAN EL DAHMAN and ARMINS ZULU (the "**Horses**") were ridden by four different riders, all registered with the FEI as riding for the United Arab Equestrian Federation ("**UAE-NF**"). The riders are the Persons Responsible for the respective horses in accordance with Article 118 of the GRs (the "**PRs**").
3. The Horses were selected for sampling in the course of the respective Events. Analyses of the samples taken from the Horses at the Events were performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("**HKJC**"), in accordance with the FEI Rules and Regulations. The analyses revealed the presence of 17 - alpha -hydroxyprogesterone hexanoate. 17 - alpha -hydroxyprogesterone hexanoate is also known as 17 - alpha -hydroxyprogesterone Caproate ("**HPC**").
4. The Prohibited Substance detected is HPC, which is a synthetic progestin for the control of estrus and maintenance of pregnancy, with anabolic effects. Whilst at the time of the positive finding, HPC was not listed by name in the 2010 FEI Equine Prohibited Substances List ("FEI Prohibited List"), the FEI Prohibited List specifically includes "other substances with a similar chemical

structure or similar biological effect(s)”¹. Therefore, following its detection by the HKJC, HPC has been classified by the FEI as a *Banned Substance* in reliance on the “catch all clause” referenced above because it has similar biological effects to several listed Banned Substances, specifically testosterone, androstenedione and deoxycorticosterone. HPC can also be metabolised into androstenedione and then to testosterone. Therefore, the finding of HPC in the Horse’s sample gives rise to an *Anti-Doping Rule* violation.

5. In the following, the PRs were notified through the UAE-NF, of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated. The respective Notification Letters included notice that the PRs were provisionally suspended and granted them the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal. None of the PRs requested a Preliminary Hearing to take place.
6. The PRs also received notice that they were entitled to the performance of a B-Sample confirmatory analysis on the relevant positive sample, and that they had the 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. The PRs declined to have the B-Sample confirmatory analysis to be performed.
7. Furthermore, in the course of the Anti-Doping procedures against the PRs, Mr. Al Sabri submitted statements confirming that he was the trainer of the Horses, and that the Horses had been under his care. Mr. Al Sabri further stated having used a supplement on the Horses which caused the positive test results in the four cases. That before using the supplement, he had double checked that it did not contain any substances listed on the FEI Prohibited List. Mr. Al Sabri further contested that HPC was a Prohibited Substance, both on the grounds that it was not listed on the FEI Prohibited List, and furthermore based on the argument that HPC would not have a similar biological effect or chemical structure to any listed Banned Substances, such as testosterone, androstenedione and deoxycorticosterone. Mr. Al Sabri further argued that insofar as he did not dispose of the necessary pharmaceutical or chemical knowledge, it would have been impossible for him to know that the substance was considered to be a Prohibited Substance.
8. Together with his statements, Mr. Al Sabri also submitted two statements, one by Dr. Kevin P. McManus, and one by Mr. John Ray Biffin. Mr. Al Sabri explained in this context that he had contacted the company producing the product used by him, and that the company had informed him that the product cannot be

¹ See Equine Prohibited Substances List, page 24.

metabolised into androstenedione and testosterone, and that a gelding would not be capable of metabolizing progesterone into testosterone. That the company had performed its own research and had provided the statements by Mr. Biffin and Dr. McManus.

9. Mr. Biffin, BVSc, Director of "Agricure SCIENTIFIC ORGANICS", based in Australia, explained in his statement that he is an equine veterinarian and a veterinary pharmaceutical manufacturer. Mr. Biffin further explained that, in his opinion, it is fundamentally erroneous to state that HPC has a similar biological effect to testosterone, claiming that whereas the primary biological effect of testosterone was masculinising or androgenic, the primary biological effect of progesterone was feminizing. Mr. Biffin further contended that a gelding could not change progesterone to testosterone.
10. Similarly, Dr. McManus claimed in his statement that hydroxyprogesterone hexanoate was not an androgenic anabolic steroid, and further refuted the idea that progesterone could be metabolised to testosterone.
11. The UAE-NF further explained that Mr. Al Sabri had administered "Hydroxy Progesterone Paste" to the Horses, and that all horses in the stable had been given the paste in the belief that it was not a Prohibited Substance, and "as a feed additive to stress down mares and geldings". The UAE-NF further submitted some documentation about the paste allegedly used, showing an empty vial. On a label next to the vial is written "Hydroxy Progesterone Paste", as well as "NXGEN". The documentation did not contain any description of the product, or a list of active ingredients of the paste.
12. Furthermore, the UAE-NF submitted an email statement by Prof. Carlos Ponferrada from Spain, containing an electronic signature of a "Carlos". Prof. Ponferrada accepted that the product used by Mr. Al Sabri had anabolic and muscle building effects. However, he contested the categorisation of HPC as a substance with "similar biological effect and chemical structure as other listed Banned Substances", on the grounds that the product used, unlike testosterone, did not have masculinising, but feminizing biological effect. Prof. Ponferrada further argued that the product would not be metabolized into any anabolic androgenic derivative.
13. By letters of 8 August 2011, submitted through the UAE-NF, the PRs requested the lifting of the Provisional Suspensions. The PRs argued that they were responsible horse athletes, and that they regularly referred to the clean sport guidance. That as athletes, they would usually take a briefing from the treating veterinarians regarding the medication administered to the horses prior to the Competition, and that they had been assured by the trainer that the Horses were free of any Prohibited Substances. That they trusted the trainer and that it was due to the fact that HPC did not appear on the FEI Prohibited List that the positive findings

occurred.

14. By its Responses to the Requests for the lifting of the Provisional Suspensions of 16 August 2011, the FEI, relying on the statement by Prof. Barragry of 9 June 2011, requested that the Provisional Suspensions be maintained.

4.2 The Proceedings

15. Also on 16 August 2011, the FEI Legal Department notified Mr. Al Sabri, through the UAE-NF, of the presence of the Prohibited Substance in the Horses following the laboratory analyses, the possible rule violation as a member of the Support Personnel of the PRs, and the consequences implicated. Mr. Al Sabri was further informed that the FEI maintained its classification of HPC as a Banned Prohibited Substance, and provided in this context an expert statement by Prof. Barragry, PhD, MSc, MVB, MRCVS, Dip ECVPT, senior veterinary pharmacologist at the Veterinary School at University College Dublin, of 9 June 2011. Prof. Barragry explained that HPC is used for oestrus suppression and pregnancy maintenance in mares, and is also indicated for progesterone deficiency in mares and associated behavioural problems. That HPC has been used in geldings for the prevention of weight loss. According to Prof. Barragry, HPC is a precursor compound in the synthesis of a number of endogenous produced steroids and is – by means of endogenous testosterone biosynthesis – metabolised into a number of possible substances including androstenedione and testosterone. Prof. Barragry further explained that all progesterone, including synthetic progestogens, have anabolic effects, also when used in horses, those anabolic effects being more noticeable in geldings. Prof. Barragry also reported HPC to have behaviour modifying effects. With regards to the general biological effects, Prof. Barragry pointed out that in particular in male animals, the effects of HPC are biologically similar quantitatively to other Banned Substances on the FEI Prohibited List, such as androstenedione and testosterone. Lastly, Prof. Barragry underlined that in the absence of any justified therapeutic indication for its administration, HPC would not normally be found in the system of geldings. Prof. Barragry concluded that the finding of HPC in the body fluids of a gelding would allow the conclusion that the substance had been administered for a potentially spurious reason, such as inducing weight gain and anabolic effect. Based on the statement by Prof. Barragry, the FEI maintained its contention that HPC has a similar biological effect to other substances included on the FEI Prohibited List, and that therefore, HPC itself is classified as a Prohibited Substance, specifically as a Banned Substance. The Notification Letter also included notice that Mr. Al Sabri was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.

16. Mr. Al Sabri did not request a Preliminary Hearing.

4.3 The Further Proceedings

17. On 3 October 2011, Dr. Elke Peperkorn, veterinarian with the UAE-NF, further argued for the lifting of the Provisional Suspensions on behalf of the PRs on the grounds that at the time of the Competition, HPC was not listed by name on the FEI Prohibited List, and that no information could be found on the FEI Clean Sport website about the substance. That according to the statement of the manufacturer of the products used, there was a difference between the possible laboratory conversion of HPC to Testosterone versus HPC's actual metabolism in a living horse. This was supported by the fact that according to the manufacturer research submitted, after 25 weeks of injections no increase in cortisol or androstenedione had been observed. That HPC indeed had the effect of causing retention of fluids and electrolytes, leading to weight gain, but that there was no scientific proof of an anabolic effect of HPC. Dr. Peperkorn contended, therefore, that the PRs had complied with the research recommended by the FEI Competitor's Guide.
18. Further, on 5 October 2011, the UAE-NF submitted an expert statement by Dr. McManus, in response to the statement of Prof. Barragry. Dr. McManus explained that he was a retired Veterinary Scientist still working in Veterinary pharmacology and that the banning of HPC would necessarily require the banning of other anabolic metabolites and the ban of metabolite steroids, and should therefore be immediately revisited.
19. In the absence of any response by Mr. Al Sabri to the Notification Letter, on 13 October 2011, the FEI enquired with the UAE-NF whether any defence explanations would be provided by Mr. Al Sabri.
20. By email of 13 October 2011, the UAE-NF stated that Mr. Al Sabri requested that the same explanations as those provided in the cases of the Horses should be considered, in particular that the substance detected was not on the FEI Prohibited List, and that its metabolism and effect were scientifically disputed.
21. By Preliminary Decision of 27 October 2011, the Tribunal lifted the Provisional Suspensions of the PRs and of Mr. Al Sabri as of 28 October 2011, stating that a hearing in the cases would be appropriate and suggesting 19 January 2012 as the date.
22. By email to the UAE-NF of 9 January 2012, the FEI informed the PRs and Mr. Al Sabri that the Tribunal, after having reviewed the Case File including the statements by Mr. Biffin, Dr. McManus, Prof. Ponferrada and Prof. Barragry, had requested that a third independent expert reviews the above statements, and provides the Tribunal with an impartial and additional opinion on the questions in dispute between the parties. That the Tribunal had selected Dr. Stuart Paine, BHA Associate Professor of Veterinary

Pharmacology at the University of Nottingham for this third expert opinion. Once Dr. Paine's statement was submitted, it was provided to the PRs and Mr. Al Sabri, along with his curriculum vitae, and the PRs and Mr. Al Sabri were invited to comment thereon before 30 January 2012. The FEI further explained that the Tribunal had agreed to postpone the hearing, pending consideration of the report by Dr. Paine. In his report, Dr. Paine, in contradiction to Mr. Biffin, Dr. McManus and Prof. Ponferrada, stated that 17 α -hydroxyprogesterone is naturally converted to androstenedione, specifically via a single metabolic step, by the naturally occurring enzyme CYP17. Further, that 17 α -hydroxyprogesterone is used to increase weight in steers and, as it is directly converted to androstenedione, must result in an anabolic effect. Dr. Paine concluded that 17 α -hydroxyprogesterone as well as esters of 17 α -hydroxyprogesterone should be considered Banned Substances.

23. Neither the PRs nor Mr. Al Sabri provided any response to Dr. Paine's report nor did they respond to the Tribunal's invitation for a hearing.

4.4 Jurisdiction

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

4.5 The Support Personnel

25. Mr. Al Sabri is a member of the PRs' Support Personnel in accordance with the EAD Rules, as will be detailed below.

4.6 The Decision

26. The Tribunal understands that the case at hand is resulting from four (4) positive anti-doping cases of the 2010/2011 Endurance season in the United Arab Emirates involving the same Prohibited Substance, 17- alpha - Hydroxyprogesterone Hexanoate, HPC. The Tribunal is further aware that all of the horses and riders concerned are from the UAE-NF, and that the horses were all under the care of Mr. Al Sabri of Emaar Stables.

4.6.1 The Prohibited Substance

27. The Tribunal is satisfied that the laboratory reports relating to the A-Samples 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 HPC in the Samples taken from the Horses at the Events. Mr. Al Sabri did not contest the accuracy of the test results or the positive findings. However, Mr. Al Sabri contested the classification of HPC as a Banned Substance under the FEI

Prohibited List. The Tribunal therefore needs to determine whether the FEI has correctly classified HPC as a Banned Substance, i.e. whether the FEI has established the Use of a Prohibited Substance, and has thereby sufficiently proven the objective elements of an offence in accordance with EAD Rules Article 3.

28. As an initial matter, the Tribunal holds that HPC, which is a product used for the control of oestrus and maintenance of pregnancy, has no justified therapeutic use in male horses. Therefore, it would not normally be found, nor should it be found, in a gelding's system. Furthermore, the Tribunal, having reviewed all of the expert statements, is convinced by the third neutral report provided by Dr. Stuart Paine. Dr. Paine clearly and unequivocally explains why HPC has a similar biological effect to anabolic steroids and the simple natural conversion of 17 α -hydroxyprogesterone to androstenedione, specifically via a single metabolic step, by the naturally occurring enzyme CYP17. Dr. Paine's statement, taken together with Dr. Barragry's expert report, both of whom are clearly experts in the field have convinced this Tribunal that HPC should be considered to have the same biological effect as anabolic steroids and should therefore be considered already included on the FEI Prohibited List, by means of the catch-all clause, at the time it was detected in the Horses' Samples.

4.6.2 The rule violation by Mr. Al Sabri

29. The Tribunal takes note that the definition of Support Personnel in the EAD Rules extends to trainers. By administering the HPC containing paste to the Horses, Mr. Al Sabri assisted the PRs in the preparation for and their participation in the Event, and therefore clearly acted as Support Personnel as defined by the FEI EAD Rules. The administration of the HPC containing paste further qualifies as "Use" of a Prohibited Substance under EAD Rules Article 2.2. A rule violation by Mr. Al Sabri has therefore been established.
30. The Tribunal further finds that it is unacceptable for Mr. Al Sabri – who himself admitted that he did not have the necessary veterinary or pharmaceutical knowledge in order to determine whether products used by him would contain Prohibited Substances – to administer any treatment with any substances without the approval of a qualified veterinary or pharmaceutical personnel, and without supervision by such qualified professionals. The Tribunal further finds that Mr. Al Sabri should have requested a written confirmation by the manufacturer of the product used that it did not contain any Prohibited Substances.
31. This is even more important and serious on the background that Mr. Al Sabri, as trainer of the four Horses, let two of his horses, OCEAN EL DAHMAN and ARMINS ZULU (Case 2011/BS07 and 2011/BS10) compete on 4-5 February and 12 February 2011. At

that time, he had already been informed about the notifications in the two cases concerning the Horses TRIASSIC and HELLOW (Case 2011/BS02 and 2011/BS03) which both competed on 18 December 2010. The respective notifications had been given to the concerned riders on 19 and 18 January 2011 (Cases 2011/BS02 and 2011/BS03). Mr. Al Sabri provided his explanation to these cases on 1 February 2011. Thus, he ignored that the FEI considered HPC to be a Prohibited Substance and therefore forbidden.

32. Given the above, the Tribunal determines that Mr. Al Sabri acted with fault in performing his duties as a trainer and member of the PRs' Support Personnel. The Tribunal finds that Mr. Al Sabri cannot establish that he bears "No Fault or Negligence" for the rule violation as required by EAD Rules Articles 10.5.1 in order to eliminate the sanctions as when using an unknown substance or supplement on the Horse, the Horse's trainer has an obligation to get all the necessary information about the product in order to ensure that no anti-doping offence occurs. The Tribunal however holds that Mr. Al Sabri can establish that he bears "No Significant Fault or Negligence" for the rule violation as required by EAD Rules Articles 10.5.2 in order to reduce the sanctions, on the grounds that Mr. Al Sabri is not a pharmacologist and it is difficult to determine without some pharmacological knowledge whether a substance does, or does not, have the same biological effect or chemical structure as a Prohibited Substance.
33. According to GRs Article 168.4, the present decision is effective from the day of written notification to the persons and bodies concerned.

4.7 Sanctions

34. Under the EAD Rules applicable at the Events, the sanction for the Use of a Banned Substance is a two-year Ineligibility period for first time offenders. Based on the arguments above, the FEI Tribunal therefore imposes the following sanctions on Mr. Al Sabri, in accordance with GRs Article 169 and EAD Rules Article 10.2:
 - 1) Mr. Al Sabri shall be suspended for a period of **sixteen (16) months** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective from 16 August 2011 to 27 October 2011, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the Period of Ineligibility expires on 1 April 2013, midnight, which means that Mr. Al Sabri is again eligible to participate in FEI activities as of 2 April 2013.

2) Mr. Al Sabri is fined **CHF 2,000.-**.

3) Mr. Al Sabri shall contribute **CHF 4,000** - towards the legal costs of the judicial procedure.

5. DECISION TO BE FORWARDED TO:

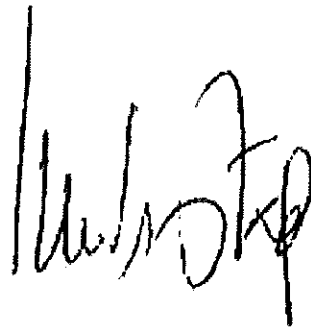
5.1 The person sanctioned: Yes

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, appearing to read 'Erik Elstad', is positioned above a horizontal line.

THE CHAIRMAN, Erik Elstad