



**DECISION of the FEI TRIBUNAL**

**dated 20 April 2010**

**Positive Medication Case No.:** 2009/16

**Horse:** ORLOWS-CASH

**FEI Passport No:** GER15117

**Person Responsible:** Erika Szabó

**Additional Person Responsible:** János Böhler

**Event:** CAI-A – Fábíansebestyén (HUN)

**Prohibited Substances:** Vedaprofen, Dexametasone, Phenylbutazone, Oxyphenbutazone

**1. COMPOSITION OF PANEL**

Mr Pierre Ketterer  
Mr Philip O'Connor  
Prof. Dr. Jens Adolphsen

**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 and the Additional 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 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.

The Equine Anti-Doping and Medication Control Rules ("**EADMCR**"), 1<sup>st</sup> edition 1 June 2006, updated with modifications by the General Assembly, effective 1 June 2007 and with modifications approved by the Bureau, effective 10 April 2008.

Veterinary Regulations ("**VR**"), 11<sup>th</sup> edition, effective 1 January 2009, 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:** Erika Szabó  
**Additional Person Responsible:** János Böhler

**3.3 Justification for sanction:**

GR 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."

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."

GR Art. 118 para. 3: "The Person Responsible shall be the Athlete who rides or drives the Horse during an Event, but the Owner and other support personnel including but not limited to grooms and veterinarians may be regarded as additional Person Responsible if they are present at the Event or have made a relevant Decision about the Horse."

**4. DECISION**

**4.1 Factual Background**

1. ORLOWS-CASH (the "**Horse**") participated at the CAI-A in Fábliansebestyén, Hungary, on 1 May 2009 (the "**Event**") in the discipline of Driving. The Horse was driven by Ms. Erika Szabó, who is the Person Responsible in accordance with Article 118 GRs (the "**PR**"). The Horse is owned by Mr. János Böhler.
2. The Horse was selected for sampling on 1 May 2009.
3. Analysis of the blood sample no. FEI-87497 taken from the Horse at the Event was performed at the FEI approved laboratory, the Laboratoire des Courses Hippiques ("**LCH**"), by Ms. Murielle

Jaubert, Senior Analyst, under the supervision of Dr. Yves Bonnaire, Director of the Laboratory. The analysis revealed the presence of Vedaprofen, Dexametasone, Phenylbutazone and Oxyphenbutazone (Certificate of Analysis dated 26 May 2009).

4. The Prohibited Substances detected are Vedaprofen, Dexametasone, Phenylbutazone and Oxyphenbutazone. Vedaprofen is a non-steroidal anti-inflammatory drug with anti-inflammatory and analgesic effects. Dexamethasone is a corticosteroid with anti-inflammatory, anti-allergy and other effects. Phenylbutazone and Oxyphenbutazone are non-steroidal anti-inflammatory drugs with anti-inflammatory and analgesic effects. Oxyphenbutazone is a metabolite of Phenylbutazone. Vedaprofen, Dexametasone, Phenylbutazone and Oxyphenbutazone are "Prohibited Substances" under the FEI Equine Prohibited List (VRs Annex II, the "*Equine Prohibited List*"), in the class of "*Medication A*". The four substances, when present together in a horse's body, are classified as "Prohibited Substances" under the Equine Prohibited List, in the class of "*Doping*". Therefore, the presence of Vedaprofen, Dexametasone, Phenylbutazone and Oxyphenbutazone in the Horse's sample constitutes an *Anti-Doping* rule violation.
5. No request had been made to administer Vedaprofen, Dexametasone, Phenylbutazone or Oxyphenbutazone to the Horse, and no medication form had been submitted for any of these substances.

#### **4.2 The Preliminary Hearing**

6. The presence of the Prohibited Substances 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 2009.
7. The Notification Letter included notice that the PR was provisionally suspended and granted her the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
8. The PR herself did not request a preliminary hearing. However, the Hungarian Equestrian Federation (HUN NF) informed the FEI that the PR's veterinarian, Dr. Izing, would participate in a Preliminary Hearing.
9. At the Preliminary Hearing, held on 10 June 2009 by means of a telephone conference call, Dr. Izing stated that on 28 April 2009, two days prior to the veterinary check for the competition, the Horse had lost its shoe. That the Horse was injured during the shoeing process, and that he was asked to treat it. That he had treated the Horse on the same day by cleaning the wound, and had administered Hyper-Betadine solution, containing Phenylbutazone

and Penicillin, to the Horse. Dr. Izing confirmed not having consulted any FEI veterinarian or the FEI Veterinary Commission prior to the treatment.

10. According to Dr. Izing's testimony during the Preliminary Hearing, the owner of the Horse, Mr. Böhler, was present at the time of the treatment. Further, Dr. Izing himself as well as Mr. Böhler were aware of the risk that the Horse could test positive for Prohibited Substances following the administration of the injection(s). Dr. Izing stated having had no contact with the PR at this time.
11. Dr. Izing further stated having drafted, following the treatment and being aware of the potential problems, a Veterinary Statement reporting that he had treated the Horse "Hyper-Betadine solution, containing Phenylbutazone (2 g - Neodexabuthason) and Penicillin (Tardomyocele)". Upon question, Dr. Izing was not able to confirm with certainty that the chosen treatment also included the Prohibited Substances Vedaprofen and Dexamethasone. According to Dr. Izing, he had handed over the above statement to Mr. Böhler, who had lost it and had not forwarded it to the FEI veterinarians at the veterinary check or otherwise present at the Event.
12. According to Dr. Izing, he had therefore personally handed over a copy of the statement prepared by him to the FEI testing veterinarian, Mr. Jármy Miklós, on the day following the testing, i.e. on Saturday, 2 May 2009. The respective statement has been attached to the Notification Letter to the PR, as "Annex 6".
13. The FEI, during the Preliminary Hearing, highlighted that it is an established FEI policy to consistently impose a Provisional Suspension in Doping cases once the prerequisites of EADMCR Article 7.2 are met. The FEI argued that there was no legal basis to lift the Provisional Suspension in this case.
14. In light of the above, the Provisional Suspension of the PR was maintained.

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

15. Together with the Notification Letter of 8 June 2009, the PR received notice that she was entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The PR was also informed of her right to attend or be represented at the identification and opening of the B-Sample.
16. The PR declined to exercise her right to have the B-Sample confirmatory analysis performed.

#### **4.4 The Further Proceedings**

17. Following the Preliminary Hearing, on 23 June 2009, the FEI formally notified Mr. Böhler of the Positive Doping case. By means of the Notification Letter of 23 June 2009, Mr. Böhler was informed that following the veterinarian's explanations during the Preliminary Hearing, he would be regarded as Additional Person Responsible ("Additional PR") in the present case in accordance with Article 118, paragraph 3 GRs. The Notification Letter of 23 June 2009 included notice that Mr. Böhler was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
18. Mr. Böhler declined to request a Preliminary Hearing.
19. Together with the Notification Letter of 23 June 2009, Mr. Böhler also received notice that he was entitled to the performance of a B-Sample confirmatory analysis on the positive sample. He was also informed of his right to attend or be represented at the identification and opening of the B-Sample.
20. Mr. Böhler declined to exercise his right to have the B-Sample confirmatory analysis performed.
21. Since even after several phone calls by the FEI Legal Department to the HUN-NF to inquire about the status, neither the PR, nor Mr. Böhler provided any explanation whatsoever on the matter, they were issued a new deadline of 6 November 2009 to submit any statement or explanation concerning the case.
22. On 8 November 2009, the HUN-NF informed the FEI that Mr. Böhler would contact the Legal Department on the following day. To date, Mr. Böhler has failed to contact the FEI.
23. On 14 December 2009, the PR, through the HUN-NF, submitted a statement dated 20 November 2009. The PR confirmed that the Horse, having been injured during the shoeing process, was treated by Dr. Izing prior to the Competition. The PR stated that the "substances according to the attached Final Hospital Bulletin" had been used. However, the Final Hospital Bulletin referred to by the PR was never submitted even though it was requested by the FEI.
24. Also on 14 December 2009, the FEI wrote to the HUN-NF pointing out that the explanations by the PR were insufficient, and that no submission had been received by the Additional PR. Attached to the FEI's letter was the FEI Questionnaire for completion by the PR which provides a framework for the responsive explanation. Yet, no explanation has been provided either by the PR or Mr. Böhler.

#### **4.5 The Lifting of the Provisional Suspensions and the further Proceedings**

25. Following the 15 December 2009 request of the FEI, the Provisional Suspensions of the PR and of Mr. Böhler were lifted on 17 December 2009 with immediate effect.
26. In the following, the Case File was submitted to the FEI Tribunal on 10 February 2010. On 15 February 2010, the chair of the panel, Mr. Pierre Ketterer, on behalf of the panel addressed some questions to the FEI in relation to the case.
27. On 18 February 2010, the FEI submitted its responses to the questions of the FEI Tribunal. On 22 February 2010, the above questions and answers were also submitted to the PR and Mr Böhler, through the HUN NF. Both were invited to comment, if any, by 5 March 2010.
28. Upon request by the Legal Department of 3 March 2010, the HUN NF confirmed having received the documents submitted by the FEI on 22 February 2010. Until the date of this decision, neither the PR nor Mr. Böhler have commented on the issues raised by the Tribunal and the responses provided by the Legal Department.

#### **4.6 Jurisdiction**

29. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EADMCR.

#### **4.7 The Person Responsible**

30. The PR is the Person Responsible for the Horse, in accordance with Article 118 GRs, as she was the driver of the Horse at the Event.

#### **4.8 The Additional Person Responsible**

31. Mr. Böhler is an Additional Person Responsible in accordance with Article 118 paragraph 3 of the GRs, as he is the owner of the Horse and has also made a relevant decision about the Horse, which was the treatment of the Horse by Dr. Izing prior to the Competition.

#### **4.9 The Decision**

32. 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 LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Vedaprofen, Dexametasone, Phenylbutazone and Oxyphenbutazone, which are Prohibited Substances, in the sample taken from the Horse at the Event. Neither the PR, nor the Additional PR, contested the accuracy of the test results or the positive finding.

33. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 of the EADMCRs. The presence of the four Prohibited Substances found together in the sample is classified as a "Doping" violation.
34. In Doping and Medication cases, the strict liability principle prevails as described in Article 2.1.1 of the EADMCRs. When a positive case has been proven by the FEI, the PR and the Additional PR have the burden of proof to show that he or she bears "No Fault and No Negligence" for the positive findings as set forth in Article 10.5.1 of the EADMCRs, or "No Significant Fault and No Significant Negligence," as set forth in Article 10.5.2 of the EADMCRs.
35. In order to benefit from any elimination or reduction of the applicable sanction under Article 10.5 of the EADMCRs, the PR or the Additional PR must establish how the Prohibited Substance entered the Horse's body. This element is a prerequisite to the application of Article 10.5 of the EADMCR. Considering the above, the Tribunal finds that the PR's vague reference to a treatment "according to the attached Final Hospital Bulletin", in the absence of the submission of the Final Hospital Bulletin, is insufficient to demonstrate how the Prohibited Substances entered the Horse's system. The Tribunal takes note that the respective Final Hospital Bulletin has been requested by the FEI through the HUN-NF, but has not been provided.
36. The Tribunal further considers the explanations provided by Dr. Izing during the Preliminary Hearing about the treatment of the Horse as not conclusive to determine whether or not the treatment by the latter has caused partially or totally the presence of the four Prohibited Substances in the Horse's sample. No further statement by Dr. Izing or any other veterinarian regarding the details of the treatment have been submitted by the PR or the Additional PR in the course of the proceedings.
37. With regard to the Additional PR, the Tribunal further notes the absence of any participation in the entire procedure despite several reminders of the FEI.
38. And, even if the PR or the Additional PR had established how the Prohibited Substances entered into the Horse's body, the Tribunal

finds that the PR and the Additional PR have not demonstrated that she and/or he bears "No Fault and No Negligence" or "No Significant Fault and No Significant Negligence," for the positive findings. To the contrary, the PR has not provided any statement that could lead the Tribunal to determine that she does bear "No Fault and No Negligence" or "No Significant Fault and No Significant Negligence" for the positive finding. The Tribunal has repeatedly expressed the view that it is the responsibility of competitors to inform themselves of all relevant rules to compete in FEI events and of substances administered to horses which are destined for participation in international events and to ensure that such horses do not have any Prohibited Substances in their systems.

39. With respect to the Additional PR, the Tribunal highlights that it was not contested that he was clearly informed by Dr. Izing that the treatment might lead to a positive test result. The Additional PR chose nonetheless to have the Horse participate in the competition in question, without submitting the veterinary statement by Dr. Izing, expressly prepared for this purpose, to the FEI Veterinarian.
40. The PR in every case has an absolute responsibility to ensure that all precautions are taken to be certain that his Horse participates in international competitions without Prohibited Substances in its system. The same applies to Additional PRs, once the prerequisites of Article 118 para. 3 of the GRs are met.
41. Accordingly, the Tribunal finds that the PR and the Additional PR have acted negligently in performing their duties as competitor and owner, and Person Responsible and Additional Person Responsible respectively.
42. According to Article 9 EADMCR, disqualification from the Events is automatic when there is a positive finding.
43. According to Article 173.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

#### **4.10 Disqualification**

44. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR from the Event and all medals, points and prize money won at the Event must be forfeited, in accordance with Article 9 EADMCR.



#### 4.11 Sanctions

45. The FEI Tribunal has decided to impose the following sanctions on the PR and the Additional PR, in accordance with Article 169 of the GRS and Article 10 of the EADMCRs:
- 1) The PR shall be suspended for a period of **18 months** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, starting on 8 June 2009 and running through 17 December 2009, shall be credited against the period of Ineligibility imposed in this decision.
  - 2) The Additional PR shall be suspended for a period of **10 months** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, starting on 23 June 2009 and running through 17 December 2009, shall be credited against the period of Ineligibility imposed in this decision.
  - 3) The PR is fined **CHF 1.500.-**.
  - 4) The Additional PR is fined **CHF 1.500.-**.
  - 5) The PR shall contribute **CHF 500.-** towards the legal costs of the judicial procedure.
  - 6) The Additional PR shall contribute **CHF 500.-** towards the legal costs of the judicial procedure.

#### 5. DECISION TO BE FORWARDED TO:

- 5.1 The persons sanctioned: Yes
- 5.2 The President of the NF of the persons 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