



## **DECISION of the FEI TRIBUNAL**

**dated 24 September 2009**

**Positive Doping Case No.:** 2009/19

**Horse:** TACKERAY

**FEI Passport No:** GBR43214

**Person Responsible:** Michael Whitaker

**Event:** CSIO5\*, TL NC La Baule, FRA

**Prohibited Substance:** Altrenogest

### **1. COMPOSITION OF PANEL**

Mr Ken E. Lalo (Chairman)  
Dr Jens Adolphsen  
Mr Hernán Mendez Cañas

### **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. The FEI Tribunal also took into consideration all evidence, submissions and documents presented during the oral hearing.

**2.3 Oral hearing:** 11 September 2009: in person (Heathrow Airport London, UK).

**Present:**

For the PR: Mr Michael Whitaker, PR  
Mr Graeme McPherson, QC, Counsel for PR  
Ms Jacqueline Brown, Counsel for PR  
Ms Melissa Braybrooke

Prof Dr Thomas Tobin, Expert for PR (by telephone)

Ms Cynthia Gurrie, groom, (by telephone)

For the FEI: Ms Lisa F. Lazarus, General Counsel  
Ms Carolin Fischer, Legal Counsel  
Dr Andrew J. Higgins, Member of the FEI Veterinary  
Commission  
Dr Yves Bonnaire, Laboratory Director LCH  
(by telephone)

### **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, revision effective 15 April 2007, updated 21 November 2008 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23<sup>rd</sup> edition, effective 1 January 2009, Arts. 118, 143.1 and 169 ("**GR**").

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. 1009 and Arts. 1013 and seq. and Annex II (the "**Equine Prohibited List**").

FEI Code of Conduct for the Welfare of the Horse.

#### **3.2 Person Responsible:** Mr Michael Whitaker.

#### **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."

EADMCR 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."

#### **4. DECISION**

##### **4.1 Factual Background**

1. TACKERAY (the "**Horse**") participated at CSIO5\* at La Baule, France, an event commencing on 14 May 2009 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr Michael Whitaker (the "**PR**").
2. The Horse was selected for sampling on 15 May 2009.
3. Analysis of the urine sample no. FEI-0096636 taken from the Horse was performed at the FEI approved laboratory, the Laboratoire des Courses Hippiques in Paris ("**LCH**"), by Mr Philippe Plou, Senior Analyst, under the supervision of Dr Yves Bonnaire, Director of the Laboratory. The analysis revealed the presence of the Prohibited Substance, Altrenogest (official document of Analysis dated 15 June 2009).
4. Altrenogest is a steroid progestogen and is used for oestrus suppression in mares. The treatment of mares with Altrenogest during competition is permitted subject to the submission of FEI Medication Form 2 and its approval prior to the event. The FEI alleged that Altrenogest, when present in the body of a male horse, is classified as a "Doping" Prohibited Substance under VR Article 1009 and the Equine Prohibited List.
5. No request had been made to administer Altrenogest to the Horse, and no medication form had been submitted for the Prohibited Substance.

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

6. The presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences involved were officially notified to the PR by the FEI Legal Department on 25 June 2009.
7. The Notification Letter of 25 June 2009 included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
8. The PR confirmed that he wished to be heard at a Preliminary Hearing. At the Preliminary Hearing, held on 26 June 2009 by

means of a telephone conference call, the PR had no explanation as to how the Prohibited Substance entered the Horse's system. The PR stated however that he did not knowingly administer the Prohibited Substance to the Horse, but that one of his mares was treated with Altrenogest and that it was possible that there was a mistake and the Horse inadvertently ingested the Altrenogest intended for his mare.

9. 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 EDAMCR Article 7.2 are met. The FEI argued that there was no legal basis to lift the Provisional Suspension in this case.
10. In light of the above, the Provisional Suspension of the PR was maintained.

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

11. Together with the Notification Letter of 25 June 2009, the PR received notice that he was entitled to the performance of a B-Sample confirmatory analysis. The PR was also informed of his right to attend or be represented at the identification and opening of the B-Sample.
12. While there was considerable back and forth between the Parties regarding whether the PR would exercise his right to have the B sample confirmatory analysis performed, the extent of the opportunity to witness and observe the B sample analysis, and whether the B urine or B blood, or both, would be tested, the Parties ultimately agreed on the way to proceed.
13. The B-Sample Analysis was performed on 2 and 3 September 2009 at the LCH by Isabelle Pottier, Senior Analyst. The analysis, upon request of the PR, was performed on urine, with and without hydrolysis, and on blood. Hydrolysis is a process whereby the parent substance is separated from the conjugate and then recovered to confirm the positive sample and then a scientific control method without hydrolysis is similarly performed for comparison purposes.
14. The PR did not attend the opening and identification of the sample and did not send a representative to the Laboratory. Therefore, Mr Patrick Cuvier, LCH Manager, witnessed the opening and identification of the B-Sample.
15. In his witness statement, Mr Patrick Cuvier 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 corresponds to that appearing on the collection documentation accompanying the sample"* (Witness Statement dated 2 September 2009).

16. The B-Sample Analysis of the blood, as well as the B-Sample Analysis of the urine with hydrolysis, confirmed the presence of Altrenogest. The B-Sample Analysis of the urine without hydrolysis was negative. The information, taken together, confirmed that the substance passed through the Horse and was unlikely to have been caused by post-collection contamination (Certificate of Analysis N° 0076542 dated 19 May 2009; Summary of Results, Sample 0096636, Dr Yves Bonnaire, 8 September 2009, page 298 Case File).
17. The results of the B-Sample Analysis were notified to the PR on 8 September 2009 through the British Equestrian Federation.

#### **4.4 The further proceedings**

18. On 17 August 2009, the PR submitted his written explanations. The submission contained the five supportive statements of: (i) Ms Michelle Gatland, owner of the Horse, (ii) Ms Cynthia Gurrie, groom, (iii) Mr Robert Noel Paul Cnockaert, Veterinarian, (iv) the British Show Jumping Association, and (v) Mr Michael Whitaker, PR.
19. The PR asserted three separate and distinct defences to the alleged EADMCR violation: (1) that the sample was contaminated following collection and consequently the Prohibited Substance was never ingested by the Horse; (2) that the Altrenogest was intended for the PR's mare who had permission to use it in competition but it was accidentally administered to the Horse; and (3) that Altrenogest has been misclassified as a Doping Prohibited Substance and instead should be classified as a Medication B (or at least Medication A) Substance.
20. Further, on 24 August 2009, the PR submitted two expert statements from Prof Dr Tobin.
21. The FEI submitted its Response to the PR's submission on 31 August 2009. The submission by the FEI contained three supportive statements, by Mr Jean-François Bruyas, FEI Veterinarian, by Dr Yves Bonnaire, LCH Laboratory Director and by Mr Timothy Morris, Director of Equine Science and Welfare, British Horse Racing Federation. With its submission, the FEI further provided the Medication Form 2 submitted by the PR at the Event for the mare, Wonami Van Denaarz, as well as a scientific paper on Altrenogest.

22. In response to the PR's arguments, the FEI contended that:
- (1) contrary to the PR's assertions, the FEI is not required under the EADMCR to prove that a Prohibited Substance "passed through" the Horse, the only obligation being to demonstrate that a Prohibited Substance was found in the bodily sample of the Horse;
  - (2) an accidental administration would only be relevant under EADMCR Article 10.5 if the PR had established how the substance entered the Horse's body, which the PR failed to do in his submission; and
  - (3) Altrenogest was properly classified as a doping substance under the category of hormonal products since there is no accepted or therapeutic use for the substance in stallions and that this position was consistent with that of other equine regulatory bodies such as the British Horseracing Authority, as set forth in Mr Timothy Morris' statement.
23. Additional documents and evidence submitted by the Parties and considered by the Tribunal are listed in the attached Index of Case File.
24. The Final Hearing took place on 11 September 2009. During a discussion on preliminary matters, the PR advised the Tribunal and the FEI that, following receipt of the B sample analysis and hydrolysis procedures conducted by LCH on 2 and 3 September 2009, he was withdrawing his argument that the sample had been contaminated post-collection. The PR conceded that such analysis demonstrated that the substance had indeed "passed through the Horse's body" and was highly unlikely to have been contaminated post-collection.
25. At the Final Hearing, the FEI argued that it had sustained its burden of proving an anti-doping violation under EADMCR Article 2.1 since the PR did not establish a departure from the FEI Standard for Laboratories or from the VRs. Further, the FEI argued that EADMCR Article 10.5 cannot apply to the PR to eliminate or reduce the sanctions because the PR did not establish how the Prohibited Substance entered the Horse's body, which is a prerequisite to the application of EADMCR Article 10.5. Specifically, the FEI argued that the groom's statement that *"as Regumate was detected in Tackeray's system it seems inevitable that I either failed to wash the buckets properly or that I gave the wrong feed to the wrong horse in the first day or so that I arrived at the show"* was insufficient to demonstrate how the Prohibited Substance entered the Horse's systems since it only hypothesized about how it may have happened and did not provide any concrete factual evidence. The FEI argued that this point was underscored by the groom's statement that she had *"no recollection of mixing the feed"*

*buckets."*

26. With regards to the PR's argument that Altrenogest was misclassified as a Doping substance, the FEI countered that this substance, when present in the body of a male horse, is classified as a "Doping" Prohibited Substance under VR Article 1009 and the Equine Prohibited List. The FEI contended that the Veterinary Committee rendered a veterinary opinion that Altrenogest is a hormonal product that satisfies the doping criteria set forth in the Equine Prohibited List, as it *"may affect the performance of a horse"* and *"has no generally accepted medical use"* in stallions and geldings. The FEI Veterinary Department's Statement dated 24 June 2009 stated that Altrenogest has been used to calm stallions and has weak anabolic potential. This position was buttressed by the submission of various research papers confirming that Altrenogest had been misused to calm stallions and could have a performance enhancing effect in stallions. Further, the FEI demonstrated that VR Article 1009, which is incorporated within the EADMCRs, specifically provides that Altrenogest is strictly prohibited. The FEI argued that this was further reinforced by Medication Form 2, which is the Form required to authorize the use of Altrenogest in mares, in that it reinforces that it is prohibited in stallions and that as the PR had on several occasions made use of Medication Form 2 for his mares, he should have been well-aware that the substance was strictly prohibited in stallions.
27. Conversely, the PR argued that Altrenogest cannot be classified as a Doping substance because there is no evidence that it *"affects the performance of a horse"* and that it does have a *"generally accepted medical use"* in mares. The PR also pointed out that Timothy Morris' statement did not confirm that Altrenogest was classified as doping within the British Horseracing Association, but merely that it was prohibited in competition, which the PR did not dispute. The PR argued that Altrenogest, even for stallions, falls squarely within the definition of Medication B, because it has *"limited performance enhancing potential"* and horses may easily become *"accidentally exposed"* to the substance. The PR argued that if the Tribunal was to credit this argument and to find that Altrenogest was improperly classified as a Doping Substance, the entire case against him must be dismissed as the FEI initiated only a Doping case against the PR and there was no pending Medication case against him.
28. Alternatively, the PR argued that if the Tribunal finds that Altrenogest was properly classified as a Doping Substance, it should find that the PR bore no substantial fault or negligence as the positive sample arose from his groom's mistake in mixing the

feed buckets between the mare that was authorized to receive Altrenogest and the Horse. As a result, while strict liability was acknowledged, the sanction should be eliminated or markedly reduced.

#### **4.5 Jurisdiction**

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

#### **4.6 The Person Responsible**

30. The PR was the rider of the Horse at the Event and is therefore, and in accordance with GR Art. 118, the Person Responsible for the Horse.

#### **4.7 The Decision**

31. The Tribunal is satisfied that the Laboratory reports relating to the A-Sample and B-Sample reflect that the analytical tests were performed in an acceptable method and that the findings of LCH are accurate. The Tribunal is also satisfied that the test results evidence the presence of Altrenogest, which all parties agree is a Prohibited Substance, in the sample taken from the Horse at the Event. The Laboratory findings were ultimately uncontested by the PR.
32. The PR claimed that the entire case against him must be dismissed as the substance is a Medication substance and the FEI only pursued a Doping case, therefore having no pending Medication case against the PR. At the outset and even prior to dealing with the issue of the categorisation of the Prohibited Substance, the Tribunal clarifies that the FEI properly pursued an alleged breach of EADMCR Article 2.1 ("*The presence of a Prohibited Substance .... in a Horse's Bodily Sample*") and that the Notification Letter of 25 June 2009 properly alleged all relevant facts relating to such breach, whether involving a Doping substance or a Medication substance. Therefore, even if the Tribunal were to find that the Prohibited Substance is a Medication substance the matter is not to be dismissed, but rather the PR sanctioned for having competed with the Horse while the Horse had an unauthorised Medication substance in his bodily fluids.
33. The FEI has thus sufficiently proven, in accordance with EADMCR Article 3, the objective elements of an offence under EADMCR Article 2.1.



34. One of the two key issues in this case is the categorisation of the Prohibited Substance:

- a. The FEI argued that Altrenogest, when present in the body of a male horse, is classified as a "Doping" Prohibited Substance under VR Article 1009. The FEI claimed that the EADMCR incorporate by reference other FEI rules, including the VRs, and therefore also this classification of Altrenogest, which is a specific rule. The FEI's position was that Altrenogest is a Doping Substance under the Equine Prohibited List as it has *"no generally accepted medical use in competition horses"*.
- b. On the other hand the PR argued that there was no specific reference to the substance in the Equine Prohibited List (which was the relevant rule and not the other FEI rules, such as the VR). The PR argued that the Equine Prohibited List was not gender neutral as the List included references to "mares", "geldings" and "male horse" in other sections. Therefore, one cannot state that Altrenogest has *"no generally accepted medical use in competition horses"* as the FEI itself agreed that Altrenogest has a legitimate use in mares, namely suppression of oestrus. The PR argued that Altrenogest fell squarely within the definition of Medication Class A as *"Agents which could influence performance by..... stimulating or producing/modifying other... behavioural effects..."* or Medication Class B as *"Substances that either have limited performance enhancing potential or to which horses may have been accidentally exposed..."*. The PR stated that in case of any ambiguity these rules must be interpreted in favour of the PR.
- c. The Tribunal finds that as both Parties agreed that *"it is common ground that there is no therapeutic use for altrenogest in male horses in competition"* (see para. 31 of PR's brief dated 14 August 2009, Dr. Higgins testimony and the veterinary opinion of The Veterinary Committee), the substance must be viewed as a Doping Substance. The reference to *"horses"* in the relevant section can be clarified by reference to VR Article 1009.10 (*"use of altrenogest in stallions or geldings is strictly prohibited"*), VR Article 1028 and Medication Form 2, all dealing specifically with Altrenogest. The PR completed Medication Form 2 for his mare that had also competed at the Event and was, therefore, aware of the prohibition against the use of Altrenogest in male horses. The Tribunal finds that Altrenogest, when present in a male horse's sample, is a

“Doping” Prohibited Substance.

35. During the Final Hearing it was acknowledged by the FEI that cases involving two mares that had tested positive for Altrenogest without Medication Form 2 were prosecuted by the FEI not as positive Doping cases but as technical violations of failure to submit the proper Medication Form and thus subject to minimal sanctions. It was also agreed by Dr Higgins that there are no protocols relating to the grant of Medication Form 2 to ensure strict criteria for its approval and ensuring that it is granted only for mares in "heat"; this despite the fact that Altrenogest must be viewed as an illegitimate substance of mares when not in "heat". The Tribunal suggests that the FEI reviews its policies and protocols in these matters and also questions why the riders of the mares in question were not prosecuted for Doping violations. Nevertheless, the fact that the FEI may have made mistakes in other cases does not alleviate the PR from wrongdoing. These matters will be taken into account in considering sanctioning.
36. The PR also referred to FEI Case 2009/02 in which the substance "Boldenone", an anabolic steroid used for "body building", found in a mare, was categorized as Medication A and not as Doping. While the Tribunal is weary of categorisation of substances in certain cases as well as their description (including in the present case), this should not alleviate the PR from wrongdoing in this case or affect the proper classification of Altrenogest.
37. Once the violation is proven, the PR may benefit from a reduction of the sanctions under EADMCR Article 10.5. In order to avail himself of this Article, the PR has the burden of showing that he bears No Fault or No Negligence for the positive findings under EADMCR Article 10.5.1, or No Significant Fault or No Significant Negligence under EADMCR Article 10.5.2. The PR argued that, if there is a finding against the PR, EADMCR Article 10.5.2 should be applied.
38. As a pre-requisite to the possible application of the defences available to the PR under EADMCR Article 10.5.2, the PR must establish how the Prohibited Substance entered the Horse's systems. Under EADMCR Article 3.1 this is to be established by the PR by *"a balance of probability"* (*"Where these Rules place the burden of proof upon the Person Responsible alleged to have committed an anti-doping or medication control rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability"*).
39. The other key issue in this case is whether the PR established how

the Prohibited Substance had entered his Horse's systems:

- a. The FEI argued that both the PR and his groom merely hypothesized that it was possible that the feed buckets of the PR's mare to whom Altrenogest had been administered and of the Horse may have been mixed. The FEI claimed that this was not sufficient to meet the burden of proof which rests upon the PR.
- b. The PR argued that as there was no intention to mix those buckets it was clear that the groom could only indicate that this was a possibility and would be lying to state with absolute certainty that this had indeed happened.
- c. The Tribunal finds that the cumulative effect of all evidence in this case is sufficient for the PR to establish under the balance of probability that the first prerequisite of EADMCR Article 10.5.2 was met. The PR's groom testified that it is more likely than not that the feed buckets had been mixed. There was sufficient evidence regarding the special circumstances that caused the PR's groom to feed the Horse and the mare after a hectic journey and in a state of fatigue. Dr Bonnaire, Dr Higgins and Prof Tobin all testified that it was scientifically plausible that the concentration detected resulted from a single accidental application hours before testing. The PR, the Horse's owner and the Veterinarian all testified that the Horse was easy to handle and an intentional application of the Prohibited Substance would not have served any purpose (see, for example, the statement of Michelle Gatland, the owner of the Horse, dated 17 August 2009). The Tribunal thus accepts that the substance entered the Horse's system through the mixing up of the feed buckets of the Horse and of the PR's mare that had been administered Altrenogest.

40. With regard to the question of fault or negligence:

- a. The Tribunal finds that the PR was negligent in that his groom mixed up the feed buckets at the Event, hours before the testing which was carried out on 15 May at approximately 10:30 (statement of Jean-Francois Bruyas, FEI Veterinarian, dated 28 August 2009).
- b. Ms Cynthia Gurrie, PR's groom at the time, testified that she had driven the lorry with the PR's horses and other horses to the Event. Due to stormy weather she was not allowed to cross the channel and had to stable the horses at Dover from around 6:30 am to around midnight. She tried to sleep in the lorry but being daylight found it difficult. She then had some ten hours drive to the Event.

On arrival she took all three horses to the vet check, unpacked the lorry and took care of the three horses. Under those circumstances, she claims that it was most likely that she had mixed the mare's and the Horse's feed buckets, all three of the PR's horses having been stabled at the Event next to one another.

- c. The PR testified that the positive finding resulted from *"human error resulting from quite exceptional circumstances. Cynthia arrived at La Baule due to unexpected and disruptive weather conditions, extremely tired and under considerable time pressure. She had very little time to organise the vet check for my horses while also organising the horses for their stay. The positive result has without doubt emerged because of this unique set of circumstances"*. The PR stated that Cynthia Gurrie, who was his groom for two years and is now freelancing and no longer working for the PR, is *"one of the most experienced international grooms on the circuit"*.
- d. The Tribunal has repeatedly expressed the view that competitors are responsible for their staff and the care given to their horses by grooms and support personnel.
- e. The FEI argued that the PR on learning about the stormy weather and eventful drive to the Event should have provided replacement or additional assistance to his groom or that he was extremely negligent in allowing his groom to make the travel without more help (she was accompanied by a groom of another rider during the drive). This is not accepted by the Tribunal as this may place impossible burdens on riders.
- f. The Tribunal does find however that the groom's actions in mixing up the feed buckets were most negligent and that this negligence is attributable to the PR.
- g. Furthermore, riders must and must ensure that their support personnel (through the establishment of clear and defined procedures and protocols, checks and personal responsibility) treat Prohibited Substances (even if authorised) as extremely dangerous products, as these may result in positive samples with all the negative consequences that follow. Therefore, all such products have to be stored separately and administered with strict caution directly to the relevant horse, on a one-on-one basis with the proper written recording of every such treatment. This will minimize the chance of inadvertent administration even under extreme circumstances.

41. Accordingly, the Tribunal finds that a violation of EADMCR Article 2.1 occurred, but that the PR is entitled to a reduction of the

sanctions under EADMCR Article 10.5.2 as set forth above.

42. In considering the appropriate sanctions, the Tribunal considered the factors mentioned elsewhere in this decision as well as: (1) the high level of the event; (2) the degree of negligence which cannot be acceptable from professional riders and their support personnel; (3) the requirement that PRs strictly control the environment of their horses especially at the Events themselves; and (4) the type of Prohibited Substance and its possible effect on stallions.
43. On the other hand, the Tribunal finds the following factors to be mitigating: (1) the PR's efforts to establish the reason for the positive test; (2) the PR's long career having represented the UK in some 180 international events and 5 Olympic Games, with no prior positives tests in the 300 – 600 occasions that the PR's horses had been tested; (3) the hardship already suffered by the PR, such as (i) the effect of the publication of this matter and the provisional suspension on earnings, sponsorships, reduction of points and ranking, (ii) the inability to compete the 35 young horses which the PR is currently training, (iii) the fact that the PR missed his first European Championship since 1985; (4) the fact that the Prohibited Substance is authorised for the treatment of mares at shows and was legitimately available to the PR's personnel at the Event; and (5) the light sanctions applied by the FEI to mares found to have been competing with the Prohibited Substance in their systems without the appropriate authorisation.
44. The Tribunal notes that the PR has requested a full dismissal of the allegations and therefore a finding that there should not be any period of Ineligibility, while the FEI has indicated that under the circumstances a five (5) month period of Ineligibility would be appropriate in this case. In regard to sanctions, the PR cited FEI Case 2008/12 (no suspension for a horse that picked up a Prohibited Substance from other horses belonging to third parties that used adjoining stalls at a national event in which such substances were permitted), FEI Case 2008/31 (4 months suspension for a doping case in which EADMCR Article 10.5 was utilised), FEI Case 2008/45 (6 months suspension for a Medication A case where the substance had been deliberately administered) and FEI Case 2008/27 (4.5 months suspension for a Medication A case in which EADMCR Article 10.5 was utilised). The Tribunal notes the distinguishing factors in this case highlighted throughout the decision and in Sections 42 and 43 above and further mentions that even had the Tribunal found the substance to be a Medication A substance, the sanctions would have likely been the same. The Tribunal notes that under the current draft of the new Equine Anti-Doping rules the sanctions in similar cases will be much harsher

with considerably longer suspension periods applied.

45. Under EADMCR Article 9, disqualification from the event is automatic when there is a positive finding.
46. According to GR Article 173.4, the present decision is effective from the date of written notification to the persons and bodies concerned.
47. The Tribunal highlights the professional way in which both the FEI and the PR have argued this case at the Final Hearing and their assistance at that Hearing in narrowing the issues and in directing the arguments and the Tribunal's attention to the key matters in dispute. However, the many discovery requests in this case, which for the most part were never relied upon at the Hearing, had clearly placed significant burden on the time, resources and funds of the FEI. With regard to the costs for the legal procedure, including the Final Hearing (which was held at Heathrow Airport, thus accommodating the PR and his defence team and lowering their costs but increasing the FEI costs), the Tribunal takes into account all of these factors.

#### **4.8 Disqualification**

48. As a result of the foregoing, the FEI Tribunal disqualifies all results of the PR and Horse combination obtained at the Event with all resulting consequences, including forfeiture of any related medals, points and prize money won at the Event, in accordance with EADMCR Article 9.

#### **4.9 Sanctions**

49. As a consequence of the foregoing, the FEI Tribunal has decided to impose the following sanctions on the PR, in accordance with GR Article 169 and EADMCR Article 10:
  - 1) The PR shall be suspended for a period of **four (4) months** to commence immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective since 25 June 2009, shall be credited against the Period of Ineligibility imposed in this decision.
  - 2) The PR is fined **CHF 250.-**.
  - 3) The PR shall contribute **CHF 2,000.-** towards the legal costs of the judicial procedure.

- 4) The PR shall cover the costs of the confirmatory analysis in the amount of **CHF 750.-**.

**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", is centered on the page.

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**THE CHAIRMAN, Mr Ken E. Lalo**