



DECISION of the FEI TRIBUNAL

dated 23 March 2018

Positive Anti-Doping Case No.: 2017/BS17

Horse: CENERADO **FEI Passport No:** 104FU71/ITA

Person Responsible/NF/ID: Giacomo Bassi/10035513/ITA

Represented by: Avv. Vincenzo Giardino, Equine Law Network, Livorno, Italy

Event/ID: CSI3*- Gorla Minore (ITA) - 2017_CI_0608_S_S_02

Date: 9 – 12 March 2017

Prohibited Substances: Stanozolol, Ketoprofen

I. COMPOSITION OF PANEL

Mr. Laurent Niddam, chair
Mr. Henrik Arle, member
Ms. Constance Popineau, member

II. SUMMARY OF THE FACTS

- 1. Memorandum of case:** By Legal Department.
- 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 and during the oral hearing, as also made available by and to the PR.
- 3. Oral hearing:** 14 March 2018 – Lausanne, Switzerland

Present:

The FEI Tribunal Panel
Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:

Mr. Giacomo Bassi, PR
Mr. Vincenzo Giardino, Legal Counsel
Ms. Sara Stopazzini, Legal Assistant
Ms. Valentina Isoardi, witness

For the FEI:

Ms. Anna Thorstenson, FEI Legal Counsel

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

Statutes 23rd edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2017, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012 ("**IRs**").

Internal Regulations of the FEI Tribunal, 3rd edition, 2 March 2018 ("**2018 IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2016.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2016.

Veterinary Regulations ("**VRs**"), 13th edition 2015, effective 1 January 2017, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Giacomo Bassi

3. Justification for sanction:

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with the World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

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 – 2.8 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."

EAD Rules Art. 10.6.3: "Prompt Admission of an Anti-Doping Rule Violation after being Confronted with a Violation Sanctionable under Article 10.2.1 or Article 10.3.1

A Person Responsible and/or member of the *Support Personnel* potentially subject to a two year sanction under Article 10.2.1 or 10.3.1 (for evading or refusing *Sample Collection* or *Tampering with Sample Collection*), by promptly admitting the asserted anti-doping rule violation after being confronted by the *FEI*, and also upon the approval and at the discretion the *FEI*, may receive a reduction in the period of *Ineligibility* down to a minimum of one half of the otherwise applicable period of *Ineligibility*, depending on the seriousness of the violation and the *Person Responsible* and/or member of the *Support Personnel's* degree of *Fault*."

EADCMRs APPENDIX 1 – Definitions:

"Fault. Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an *Person Responsible* and/or member of the *Support Personnel's* degree of *Fault* include, for example, the *Person Responsible's* and/or member of the *Support Personnel's* experience, whether the *Person Responsible* and/or member of the *Support Personnel* is a *Minor*, special considerations such as impairment, the degree of risk that should have been perceived by the *Person Responsible* and/or member of the *Support Personnel* and the level of care and investigation exercised by the *Person Responsible* and/or member of the *Support Personnel* in relation to what should have been the perceived level of risk. In assessing the *Person*

Responsible's and/or member of the Support Personnel's degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible's and/or member of the Support Personnel's departure from the expected standard of behaviour. Thus, for example, the fact that the Person Responsible would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Person Responsible only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2."

"No Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse's system otherwise contained, a Banned or Controlled Medication Substance or he or she had Used on the Horse, a Banned or Controlled Medication Method or otherwise violated an EAD or ECM Rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system."

"No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EADCM Regulation violation. Except in the case of a Minor, for any violation of Article 2.1 of the EAD Rules, the Athlete must also establish how the Prohibited Substance entered his or her system."

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced during the oral hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 CENERADO (the "**Horse**") participated at the CSI3* in Gorla Minore, Italy, from 9 to 12 March 2017 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr. Giacomo Bassi who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").
- 1.2 The Horse was selected for sampling during the Event, on 12 March 2017.
- 1.3 Analysis of the urine and blood sample with bar code no. 5556277 taken from the Horse at the Event was performed at the FEI approved laboratory, the LGC, Newmarket Road, Fordham, in the United Kingdom (the "**Laboratory**"). The analysis of the sample revealed the presence of Stanozolol in the blood sample and Ketoprofen in the urine sample.
- 1.4 The Prohibited Substances detected are Stanozolol and Ketoprofen. Stanozolol is an anabolic steroid used to improve performance by promoting muscular development and is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). Ketoprofen is a non-steroidal anti-inflammatory drug with anti-inflammatory and analgesic effects and is classified as a Controlled Medication Substance under the FEI List. Therefore, the positive finding for Stanozolol and Ketoprofen in the Horse's sample gives rise to an Anti-Doping Rule violation under the EADCMRs (Article 10.8.6 of the EAD Rules).

2. The Further Proceedings

- 2.1 On 5 April 2017, the FEI Legal Department officially notified the PR through the Italian National Federation ("**ITA-NF**"), as well as the owner of the Horse, of the presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the possible consequences. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the Tribunal.
- 2.2 The Notification Letter further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 5 April 2017, until 4 June 2017. The above Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.

3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 5 April 2017, the PR and the owner of the Horse were also informed that they were entitled (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 On 27 June 2017, the FEI informed the PR and the owner of the Horse of the results of the B-Sample analysis carried out at the Laboratory. The B-Sample analysis confirmed the results of the A-Sample analysis, *i.e.*, the presence of the Prohibited Substances Stanozolol and Ketoprofen.

4. Written submissions by and on behalf of the PR

- 4.1 On 18 July 2017, the PR provided an "Admission of Guilt" which states as follows:

"The horse Cenerado – FEI passport number 104FU71 – was treated with a cycle of the ACME product "Stargate" , as well as with a cycle of "Tildren" and repeated shock wave therapy treatments in the period between the 28/11/2016 and the 25/12/2016, in the attempt to cure or reduce the symptoms of a bilateral chronic sesamoiditis (X-RAYS 12.10.2016 ATTACHED) and the consequent chronic desmopathy of the tissues of the suspensory ligaments of both back legs.

This therapy was suggested by a veterinary trusted by the owner of the horse (Azienda Agricola del Duca). The prescribed cycle of Stargate was done by me with an intramuscular injection once a week for four weeks.

The cycle of Tildren was done both via intravenous and via perfusion in both back fetlocks, while the shock wave therapy was repeated weekly on the back fetlocks.

Both the Tildren and the Stargate were used with only a healing and supportive purpose during Cenerado's recovery, whom, at the beginning of the treatment, presented lameness on his back right leg when trotting in a circle. It was decided between owner, veterinary and rider to leave the horse a four week break, necessary for his well being and in order to allow the therapies to give results.

These pharmaceutical veterinary products were used only for their action against osteolysis and their intervention in the regeneration of the damaged bone tissue with delayed consolidation, and they were

suggested by the pharmaceutical company ACME.

The shock wave therapy, was aimed at stimulating the metabolic and regenerative processes of Cenerado's sesamoids in both his back fetlocks and at the insertions of the suspensory ligaments branches.

(....) Following this date the horse started doing small jumps and he then did his first show during the weekend of the 10-12 February 2017.

During the three phases of his recovery, Cenerado was constantly checked.

The product Stargate was suggested to us by the pharmaceutical company ACME, and they assured us that its use was admitted, if used far from competitions.

To support this theory, they showed me some international studies that confirmed the validity of these suggested therapies.

In this specific case, the injections were done every Wednesday, therefore, the last one was done the 21/12/2016, 50 days prior to the three day national show from the 10th of the 12th of February 2017 and 80 days prior the date of the doping test (Sunday 12/03/2017).

Following the communication of the result of the doping test, I realised the mistake I had committed. I verified and I found out that Stanozolol is prohibited at all times, unlike what ACME had told me. Therefore, I realised that the declarations ACME had made were only in their interest and not truthful.

I recognize the violation committed and I take all responsibility for it. I am truthfully sorry for this event, and, in my partial defence, I can say that I thought I was acting only for the horse's well being and for his health.

I ask you to be treated with mercy and that the final sanctions that will be applied will be within the minimum possible time frame.

I ask you to be able to continue to do this sport that I love and I solemnly pledge to follow rules attentively, giving all the necessary attention to the EAD RULES and asking, where necessary, support and advice from the FEI prior any cures and before using any pharmaceutical product on my horses in the future."

- 4.2 Later on, the PR stated that he wanted to admit the rule violation earlier, *i.e.*, prior to 18 July 2017, and prior to the B-Sample analysis, but that the pharmaceutical company ACME ("**ACME**"), producer of the product STARGATE (as outlined further below) and Dr. Paolo Predieri, CEO of ACME, had strongly advised him against this option, accusing the positive finding to a mistake or a wilful default, and telling him to request the B-Sample analysis. Thus, he therefore only admitted the rule violation after he received notification of the B-Sample results.
- 4.3 On 18 July 2017, and between 22 December 2017 and 2 March 2018 – following the FEI submission and request for further information and evidence – the PR submitted in essence that:
- a) He was a high level rider who competed in FEI competitions since 2006. Until the present case he and his horses had been tested over fifty (50) times, always with negative results; neither did he receive any behavioural sanction or warning card to date.
 - b) Regarding the Horse, the PR explained that since 2013 it had been stabled in the stables of the Azienda Agricola del Duca of Ms. Silvia Gonni, the owner of the Horse ("**Owner**"). During the hearing the PR clarified that the Owner was his mother. That already back then the Horse had presented the desmopathy in the back fetlocks, but that the Horse's clinical situation had always been excellent and suitable for sport use. From 2014 to 2016 the Horse took part, together with him, in many international shows without requiring frequent veterinary treatments. Further, the Horse did not present any significant lameness until November 2016, most likely caused by a wrong choice of shoeing and a twisted foot.
 - c) He fully admitted an Article 2.1 EAD Rule violation, and more specifically having used Stanazolol and Ketoprofen on the Horse as a therapy suggested by the pharmaceutical company ACME. He further stated that he has had no intention to improve the Horse's performance by promoting muscular development, but rather the health of the Horse.
 - d) Related to the foregoing, the PR also provided statements of two veterinarians, Dr. Andrea Miliani, and Dr. Silvia Ferioli. Dr. Ferioli confirmed that she has conducted three (3) Ultra Sound exams on the Horse, between 27 July 2016 and 24 September 2016, as well as an X-ray exam on 12 October 2016, and stated that the Horse was suffering from a "*Bilateral Chronic Desmopathy (Left and Right back legs) of both lateral and medial Suspensory Ligaments of the*

fetlock in the distal and insertional portion of the ligament, and consequent sesamoiditis and diffused bone rarefaction". Dr. Miliani stated on 14 August 2017, that the Horse had been under his cure for the past ten months, and basically confirmed Dr. Ferioli's diagnosis. In addition, the PR provided the X-rays and Ultra Sound exams of the Horse.

- e) Regarding how the Stanozolol entered the Horse's system, the PR stated that the veterinarian of the Owner, Dr. Alessandro Tampieri, has prescribed the product STARGATE – containing Stanozolol - on 20 November 2016. The PR explained that the product STARGATE was suggested to them by ACME, by Dr. Predieri and by Dr. Tampieri, who, after having treated the Horse in 2014 and 2015 (prescriptions dated 20 November 2014 and 22 November 2015) with the product SUNGATE, decided to use a product with a higher Stanozolol concentration.
- f) Furthermore, ACME and Dr. Predieri had assured him many times that the use of their product was allowed, if used far from competitions, and that no traces of the product should be detected in the Horse's system after forty (40) days. To support this thesis, Dr. Predieri had sent him international studies and documents signed by him to prove the validity and legitimacy of the suggested therapies. In this respect, the PR provided some scientific studies.
- g) The PR provided the Medication Logbook of the Horse that lists 5 mg administrations of SUNGATE on 1 December 2014 and on 3 December 2015; it does however not include any STARGATE administration in 2016. The Medication Logbook of the Horse also lists the administration of 10 ml of Ketoprofen on 5 March 2017. In addition, the PR provided translated product leaflets for both products, *i.e.*, SUNGATE (containing 5mg/ml of Stanozolol) and STARGATE (containing 50mg/ml of Stanozolol). According to the product leaflets, the route of administration foreseen for injections of STARGATE is intra-muscular, and intra-articular for SUNGATE.
- h) The Stanozolol was injected via intramuscular route on 30 November 2016 by Dr. Tampieri, and thereafter three (3) more times (on 7, 14 and 21 December 2016 respectively) by the Horse's groom, Ms. Amy Ives, who had received instructions from Dr. Tampieri on how and when to inject the Horse, as Dr. Tampieri had been absent from the stables during that time. In a statement Ms. Ives confirmed the three (3) injections by her, which she had conducted under the responsibility and with the authorization of the PR and the Owner. Whereas, in his "Admission of Guilt" the PR

stated that he himself had injected the Horse with Stanozolol, he later on clarified that the injections were performed by Dr. Tampieri and by Ms. Ives. The PR further stated that he assumed full responsibility for the injections performed by Ms. Ives.

- i) Regarding the Prohibited Substance Ketoprofen, the PR explained that it was injected intravenously by the veterinarian Dr. Gaia Mosconi on the evening of 5 March 2017. The PR provided a statement of Dr. Mosconi, who confirmed that on 5 March 2017 she had diagnosed the Horse with fever due to fatigue and decided to inject 10 ml Ketoprofen intravenously, along with an integration of electrolytes, vitamins and minerals, and that she had furthermore suggested to always keep a bucket of fresh water available for the Horse.
- j) The PR stated that he admitted the rule violation he committed and that he assumed responsibility for it. Furthermore, he apologised and stated that he always acted and will always act exclusively for the wellbeing and health of his horses. He did not and he never will intentionally commit sports fraud and/or alter the results of a competition using Banned Substances. He offered to volunteer for the Clean Sport project of the FEI or any other activity within the FEI, and stated "*Doping does not represent me, I am truly sorry for what happened and I can guarantee that it won't happen again*".
- k) Moreover, the PR explained that due to him being provisionally suspended he had lost clients and was forced to close his stable.
- l) Finally, the PR requested for a reduction of the period of Ineligibility for his prompt admission, in accordance with Article 10.6.3 of the EAD Rules. He requested the minimum sanction possible, and proposed a six (6) months period of Ineligibility and a fine of CHF 5'000.

4.4 In addition, the PR provided a statement by Dr. Predieri, the CEO of ACME, which reads – among others - as follows:

"Stanozolol is a widely used medicament to treat various conditions both in humans and animals. (...)

In competition horses, we find that one of the main causes of bone decalcification is given by the continuous trauma that the skeleton undergoes during exercise and competition. Furthermore, various scientific research papers (Falanga et al., 1998) show how

Stanozolol stimulates collagen synthesis, a fundamental constituent for the repair of ligaments affected by desmitis.

The prescription of Stanozolol via systemic treatment (oral, intramuscular or endovenous) for horses not intended for human consumption, whom are affected by bilateral chronic desmitis of the fetlock suspensory ligament in its distal and insertional portions, with consequent sesamoiditis and diffused bone rarefaction, belongs to the category of medical treatments allowed for the well-being of the animal. In Italy it is not possible to legally buy veterinary medicines with Stanozolol that you can give via systemic injection and registered for the treatment of orthopedic pathologies in horses.

It is a severe deficit that is common to other minor species in Italy as well, that, having, like horses, just a limited number of specimen on the territory, it is not possible to have an appropriate therapeutical plan and handbook for the safeguard of their well-being.

Considering this penalisation, in order to ensure the protection of the animals' well-being, the European Legislation, as well as the National Legislation, allows the veterinary to prescribe medicines for the horse that are not registered for the horse but that present in at least one other animal species the indications of the clinical conditions that you want to treat.

This possibility is allowed through the so called "a cascata" system in Italy (Directive 2004/28/CE and articles 10, 11 acknowledged in Italy with the Legislative Decree 193/2006).

In fact, the "a cascata" system allows the prescription of medicines with Stanozolol registred for other animal species (dogs, cats) for horses that suffer of chronic dismitis with bone rarefaction and sesamoiditis.

The administration of Stanozolol under strict control of the veterinary for those horses that are affected by orthopedic diseases appears as a legitimate act for the well-being of the animal."

5. Written submission by the FEI

- 5.1 On 2 November 2017, and responding to the PR's submission of 18 July 2017, the FEI submitted a summary of a scientific expert, Dr. Peter Kallings, Member of the FEI List Group, who has summarised the following facts on Stanozolol¹:

"Anabolic Steroid

Stanozolol is a synthetic anabolic steroid derived from dihydro-testosterone. It has been used in both animal and human patients for a number of conditions. In veterinary medicine it has been used as an adjunct in the management of wasting diseases, to stimulate the formation of red blood cells, arouse appetite, and promote weight gain, but the evidence for these uses is weak and it is no longer considered to have any justification in modern medicine. However, it is still abused as a performance enhancing drug in human athletes and race horses.

Adverse effects

Anabolic steroids have well known negative effects in man and in horses it is also considered a risk for too early fusion of growth plates in treated yearlings. An increased muscle mass and too hard training may cause ruptures and fractures as well as overtraining syndrome. Negative effects on fertility with decreased testis and sperm production and aggressive behavior are known in both humans and horses. Side effects of anabolic steroids include weight gain, water retention, and difficulty eliminating nitrogen-based waste products and it is toxic to the liver.

Regulated as a banned substance in human sports (WADA) and racing (IFHA)

Stanozolol is one of the anabolic steroids commonly used to increase performance and is banned from use in human sports. Stanozolol became well known after Canadian athlete Ben Johnson tested positive for it after winning Olympic gold in Seoul 1988. It is on the Prohibited list by WADA, the World Antidoping Agency (3), the International Olympic Committee (IOC), the International Association of Athletics Federations (IAAF) and many other sporting bodies.

Stanozolol has been used in horse racing and is banned in most racing jurisdictions in e.g. Europe, Australia and more recently also restricted in the USA. It is classified as banned substance by the leading equine

¹ Peter Kallings, DVM, PhD, Research Director, Swedish-Norwegian Foundation for Equine Research, SE-161 89 Stockholm, SWEDEN

sports regulatory bodies due to its high potential for abuse. The International Federation of Horseracing Authorities (IFHA) has minimum standards that states that use of anabolic steroids, like stanozolol, should not be permitted in or out of competition (4). British Horseracing (BHA) has a zero-tolerance towards anabolic steroids (5). BHA had some years ago several incidents with stanozolol used intramuscularly (Stanasol) as doping (6) as well as used intra-articularly (Sungate) as prohibited medication (7). BHA stated that "Sungate is a product developed by an Italian company, produced and licensed for equine use in Italy. Its use in the UK is legal, but only when imported under the Special Import Certificate scheme administered by the Veterinary Medicines Directorate. The product is intended to assist in the treatment and management of joint disease in horses. Sungate contains stanozolol, an anabolic steroid and consequently a prohibited substance under the Rules of Racing" (8). The FEI List Group has also expressed that the risk of abusive usage of stanozolol to enhance performance is very high as seen in other sports."

5.2 Moreover, the FEI submitted in essence as follows:

- a) Article 3.1 of the EAD Rules made it the FEI's burden to establish all of the elements of the EAD Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. "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". Instead it was a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A-Sample taken from the Horse at the Event confirmed the presence of Stanozolol and Ketoprofen, and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. The PR did not dispute the presence of the Prohibited Substances in the Horse's sample. Accordingly, the FEI has discharged its burden of establishing that the PR has violated Article 2.1 of the EAD Rules.
- b) Where a Banned Substance was found in a horse's sample, a clear and unequivocal presumption arose under the EAD Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EAD Rules provided that a Person Responsible with no previous doping offences who violated Article 2.1 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless he was able to rebut the presumption of fault. And that to do this the rules specified

that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability) (i) How the Prohibited Substance entered the Horse's system; and (ii) that he bore No Fault or Negligence for that occurrence, *i.e.*, that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the horse (or the horse's system otherwise contained) a Banned Substance (in which case, the presumptive two-year period of Ineligibility is eliminated completely pursuant to Article 10.4 of the EAD Rules); or in the alternative (iii) that he bore No Significant Fault or Negligence for that occurrence (in which case, the presumptive two-year period of Ineligibility may be reduced by up to 50%, depending on his degree of fault, pursuant to Article 10.5 of the EAD Rules). If the PR failed to discharge this burden, the presumption of intentional administration and performance stood.

- c) The FEI submitted in this context that the PR had to provide clear and convincing evidence that proved how the Stanazolol and Ketoprofen had entered the Horse's system. The PR had provided evidence and admitted that the Horse was treated with a cycle of the ACME product "Stargate", as well as with a cycle of "Tildren" and repeated shock wave therapy treatments in the period between 28 November 2016 and 25 December 2016. The FEI found that such treatment could be a plausible explanation of how the Stanazolol entered the Horse's system. However, at the time the PR has not provided any explanations of how the Ketoprofen entered the Horse's system. Hence the FEI was of the opinion that the PR would need to submit further evidence to support his case on that particular matter, in order to fulfil the threshold requirement on how the substances entered the body of the Horse.
- d) In terms of the degree of Fault and Negligence by the PR for the rule violation, the FEI argued that the starting point of any evaluation of the degree of Fault and Negligence by the PR for the rule violation was the "*personal duty*" of the PR following from Article 2.1.1 of the EAD Rules, *i.e.*, his personal duty to ensure that "*no Banned Substance is present in the Horse's body*".
- e) In light of the CAS jurisprudence (outlined further below), the FEI respectfully submitted that making the PR *prima facie* responsible for the condition of the Horse while competing, subject to his ability to prove he bears No (Significant) Fault or Negligence for its doped condition, was a reasonable and justifiable stance.

- f) In this respect, CAS in the *Royal des Fontaines* case² had endorsed the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible. The CAS Decision states as follows:

"No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent (the FEI) put it in its skeleton argument

"The FEI believes that making the rider the responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay apprised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse"

The Sole Arbitrator respectfully agrees."

- g) In the *Glenmorgan* case³ the Panel confirmed that the rider was best fit to control the Horse before a competition. The Panel further stated as follows:

"... Among them (any support personnel), the rider is best able to function as the "last check" on the physical condition of the horse immediately prior to and during the race, regardless of whether he knows the horse or mounts it for the first time. An experienced rider can quite often identify with the naked eye an irregularity in the condition and behaviour of the animal both before mounting and during the competition."

- h) Further, that it was necessary to look at the definitions of fault, as defined in Appendix 1 of the EAD Rules, *i.e.*, Fault, No Fault or Negligence, and No Significant Fault or Negligence.
- i) In this respect the FEI highlighted that, in accordance with Article 1055 of the VRs, Banned Substances are never to be found in a competition horse, they were substances with no legitimate use and had a high potential for abuse. In the case of Stanazolol, which was one of the old-school doping substances and one of the most known anabolic steroids, the FEI had a zero-tolerance for such substance in a competition horse.

² CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI, para 57.

³ CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI, paras 203 and 209.

- j) Further, it was the PR's personal duty to ensure that no Banned Substance was present in the Horse's body. For No Fault or Negligence to apply, the PR has to establish that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the Horse, or the Horse's system otherwise contained, a Banned Substance. The FEI was however of the view that the PR was fully aware of the treatment given to the Horse, he injected the Horse himself on recommendation of the veterinarian of the Owner. The FEI submitted that it could have been very simple for the PR to check the active ingredient in STARGATE, as with a simple internet search one found a picture of STARGATE with big letters stating Stanazolol on it. In view of the FEI it had also to have been written on the bottles used by the PR to inject the Horse.
- k) The FEI was of the opinion that in cases where the PR actually administered or treated a horse willingly with a Banned Substance, No Fault or Negligence could not be applied. In the opinion of the FEI the PR had been highly at fault and negligence for the rule violation. He had to have realised while using the product that he should have checked the product on the internet and checked the active substance Stanazolol on the FEI List. By not doing any research on the product or checking with other people or veterinarians in the sport about such substance, the PR had been highly negligent. With this background the FEI was of the opinion that neither could No Significant Fault or Negligence be applied in the case at hand. In addition, the FEI argued that the fact that ACME has recommended the product was irrelevant, since the PR was still responsible for any treatments given to the Horse he was competing with. Also, the use of the anabolic steroid Stanazolol was illegal in most countries, and that that alone should have raise a warning flag.
- l) Regarding Prompt Admission, in accordance with Articles 10.6.3 of the EAD Rules, the FEI submitted that should the Tribunal decide to accept that the PR did promptly admit the violation, the fact that Article 10.6.3 required a consideration of the two key factors of the "seriousness of the violation" and the PR's "degree of fault" could not be ignored. A corresponding provision to Article 10.6.3 of the 2015 EAD Rules can be found in the 2015 WADA Code and indeed it was upon this provision that Article 10.6.3 of the 2015 EAD Rules was based. It was therefore clear, that the intention of WADA that the ADO's (in the case at hand the FEI's) assessment of the seriousness of the offence was a key factor to be considered in any decision to reduce the period of Ineligibility.

- m) In this regard, it was the submission of the FEI that the offence in question – the Presence of a Banned Substance in a Horse’s Sample – was a very serious offence and one which attracted the highest “base” level sanction under the EAD Rules, *i.e.*, two (2) years. The fact that the PR did administer the particular Banned Substance himself augmented the gravity of the offence. Banned Substances have been identified as the most serious of the substances that are included on the FEI List. Stanazolol is an anabolic steroid used to improve performance by promoting muscular development, and one of the most serious substances to be found in a Horse’s system, and should never ever be found in a competition horse. Further, that it was a core principle that the PR was responsible for ensuring that no Banned Substance was present in the Horse’s body. It was very relevant when considering the seriousness of the offence to look at the personal responsibility of the PR, who had in this case actually injected the Horse with Stanazolol himself, and this had to be a factor to be taken into account when determining the seriousness of the offence. Finally, the FEI argued that given the FEI’s position on the seriousness of the offence, if the Tribunal finds that the PR timely admitted the violation and therefore applied Article 10.6.3 of the EAD Rules, the FEI submitted that the consequent reduction of the period of Ineligibility had to be very minimal.
- n) As a result, the FEI respectfully submitted that the period of Ineligibility imposed on the PR should be two (2) years in accordance with Article 10.2 of the EAD Rules.
- o) Pursuant to Article 9 of the EAD Rules, the results of the PR and Horse combination obtained in the Competition shall be disqualified with all resulting Consequences, including forfeiture of any related medals, points and prizes. This rule applied even if the period of Ineligibility was reduced or eliminated under Article 10 of the EAD Rules, *e.g.*, on the basis of No (or No Significant) Fault or Negligence. Furthermore, since this was a case with a Banned Substance, occurring during or in connection with an Event, and in order to safeguard the level playing field, the FEI may disqualify all of the Persons Responsible’s individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article 10.1.2 of the EAD Rules. In cases of team competition, Article 11 of the EAD Rules also applied.
- p) As fairness did not dictate that no fine be levied in the cases at hand, the FEI duly requested that a fine be imposed on the PR, and that the PR was ordered to pay the legal costs that the FEI has incurred in

pursuing this matter. The FEI requested that the Tribunal fined the PR in the amount of 5 000 CHF, and ordered the PR to pay the legal costs of 1 500 CHF that the FEI has incurred in these proceedings, as well as the cost of the B-Sample. In this regard the FEI informed that certain parts of fines contribute to education within anti-doping.

6. Hearing

- 6.1 At the outset of the hearing, the Parties confirmed that they did not have any objection to the constitution of the Panel.
- 6.2 In accordance with Article 19.34 of the IRs, the witness heard by the Tribunal was asked to tell the truth, and was examined and cross-examined by the Parties, as well as questioned by the Tribunal. At the hearing the PR withdraw Ms. Ives from the list of witnesses, and explained in this respect that Ms. Ives was no longer able to attend the hearing for medical reasons.
- 6.3 The Parties had ample opportunity to present their cases, submit their arguments and answer to the questions posed by the Tribunal. After the Parties' final submissions, the Tribunal closed the hearing and reserved its final decision. The Panel heard carefully and took into consideration in its discussion and subsequent deliberation all the evidence and the arguments presented by the Parties even if they have not been summarized herein.
- 6.4 At the end of the hearing, the Parties acknowledged that the Panel had respected their right to be heard and their procedural rights.
- 6.5 The witness Ms. Valentina Isoardi, rider and girlfriend of the PR, confirmed that the Horse after it came to the PR's stable in 2013, and after initially been treated for a slight lameness, was always sound and competed achieving good results regularly. Ms. Isoardi further stated that at a show at the end of November 2016 the Horse got lame and was send back to its stables in Imola, *i.e.*, the stables of the Owner, for a resting period. Dr. Tampieri, the veterinarian of the Owner, who previously treated the Horse with SUNGATE, in the presence of the PR, herself, the Owner and the horse carrier, decided to treat it with a stronger version of SUNGATE, which according to ACME – following discussions between the PR and Dr. Predieri - was the product STARGATE (same substance but stronger version). According to Ms. Isoardi the reason why Dr. Tampieri used a stronger version of SUNGATE was *"to try to reduce the lameness and to try to preserve the Horse"*, and since the Horse was in a worse situation than previously. Furthermore, Ms. Isoardi confirmed that Dr. Tampieri conducted the first intra-muscular STARGATE injection on the Horse, and showed Ms. Ives how to inject the Horse in the weeks to follow; the PR and herself were then no longer in Imola, as they had to organise the new stables. Regarding the Ketoprofen injection in the week prior to the sampling Ms. Isoardi confirmed that the Horse has undergone horse inspection prior to

the Event and has been declared fit to compete. Moreover, Ms. Isoardi stated that all the different veterinarians of the Horse knew about all the treatments on the Horse, but that Dr. Tampieri had decided on the therapy which included the administration of STARGATE next to the use of Tildren and the shock wave therapy. She also confirmed that Medication Logbooks existed for all horses in the stable, and that the veterinarians recorded the treatments given to the horses.

- 6.6 Furthermore, Ms. Isoardi explained that she was herself an FEI registered rider, but was not familiar with the EADCMRs prior to the case at hand. Her role in the PR's stable was mostly an administrative one. She also stated that most of her colleague riders in Italy were just relying on what their veterinarians told them, and had not much knowledge about the EADCMRs, or detection times of substances etc. She did not know the substance Stanozolol prior to the present case, but knew that the product SUNGATE had a long detection time, without knowing the composition of the product.
- 6.7 During the hearing the PR clarified – following the FEI submission outlined further below - that injecting Stanozolol was only considered a criminal offence in Italy, *i.e.*, “mistreatment of the horse”, where an injection of Stanozolol was not justified for medical reasons. The PR furthermore explained that ACME has brought a claim against the ITA-NF and the FEI at the court in Milan (proceedings are ongoing) seeking for allowance of the use of the product SUNGATE, containing Stanozolol, and which could be purchased in every pharmacy in Italy with a prescription. Moreover, the PR explained that ACME has been his sponsor for five (5) years up until the positive findings, and that ACME also sponsored the ITA-NF, for example ACME's logo was on the Medication Logbooks of the horses, and other Equestrian activities, including veterinary conferences etc. In addition, ACME was also providing feed and supplements to the stables, and had fiduciary veterinarians in every region.
- 6.8 Moreover, the PR explained that the Horse has been treated with SUNGATE every year since 2013, around two (2) to three (3) months before the first show of the Horse, which treatments have all been recorded in the Medication Logbook of the Horse, and that during all these years his horses, including the Horse, have been tested, always with negative results. When requested why STARGATE has not been registered in the Medication Logbook of the Horse, the PR answered because it was not considered as a medical treatment as it was a Banned Substance – which he only found out after the positive test -, and that that was the reason of his admission. He would not have used the product STARGATE on the Horse if he had known it contained a Banned Substance, but that this treatment had been part of the daily routine of the stables, *i.e.*, the veterinarian came in and treated the Horse. His fault was not having paid due attention to this product, but he promptly admitted the rule violation and this was his first violation in his career of twenty (20) years. Further, that his fault was a fault of excessive trust, as he had trusted the sponsor, *i.e.*, ACME, and the veterinarian to a 100%.

- 6.9 The PR explained that they were very organised in the stables, had three (3) grooms, and two (2) veterinarians, in addition to a veterinarian in case of emergency. That if the Horse has a problem he was calling the veterinarian, there was a basket with all medicines for emergency use, and he did normally not inject the Horse. He usually also looked what was given to his horses, including the Horse, but not in the case at hand. He had only done research after the positive findings, and also only read the EACDMRs after the positive findings. In the PR's view, other riders in Italy did not know the rules either and he was planning on doing an online sensitization campaign in Italy. The PR further explained that ACME was heavily promoting their products, and that from the information found on the internet with regard to their products it sounded like buying an aspirin. Finally, the PR explained that there were plenty of horses in Italy treated with Stanazolol, and that there **were** many Stanazolol positives on a national level.
- 6.10 Upon argument of the FEI that studies existed that showed that a single injection of Stanazolol could have positive effects in a horse for two (2) to three (3) years, the PR argued that intra-articular injections could not improve the muscular mass, as the injection took place in between bones, and since the concentration of injected Stanazolol was too low (however as previously outlined only SUNGATE is injected via intra-articular route, but not STARGATE, which is and was in the case at hand injected via intra-muscular route).
- 6.11 Finally, the PR argued that Article 10.6.3 of the EAD Rules, *i.e.*, prompt admission, was applicable in the case at hand. While the PR agreed with the FEI on the seriousness of the rule violation, he argued that the rule violation had to be seen in relation to the average fault in a case of this type in Italy. He was a very responsible person, over the average of riders in Italy, spoke English, has lived abroad and has made many experiences. The PR's fault in the case at hand had to be considered low due to the situation with regard to this substance, *i.e.*, Stanazolol, in Italy. The PR also argued that 50% of the veterinarians in Italy were "pro-ACME", and that through ACME's campaigning in the last four (4) to five (5) years ACME had reached 90% of all persons involved in the Equestrian sport in Italy. The PR stated that he was provisionally suspended for almost one year now, that he needed to re-start working as soon as possible in order to survive, and that he requested a reduction of half of the period of Ineligibility. He offered to sensitise Italian riders – of whom 90% of the total licensed riders would follow his blog – with regard to the EADCMRs.
- 6.12 The FEI argued that it accepted the PR's explanations on how the Stanazolol entered the Horse's system, namely through the administration of SUNGATE or STARGATE. The FEI highlighted that Stanazolol was one of the old-school doping substances, used in the 1980s, and has therefore been prohibited for a long time already. It was prohibited in all sports, and in all countries which have adopted the World Anti-Doping Code ("**WADC**"), which are almost all countries in the world. In many countries the mere possession of Stanazolol was also a criminal offence. In addition, the doping law in Italy foresaw

imprisonment of up to three (3) years for doping offences. All of this showed the seriousness of steroids, including Stanozolol. The FEI did not want to see this substance in competition horses, and neither in the sport or in society.

- 6.13 Regarding the level of fault of the PR for the EAD Rule violation, the FEI highlighted that Stanozolol is a Banned Substance, which should never be found in a competition horse. Banned Substances have no legitimate use in a competition horse, since they have a high potential for abuse. The FEI argued that the rule violation in the case at hand was not only "Presence" of a Banned Substance, but also "Use" as the substance was used over a period of time of three (3) consecutive years. Furthermore, the "Possession" of a Banned Substance was also a violation of the EAD Rules. Hence, the PR had violated Article 2.1, 2.2, and 2.6 of the EAD Rules.
- 6.14 The FEI was of the opinion that the PR was fully aware of the treatment given to the Horse. In the case at hand the PR has actually admitted that he willingly gave this substance to the Horse, despite the fact that the Stanozolol substance is clearly stated on the product labels of both SUNGATE and STARGATE. The FEI argued that the PR by not doing the necessary research on the substance, was highly at fault for the rule violation. Therefore, No (Significant) Fault or Negligence could not be applied in the case at hand.
- 6.15 The FEI further argued that it was also negligent of the PR to compete with the Horse only five (5) days after it has been injected with Ketoprofen. In this respect the FEI argued that the FEI published detection time when injecting a horse intravenously with Ketoprofen was four (4) days, and that the withdrawal time had to be doubled.
- 6.16 The FEI argued that therefore no reduction of the two (2) year period of Ineligibility was applicable. The FEI was instead of the opinion that the use of Stanozolol over several years was rather indicating aggravating circumstances, and that the fact that the possession of Stanozolol was a criminal offence in Italy had to also be taken into account. Hence the Tribunal should take into consideration whether aggravating circumstances exist in the case at hand. The FEI also questioned whether a Horse that needed to be treated with Stanozolol every year was fit to compete, or whether this was rather an indication of horse abuse. The FEI provided examples from the racing industry where horses are suspended for either fourteen (14) months or even for life (depending on the country) after they have been treated with Stanozolol.
- 6.17 Finally, the FEI argued that Article 10.6.3 of the EAD Rules was not applicable in the case at hand, as the use of Stanozolol was considered a serious violation, and since the PR did not take the necessary precautions to avoid that the Stanozolol entered the Horse's system. The FEI stated that the FEI could however agree on the application of Article 10.10.3 of the EAD Rules, *i.e.*, Timely Admission, in the present case.

7. Jurisdiction

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

8. The Person Responsible

In accordance with Article 118.3 of the GRs, the PR is the Person Responsible in the case at hand, as he has competed with the Horse at the Event.

9. The Decision

- 9.1 As set forth in Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A-Sample, which has been confirmed through analysis of the B-Sample. 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 manner and that the findings of the Laboratory, for both the A-Sample and the B-Sample, are accurate. The Tribunal is satisfied that the test results evidence the presence of Stanozolol and Ketoprofen, in the blood and urine sample respectively, taken from the Horse at the Event. The PR accepted the accuracy of the test results and the positive finding. Stanozolol is a Banned Substance under the FEI List and the presence of the substance in a Horse's body is prohibited under Article 2.1 of the EAD Rules. Ketoprofen is a Controlled Medication Substance under the FEI List and the presence of the substance during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 9.2 As a result, the FEI has thus established an Adverse Analytical Finding for a Banned Substance and a Controlled Medication Substance, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules. Moreover, the PR admitted guilt and it is therefore common ground between the Parties that the objective elements of the offence have been established.
- 9.3 As set forth in Article 10.8.6 of the EAD Rules, where a PR, based on the same factual circumstances, is found to have committed a violation involving both a Controlled Medication Substance under the ECM Rules and a Banned Substance under the EAD Rules, the PR shall be considered to have committed one EAD Rule violation and the sanction

shall be based on the Banned Substance that carries the most severe sanction.

- 9.4 Pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 violation, *i.e.*, the Presence of a Banned Substance in a Horse's sample, as in the case at hand, shall be two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules. Furthermore, according to Article 10.7 of the EAD Rules where Aggravating Circumstances are present which justify the period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four years, unless the Person Responsible can prove to the comfortable satisfaction of the Tribunal that he did not knowingly commit the EAD Rule violation.
- 9.5 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR has the burden of proving that he bears "No Fault or Negligence" for the rule violation as set forth in Article 10.4 of the EAD Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the EAD Rules.
- 9.6 In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substances entered the Horse's system.
- 9.7 To start with, the Tribunal takes note of the PR's explanations of how the Prohibited Substances have entered the Horse's system, namely through four (4) intra-muscular injection of the product STARGATE – containing 50 mg/ml of Stanozolol - between 30 November 2016 and 21 December 2016 (by Dr. Tampieri and by Ms. Ives), and through the intravenous injection of 10 ml of Ketoprofen by Dr. Mosconi on the evening of 5 March 2017. In this regard the Tribunal takes also note that the FEI accepted the PR's explanations on how the Prohibited Substances entered the Horse's system. The Tribunal is therefore satisfied that the PR established – by a balance of probability, as required under Article 3.1 of the EAD Rules – how the Stanozolol and Ketoprofen have entered the Horse's system.
- 9.8 At this point, the Tribunal wishes to clarify that from an FEI Rules point of view, there is no difference between the administrations of the product STARGATE and the previous administrations of the product SUNGATE. This is because both products contain the Banned Substance Stanozolol, and the mere presence, administration or possession of this substance might be considered as a rule violation, no matter the

concentration contained in the various products, the route of administration, or whether the doping test was positive. Neither is it relevant from an FEI Rules point of view, whether the administration of those products is allowed in Italy, or whether its use is considered a valid treatment for the Horse's condition. The PR, when competing in FEI events, has to adhere to FEI Rules and Regulations, including the EADCMRs, which prohibit Banned Substances, such as Stanozolol, in horses participating in FEI events. Thus, the previous administrations of the product SUNGATE, containing Stanozolol, albeit in a lower concentration than STARGATE, also violated the EAD Rules. The PR with his statements and by providing the Medication Logbook of the Horse has himself shed light to the previous use of products containing Stanozolol, *i.e.*, the administration of SUNGATE over a period of three (3) years.

- 9.9 Moreover, the Tribunal wishes to clarify that the case at hand does not concern a case of not allowing sufficient detection or withdrawal times of a medicine administered to the Horse. According to the EADCMRs, Banned Substances, such as Stanozolol in the case at hand, shall never be found in any competition horse. It is therefore irrelevant whether or not the suggested detection/withdrawal times have been followed by the PR.
- 9.10 In a further step the Tribunal examines the question of "No Fault or Negligence" or "No Significant Fault or Negligence" of the PR for the rule violation.
- 9.11 In accordance with Articles 2.1.1 of the EAD Rules, the Tribunal considers that it is the PR's personal duty to ensure that no Banned Substance is present in the Horse's body at any time. Under the EAD Rules the PR is held strictly liable for the condition of the Horse. CAS (CAS 2015/A/4190 - Mohammed Shafi Al Rumaithi v. FEI) has confirmed the FEI's policy in making the rider the Person Responsible. The Tribunal agrees with CAS and the FEI's policy. Furthermore, both - CAS, as well as the Tribunal - have accepted this reasoning in the past and upheld the lawfulness of this approach.
- 9.12 In the case at hand, the Tribunal notes that the PR took responsibility for the rule violation, by admitting it, and also by taking responsibility for the actions committed by his support personnel, *i.e.*, his groom.
- 9.13 The Tribunal is however astonished that the PR, who has been riding in FEI competitions since 2006, was not aware of the EADCMRs until the case at hand arose. The PR's claim that he is more responsible than other riders in Italy, and that other riders in Italy seem to have no

knowledge regarding the EADCMRs either, cannot be accepted as a valid excuse. Rather, the PR had the obligation to know what constitutes an EAD Rule violation and which substances are prohibited. As Article 2 of the EAD Rules states in this respect: "*Persons Responsible and/or 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 and Banned Methods.*"

- 9.14 The Tribunal has taken note of the PR's claim that he usually checked what was given to his horses, including the Horse, but not in the case at hand. However, the fact that a product containing Stanazolol, *i.e.*, a Banned Substance, has been administered several times to the Horse over a three-year period prior to the STARGATE administration in the case at hand suggests otherwise. If the PR had checked what has been given to the Horse prior to the STARGATE administration in the case at hand, he would have discovered that the same Banned Substance has already previously been administered to the Horse.
- 9.15 Irrespective of the foregoing, the Tribunal has to decide on the degree of fault for the rule violation in the present case, *i.e.*, the presence of Stanazolol resulting from the STARGATE administrations between 30 November 2016 and 21 December 2016, and the presence of Ketoprofen, resulting from the Ketoprofen administration prior to the Event on the evening of 5 March 2017.
- 9.16 The PR himself does not dispute that he has been at fault for the rule violation. He does neither dispute that he did not check the ingredients of the product STARGATE, which product label clearly indicates that it contains Stanazolol. Nor did he have any knowledge of the EADCMRs and with regard to Prohibited Substances prior to the positive findings. The PR however argued that the rule violation has to be seen in relation with the average fault in a case of this type in Italy, and that he was a very responsible person, over the average of riders in Italy. As such his fault in the case at hand had to be considered low due to the situation with regard to this substance in Italy, *i.e.*, Stanazolol.
- 9.17 The Tribunal however does not agree with the PR's arguments in this respect. The Tribunal finds that the PR has been highly at fault for the rule violation. It is clear that he did not check the ingredients of the product STARGATE injected to the Horse over a period of time, nor did he make himself familiar with the EADCMRs, even though he has been riding in FEI competitions since 2006, *i.e.*, for over ten (10) years prior to the case at hand. The Tribunal finds that knowing the rules and checking the ingredients of products administered to a horse have to be

considered as minimum requirements with regard to the duty of care expected of a rider, no matter the particular circumstances of any case. Moreover, relying on the recommendations of veterinarians or of a sponsor who also happens to be a pharmaceutical company to administer an anabolic steroid, does not diminish the degree of fault of the PR. As such, the fault of the PR for the rule violation has to be considered high, and Articles 10.4 and 10.5 of the EAD Rules, *i.e.*, No Significant Fault and No Fault, are not applicable in the case at hand.

- 9.18 In an additional step, the Tribunal has to decide whether an Elimination, Reduction, or Suspension of the Period of Ineligibility or other Consequences for Reasons Other than Fault, in accordance with Article 10.6 of the EAD Rules, and more specifically Article 10.6.3, applies in the present case.
- 9.19 Pursuant to Article 10.6.3 of the EAD Rules a PR subject to a two (2) year sanction under Article 10.2.1, by promptly admitting the asserted anti-doping rule violation after being confronted by the FEI, and also upon the approval and at the discretion of the FEI, may receive a reduction in the period of Ineligibility, depending on the seriousness of the violation and the Person Responsible's degree of fault.
- 9.20 In this regard the Tribunal has taken note of the Parties' claims and submissions with regard to Article 10.6.3 of the EAD Rules, *i.e.*, Prompt Admission. More specifically, the Tribunal has also taken note that the FEI has not approved any reduction of the period of Ineligibility.
- 9.21 Furthermore, following the view of the CAS panel in the Royal des Fontaines case (as previously outlined) (Art. 60 of the CAS award), the Rules itself "*identifies a prompt admission only as a gateway through which the PR must pass before any discretion can be exercised in his favour but requires consideration of the gravity of the offence and the care taken to avoid it.*" In addition, both of those factors have to be taken into consideration, *i.e.*, the gravity of the offence and the care taken to avoid it. In the case at hand both Parties agree that it concerns a serious offence. In this regard the Tribunal shares the findings of the CAS panel, that "*the presence of a Banned Substance in the Horse's system is, in itself, a very serious offence.*" In fact, in accordance with FEI Rules and Regulations, a Banned Substance shall never be found in a competition horse, such as the Horse in the case at hand. Furthermore, as the Tribunal previously found, the degree of fault of the PR is high in the case at hand. Hence, neither of the two factors are fulfilled in the case at hand.

- 9.22 As a result the Tribunal finds that no reduction of the otherwise applicable period of Ineligibility, *i.e.*, two (2) years pursuant to Article 10.2 of the EAD Rules, is possible.
- 9.23 The Tribunal has also taken note of the FEI's claim that the PR has violated in addition Articles 2.2 and 2.6 of the EAD Rules, and of the FEI's request to take those violations into account when deciding whether aggravating circumstances exist in the case at hand. The Tribunal is further taking into consideration on the one hand the long-term use of Stanozolol on the Horse, *i.e.*, since 2013, and on the other hand the PR's offer to sensitise Italian riders on the EADCMRs and Prohibited Substances, including Stanozolol, as well as the fact that his former sponsor had recommended treatments containing the Banned Substance. Taking into consideration all circumstances in the case at hand, the Tribunal does not consider that aggravating circumstances are present which would justify the imposition of a period of Ineligibility greater than the standard sanction.
- 9.24 Finally, the Tribunal has to decide whether Timely Admission pursuant to Article 10.10.3 of the EAD Rules is applicable in the case at hand. The Tribunal finds that the PR promptly admitted the EAD Rule violation in accordance with Article 10.10.3 of the EAD Rules, and notes that the FEI indicated at the hearing that it could accept that the period of Ineligibility could start as from the date of the sample collection. In light of the position of the FEI and with due consideration of the explanations given by the PR at the Hearing, the Tribunal holds that the period of Ineligibility shall start from the date of Sample collection, *i.e.*, 12 March 2017.
- 9.25 The Tribunal takes note that the PR has been provisionally suspended since 5 April 2017, and that the PR did not compete during the period of the Provisional Suspension.
- 9.26 Any other claims and arguments of the Parties are dismissed. While the Tribunal has taken them into account, the Tribunal found that they were not decisive to the outcome of this decision.

10. Disqualification

- 10.1 Since the EAD Rules have been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination from the Competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the EAD Rules.

- 10.2 Furthermore, all results of the PR with any horse between the date of the Sample collection, *i.e.*, 12 March 2017, and the date of the start of the Provisional Suspension, *i.e.*, 5 April 2017, shall also be disqualified, and all medals, points and prize money won must be forfeited.

11. Sanctions

- 11.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be two (2) years, starting from the date of Sample collection, *i.e.*, 12 March 2017.
- 11.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:
- 1) The PR shall be suspended for a period of **two (2) years**, starting with the date of Sample collection, *i.e.*, 12 March 2017. Therefore, the PR will be ineligible **through 11 March 2019**.
 - 2) The PR is fined **four thousand Swiss Francs (CHF 4'000,-)**.
 - 3) The PR shall contribute **two thousand five hundred Swiss Francs (CHF 2'500,-)** towards the costs of the judicial procedure, plus the cost of the B-Sample analysis.
- 11.3 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).
- 11.4 Where a Person Responsible who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EAD Rules).
- 11.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

11.6 In accordance with Article 12 of the EAD Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

FOR THE PANEL



THE CHAIR, Mr. Laurent Niddam