



**Decision of the FEI Tribunal
dated 27 February 2019**

Positive Anti-Doping Case No.: 2018/BS09

Horse: TINA LA BOHEME

FEI Passport No: 104IJ07/USA

Person Responsible/NF/ID: Mohammed Ahmed AL OWAIS/UAE/10040940

Event/ID: CSI2* - Abu Dhabi (UAE)/2018_CI0207_S_S_02

Date: 14 - 16 February 2018

Prohibited Substance(s): Diisopropylamine

I. COMPOSITION OF PANEL

Mr. Laurent Niddam, chair
Ms. Cesar Torrente, 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 hearing, as also made available by and to the PR.
- 3. Hearing:** 1 February 2019, FEI Headquarters, Lausanne, Switzerland.

Present:

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

For the PR:

- Mr. Mohamed Al Owais, PR
- Ms. Lisa Lazarus, Counsel

- Ms. Emma Waters, Counsel
- Mr. William Sternheimer, Counsel

For the FEI:

- Ms. Anna Thorstenson, Legal Counsel
- Ms. Ana Kricej, Junior Legal Counsel

Observers:

- Ms. Harveen Thauli, FEI Tribunal member

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 2018, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2018.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2018.

Veterinary Regulations ("**VRs**"), 14th edition 2018, effective 1 January 2018, Art. 1068 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Mohammed Ahmed AL OWAIS, represented by Morgan Sports Law, London, United Kingdom.

3. Justification for Tribunal finding:

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."

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 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 TINA LA BOHEME (the "**Horse**") participated at the CSI2* in Abu Dhabi, United Arab Emirates (UAE), on 14 February 2018 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr. Mohammed Ahmed AL OWAIS, who is considered as 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 16 February 2018.
- 1.3 Analysis of urine and blood sample no. 5560088 taken from the Horse at the Event was performed at the FEI approved laboratory, The Hong Kong Jockey Club (HKJC) in Hong Kong (the "**Laboratory**"). The analysis revealed the presence of Diisopropylamine in the blood sample.
- 1.4 Diisopropylamine is a vasodilator used in the treatment of peripheral and cerebral vascular disorders and is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). Therefore, the positive finding for Diisopropylamine in the Horse's sample gives rise to an Anti-Doping Rule violation under the EADCMRs.

2. Further proceedings

- 2.1 On 19 March 2018, the FEI Legal Department officially notified the PR, through the United Arab Emirates National Federation ("**UAE-NF**"), of the presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the consequences implicated. 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.*, 19 March 2018, until 18 May 2018. The Provisional Suspension of the Horse has been challenged by the then Owner of the Horse. On 23 April 2018, the Preliminary Hearing Panel has issued a Preliminary Decision maintaining the Provisional Suspension of the Horse. As a consequence, the Horse has served the entire period of Provisional Suspension.

3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 19 March 2018, the PR and the Owner 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 14 May 2018, the FEI notified the PR of the results of the B-Sample analysis, which confirmed the presence of Diisopropylamine in the blood.

4. Preliminary Decision on Provisional Suspension of PR

- 4.1 On 16 October 2018, the PR requested the lifting of the Provisional Suspension imposed on him, and on 2 November 2018, the PR submitted additional explanations. On 26 November 2018, a Preliminary Hearing was held via telephone conference call. On 10 December 2018, the Preliminary Hearing Panel issued a Preliminary Decision, and decided to maintain the Provisional Suspension of the PR as the requirements of Article 7.4.4 of the EAD Rules for the lifting of the Provisional Suspension have not been met.

5. Written and oral submissions by or on behalf of the PR

5.1 On 16 October 2018, on 2 November 2018, and on 24 January 2019, the PR provided his written explanations for the positive finding. The PR also made further submissions and provided clarifications during the Preliminary Hearing which will be outlined in the following to the extent relevant for this Decision.

5.2 To start with, the PR accepted being the Person Responsible in accordance with Article 118 of the GRs, and also accepted that the presence of Diisopropylamine in the A and B Sample constituted a violation of Article 2.1 of the EAD Rules. In fact, on 24 August 2018, the PR submitted a letter in this respect.

5.3 In essence the PR submitted the following requests for relief:

"(a) As his primary case, that he acted without significant fault or negligence, such that Article 10.5.2 of the EADR applies to the present case and that any period of ineligibility imposed on him be limited to a maximum of 12 months, backdated to the date of Sample collection (16 February 2018) in accordance with Article 10.10.3 of the EADR.

(b) Alternatively, as his secondary case, that he promptly admitted the Violation, such that any period of ineligibility imposed on him be limited to a maximum of 12 months in accordance with Article 10.6.3 of the EADR.

(c) [redacted]

5.4 More specifically, the PR explained that he had been involved in international jumping for more than twenty (20) years, and since 2010 competed in five hundred and five (505) Jumping events with a total of ten (10) wins. Since 2012 he was sponsored by Al Shira'aa Stables (the "**stables**"), with stables in Abu Dhabi, Sharjah and in Surrey in England. There he was typically given three (3) or four (4) competition horses to train and work with, and his allocated groom was Mr. Mohammed Othman, with whom he had been working for around fifteen (15) years. In addition, he also owned his own stables, Al Safinat Stables (the "**own stables**") (together with the stables the "**two stables**"), where in total nine (9) horses (3 competition horses and 6 retired horses) were stabled. The two stables are managed by Al Sakb Equestrian, a family business, run by him and his brother. From 21 December 2017 to 19 February 2018, the Horse was stabled at the stables and assigned to him for trial for the Arab League.

5.5 Moreover, the PR explained the daily routines at the stables, including feed and veterinary routines. The PR submitted that veterinary services for the two stables are outsourced, and for the last three (3) years they had engaged Dr. Francesco Puglisi, who visited the two stables approximately once a week for horse inspection and to prescribe any necessary treatments. Any specific medication required by any of the horses was supplied by Dr. Puglisi at the time of treatment or purchased separately following his prescription. Only Dr. Puglisi, or Mr. Othman (who had been trained by a veterinarian to give intra-muscular injections), or occasionally Ms. Ilaria Zavarise at the own stables, who was a trained veterinary assistant were allowed to administer intra-muscular injections; intra-venous injections were only administered by a veterinarian, or at a hospital. The PR himself did never inject any horses as he had not been trained to do so. When the horses are in England – during the summer months – veterinary services for the past ten (10) years have been provided by the Sussex Equine Hospital, and veterinary records were shared between Dr. Puglisi and Dr. Ed Lyall, Director of the Sussex Equine Hospital. Purchases of horse supplies, medication and supplements were managed by Al Sakb’s Equestrian, and expenses were then allocated to the appropriate stables or horse owners. Hay was sourced from Europe due to their superior quality, and “essential medication”, such as Buscopan, supplements and other general supplies were purchased from the Camel Market. Other than essential medication, medication was only purchased if prescribed by a veterinarian. Only Mr. Afroz Khan, and no other staff member, was responsible for the purchase of supplies for the two stables; very occasionally Mr. Othman or the PR were attending the suppliers personally, or collecting orders. Finally, the PR submitted that no staff member was permitted to purchase any new product or brand that has not previously been used by the two stables, without first obtaining his permission. Ms. Zavarise confirmed that equine medication at the own stables were kept locked and only the veterinarian, Mr. Othman or herself would be permitted to request the key from the Stable Treasurer and access it.

5.6 Regarding the source of the Diisopropylamine, the PR submitted that the substance was contained in a product called Tridenosen (the “**Product**”), which - as confirmed by Mr. Othman - was injected by Mr. Othman (via intra-muscular route) to the Horse on or around 13 February 2018 prior to the Horse travelling to the Event. The PR submitted in this respect that following considerable research, after being notified of the positive result, he discovered that the product lists as an ingredient *di-isopropylamine dichloroacetate*, which he now understood was the same substance as Diisopropylamine. Further, that he had been introduced to the product by a veterinarian more than ten (10) years ago, and was recommended the product to be used to assist with alleviating cramping in horses that

were participating in multi-day competitions, *i.e.*, for welfare of the horse purpose. Moreover, he argued that he had been using the product since 2008, prior to the substance being included on the FEI List. He bought the product from different sellers in the UAE, and his horses which had been administered the product had never tested positive prior to the present case. In this respect, the PR provided several invoices – dated between 2009 and 2017 (the last one dating 21 December 2017) – which included Tridenosen, and which were issued for the own stable (no copies of invoices issued for the stables have been provided). The PR did neither provide any prescription of the Product by Dr. Puglisi, or a Medication Logbook of the Horse, showing when and how often the Horse was administered with the product. Mr. Khan confirms as follows:

"Tridenosen is a product which has been purchased by the Two Stables for many years. As with most of the general supplies, Tridenosen is bought from our specialist equestrian suppliers located in the Animal Market (Camel Market), or from smaller local suppliers.

- 5.7 With regard to his degree of fault for the rule violation, the PR submitted that his fault or negligence, when viewed in the totality of the circumstances, was not significant in relationship to the violation. His degree of fault was, in the particular circumstances, minor. It fell at the very lowest end of the spectrum as he (a) began using the product on the recommendation of a trusted veterinarian; (b) began using the product when it was not prohibited by the FEI (2008); (c) understood that the product was produced by Ceva, a trusted veterinary brand, subject to stringent Australian regulation; (d) understood that the product was safe for use in competition horses due to misleading Ceva marketing materials; and (e) could not have identified that the product contained a prohibited substance via the FEI database due to the alternative spelling of "*di-isopropylamine dichloroacetate*".
- 5.8 In addition, the PR submitted that he had never received any formal anti-doping education, and while not having a detailed knowledge of the many substances on the FEI List, he understood the difference of Banned Substances and Controlled Medication Substances, and he had a policy of extending withdrawal times recommended by the FEI by an extra four (4) days. The panel had to take into account the PR's total lack of formal anti-doping education when considering his conduct. In this respect the PR also submitted that the product was marketed by Ceva as a brand that was safe for use in competition horses from an anti-doping perspective, and that the PR thus understood prior to the present case, that Ceva products contained no Prohibited Substances. The PR provided a document entitled "Racing (UAE)" by Ceva outlining how to administer Ceva products, which foresees for Tridenosen to be administered two (2) days before race. The document also states that "ALL INJECTIONS MUST

STOP 24 HOURS PRE-RACE". Moreover, the product was readily available in the UAE and, in the PR's experience could be purchased by anyone. Given those matters – coupled with the PR's total lack of anti-doping education – it was, from an objective standpoint, entirely understandable that the PR perceived that there was no risk involved in the use of the product.

- 5.9 The PR argued that the panel was faced with an unusual set of circumstances, as (i) Diisopropylamine was not listed as Prohibited Substance when the PR began using it in 2008; and (ii) the PR used the product for ten (10) years, without incident, despite the fact that his horses would have been subject to doping controls throughout that period.
- 5.10 Finally, the PR compared the present case – among others – mainly to two cases¹, in which (i) athletes used certain products for several years; (ii) the status of those products changed from permitted to prohibited; and (iii) the athletes were held to have acted without significant fault or negligence. Compared to those cases – one of which the Athletes in that case had used a substance for seven (7) years – his use of the product was in fact much longer, *i.e.*, ten (10) years.
- 5.11 In the alternative, if the Tribunal were to conclude, that he did act with significant fault or negligence, Article 10.10.3 of the EAD Rules applied given his Prompt Admission of the violation (by letter of 24 August 2018), such that any period of Ineligibility imposed on him should nevertheless be limited to a maximum of twelve (12) months. The seriousness of the violation fell at the very lowest end of the applicable range, as only one Banned Substance was present in the Sample, the PR's horses were well looked after and cared for; and the substance in question was intended for the wellbeing of the Horse, and thus there was "a legitimate medicinal or dietary purpose for its use". And his degree of fault fell at the very lowest end of the applicable range.
- 5.12 Unless, the Tribunal reduced the otherwise applicable period of Ineligibility in accordance with Article 10.6.3 of the EAD Rules, any period of Ineligibility should be backdated to the date of Sample collection (16 February 2018) in accordance with Article 10.10.3 of the EAD Rules, *i.e.*, Timely Admission. The PR has not competed since he has been notified of the alleged violation and since the Provisional Suspension has been imposed on him (19 March 2018), and he was entitled to credit for that period of Provisional Suspension in accordance with Article 10.10.4 of the EAD Rules.

¹ 2006 decision *ITF v. Hood*, and 2016 decision *CAS 2016/A/4643 Sharapova v. ITF*.

5.13 [redacted]

5.14 [redacted]

5.15 On 24 January, and in responding to the Preliminary Decision, the PR further submitted as follows:

- a) While acknowledging that Banned Substances have no legitimate use in competition horses, Tridenosen was, in fact, designed and marketed for competition horses by a reputable veterinary company, and was targeted at minimising tying-up in horses.
- b) He treated all horses under his supervision with the same high level of care and attention, no matter whether owned or loaned. The PR reiterated that he did not know that the product contained a Banned Substance, and thus it could not be an aggravating factor that he administered it to a loaned horse.
- c) As he has provided invoices documenting his purchase of Tridenosen, the Tribunal should be satisfied that he has a long history of administering Tridenosen to his competition horses. Further, he reiterated – as previously submitted – that he followed meticulous procedures for the medication of horses.
- d) Further, even if he had input each of the ingredients of Tridenosen into the FEI Prohibited Substances Database prior to administration (including “di-isopropylamine dichloroacetate” or “di-isopropylamine”), the FEI database would not have alerted him to the fact that the product contains a Banned Substance. This was because “di- isopropylamine”, as spelled in the ingredients section of Tridenosen does not appear as a Prohibited Substance in the FEI Database.
- e) The PR argued that contrary to the Tribunal’s finding in the Preliminary Decision, the Athletes in the cited cases would not have been granted a TUE; thus the case at hand could not be distinguished from the cases cited.
- f) [redacted]

6. Written submission by the FEI

- 6.1 On 24 January 2019, the FEI provided its Answer to the submissions received by the PR until that day. Together with its Answer the FEI submitted a letter by the FEI Veterinary Department, dated 18 January 2019, which stated as follows:

"(...) The conclusion to be drawn from the Veterinary and Endurance Departments perspective is that the information that you have provided is not discovering any news nor adding any value to the knowledge we already possess."

- 6.2 Furthermore, the FEI provided an email by Dr. Lyall from the Sussex Equine Hospital, confirming that he has no knowledge of the substance Diisopropylamine nor the product Tridenosen.

- 6.3 Regarding science, the FEI submitted as follows:

"Diisopropylamine, is a vasodilator used in the treatment of peripheral and cerebral vascular disorders and is classified as a Banned Substance under the FEI Equine Prohibited Substances List.

Diisopropylamine, is also prohibited in horse racing. The annual IFHA (International Federation for Horse Racing Federation) Reports confirm that prohibited substances are: Substances capable at any time of acting on one or more of the following mammalian body systems: Diisopropylamine, counts as a vasodilator, hypotensive effect of the group of CS - the blood system.

Diisopropylamine can be found in several products such as CEVA – Tridenosen (50mg/ml), CEVA - NV DADA 250 injection (250mg/ml), Heptenel injection (20mg/ml), Top B15 +3 etc."

- 6.4 In essence the FEI submitted that:

- 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 and B Samples taken from the Horse at the Event confirmed the presence of Diisopropylamine, and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. In any event, the PR did not dispute the presence of the Diisopropylamine in the Horse's sample. Accordingly, the FEI discharged its burden of establishing that the PR had 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 offence, but 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. 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; or, alternatively (iii) that he bore No Significant Fault or Negligence for that occurrence. If the PR failed to discharge this burden, the presumptive two-year ban under Article 10.2 of the EAD Rules applied.
- c) The EAD Rules stipulate and the jurisprudence of the Tribunal and the Court of Arbitration for Sport ("**CAS**") are very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR prove how the substance(s) entered into the Horse's system. The FEI submitted that the PR has an obligation to provide clear and convincing evidence that proved how the Diisopropylamine entered the Horse's system. In the case at hand, the PR has provided plausible information on how the substance could have entered the Horse. He admitted using a product called Tridenosen which contained Diisopropylamine for the past ten (10) years. Although there has been no medical records nor medical log book for the Horse, the FEI concluded that the explanation provided by the PR could have caused the positive finding. The threshold requirement of proving how the substance entered the Horse's system, had therefore been fulfilled

on a balance of probabilities.

- d) In terms of the degree of Fault or Negligence by the PR for the rule violation, the starting point of any evaluation was the “*personal duty*” of the PR following from Article 2.1.1 of the ECM Rules, *i.e.*, his personal duty to ensure that “*no Banned Substance is present in the Horse’s body*”.
- e) In this respect, the FEI highlighted that Banned Substances are never to be found in a competition horse, they are substances with no legitimate use and have a high potential for abuse.
- f) The FEI questioned how often the product was used and on which horses, and argued that it was clear that there was no records of the use of the product on the Horse, despite the fact that it concerned an intra-muscular injection. The FEI found it particularly negligent that no records of any injections exist especially since it was injected close to competition.
- g) The FEI ascertained that the PR never checked the substance himself on the FEI List neither when he first used it nor double checked it from year to year in comparison with the new lists, with his veterinarians or team. There was further no proof that the PR actually confirmed the use of the product with a veterinarian when he introduced it in 2008, or any veterinary records or medical log books confirming such use or the reasons why the Tridenosen was introduced in the first place. It was the FEI’s understanding that the PR never checked the List with his team, going through all the medications/supplements/feed given to his horses on a daily basis. Despite this he mentions that his veterinary team and support personnel was fully aware of his use of the product.
- h) The FEI argued that the product Tridenosen clearly stated its ingredients, where one was specified as *Di-Isopropylamine Dichloroacetate*. With a simple google search of *Di-Isopropylamine Dichloroacetate* you get the hit DiIsopropylamine Dichloroacetate without the hyphen. The product actually states *Di-Isopropylamine Dichloroacetate* on its lists of ingredients, and the FEI found it very negligent not to verify such ingredient appropriately before the use of it on a competition horse. Further, on the FEI Database of Prohibited Substances, if you put the 3 first letters of any substance you are looking for, it gives you suggestions. By doing so, Diisoprophylamine appeared very quickly. In addition, the Australian CEVA website, clearly stated that this product was a “Vet product only” and due to legal considerations in different countries the content of this site was only available for members of the veterinary profession; “*If used in*

performance animals, the regulations of the relevant authorities regarding the medication should be observed". The FEI submitted that the PR should have cleared this specific substance with his veterinarian, his NF or the FEI. On the European CEVA website, this product did not even exist.

- i) The FEI argued that the FEI did not agree that the substance was allowed in 2008, when the PR allegedly started using the product. The FEI highlighted in this regard that prior to the introduction of the FEI List – in today's form - in April 2010, the List in 2008 was not an exhaustive List specifying each and every substance; it was rather a list consisting of different groups of Prohibited Substances. The FEI argued that the substance, being a vasodilator, would – according to the FEI Veterinary Director – have been grouped under: antipsychotic, anti-epileptic and antihypertensive substances. In 2010, the FEI Equine Anti-Doping program FEI's Clean Sport was put in place, and Diisopropylamine was introduced as a Banned Substance and included on the FEI List. In connection with this change including new EADCMRs and FEI List, extensive information was provided to the FEI stakeholders; despite this change of system the PR did not check the new List. The PR's situation was different from the cases cited by the PR, as the substance has been prohibited for a very long time, and ever since the PR has been using it, in addition it was listed since 2010. The FEI was of the strong opinion that the PR had more than ample time to double check the product.
- j) Diisopropylamine was not a newly added substance like Meldonium in the *Sharapova case*, but a Banned Substance that the PR had used on his horses for over eight (8) years, without double-checking on a regular annual basis neither with his veterinarian nor on the FEI database. The opinion of the FEI was that the PR has been highly negligent, since he used a Banned Substance on his horses for a period of over eight (8) years. The fact that the PR used the product for many years without any further double-checks, was from a FEI perspective to be even more negligent, since it was the responsibility of the PR to check the new List every year, and also to compare any substances given to competition horses, against the new changes of the List.
- k) In order to overcome the presumption of two (2) years standard suspension, the PR needed to demonstrate by a preponderance of the evidence truly exceptional or compelling circumstances justifying less than the standard two (2) years. The PR needed to prove that his conduct was not intentional or purposeful and that unique circumstances prevailed. The FEI believed that indeed the intention was to give this product to the Horse to assist with alleviating muscle

cramping which would improve his comfort, welfare and in the end enhancing the performance. There were no unique or exceptional circumstances that could exclude the PR from the obligation to check the FEI List over the past eight (8) years. This failure was from an FEI perspective to be highly and significantly at fault. In referring to several cases, the FEI submitted that case law tend to agree. It was the PR's personal duty to exercise utmost caution and be aware of the actual List.

- l) Regarding previous negative testing results, the FEI confirmed that it had double checked all the negative results from 2013-2018, and the Horse was tested once in 2018, which was the case at hand, and another Horse of the PR was tested in January 2017; in fact, the PR's horses were only tested once.
- m) Based on the arguments and the case law provided, the FEI does not believe that No Significant Fault or Negligence applied in the present case. The FEI therefore submitted that the period of Ineligibility imposed on the PR should be two (2) years, starting from the date the Provisional Suspension was imposed, *i.e.*, 19 March 2018.
- n) The FEI also requested that the results of the PR and Horse combination obtained in the Competition be disqualified with all resulting Consequences, including forfeiture of any related medals, points and prizes. 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, all of the Person 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, might be disqualified in accordance with Article 10.1.2 of the EAD Rules.
- o) As fairness did not dictate that no fine be levied in the case at hand, the FEI requested that a fine be imposed on the PR, and that the PR be ordered to pay the legal costs that the FEI had incurred in pursuing this matter. The FEI requested that the Tribunal fine the PR in the amount of 7,500 CHF, and order the PR to pay the legal costs of 5,000 CHF, as well as order the PR to pay the cost of the B-Sample.
- p) With regard to the PR's claim for Prompt and Timely Admission, the FEI argued that the PR only officially admitted the rule violation on 24 August 2018, *i.e.*, five (5) months after the date of Notification. This was from an FEI perspective not promptly nor timely, since that would require with little or no delay, ideally immediately. Further, Article 10.6.3 of the EAD Rules required a consideration of the two key

factors of the "seriousness of the violation" and the PR's "degree of fault". Given the FEI's position on the seriousness of the offence and the level of fault of the PR, in addition to the very late admission, the FEI was of the opinion that Prompt Admission could not be applied in this case.

q) *[redacted]*

r) *[redacted]*

s) [redacted]

t) [redacted]

7. Hearing

- 7.1 During the hearing the Parties had ample opportunity to present their cases, submit their arguments and answer to the questions posed by the Tribunal. After the Parties' submissions, the Tribunal closed the hearing and reserved its Decision. The Tribunal 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.
- 7.2 At the end of the hearing, the Parties acknowledged that the Tribunal has respected their right to be heard and their procedural rights.

- 7.3 During the hearing, and where not mentioned otherwise in the following, both Parties maintained their previous submissions.
- 7.4 The PR further argued that, he had been selected as the only UAE rider by the sponsor six (6) years ago because of his good reputation and performance. The aim of the sponsor was to prepare the UAE team for competitions such as the WEG, Asian Games etc. He had qualified for the 2018 WEG, but was provisionally suspended, and the UAE team had (without him) not been able to send a team to the 2018 WEG. Further he had missed out also on participating in the Asian Games. He was hoping to qualify for the 2020 Olympic Games, for which the Qualifiers took place in October 2019 (in order to compete there his suspension had to be lifted by April 2019). He would like to be able to compete in one more championship prior to one of his horses retiring. Finally, he urged the FEI to implement the EADCMRs because of the welfare of the horses, and apologised for the rule violation; he assured that such a mistake was not going to happen again from his side.
- 7.5 Furthermore, he had been going to Europe to learn from the best, and horse welfare was the key to success. In the past he used to go to Germany each summer to train there, and that is where a veterinarian had advised him of the Product, which would help horses from tying up.
- 7.6 The use of the Product had become usual procedure for him. He was sure that his horses tested negative at FEI events having been injected the Product, at least once in 2010, once in 2011 and once in 2012 (prior to the FEI registering negative tests online), as well as once in 2017. In addition, a testing programme at a national level had also been in place for the past few years, where the medal winners were tested.
- 7.7 Moreover, the PR stated that, while he knew there was an FEI List, he had not received any anti-doping education and was not familiar with doping and anti-doping matters. He would trust his veterinarian for advice with medicines, withdrawal times etc. It was either his veterinarian or him who would decide on medicines, supplements etc. given, and he would instruct his groom at times. He Product however, had been the only medicine he had not discussed with his veterinarian, as he thought it was safe to use. Further, he used the Product on his horses, and it was administered by either the groom or his veterinarian assistant. However, now after the positive finding, only the veterinarian – and no longer the groom or veterinarian assistant – was allowed to administer (even when administered orally only) any medicines to his horses.
- 7.8 He would in general not give many medication to his horses, and treated

all horses, whether his or borrowed the same. He acknowledged that he should have been discussing the Product with his veterinarian, and been more curious about what was administered to his horses. He stated in this regard that he regrets the mistake.

- 7.9 Via google he had found out where the substance, *i.e.*, the positive finding had come from. When asked whether he checked the FEI Database against the product/ingredients of the product, he responded "maybe briefly". He stated that he did not double-check in every situation and acknowledged that he should have. Regarding Medication log books for horses he stated that he had not been aware of this requirement and was planning on using it in the future. The veterinarians, however, would note all medications given to his horses.
- 7.10 In addition, the stated that he requested for the B-Sample analysis, as his groom was not sure whether the Horse was administered the Product prior to the Event, and that he only admitted the rule violation once he was sure regarding the source of the Prohibited Substance, *i.e.*, five (5) months after having been notified of the positive finding.
- 7.11 *[redacted]*
- 7.12 The PR further submitted that he accepted the rule violation, and that he accepted some fault for the violation, as he should have checked the ingredients of the Product. However, No Significant Fault or Negligence applied in the present case, and that the period of Ineligibility had to be closer to twelve (12) than twenty-four (24) months for reasons as follows.
- 7.13 To start with, contrary to the FEI's submission he did not have to prove exceptional circumstances, as this was not a standard for No Significant Fault or Negligence. There were many mitigating factors according to case law, both CAS and Tribunal, which was binding. Namely, that he was introduced to the Product by a veterinarian, *i.e.*, received advise by a specialist. Further, that the product – even though it contained a Banned Substance, which should per definition never be used in competition horses, was specifically marketed for horses, and was clearly a substance that could be used when the situation called for it. In this respect, the brand was a reputable brand, which marketed all their products as doping-free. Neither did anything on the label suggest that it was performance enhancing. Furthermore, even if the PR had checked the ingredients against the FEI List Database, he could not have

found it as being prohibited (writing dash vs. no dash). Moreover, at the time when he started using the Product, the ingredient was not prohibited, or at least there was no way he could have known that it was prohibited. In this regard, the PR argued that the FEI had not provided any statement by the FEI Veterinary Director confirming that the substance was prohibited from 2008 (when he started using the Product) to 2010. In addition, there was no record that any cases involving this Prohibited Substance have been prosecuted prior to 2010. In fact records showed first cases only in 2017, and the burden of proof that the substance was prohibited prior to 2010 was on the FEI. The PR further concluded that the laboratories might now have the ability to detect this substance.

7.14 When taking case law into consideration, where an athlete wrongly relied on a false sense of security, such as in the case at hand, No Significant Fault or Negligence applied. Case law took impairment, *i.e.*, a low level of risk, as a substance was used over a long period of time without any incident into consideration. The most relevant cases comparing to the case at hand were the *Sharapova case* and the *Cilic case*. The PR in the case at hand had far less education and staff than Sharapova.

7.15 The PR had not promptly admitted the rule violation in the case at hand, since he had not been represented prior to the date of Prompt Admission.

7.16 *[redacted]*

7.17 The FEI highlighted that Diisopropylamine is a Banned Substance, and its status as Banned Substance has not changed for the past eight (8) years, *i.e.*, since 2010. Diisopropylamine was not less serious than a steroid – as contented by the PR – as the sanctions for both substances when found in a competition horse were the same. Furthermore,

Diisopropylamine was clearly listed on the list of ingredients on the Product. Furthermore, there was a clear message on the bottle itself it being a "vet product only" and that essentially the content of the product was not safe to use in many countries. In the FEI's view it was even irrelevant whether the substance was prohibited or not prior to 2010 – which burden to prove that it was not prohibited was on the PR -, as the PR had ample time to check the substance in the eight (8) years thereafter, which he did not do. The PR had never checked the substance against the list, neither first when he started using the Product, nor at any point thereafter. Nor did the PR at any time discuss the substance with his veterinarian. The FEI also still believed that the PR, with a simple search on the FEI Database, could have easily found out that it was prohibited. However, the PR has used the Product over a long period of time without re-evaluating the status of its ingredients.

- 7.18 Therefore, the FEI believed that the case law submitted by the PR was not comparable to the case at hand. In the case at hand, the PR has used the Product containing the substance for an extended period of time, and the substance was not newly added to the FEI List, like for example in the *Sharapova case*. The low risk argument could only be made in cases where substances were newly added to the List of Prohibited Substances, which was not the case in the present case.
- 7.19 The FEI argued that No Significant Fault or Negligence could not apply in the case at hand, as a Person Responsible had to update himself with regards to the FEI List. In the FEI's view the PR intentionally administered the Product to the Horse, and the Product had clear performance enhancing effects; as the label reads: the substance is improving blood circulation. The PR has not provided any Medication log book, and there was no proof that he consulted the veterinarian; one could not track back the use of the substance/Product. In the FEI's view therefore, the failure of the PR's expected duty of care was extensive; the PR had not established that it was not significant. Here, the PR had to submit exceptional or unique circumstances as to why he failed in his duty of care to check the substance over the last eight (8) years, which the PR had not done in the present case.
- 7.20 Regarding Prompt/Timely admission, the FEI maintained that five (5) months after notification of the positive finding was neither prompt nor timely. Furthermore, a person admitting a rule violation did neither ask for the B-Sample to be organised, which was the case in the case at hand.
- 7.21 [redacted]

8. Jurisdiction

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

9. The Person Responsible

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

10. The Decision

- 10.1 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 and B Sample. The Tribunal is satisfied that the laboratory reports relating to the A and B Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratories are accurate. The Tribunal is satisfied that the test results evidence the presence of Diisopropylamine in the blood sample taken from the Horse at the Event. The PR accepts the accuracy of the test results and the positive finding. Diisopropylamine is a Prohibited Substance on the FEI List and the presence of Diisopropylamine in a Horse's body is prohibited at all times under Article 2.1 of the EAD Rules.
- 10.2 As a result, the FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules.

- 10.3 Pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 EAD rule 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.
- 10.4 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.
- 10.5 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 Substance entered the Horse's system.
- 10.6 To start with, the Tribunal has taken note of the PR's explanations as to the source of the Diisopropylamine, namely that his groom had injected the Horse the Product containing the substance on or around 13 February 2018, prior to the Horse travelling to the Event. In this regard, the Tribunal notes that – with the exception of the groom's confirmation of his injection – the PR has not provided any further evidence, such as for example a Medication log book, registering the alleged administration. The Tribunal takes also note that the FEI accepts the PR's explanations, and the Product being the source of the Banned Substance found in the Horse's system. Ultimately, the Tribunal finds that the explanation provided by the PR is more likely than not, and therefore finds that the PR has shown – on a balance of probability, as required – how the Diisopropylamine entered the Horse's system.
- 10.7 In a second step, the Tribunal has to decide on the PR's degree of fault and whether any of the Articles 10.4, 10.5 and/or 10.6 of the EAD Rules, which allow for a reduction of suspension of the two (2) year period of Ineligibility, are applicable.
- 10.8 To start with, the Tribunal takes note that the Parties are in dispute as to whether Diisopropylamine was prohibited in 2008, when the PR allegedly started using the Product on his horses. The Tribunal however does not have to make a determination in this respect as it is irrelevant whether or not Diisopropylamine was prohibited ten years ago since the PR has to check updates on the FEI List on an annual basis. The Tribunal notes in this respect, that the FEI List, like the WADA List, is reviewed on a yearly basis and changes to the FEI List are published 90 days prior to coming into effect (usually on 1 January). So even if Diisopropylamine was not

prohibited until 2010, there is no question that it has been for the eight years at the time the Horse tested positive.

- 10.9 The Tribunal has taken note of the PR's submission with regard to case law, where panels found that the perceived risk was lower in those cases where an Athlete has used a substance over a long period of time without incidents. However, each case has to be treated individually, and the circumstances in each case are different. Here we have a Banned Substance that the PR has admitted using for more than ten years, and even if we assume that the substance was not banned prior to 2010, it is not a case of a substance newly added to the list of prohibited substances.
- 10.10 The Tribunal agrees with the FEI that the present case cannot be compared with some case law provided by the PR. By way of example, the case at hand is not comparable with the *Sharapova case*. This is because Sharapova was prescribed the substance for a legitimate medical reason, and her doctor, and thereafter her manager, checked on a yearly basis whether the substance contained in the medication was not on the WADA List. Only at the end of the year prior to the positive finding at the beginning of the year that followed, did her manager fail to check for the updates on the WADA List, which by then included the substance starting with the year to come. However, her manager did bring forward specific circumstances, *i.e.*, going through a personally difficult time, which prevented him from checking the modifications introduced to the WADA List.
- 10.11 In the case at hand however, the PR claims that he had started using the Product on advice of a veterinarian and that he was advised that it would help the Horse from tying up. However, the PR has neither provided a prescription or a statement from this veterinarian, which would prove that this advice was actually given/received. The Tribunal also notes that prior to the hearing, the PR has not put forward the name of this veterinarian. Neither has the PR provided a Medication log book which would confirm that the horses had actually been administered the Product over the alleged ten (10) year period.
- 10.12 The PR has acknowledged during the hearing that he never either checked the Product, or the ingredients listed on the Product by himself, or discussed it and/or requested it being checked by his veterinarian, who allegedly otherwise checks all products prior to being used on horses. Upon further questioning from the Tribunal, the PR stated that he might have "maybe briefly" checked the product. However, this answer was given following an untimely interference by counsel, but in the Tribunal's view, when taking into account all explanations otherwise provided by the PR, it is clear that this was not the case. As a result, the PR's argument

that he could not have found the substance on the FEI Database (hyphen vs. non-hyphen argumentations by the Parties) is inapposite, as he never attempted to check the FEI Database in the first place. Moreover, the Tribunal also notes that the PR easily found information on the internet after having been notified of the positive finding, from which the Tribunal has to conclude that he could have found the same information, *i.e.*, the Product containing a Prohibited Substance, prior to using it on his horses if he had done this search, which is not the case.

10.13 The Tribunal finds that the PR has not brought forward circumstances or a valid explanation why he did not check the ingredients of the Product in at least 10 years, either by himself or through his veterinarian. The PR's explanation that he felt safe using it, cannot be accepted in this case. In the Tribunal's view "feeling safe" or having a "reduced perception of risk" could only be a valid argument where the product had actually been checked in the first place prior to its use, or prescribed by a doctor for a legitimate medical use such as some case law suggests, which is not the situation in the case at hand.

10.14 Furthermore, the PR's argument that his horses had never tested positive in the past when he was using the Product can only be given little weight given the fact that the PR has not provided any records of such administration but more importantly because not getting caught in the past cannot be a legitimate mitigating or exonerating factor.

10.15 As a result, the Tribunal finds that the PR has been highly negligent in using the Product that contains a Banned Substance, which should never be found in a competition horse, for ten (10) years without checking its ingredients against the FEI List or discussing it with his veterinarian. Even more so, since the PR claims not knowing anything about doping and anti-doping, with the exception that the FEI List existed. In line with its previous decisions, the Tribunal finds that having received no education cannot in principle relieve a Person Responsible from his duty of care. It is each rider's personal duty to be aware of the EADCMRs. The Tribunal finds that the PR in the case at hand, who submits that he has been riding internationally for over twenty (20) years, had even less excuse of not informing himself about doping and anti-doping, than for example a young rider which is new to the sport, or a rider who competes in a one-off international competition.

10.16 As a result, the Tribunal finds that no reduction under Articles 10.4 and 10.5 of the EAD Rules is warranted in this case.

10.17 In a further step, the Tribunal has to decide whether any reduction in accordance with Article 10.6 of the EAD Rules is warranted.

10.18 The Tribunal finds that "Prompt Admission" cannot apply in the case at hand, as the PR only admitted the rule violation five (5) months after he has been notified of the positive finding, which cannot be accepted as "promptly". The Tribunal has taken note of the PR's argument that this was because he had not been legally represented beforehand. The Tribunal, however, finds that the "Prompt Admission" provision does not change whether the PR was legally represented or not. The Tribunal further notes that the Notification Letter clearly informs the PR of the possibility to promptly admit the rule violation. As the PR explained himself during the hearing, he identified the source of the Banned Substance shortly after having been notified of the positive finding. In the view of the Tribunal, he should have admitted the rule violation then. Instead, the PR went ahead and requested for the B-Sample to be analysed and only admitted the rule violation after receiving the B-Sample analysis results. For the foregoing reasons, the Tribunal finds that "Timely Admission" is also not applicable to the facts of this case.

10.19 *[redacted]*

10.20 *[redacted]*

10.21 *[redacted]*

10.22 *[redacted]*

10.23 *[redacted]*

10.24 *[redacted]*

10.25 *[redacted]*

11. Disqualification

- 11.1 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.

12. Sanctions

- 12.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be twenty-four (24) months, of which two (2) months shall be suspended *[redacted]*.
- 12.2 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 **twenty-four (24) months, of which two (2) months shall be suspended *[redacted]***. The period of Provisional Suspension, effective from 19 March 2018 shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **until 18 January 2020**.
 - 2) The PR is fined **six thousand five hundred Swiss Francs (CHF 6,500)**.
 - 3) The PR shall contribute **three thousand Swiss Francs (CHF 3,000)** for the cost in these proceedings. In addition, the PR shall bear the cost of B-Sample analysis.
- 12.3 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).
- 12.4 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).

- 12.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 12.6 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



Mr. Laurent Niddam, FEI Tribunal panel chair