

DECISION of the FEI TRIBUNAL
dated 18 August 2020

Case: 2020/CM01

Horse/Passport: ITALO TEN DOORN/104LR16/BEL

Person Responsible/ID/NF: Loris BERRITTELLA/10072252/BEL

Event/ID: CSI2*- Oliva (ESP) 2020_CI_0500_S_S_01

Date of Event: 18-23.02.2020

Prohibited Substance(s): Meloxicam, Altrenogest

Bar Code No.: 5591073

I. COMPOSITION OF PANEL

Mr. José A. Rodriguez Alvarez, one member panel

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 24th edition, effective 29 November 2019 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 24th edition, 1 January 2020, Arts. 118, 143.1, 161, 159 and 164 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, changes effective 1 January 2020.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2nd edition, changes effective 1 January 2020.

Veterinary Regulations ("**VRs**"), 14th edition 2018, effective 1 January 2020, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Loris Berrittella

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)."

GRs Art. 118.3: "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunger shall be an additional Person Responsible."

ECM Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Controlled Medication Substance* is present in the *Horse's* body during an Event without a valid Veterinary Form. *Persons Responsible* are responsible for any *Controlled Medication Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.5 ECM Rules where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing *Use* be demonstrated in order to establish a *Rule* violation under Article 2.1."

ECM Rules Art. 7.6.1: "In cases where the Administrative Procedure, as set out in Article 8.3 below, is not available, at any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an anti-doping rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these ECM Rules or (where some discretion as to Consequences exists under these ECM Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3."

III. DECISION

1. Parties

- 1.1 The Person Responsible ("**PR**"), Mr. Loris Berrittella, is a rider for Belgium.
- 1.2 The Fédération Equestre Internationale (the "**FEI**" and together with the PR, the "**Parties**"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).

2. Proceedings

- 2.1 On 18 March 2020, the FEI notified the PR through the Belgian National Federation (the "**BEL-NF**") of the apparent ECM rule violation based on the Laboratory's adverse analytical finding of Meloxicam and Altrenogest in the Horse's Sample collected at the Event on 20 February 2020. Further, the FEI informed the PR that he was provisionally suspended as of the notification until further notice.
- 2.2 On 29 July 2020, the FEI informed the Tribunal that the PR requested the lifting of the Provisional Suspension imposed on him.
- 2.3 On 3 August 2020, the Tribunal confirmed receipt of the FEI communication and invited the PR to submit his request to the lifting of the Provisional Suspension, including the reasons for such request.
- 2.4 On 5 August 2020, both Parties informed the Tribunal that the Parties had reached an Agreement in the case at hand, and that the Agreement between Parties was submitted to the Tribunal for approval shortly.
- 2.5 On 10 August 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the context of the Case 2020/CM01 ITALO TEN DOORN and submitted the Agreement (together with the Case Summary and the Full Reasoning for the Agreement, as well as the Annexes outlined throughout this Decision) to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.6.1 of the EADCMRs.
- 2.6 On 11 August 2020, the FEI Tribunal Chair nominated a one member panel to which neither party objected.

3. Agreement between Parties

3.1 The Parties reached the following Agreement:

*** Quote***

NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR THE CLOSURE OF THE PROCEEDINGS:

In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR's horse ITALO TEN DOORN at the CSI2* in Oliva, Spain on 20 February 2020, the PR and the FEI agree in accordance with 7.6.1 ECM Rules on the following:

- (a) The PR admits the violation of Article 2.1 of the ECM Rules (*The presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*);
- (b) The PR established on a balance of probabilities how Meloxicam and Altrenogest entered the Horse's system;
- (c) The PR bears fault for the Rule Violation and the applicable period of Ineligibility shall be six (6) months, commencing as of the date of sample collection i.e. 20 February 2020 until 19 August 2020 at midnight, taking into account the already served period of provisional suspension;
- (d) In accordance with Articles 9.1 and 10.1.2 of the ECM Rules the results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
- (e) Due to the application of Article 10.10.3 of the ECM Rules any and all results achieved by the PR between 20 February 2020 and 18 March 2020 are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes
- (f) The PR shall pay a fine of 1`000 CHF;
- (g) Each party will bear its own legal and other costs incurred in connection with these proceedings;
- (h) No other Sanctions will apply in this case;

- (i) This violation of the ECM Rules shall be considered a prior violation for the purpose of Multiple Violations in accordance with Article 10.8 of the ECM Rules.

This agreement is made in accordance with Article 7.6.1 of the ECM Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the ECM Rules.

The parties acknowledge and agree that, pursuant to Article 13.3 of the ECM Rules, the Decision will be made public by the FEI. The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings.

End Quote

- 3.2 The Parties provided the following Case Summary and Reasons as part of the Agreement:

“Mr. Loris BERRITTELLA (FEI ID 10072252), the Person Responsible (“PR”) in accordance with Article 118.3 of the FEI General Regulations, is a rider for Belgium.

The Fédération Equestre Internationale (the “FEI” and together with the PR, the “Parties”), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para Dressage and Para Driving).

The PR participated with the horse ITALO TEN DOORN (FEI ID: 104LR16) (the “Horse”) in CSI2* in Oliva, Spain between 18-23 February 2020 (the “Event”). As a member of the Belgian Equestrian Federation (the “BEL-NF”), the latter being a member of the FEI, the PR was bound by the FEI EADCM Regulations.

The Horse was selected for testing on 20 February 2020. Blood samples were collected from the Horse and sent to the FEI approved LGC Newmarket Road Laboratory (“LGC”) in Cambridgeshire, UK for analysis.

Analysis of the sample identified the presence of Meloxicam and Altrenogest. Meloxicam is an anti-inflammatory drug with analgesic effects. Altrenogest is a hormone used for the synchronisation of oestrus and calming effects in mares. The substances are classified as Controlled

Medication Substances under the FEI Equine Prohibited Substances List with Altrenogest being classified as a Prohibited Substance for males and geldings only.

The positive finding of Meloxicam and Altrenogest in the Horse's sample gave rise to a Controlled Medication Rule Violation.

By notification letter dated 18 March 2020, the FEI informed the PR, in his capacity as the Person Responsible, along with the BEL-NF of a violation of Article 2.1 (*The Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*) of the FEI Equine Controlled Medication Rules (the "ECM Rules") based on the Laboratory's adverse analytical finding of Meloxicam and Altrenogest in the Horse's Sample collected at the Event. (Exhibit 1)

In accordance with Art. 7.4.1 of the ECM Rules the PR was provisionally suspended as of the date of the notification letter.

The PR was informed that he had the right to request the Horse's B Sample to be analysed. The PR has not requested the B Sample analysis. According to Art. 7.1.4 (c) of the ECMR Rules the right to promptly request the B sample analysis has been given and by failing such request the B sample analysis is deemed waived.

On 2 April 2020, the PR promptly admitted the Rule Violation and provided his written submission alongside with supporting documents explaining how the Prohibited Substances entered the body of Italo Ten Doorn (Exhibit 2-4):

- The PR is not a very experienced rider and usually competes up to 2* level with the exception of a few participation in 3* level International Events;
- The PR competed with a few horses at the Oliva Tour in February 2020;
- On Sunday, 16 February, the Horse had a slight swelling on his left front leg after jumping the Grand Prix. The PR called his veterinarian Dr. S.B. ("The Veterinarian") to consult on the veterinary issue;
- The Veterinarian recommended an oral administration of one dose of Inflacam by Virbac (in powder form); [Inflacam is a generic medication with Metacam being the reference medication]

- Due to a misunderstanding between the Veterinarian and the PR, the PR administered a second dose of the medication on Monday, 17 February 2020;
- After Sample Collection the Veterinarian contacted the Veterinary Delegate of the Event explaining what has happened, however, the Veterinary Delegate replied that strict and clear rules apply for the medication of horses before and during the show and that there is nothing they can do. The PR enclosed this email correspondence in the provided submission;
- Because the Horse was tested straight away after the first class (which the PR considered as low training before further competition on Saturday and Sunday) he still fell within the Detection Time of 72h for Meloxicam as per the FEI List of Detection Times.
- Concerning the Altrenogest, the Veterinarian confirmed that the PR's two other mares CELELBRIAN Z and MELBA DE BOIS ET BORSU, are on Regumate;
- The Veterinarian stated there was no intention to give this product to the Horse and that most likely a contamination of the feed occurred. The PR provided the Veterinarian's statement;
- The PR himself explained that each Horse has its own individual bucket and that the buckets are labelled with the horses' names. The buckets are disinfected and cleaned regularly with Desinclor, an antiseptic solution;
- On this occasion, a friend who was vacationing in Oliva Nova, helped the PR for a few days with the maintenance and feeding of the horses. The friend explained [translated into English]: *"...Loris and I fed the horses 3 times a day with each named food bucket but it is possible that I changed the buckets because I did not know the horses and their names well. After each meal, we clean and disinfect the horse buckets with water and the DESINCLOR product."*

In relation with the positive finding of Meloxicam, the FEI acknowledges that the medication Inflacam is available in a powder/granules form to be administered orally. The medication does contain the active substance of Meloxicam. In addition, the FEI acknowledges that according to the FEI List of Detection Times, the estimated detection time for Meloxicam is 72h (3 days). (Exhibit 5)

Detection time is the approximate period of time for which a medication (or its metabolite) remains in a horse's system, such that it can be detected by the laboratory. The FEI provides the list of some detection time only as a guide. A detection time is not the same as a withdrawal time. The withdrawal time for a medication must be decided upon by the treating veterinarian and is likely to be based on the detection time and an added safety margin. This margin should be determined using professional judgment and discretion to allow for individual differences between horses such as size, metabolism, degree of fitness, recent illness or disease etc. to be taken into consideration. The safety margin in most cases should be at least multiplied with 2 i.e. in the case at hand that would amount to 6 days.

Therefore, the Sample Collection on 20 February was well inside the withdrawal time. The FEI therefore finds it scientifically plausible that the Adverse Analytical Finding of Meloxicam could be attributed to the administration of Inlacam on Sunday and Monday 16-17 February 2020, three days before Sample Collection.

In relation with the positive finding of Altrenogest, the FEI acknowledges that the product Regumate contains the active ingredient Altrenogest and if given to a horse intentionally or inadvertently (be it mixed with food or by residues in the feeding bucket) it could result in an Adverse Analytical Finding of Altrenogest.

The FEI is therefore satisfied that the PR established, on a balance of probabilities, how Meloxicam and Altrenogest entered the Horse's system.

In evaluating the PR's fault or negligence, the FEI took into account in particular the following considerations.

As per Art. 2.1.1 of the ECM Rules it is each Person Responsible's personal duty to ensure that no Controlled Medication Substance is present in the Horse's body during an Event without a valid Veterinary Form. The Period of an Event commences one hour before the beginning of the first Horse Inspection and terminates half an hour after the announcement of the final results. Horses participating in Events may be tested anytime within the Period of the Event.

When administering medications to a horse that is scheduled to participate in an upcoming Event the PR in consultation with the veterinarian needs to be satisfied that the medication will no longer be present in the horse's body once the Period of Event commences namely on the Horse inspection day.

In the present case, it seems that the PR in consultation with the Veterinarian consulted the detection time for Meloxicam (72h) and believed that the Horse will be cleared of the Prohibited Substance in time for his first Competition on Thursday, 20 February, as there were three days in between the administration of the medication and the first Competition. However, this approach is erroneous from two reasons. The first reason being that no withdrawal time was decided upon, namely no safety margin was added to the detection time. The safety margin in most cases should be at least multiplied with 2 i.e. in the case at hand that would amount to 6 days. The second reason is the wrong interpretation as to when the Horse needs to be cleared from any medication if participating in an Event. The medication should have passed the horse's system by the time of the commencement of the Event Period and not by the time of the first Competition.

In the present case, the Horse was administered Inflacam on Sunday, 16 February, and a second dose was given mistakenly on Monday, 17 February. Neither of the administration allowed for a 6 days gap leading to the start of the Event Period i.e. 18 February. The Event Period therefore commenced when the Horse was still well within not only withdrawal time but most importantly well inside the detection time for the administered Prohibited Substance.

With regards to the Horse's inadvertent exposure to Regumate, the FEI acknowledges that the PR has procedures in place to avoid such scenarios. Namely each horse has its own bucket labelled with its name in order for each horse to get the allocated food. The buckets are cleaned with water and antiseptic solution.

However, on this occasion those procedures were not sufficient to prevent the Rule Violation. The PR failed to properly inform his friend, who temporarily helped him with the management of the horses at the Event, on the feeding regime and related precautionary measures. The PR could have avoided the Rule Violation by labelling the name of each horse not only on the buckets but as well on each horse's stall to prevent a mix-up. In addition, he should have specifically warned his friend that two of his mares are receiving a product that contains a Prohibited Substance and that extreme caution needs to be taken to not mix the feeding buckets in order to prevent a violation of the ECM Rules.

The FEI has had previous cases involving miscalculated withdrawal and/or detection times involving Controlled Medications. In some of those cases, the FEI found the PRs to be at *no significant Fault* and reduced to some extent the applicable period of Ineligibility. However, in the present case Inflacam was administered very close to the Event, with the second dose of the medication being given on Monday, 17 February, with the Event Period starting on the next day Tuesday, 18 February. That left only a one day gap for the medication to pass through the horse's system with the medication having a three day detection time. In addition, this was not the only misconduct that occurred, as a second Prohibited Substance was found in the Horse due to a mistake in the management of the Horse at the Event namely the mix-up of the feeding buckets.

The PR has not established any specific or relevant circumstances that would justify the PR's departure from the expected standard of care.

Based on the above and specifically the occurrence of two misconducts that lead to this Rule Violation, the FEI finds the PR to be at fault for the Rule Violation. Consequently, no elimination or reduction of the period of Ineligibility is possible under Art. 10.4. or Art. 10.5 of the ECM Rules. The applicable period of Ineligibility shall therefore be six (6) months.

The FEI acknowledges that the PR promptly admitted the Rule Violation and was fully cooperative and transparent throughout the procedure. In consequence, the FEI agrees to apply Art. 10.10.3 of the ECM Rules and start the period of Ineligibility as of the date of Sample Collection i.e. 20 February 2020.

Lastly, the PR submitted a request for the lowering of the fine due to his financial situation which was worsened by the Covid-19 pandemic. The PR's company is receiving governmental financial aid in light of the Corona crisis and related financial losses. In addition, the PR has not been receiving a salary since March 2020. (Exhibit 6) In consequence, the FEI agrees to lower the otherwise applicable fine to 1`000 CHF."

4. Jurisdiction

- 4.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, Article 8.1 of the EADCMRs, as well as Article 18 of the IRs.
- 4.2 As a member of the BEL-NF, the latter being a member of the FEI, the PR is bound by the EADCMRs.

- 4.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.
- 4.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

5. Approval of Agreement

- 5.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Tribunal has – among others – taken note, that the Parties agreed that the standard sanction of six (6) months applies in the case at hand.
- 5.2 The Parties however agreed for the period of Ineligibility to start as early as the date of Sample collection as the PR admitted the rule violation. The Tribunal notes that Article 10.10.3 of the ECM Rules foresees for an earlier start date of the period of Ineligibility where a Person Responsible promptly admits an ECM Rule violation. *In casu*, the PR admitted the rule violation on 2 April 2020 after having been notified of such violation on 18 March 2020. The Tribunal accepts as agreed by the Parties that such admission was prompt as required under Article 10.10.3 of the ECM Rules.
- 5.3 The Tribunal wishes to emphasise that it did neither evaluate whether the PR has met the burden of proof with regard to the source of the Prohibited Substances, nor his degree of fault. Furthermore, the Tribunal highlights that the present agreement does not constitute jurisprudence, and as such when reviewing it did not take into account previous case law.
- 5.4 Finally, the Tribunal notes that the Parties agreed on a reduced fine given the PR's financial situation, which the Tribunal finds reasonable in the case at hand.
- 5.5 Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement as set forth in Article 3.1 above. Further, this Decision shall terminate the present case 2020/CM01 ITALO TEN DOORN.

6. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Loris Berrittella, concerning the case 2020/CM01 ITALO TEN DOORN is hereby - pursuant to Article 7.6.1 of the EADCMRs - approved by the Tribunal with the consent of the Parties and its terms are incorporated into this Decision. Namely, the Parties agreed as outlined in Article 3.1 above.

- 2) This Decision is subject to appeal in accordance with Article 12.2 of the ECM Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 3) This Decision shall be published in accordance with Article 13.3 of the ECM Rules.

IV. DECISION TO BE FORWARDED TO:

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

FOR THE PANEL

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by 'R' and 'A', with '2013' written below it.

Mr. José A. Rodríguez Álvarez, one member panel