

DECISION of the FEI TRIBUNAL
dated 23 April 2021
(Reference No. FEI Tribunal: A20-0006)

In the matter of

National Equestrian League LLC and Jumping Clash SL (“the Appellants”)
Represented by Morgan Sports Law

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (“FEI”)

together “the Parties”

I. COMPOSITION OF THE FEI TRIBUNAL PANEL:

Mr José A. Rodriguez Alvarez (Chair) (MEX)
Mr Cesar Torrente (COL)
Ms Constance Popineau (FRA)

II. SUMMARY OF FACTS:

Case File: The Tribunal duly took into consideration all the Parties’ written submissions and communications received up to date, as well as oral arguments presented regarding jurisdiction during the hearing on 11 January 2021.

Hearing: 11 January 2021 at 3 pm (Central European Time by videoconference (via Cisco WebEx).

Present

- The FEI Tribunal Panel
- Ms. Hilary Forde, FEI Tribunal Clerk

- Mr. Gautier Aubert, FEI Tribunal Clerk

Appellants:

- Mr. Daniel Entrecanales
- Mr. Pablo Marquez

Counsel for the Appellants:

- Ms. Liza Lazarus
- Mr. Tom Seamer
- Ms. Emma Waters
- Ms. Ellen Kerr
- Mr. David Zack (personal attorney of the Appellants)
- Ms. Crispina Sanders (translator)

For the FEI:

- Mr. Mikael Rentsch, FEI Legal Director
- Ms. Áine Power, Deputy Legal Counsel

FEI Witnesses:

- Mr. Matthew Morrissey, Major League Show Jumping
- Mr. Kean White, Major League Show Jumping

III. DESCRIPTION OF THE CASE FROM A LEGAL VIEWPOINT

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

Statutes 24th edition, effective 19 November 2019 (“Statutes”).

General Regulations, effective 24th edition, 1 January 2020, (“GRs”).

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

Internal Regulations of the FEI, 20 November 2018 (“FEI IRs”).

2. The Relevant Legal Provisions

FEI Statutes Article 38.1:

“Subject to Articles 38.2 and 38.4, the FEI Tribunal shall decide all cases submitted to it by or through the Secretary General, whether Appeals from or matter not otherwise under the jurisdiction of the Ground Jury or Appeal Committee. These cases may be:

- i. Any infringement of the Statutes, General Regulations, Sport Rules, or Procedural Regulations of a General Assembly or of violation of the common principles of behaviour, fairness, and accepted standards of sportsmanship, whether or not arising during an FEI meeting or Event;"

GRs Article 105.3:

"FEI-named Series and any other Series must be approved by the Board."

GRs Article 105.4:

"The number of Series per Discipline and per category should be limited in order to have a well-structured Calendar and to avoid Horse welfare issues."

GRs Article 162.1:

"1. An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible (see paragraph 2 below):

(...)

1.2 With the FEI Tribunal against Decisions of the Appeal Committee or any other person or body.

(...)

5. Appeals to the FEI Tribunal must be dispatched to the Secretary General and signed by the appellant or his authorised agent and accompanied by supporting evidence in writing or by the presence of one or more witnesses at a designated hearing and must reach the FEI Tribunal within thirty (30) days of the date on which the Secretary General's notification of the earlier Decision was sent."

GRs Article 162.6:

"A deposit to the FEI of the equivalent of CHF 500 must be paid in order for the Appeal to be admissible."

IRs of the FEI Tribunal Article 18.1:

"In accordance with Article 38 of the FEI Statutes, the FEI Tribunal has the competence to hear and determine any matter properly submitted to it, including, but not limited to, Claims (as provided for in Article 30 of these Internal Regulations of the FEI Tribunal), those matters specified in Article 163

(Protests and Disciplinary cases) and Article 162 (Appeals) of the FEI General Regulations and all disputes and procedures arising under the FEI Anti-Doping Rules for Human Athletes and the FEI Equine Anti-Doping and Controlled Medication Regulations.(....).”

IRs of the FEI Tribunal, Article 23.1:

“A Hearing Panel (or, if urgent action is required before a Hearing Panel is appointed, the FEI Tribunal Chair) shall have all powers necessary for, and incidental to, the discharge of its responsibilities under the FEI Rules and Regulations and these Procedural Rules of the FEI Tribunal, including (without limitation) the power, whether on the application of a party or of its own motion:

(a) to order that certain potentially dispositive issues (e.g., as to jurisdiction) be heard and determined in advance of any other issues in the matter;

(b) to rule finally (subject only to any right of appeal to CAS) on its own jurisdiction to hear and determine proceedings brought before it either in a preliminary decision or in the Decision on the merits. When an objection to FEI Tribunal jurisdiction is raised, the Hearing Panel shall invite the opposing party (parties) to file written submissions on the matter of the FEI Tribunal's jurisdiction.”

IRs of the FEI, Article 2.1:

“....Board proceedings, whether in-person meetings, telephone or video conferences, via email exchanges, or on intra-/extra-net sites are confidential and therefore not subject to disclosure to third parties unless compelled by law. Communication of any information resulting from Board proceedings shall be in accordance with Article 2.6 below or an official process agreed by the President and Secretary General.”

IRs of the FEI, Article 2.6:

“Minutes must be kept of the deliberations and resolutions of the Board. The Minutes shall contain a summary of the deliberations, the proposed resolutions, the declarations which a member requests to be recorded in the Minutes, and the resolutions with the result of the vote. The Minutes are submitted to the Board for review. The Minutes are then signed by the Chair of the meeting and the Secretary General. The resolutions approved by way

of correspondence must be included in the Minutes of the next meeting. Minutes of Board meetings shall be made available to all Board members and NFs via an FEI website and/or email no later than six (6) weeks following the meeting. Minutes must not contain any confidential information.”

IV. DECISION

1. Below is a summary of the relevant facts, allegations and arguments based on the Parties’ written submissions, pleadings and oral testimony submitted throughout the proceedings and at the oral hearing held on 11 January 2021. Although the Tribunal has fully considered all the facts, allegations, legal arguments, and evidence presented throughout this Appeal, the FEI Tribunal will only refer to the submissions and evidence it considers necessary to explain its reasoning in this Decision.

V. FACTUAL AND PROCEDURAL BACKGROUND

2. In their Appeal Brief the Appellants, Mr Daniel Entrecanales and Mr Pablo Marquez, stated the following:

2.1. That in 2011, they conceived a new jumping competition format, styled after American sports leagues, and formed an organisation labelled JumpingClash SL (“**JumpingClash**”). The Appellants spent nine years developing their idea (between 2011 and 2020) and provided evidence of the respective copyright registration in 2012.

2.2. That throughout the development of the JumpingClash concept they consulted with the FEI closely and in 2019 the individual and team competition formats were approved by the FEI. They believed that North America would be the best region to launch the new Series and named the competition National Equestrian League (“**NEL**”). In order to ensure NEL would be a success, the Appellants met with Morrissey Management Group (“**MMG**”) in October 2018. MMG are an equestrian events management agency and were hired by JumpingClash to bring NEL to its launch.

2.3. That the Appellants and MMG worked together for nearly three years developing NEL and said working relationship continued until March 2020, until the Appellants discovered that MMG had developed a competing Series called Major League Show Jumping (“**MLSJ**”). On hearing about this the Appellants proceeded to file a complaint against MMG in the Federal

Court of the Southern District of Florida (**“the Complaint”**) alleging that MMG wilfully violated JumpingClash’s rights and infringed the copyright of JumpingClash.

2.4. That this litigation is ongoing with a proposed trial date in December 2021.

2.5. That in early 2020, MMG submitted the MLSJ Series to the FEI for Board Approval. When JumpingClash became aware of MMG’s actions, they promptly informed the FEI Legal Department and the FEI Board of the ongoing Litigation and requested that the FEI refrain from approving the MLSJ Series until the proceedings in Florida were exhausted. This request was not accepted, and the FEI notified the Appellants on 18 August 2020 that the FEI Board had approved the MLSJ Series and issued their Decision (**the “Decision”**).

3. The Appellants believed that MLSJ directly infringed the copyright of their JumpingClash concept and on that basis, they had a legitimate interest in the FEI Board’s Decision to approve this Series. They felt that the Decision would create significant financial hardship to them and therefore lodged an Appeal (represented by Morgan Sports Law) dated 8 September 2020 pursuant to Article 162 of the FEI GRs to the FEI Tribunal against the Board’s Decision on the basis that it was arbitrary and grossly erroneous. They furthered that to obviate the FEI’s Decision from being arbitrary and/or grossly erroneous the FEI Board should have:

- a) Complied with applicable FEI rules, regulations and policies;
- b) Honoured its own past practice;
- c) Upheld the FEI’s ethics and values;
- d) Reached a decision based on substantial, credible evidence.

The Appellants opined that the FEI Board failed in the areas outlined above and by virtue of such claims they requested for the Board’s Decision to be overturned by the FEI Tribunal. Such claims will be discussed in further at section VII in this Decision.

4. On 28 September 2020, the FEI Tribunal informed the Parties of the appointment of a three-person hearing panel in accordance with Article 19.1 of the IR’s. In accordance with Article 19.3 of the IR’s the Parties were invited to submit objections to the constitution of the nominated panel by 1 October 2020.

5. On the 19 October 2020, the FEI submitted their Answer to the Appeal of the Appellants and requested that in accordance with article 23.1 of the Internal Regulations of the FEI Tribunal, the FEI Tribunal firstly decide on the Tribunal's jurisdiction for such an Appeal and whether the Appellants are entitled to appeal the FEI Board Decision or not.
6. On the 27 October 2020, the Appellants issued a letter to the FEI Tribunal objecting to the FEI's request to bifurcate the proceedings under Article 23.1 of the Internal Regulations of the FEI Tribunal IRs and determine the issue of jurisdiction before engaging with the merits of this case. In addition to this request, the Appellants also asked for the Panel's permission to file new evidence in accordance with Article 44.2 of the FEI Tribunals IRs.
7. On the 13 November 2020, the FEI Tribunal issued a letter to all Parties and confirmed they had considered the arguments set forth by both Parties in the above-cited correspondence regarding the issue of jurisdiction. The result of which the FEI Tribunal informed both parties that it had analysed the matter of jurisdiction under Article 38.1 of the FEI Statutes and the right of Appeal pursuant to Article 162 of the FEI General Regulations and confirmed that the Appeal was admissible. In addition, the FEI Tribunal considered the Appellant's request regarding the filing of new evidence in a second round of submissions and authorised such a request. Appropriately, the FEI Tribunal established the following procedural calendar to be abided by:
 - 24 November 2020: the Appellant's deadline to file a second round of submissions;
 - 8 December 2020: the FEI's deadline to submit any response to this additional evidence.
8. This Calendar was abided by both Parties and the requested papers were filed. In their second round of submissions, the Appellants also requested for a (video) oral hearing to be held in this matter, pursuant to Article 25.1 of the FEI Tribunal IRs and in accordance with Article 45.1 of the IRs.
9. Further to the request for a hearing made by the Appellants, the FEI issued their response. In this response (filed by the FEI on the 8 December) they argued that the Appellants' further submission of 24 November 2020 was obtained illegally under Swiss law and should therefore be completely ignored by the FEI Tribunal.

10. Please note that the various procedural matters that materialised at the oral testimony will be discussed in greater detail in below section entitled preliminary matters.

VI. PRELIMINARY MATTERS

11. At the outset of the hearing, it was agreed by the parties that any preliminary matters should be clarified in advance. These matters were as follows:

1st Preliminary Request

11.1 There was a request from the FEI not to accept the further submissions including exhibits of the Appellants dated 24 November 2020 as they argued that no discovery process existed under Swiss law and they were surprised by the production of such confidential information. They furthered that such information had been obtained illegally under Swiss Law, the governing law of these Proceedings. The FEI contested that to allow such documentation into the Proceedings would serve to undermine the integrity of the entire FEI Tribunal Proceedings.

11.2 The Legal Representative for the Appellants claimed that the FEI's argument outlined above was misconceived and stated that such submissions and evidence are admissible. He said this was reflected in letter dated 13 November 2020 from the FEI Tribunal which allowed them to file any new evidence in a second round of submissions by the 24 November 2020. He furthered that no limitations were placed on the evidence that could be filed and such evidence was obtained pursuant to the order of a Judge in the Florida Courts and not illegally or subject to a confidentiality agreement. The Appellants also stressed that the procedural rule of the Swiss Civil Court does not apply to these Proceedings pursuant to Decision of CAS 2011/A/2426 (para. 89-93) Amos Adamu v. Fédération Internationale de Football Association (FIFA), award of 24 February 2012 and the relevant provisions contained in the IRs of the FEI Tribunal, in particular Article 34.2 of the Internal Regulations of the FEI Tribunal.

11.3 The FEI Tribunal considered the oral and written arguments raised by both parties in relation to the submission of the evidence and during their deliberations further considered the specific procedures relating to the

admissibility of evidence contained at Article 34.2 of the IRs of the FEI Tribunal.

11.4 The Hearing Panel considered the fact that the FEI did not provide any evidence to the Panel as to why it considered that such evidence was obtained illegally. The FEI argued that there is no discovery process under Swiss Law and furthermore that a document disclosure order as practised in common law jurisdictions is alien to Swiss Law, however the Panel noted that in accordance with Article 34.2 of the IRs of the FEI Tribunal such arguments do not apply when considering the admissibility of evidence in proceedings before the Tribunal and such evidence was important for the FEI Tribunal's review of this case.

11.5 Furthermore, the Panel also considered the jurisprudence arising from the case of CAS 2011/A/2426 (para. 89-93) cited above in order to provide grounds for accepting such additional evidence and rebut the position of the FEI that such evidence was obtained illegally. In this Decision, the admissibility of evidence was considered, and it was confirmed at CAS that if there was no declaration by an official judge that the evidence was unlawfully obtained thereby prohibiting its use, it cannot be prevented in and of itself to use such evidence in disciplinary proceedings conducted within a private association. As a consequence, the Panel considered that there was no basis to exclude the disputed evidence from the FEI Tribunal proceedings and approved the admissibility of such evidence.

2nd Preliminary Request

11.6 The Appellants also requested that the FEI's witnesses are sequestered as provided for by Article 34.8 of the IRs of the FEI Tribunal. This request was not opposed by the FEI and as such was accepted during the hearing.

3rd Preliminary Request

11.7 The Appellants also enquired if there were screen sharing capabilities turned on for this videoconference hearing. The Chairman of the Panel confirmed this was the case and as such was authorised.

4th Preliminary Request

11.8 The final preliminary request raised by the Appellants related to the admissibility of a further document which they recently realised was not on the record. The document in question was a letter sent by Mr White

(FEI witness and a founder of MLSJ) to the FEI Board dated 16 June 2020. This letter was emailed to FEI Legal Director also. This letter was prepared by Mr White to give the FEI Board the background to the relationship between the NEL and the MLSJ. The Appellants stated that this letter should be admitted as it is a key document and formed part of the file upon which the FEI reached its key decision i.e., approval of the MLSJ Series. The Legal Representative of the Appellant further explained that the admissibility of this letter is being contested by the FEI, however this opposition must be denied due to the importance of the document for these proceedings.

11.9 The FEI replied to the aforementioned request and referred to Article 44.2 of the IRs of the FEI Tribunal which states that:

“Unless the parties agree otherwise or the Hearing Panel Chair orders otherwise for good cause shown, the parties shall not be permitted to supplement their written arguments or evidence with further written submissions after submission of *the Notice of Appeal* and accompanying documents (in the case of the *Appellant*) or the answer and accompanying documents (in the case of the FEI). Notwithstanding the foregoing, the Appellant may be permitted, with the permission of the FEI Tribunal, to introduce evidence and/or a statement from an expert witness no later than fourteen (14) days following receipt of the Respondent’s answer for the sole and specific purpose of addressing evidence and/or a witness statement from an expert witness referred to in the Respondent’s answer”.

11.10 In this respect the FEI confirmed their position that such additional evidence should not be accepted, and furthermore that no request was filed by the Appellants for this document to be disclosed. In addition, the FEI noted the Appellant’s request for said document to be admitted was made less than 45 minutes before the Hearing commenced and as such argued that this evidence should not be admitted as part of the Proceedings pursuant to Article 44.2 of the IRs of the FEI Tribunal as outlined above.

11.11 The FEI Tribunal Panel evaluated both parties’ arguments in relation to admissibility of this evidence and prior to moving to deliberate on the request, the Panel queried the Legal Representative of the Appellant as to when did the Appellant become aware of the documents in question.

The Appellants stated that although they had this file at the time of filing their second submission on 24 November 2020, to their error they only noticed on the day of Hearing that such file was not included.

11.12 Taking into account the provisions contained at Article 44.2 of the IRs the FEI Tribunal confirmed that since the Appellants had omitted such file in its possession since their second submissions were lodged, they were unable to demonstrate “good cause” for this document to be accepted other than a timing error on their part. In this regard, the Panel ruled during their brief deliberations that such evidence would not be accepted at this stage of the Proceedings.

VII. SUBMISSIONS BY THE PARTIES WITH THE RESPECTIVE POSITIONS:

In the following, a short summary of the written and oral submissions made by the Parties concerning the merits of the Appeal is provided. While the Tribunal has taken into consideration all submissions, only the ones relevant for the Decision are outlined below.

A. APPELLANT:

12. The submissions of the Appellants addressed the following key issues:

12.1 They respectfully submitted that the FEI Tribunal overturn the FEI's Board's Decision in approving the MLSJ Series on the basis that is arbitrary and grossly erroneous. They claimed that the FEI Board acted contrary to the FEI's own values and the Decision was not based on substantial and credible evidence.

It is also important to note that a new prayer for relief was raised by the Appellants at this juncture of their oral submission wherein they sought permission from the Tribunal to remit the entire matter back to the FEI Board for their reconsideration pursuant to Article 46.2 (C) of the IRs of the FEI Tribunal. They maintained that such a step would enable the Board to reconsider their Decision on Series approval based on all the 'now' available documentation and evidence.

12.2 The Appellants also referred to the issue of jurisdiction in their submissions, stating that notwithstanding the FEI Tribunal had already

clarified the matter of jurisdiction, the FEI were raising this issue again and suggesting that the Appellants are expecting the Panel to carry out the role of the Florida Courts by seeking injunctive relief or asking them to award damages against MLSJ. The Appellants stressed this was not the case and all they were merely requesting was for the Panel to consider whether or not the Board's Decision was arbitrary and/or grossly erroneous.

12.3 The Appellants then addressed the process for approval of a Series and discussed the FEI's strict regime in governing the approval of a Series pursuant to the "FEI Policy for Approval of Series" (**the "Policy"**) dated 17 November 2018. They claimed that under this Policy the FEI Board should only approve a Series during its two annual in-person meetings and review those Series submitted for approval at least 6 months in advance and noted that such language in this policy is mandatory. Therefore, they argued as regards the procedure for approval of a Series, this Policy allows for no exceptions was created to ensure transparency, clarity and efficiency. Therefore, the Appellants contended that the application submitted by MLSJ for Series approval should not have even been considered as doing so disregarded the parameters of the Policy and demonstrated that the Board acted beyond the scope and boundaries of said Policy. They claimed that was shown by their failure to adhere to the annual in-person meetings when approving a Series and by its inability to provide the Appellants with any evidence of the timely filing of the MLSJ application.

12.4 Furthermore, the Appellants contended that in addition to the mandatory nature of the timescales set out under this Policy, there are also non-exhaustive factors to be considered for the approval of a Series, which are the following:

- a) The Welfare of the horse is paramount;
- b) Compliance with the FEI Rules and Regulations;
- c) Compliance with the applicable international and national legislations.

12.5 Considering the factors listed above for approval of a Series, the Appellants stated that the FEI in their submissions only alluded to whether MLSJ met all the sporting and technical requirements to be endorsed which is incorrect as it is ignoring the clear and mandatory language of its own Policy. In addition, they noted that the FEI filed witness

statements from Mr Kean White and Mr Matthew Morrissey which by their very necessity for these proceedings provided evidence that the FEI was not only concerned about sporting and technical requirements when approving a Series.

12.6 They also questioned whether MSLJ and/or its organisers have complied with applicable international and national legislation (such as but not only antitrust and competition law) as such compliance will be crucial to the determination of this Appeal. In addition, the question of whether the organisers of MSLJ have complied with FEI regulations will also be crucial to the determination of this Appeal.

12.7 In relation to the matter of compliance with legislation, the Appellants contested that there was a Complaint initiated against MLSJ, MMG and other connected parties in the Federal Court of the Southern District of Florida alleging that MSLJ breached NEL's copyright and exclusive rights. MLSJ's non-compliance with the US federal trademark law must be considered since "copyright" qualifies, without doubt, as national legislation. They pointed out that the Board was aware of the Litigation pending in Florida (and provided the relevant filing documents including proof of its federal copyright) at the time that the Board approved the MLSJ Series. Therefore, they contested that the FEI went against their own Policy in approving the MLSJ Series while it was alleged to be in breach of national legislation.

12.8 The Appellants also submitted detailed arguments around the FEI's mission and the Board's obligation to keep that at the forefront of its decision making, which is *"to drive and develop equestrian sport globally in a modern, sustainable and structured manner with guaranteed integrity, athlete welfare, equal opportunity and a fair and ethical partnership with the horse"*. They submitted that the decision to approve the MLSJ Series does not comply with the FEI's mission due to the fact that the Series was produced through unethical means i.e., by falsely obtaining concepts and later claiming them for their own and is therefore non-compliance with the FEI's mission. They also submitted that they had no idea that MMG were disloyally working behind their back despite nearly working together for 3 years and then used this misappropriated information to create their own competing Series.

12.9 The Appellants also raised the FEI's code of ethics (Appendix F, GRs) which provides that...*"all participants in Equestrian Sport, including but not limited*

to Athletes (and their Support Personnel), Owners, Organisers, Officials, sponsors, and FEI volunteers and staff undertake to respect and be bound at all times by the present Code, and by the IOC Code of Ethics where applicable". They submitted that the actions of MMG are prima facie the very opposite of ethical and furthermore by approving the MLSJ Series, the FEI Board sanctioned unethical behaviour, rather than upholding its commitment to the contrary. They concluded that the FEI Tribunal should now be fully appraised of MMG's deception and unethical conduct and in light of which it must overturn the decision to approve the MLSJ Series.

B. FEI:

13. The position submitted by the FEI is that the Appeal should be dismissed, the FEI Board Decision is confirmed and upheld, the Appellants bear the costs of the Appeal proceedings and that they contribute to the FEI's legal costs. The key arguments of the FEI, both oral and written are set out in more detail below:

13.1 At the outset, it is important to note that the FEI addressed the Appellants request of a new prayer for relief i.e., the option of remitting the matter back to the FEI Board for their reconsideration pursuant to Article 46.2 (C) of the IRs of the FEI Tribunal. The FEI requested that it is put on record that this option was not previously mentioned in the Appellant's submissions.

13.2 Continuing on, the FEI stated that as the sport's governing body their function is only to approve a Series from a sporting and technical point of view i.e., does the series comply with the FEI Rules and Regulations? If the answer is "yes", there is no reason for the FEI Board not to approve such a series. Furthermore, they stated whilst the FEI had approved the MLJS, it has not disapproved the NEL Series and despite all the arguments submitted stating that the NEL concept and ideas were stolen, the FEI asserted that it was totally normal to have several competitions existing in various sports.

13.3 The FEI also provided that if the Organiser/Promoter of a Series had a right to appeal against the approval of a FEI Series, it would mean that the Organiser of the Global Champions League and Global Champions Tour or the Rolex Grand Slam for example would be entitled to appeal and this would restrict the market and prevent the entry of other

organisers with whom they are in competition. They furthered that such restrictions would be anti-competitive and against anti-trust legislations, given that there are currently 15 Jumping Events (Series) approved by the FEI based on their compliance with sporting and technical requirements.

13.4 The FEI also confirmed that they were aware of the ongoing litigation between the Appellants and MLSJ however such a dispute has nothing to do with the FEI Board's approval of a Series. The FEI view their role as one that governs Equestrian Sports, and in this case, the Discipline of Jumping. Accordingly, they maintain that the FEI's Board Decision was based solely on compliance with the FEI Rules and Regulations and assessing whether the appropriate rules were followed in addition to the FEI sporting and technical requirements.

13.5 In relation to any trademark and copyright infringement issues, the FEI confirmed that such issues were the sole responsibility of the Appellants and must be dealt with by the appropriate courts, the FEI does not have the rules or regulations to consider such matters. The FEI also noted that from a legal perspective, the claims made by the Appellants against MLSJ are only mere allegations; nothing has been proven or decided yet and it would be inappropriate for the FEI Tribunal to pre-empt the outcome of proceedings before the United States District Court for the Southern District of Florida by admitting this Appeal and/or interfering with the FEI Board's Decision.

14. The FEI then addressed the arguments submitted by the Appellants that the Board's Decision is arbitrary and grossly erroneous and submitted that such allegations had no valid basis and that the FEI Board Decision is valid, rational, and appropriate.

15. Focusing on the Appellant's argument that the FEI Board Decision did not occurred during "an in-person meeting" as per the FEI Policy, the FEI highlighted that the Appellants must be aware of the COVID-19 situation and related consequences. Moreover, for obvious reasons the FEI Board did not meet in person this year, but instead conveyed its meeting by videoconference.

16. In response to the Appellants' argument that MLSJ did not file its application with the FEI in a timely manner, the FEI reiterated that the Board's processes and proceedings are confidential, and it is not up to the Appellant to argue or contest how the FEI Board took the Decision. Moreover, the FEI Board is the

only body to decide its agenda and matters to be determined. In any event, the only questions that the FEI Tribunal must answer in the affirmative is whether the FEI Board Decision is valid, rational, and appropriate, does the MLSJ Series meet all the FEI sporting and technical requirements and does it comply with all the FEI Rules and Regulations to be approved by the FEI Board.

17.The FEI also addressed the argument raised by the Appellants that the FEI Board should have waited until the pending litigation between the parties in the Federal Courts of Florida was complete before any decision made to approve a Show Jumping Series. In this regard, the FEI stated that the FEI Headquarters and the FEI Board's position were clear in that a decision on whether to approve or not approve an application of a Series can be carried out regardless of any unrelated pending legal dispute. They respectfully submitted again that it would be inappropriate for the FEI Tribunal to anticipate the outcome of the proceedings Southern District Court of Florida by admitting this Appeal and/or interfering with the FEI's Board's Decision.

18.In relation to the allegations made by the Appellants that the FEI made a *"thinly veiled attempt to avoid the issue of horse welfare"* and that it cannot be denied that *the MLSJ adds classes and competitions in the same region and aimed at the same market as the NEL intends to target, and therefore inherently increases the demand placed on the horses"*. The FEI stated that these the horse welfare concerns are unsubstantiated in the approval or non-approval of the MLSJ Series as the "pool" of Athletes and Horses is big enough to have several high-level events in a calendar year. Moreover, if the FEI had not approved the MLSJ Series, each individual event would have taken place anyway (as the MLSJ is mostly linking existing individual events together). Therefore, the FEI maintained that this Series does not place any additional demand on the horses or create welfare concerns.

C. FEI at the Hearing:

19.In their closing arguments the FEI reiterated that the FEI Board Decision approving the MLSJ Series was valid, rational, and appropriate despite all the arguments and procedural difficulties presented by the Appellants arising from the FEI Board meeting. The FEI stated that the FEI Board's processes and proceedings are confidential, and it is not up to the Appellants to argue or contest how the FEI Board took the decision. They explained that the rationale behind the FEI Policy for Approval of a Series was to establish a routine process to streamline the number of requests received by the FEI, as on numerous

occasions applicants for a series requested that the FEI approve their Series “immediately” or in very short timelines They s that the application process can be complex and therefore it needed to be reviewed by the relevant Technical Committee and FEI Headquarters prior to submitting it to the Board.

20.The FEI also addressed the allegation that MLSJ is non-compliant with copyright legislation and therefore it should never have been approved by the FEI Board. Moreover, the FEI viewed such arguments raised by the Appellants regarding compliance with international and national legislation (such as antitrust and competition law) as unrelated to trademark or copyright infringement by one party (the requesting party). Moreover, the FEI's highlighted their adherence to Belgian and European Competition Regulations after various claims were raised for alleged infringements of these Regulations in 2018, wherein concerns were raised by the Belgian Competition Authority that the FEI would conduct a review of a given Series in an anti-competitive manner. Consequently, the FEI Policy for Approval of Series was enacted to ensure the FEI complies with antitrust legislation, avoids any such infringement claims in the future and ensures that all Series are approved in compliance with anti-competitive and antitrust legislation.

21.Taking into account the facts submitted above, the FEI furthered that the purpose of this Policy was not for determining whether or not the requesting parties' concept or Series was compliant or non-compliant with copyright or trademark law. The FEI has always maintained that is the responsibility of the applicant(s) to ensure compliance with copyright or trademark of others.

22.In their closing remarks the FEI highlighted that they are a sport's governing body and not an intellectual property agency or a dispute resolution body. Furthermore, the FEI considered these proceedings a blatant attempt by the Appellants to short circuit the Florida courts legal process by requesting that the FEI Tribunal expedite pending legal proceedings in Florida by overturning the FEI Boards Decision on approval. Taking into account all the particulars raised in these submissions (both oral and written), the FEI respectfully requested that the FEI Tribunal:

- a) Rule that the Additional Submissions of the Appellants are not admissible;
- b) Decide the Appeal solely based on the Appellant's Appeal Brief dated 8 September 2020 and the FEI's Answer of 19 October;
- c) Dismiss the Appeal;

- d) Confirm and Uphold the FEI Board Decision; and
- e) Determine that the Appellant shall bear the costs of the Appeal proceedings and contribute to the FEI's legal costs.

D. Appellant at the Hearing:

23. Firstly, the Legal Representative on behalf of the Appellants emphasised that despite the assertions by the FEI that NEL are requesting that the FEI Tribunal replace the Florida courts and pre-empt the decision in relation to the ongoing copyright litigation this is not the case. Instead, they are asking for the FEI Tribunal to provide a supervisory jurisdiction and noted that such jurisdiction was granted by the Tribunal. Therefore, they do not understand why the FEI are repeatedly raising the arguments in relation to jurisdiction. They furthered that the key question they wished to clarify was "whether there was any objective reason for the FEI Board not to approve the MLSJ Series?" Furthermore, that if such a reason exists to reject MLSJ Series then the Tribunal is required to act either by overturning the Decision or by remitting the matter back to the Board to be reconsidered in light of all the evidence now presented.

24. Finally, the Appellants addressed four key issues to be considered by the Tribunal in order to assess if any objective reason exists for the FEI board not to approve the MSLJ Series, there were as follows:

- (i) The timing of the FEI Board Meeting: The Appellants submitted that the FEI mistakenly believed that they took issue with the FEI Board meeting taking place by videoconference. They clarified this is not accurate and their concerns are related to the FEI Board Decision taking place outside of the two annual meetings notably on 23-25 June 2020 and 18 November 2020. They argued that such actions are in contravention of the clear terms of the FEI Policy and the mandatory language contained therein setting out the timings of meetings. They stated that the application made by MSLJ was late and therefore the Board should not have even considered the application. Notwithstanding that the FEI deemed the timing issues of Board meetings as an inarguable point i.e., the FEI would have approved the Series at the next meeting in any event, the Appellants are not satisfied such a Decision was validly reached and argued that this in itself showed enough evidence to dispose of the case on the basis that it is arbitrary and grossly erroneous.

- (ii) As outlined earlier, the Appellants again referred to its arguments of non-compliance with national legislation as set out under Section 10.3 of the FEI Policy. They stated that the FEI Board was obliged to consider the non-compliance with copyright legislation when deciding whether or not to approve the MLSJ Series. Despite the FEI's argument that such considerations would be impractical and require the FEI to change their Policy, the Appellants argued that no flexibility should exist for the Board to opt out of the defined list of factors for approval of a Series Decision. Consequently, they submitted that the FEI Tribunal Panel in its supervisory role must conclude that MLSJ breached national law and disregarded the parameters of the Policy.

- (iii) Thirdly, the Appellants raised the issue of compliance with the FEI Rules and Regulations and requested that the Tribunal consider this issue in accordance with Article 10.2 of the Policy "compliance with applicable international and national legislations (such as but not only antitrust and competition law)" which they claimed had not been satisfied. They alleged that all FEI Rules and Regulations e.g., the principle of ethics as detailed in the FEI Statutes (24th Edition, effective 19 November 2019) Article 2.11 must be considered and not solely the sport and technical rules. They furthered that the FEI's mission is entirely undermined if it permits organisers to conduct themselves in this manner – falsely obtaining concepts and later claiming them as their own and in this regard requested that the FEI Tribunal consider the code of ethics when adjudicating on these proceedings. They maintained that MLSJ produced this Series by unethical means through disclosing confidential information entrusted to them and therefore its approval runs contrary to the FEI's mission of integrity.

- (iv) Finally, Counsel for the Appellants submitted that FEI Decisions are required to be consistent, and it is for this reason that the FEI Tribunal and the principle of *lex sportiva* which recognizes and provides protection against arbitrary and erroneous decisions. In this regard the Appellants queried whether the FEI Board acted inconsistently with past practice in issuing this Decision to approve the Series and furthermore was this Decision based on substantial and credible evidence. They stated that the FEI has a long-established practice of declining involvement and providing a supervisory role (and therefore remaining neutral) where legal disputes are first initiated in jurisdictions outside of the FEI, until such time as the relevant dispute mechanism had been exhausted. In this respect, the

Appellants cited the matter of Prunthaller et al v FEI (Decision dated 4 May 2020) wherein the FEI tribunal had a supervisory role and encouraged stakeholders within the equestrian world to remit proceedings to overall apparent breaches of the FEI rules and regulations so that integrity, accountability, and transparency could be reinforced in the behaviour of all FEI related stakeholders.

VIII. JURISDICTION

25. The jurisdiction of the FEI Tribunal in relation to this Appeal pursuant to Article 38 of the FEI Statutes is disputed by the FEI. In their submissions, the FEI addressed the lack of jurisdiction for the FEI Tribunal to rule on this matter and that the Appellants have no standing to lodge an Appeal. Therefore, given the arguments raised, it is important to clarify any jurisdictional issues and in this regard the Tribunal will provide a more detailed review as to why jurisdiction is granted for such an Appeal. To decipher jurisdiction, the Tribunal had to consider whether (i) *ratione temporis*; (ii) *ratione personae*; and (iii) *ratione materiae* are established.
26. The Tribunal also noted that under the general principles of the Appeal provisions of the FEI GRs that, an Appeal is admissible in front of the Tribunal pursuant to Article 162.1 of the GRs which states that: "An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible: (a) With the FEI Tribunal against Decisions of the Ground Jury or any other person or body. (b) With the CAS against Decisions by the FEI Tribunal. The person or body lodging such Appeal shall inform the FEI Legal Department".
27. Furthermore, and to ensure that the elements of Article 162.1 above are present for said proceedings in particular the requirement of a "legitimate interest against any Decision made by any person authorised under the Statutes, GRs or Sport Rules", the Tribunal must examine whether a minimum threshold for further action has been reached. Such threshold would be evaluated on whether the Appellant has established that there is a sufficient value in admitting the Appeal and whether by refusing to admit such an Appeal, latent economic and/or moral risks would materialise. In order to examine and clarify these issues further, the Tribunal refers to the jurisprudence of CAS 2016/A/4579 Gordon Derrick v. Fédération

Internationale de Football Association (FIFA), award of 3 February 2017¹ wherein it was “well established that a party must have a current “interest worthy of protection” that can be addressed or rectified by the claims or appeal being made”. In said case, The Appellant lodged an Appeal before CAS against an International Federation concerning his ineligibility to stand for election within the relevant branch of such federation.

28. Thus, akin to the legal arguments presented in CAS 2016/A/4579 and in order to demonstrate that a legitimate interest exists, the Panel have taken account of the arguments put forward by NEL in the same vein when analysing if a “legitimate interest” as set out at Article 162.1 of the GRs is present. As noted in the above-mentioned CAS case, it is now well established under Swiss Law that a party must have a current “interest worthy of protection” that can be addressed by the claims or the appeal being made. This principle is known as “Rechtsschutzinteresse” or an “intérêt digne de protection”; it is generally translated into English by the term “standing”. More specifically, that an appellant has demonstrated sufficient actual and present interest to provide standing for his appeal if he has shown that the reversal of the challenged Decision would have significant practical and tangible benefits to him going forward. From the foregoing, as confirmed by CAS jurisprudence and Swiss law, it is clear that although findings on standing have procedural implications, the approach taken arises out of the material conditions of the claim and an evaluation on the practical determination of such standing by the Tribunal.

29. Therefore, the Tribunal have considered the latter jurisprudence and when applying them to the proceedings before us, noted that the same principles are applicable, and as such the Appellants have demonstrated a practical and legitimate interest in the FEI Board Decision to maintain their appeal. In particular, as evidenced throughout their submissions the Appellants claim that the MLSJ Series directly infringes the Founders’ copyright and has the capacity to cause significant financial risk and hardship to them via allegations of wilfully violating their exclusive rights of a Series wherein they are seeking damages and injunctive relief for lost revenue and reputational damages elsewhere. Such claims and documentation presented suffice to establish the prima facie finding of an actual practical interest for the Founders of NEL and thus to justify their appeal.

¹ [TAS xxx \(tas-cas.org\)](https://www.tas-cas.org) Arbitration CAS 2016/A/4579 Gordon Derrick v. Fédération Internationale de Football Association (FIFA), award of 3 February 2017

30. Secondly the Tribunal must ensure that the Appellant fulfilled the relevant formal requirements in accordance with Article 162.2, 162.5 and 162.6 of the FEI GRs- “process for Filing an Appeal against other FEI Decisions”, i.e., that it does not fall under the list of possible inadmissible appeals (cf. Article 162.2 of the GRs), which is not the case; that it was submitted to the FEI Tribunal within twenty one (21) days of the date on which the earlier notification was sent (cf. Article 162.5 of the GRs), which was properly respected; and, that a deposit was paid to the FEI of the equivalent of CHF 500 in order for the Appeal to be admissible (as evidenced from the proof of payment dated 8 September 2020 in the exhibits).

31. Furthermore, with regard to the jurisdictional analysis - referred to in paragraph 25 above - and with regard to the first jurisdictional element to be considered in this case *ratione temporis*, the Tribunal noted this Appeal concerns a Decision made by the FEI Board in approving the MLSJ Series. The Appellants were formally notified by the FEI of the FEI Board’s Decision on 18 August 2020. The relevant rules for lodging an Appeal against this Decision are the 2020 GRs (which came into force on 1 January 2020), and more specifically Article 162.1 thereof, and in addition the 2018 IRs, (which came into effect on 2 March 2018) Article 25, 40, 45 of the IRs. Therefore, the Decision was issued after the relevant rules came into effect and as such are the applicable rules for the present case.

32. In respect of the second jurisdictional element to be considered of *ratione personae*, i.e., the ability of a Tribunal to decide on matters concerning a person or entity and that such bodies must be bound by the FEI Regulations. As previously detailed above at paragraphs 26-28 above, the Appellants have the right to appeal the Decision under Article 162 of the FEI GRs once they have also demonstrated sufficient practical and tangible interest to justify their standing to appeal, despite the position expressed by the FEI (submissions dated 8 September 2020), that the Appellants were not party to the proceedings in front of the FEI Board when making the Decision for Series Approval and accordingly wouldn’t have standing to file an Appeal.

33. In addition, on examining the matter further i.e., how the position of the Appellants enabled them to access the services of the FEI to bring said appeal, the tribunal noted that the Appellants as FEI stakeholders (NEL Series approval 2019), are valued and registered members of the FEI Equestrian Community, as set out in the introduction of the FEI Statutes, 2019:

“The Statutes are the FEI’s constitution and thereby set forth its organisation and the attribution of powers, rights and responsibilities among its bodies and stakeholders, including but not limited to National Federations, Athletes, Organising Committees, Standing Committees, FEI Tribunal, the International Olympic Committee and the International Paralympic Committee.

As outlined in the excerpt above, the *“attribution of powers, rights and responsibilities among its bodies and stakeholders”* affords the Appellants a right to access the FEI regulatory services in order to resolve a legitimate dispute.

Furthermore, for the present matter we have noted that the FEI never contested the Appellants role as FEI Stakeholders, in fact they have been recognised as organisers by virtue of their close consultation over the years with the FEI Jumping Committee to develop the NEL Series. Thus, any decisions made by the FEI Board in approving a series are naturally of interest and important to those affected by any decisions such as the Founders of the NEL Series. The Tribunal also noted that given such status as Stakeholders within the FEI, they are to abide and be affected by a Decision passed based on the FEI Policy for Approval of a Series dated, 17 November 2018.

34. Moreover, despite the arguments raised by the FEI (paragraph 3.4 submissions dated 8 September 2020) that any such right to appeal pursuant to the FEI Policy for Approval of a Series is strictly limited to a “requesting party” seeking approval of its Series by the FEI Board (Article 11 of the Series Approval Policy) contradicts Article 162.1 of the GRs which grants jurisdiction to the FEI Tribunal against Decisions of the Ground Jury or any other person or body with a legitimate interest against any Decision made by any person or body authorized under the Statues, GRs or Sport Rules. Nevertheless, the Tribunal accepts that within the scope of Article 11 of the Series Approval Policy, if the FEI Board refuse a proposal for approval of a Series by a requesting party, it is understood that any such right to appeal is limited to the those submitting said application. However, the latter is not analogous to a situation whereby a Series is approved which may have a collateral effect on persons or bodies with a legitimate interest and limit a right of appeal to only the applicants.

35. The Tribunal is also cognisant of the argument set forth by the FEI (submissions dated 8 September 2020, paragraph 3.6) that FEI Board proceedings, “whether in-person meetings, telephone or video conferences, via email exchanges are confidential and therefore not subject to disclosure to third parties”, despite such assertions, this cannot be accepted as the

outcome of such meetings have public significances i.e., the approval of a new Jumping Series in North America, and such outcomes warrant a legitimate right to appeal under the FEI GRs. Such meetings, although held behind closed doors, cannot be deemed as confidential, in the sense presented by the FEI, when they impact on the sport for the wider equestrian community in a given discipline. The launch of a new Jumping Series is public knowledge and subject to the provisions as outlined in the “FEI Policy for Approval of a Series”, (November 2018) affording National Federations and FEI Stakeholders the benefits of transparency, clarity, and efficiency in any Series approval.

36. In respect of *ratione materiae*, the Tribunal's task is to decide whether the subject matter of the Appeal lodged falls within the jurisdiction of the Tribunal. The Tribunal has evaluated this requirement in the previous paragraphs and in accordance with Article 38 of the FEI Statutes, notably Article 38.1, wherein the FEI Tribunal shall decide on all cases submitted to it by or through the Secretary General, whether Appeals from or matters not otherwise under the jurisdiction of the Ground Jury or Appeal Committee. These cases may be: “Any infringement of the Statutes, General Regulations, Sport Rules, or Procedural Regulations of a General Assembly or a violation of the common principles of behaviour, fairness, and accepted standards of sportsmanship, whether or not arising during an FEI meeting or Event;...”

37. Furthermore and as previously mentioned and elaborated the Tribunal has evaluated the relevant legal considerations to demonstrate the Appellant's standing to Appeal the FEI's Board Decision under the competence of the FEI Tribunal, which pursuant to Article 18 of the FEI Tribunal IRs can hear and determine any matters properly submitted pursuant... “including, but not limited to [...] Appeals of the FEI General Regulations..” In this regard the Tribunal analysed all submissions thus far and confirmed the existence of a legitimate interest to justify bringing matters forward under the jurisdiction of the FEI and in particular the forum of the FEI Tribunal.

IX. LEGAL DISCUSSION

38. In the present case, the Tribunal has reviewed all the relevant matters submitted and exchanged by the Parties to these proceedings, and in the following paragraphs the Panel will set out their position in relation to the relevant points below surrounding the merits of these proceedings:

- (i) The supposition that Decisions of the FEI Board can be *a priori* overturned in cases of arbitrariness or grossly erroneous Decisions;

- (ii) The supposed breach of the FEI in relation to their Rules and Regulations in approving the MLSJ Series taking into account applicable time limits and due procedures;
 - (iii) The supposed breach of the FEI Rules and Regulations in relation to the merits of their Decision namely;
 - a. Breach of past practice;
 - b. Breach of Ethics and Values;
 - c. Breach of articles related to the actual approval of a series.
- (i) **The supposition that Decisions of the FEI Board can be *a priori* overturned in cases of arbitrariness or grossly erroneous Decisions;**

39. The FEI Tribunal has considered the arguments submitted by the Appellants that the Decision of the FEI Board was arbitrary and/or grossly erroneous and must be overturned on that basis. The Panel noted the Appellants argued that the FEI Tribunal should overturn the FEI's Board's Decision of approving the MLSJ Series claiming that the Board acted contrary to the FEI's own values and the Decision of the FEI Board was not based on substantial and credible evidence. The FEI have counter-argued these claims stating that the FEI Board's Decision is valid, rational and appropriate and the accusations of it being arbitrary and/or grossly erroneous are without any valid argument. Before analysing such arguments and each of the components in turn including the submissions which enabled the parties to arrive at such conclusions, the Panel examined the initial assertion made by the Appellant which triggers the subsequent reasoning.

40. In this regard the Tribunal reviewed the Appellants assertion that "The FEI Tribunal has established that, in Appeals of this nature: "in order to overturn the Decision passed by the FEI, it [is] fundamental to be able to evaluate whether the FEI acted arbitrary [sic], in mala fide, or where the FEI decided in a grossly erroneous manner." (see par. 2.1 of the Appeal Brief, Morgan Sports Law dated 8 September 2020). Although the quote in question is accurate (see FEI Tribunal Decision Schmidt, Prunthaller et al v FEI (Decision dated 4 May 2020 paragraph 4.20) the context has been misinterpreted and bears no direct application in the present matter.

41. In the abovementioned case, the matter under debate and review was determining the justification of an appeal against the right of a prosecutorial body to exercise their discretion when issuing orders not to proceed with a particular claim received. In other words, the Tribunal noted that the principles in the quoted FEI Tribunal case are misinterpreted by the Appellants since the

arguments therein relate to a different concept i.e., these principles are specifically applied to circumstances whereby the FEI decides not to prosecute a claim referred to it by another party. Thus, the quote referred by the Appellants does not apply expressly to the circumstances of the present case.

- (ii) **The supposed breach of the FEI in relation to their Rules and Regulations when approving the MLSJ Series taking into account applicable time limits and due procedures;**

42. The Tribunal noted the Appellant's claims that different protocols of the Board's Policy in approving a Series were violated. In this regard, they referred to the protocol whereby approval must take place during its two annual in-person meetings and the application must have been submitted for approval at least 6 months in advance. On the other hand, the FEI stated that due to the COVID-19 situation and related consequences of the pandemic, the FEI Board did not meet in-person but instead conveyed its meeting by videoconference. The FEI also addressed the 6-month protocol raised by the Appellants arguing that this timeline was only established in order to give sufficient time for the Technical Committee and FEI Headquarters to review an application, proposed Rules for the Series, to give its feedback and to ask for clarifications etc. when approving a Series. They further explained that once a Series has met all the most important factors i.e., the technical and sport aspects relevant to the FEI Rules and Regulations there is no objective reason to deny the application on the basis on timelines.

43. Firstly, the Tribunal has taken note of the Appellant's argument that MLSJ did not file its application with the FEI in a "timely manner" and in response to which the FEI reiterated "that the FEI Board's processes and proceedings are confidential, and it is not up to the Appellant to argue or contest how the FEI Board took their Decision". The Tribunal disagreed with this perspective and considered that regardless of whether the FEI deems the Board processes of a confidential nature, the Policy in question which is the basis of the present debate was established to ensure transparency and to guarantee a concrete process, thus the position taken by the FEI is not supported as such a position opposes the very reason for having a Policy in the first place.

44. Moreover, note is taken that the FEI Policy in question entitled "FEI Policy for approval of a Series", (dated 17 November 2018), was approved by the FEI Board during its in-person meeting in Montevideo (URU) on 18 November 2017, further modifications took place in 2018. In this sense, aside from the mandatory nature of the provisions contained in this Policy, there is no

question that it allows for modifications/updates to be performed and duly published.

45. Furthermore, the Tribunal noted that in the first paragraph for of the FEI Policy for Approval of Series the reasoning behind the document is stipulated, i.e. “[...] the FEI felt the necessity to approve a policy for approval of Series for the sake of transparency, clarity and efficiency” bearing in mind “[...] the increasing number of requests that the FEI is receiving from third parties [...]”. From the outset, it is clear that the leading purpose of the Policy is to guarantee that the FEI can better manage the large amount of approval requests, whilst assuring all individuals applying for approval have fair treatment, their applications are thoroughly reviewed and dealt with in a transparent and diligent manner.

46. *In casu*, the Panel noted that the first exchanges between the applying party of the new Series Morrissey Management Group (**MMG**) and the FEI seem to have initiated on 3 February 2020. Moreover, note has been taken that the official application was also submitted in February 2020 and the application and rules were reviewed by the FEI Headquarters (Jumping, IT and Legal Departments) and by the FEI Jumping Committee from that date onwards. Ultimately the official approval took place on 21 July 2020 approximately 6 months after the initial exchanges and approximately 5 months after the formal application was received.

47. In this sense, upon detailed consideration of the clear purpose behind the Policy, it is to be understood that the 6-month threshold is built into this Policy as a tool in favor of the FEI Board and the administration, with the aim of ensuring they have sufficient time for the Technical Committee and the FEI Headquarters to diligently review and provide feedback to the various applications submitted for the benefit of the stakeholders. The Tribunal noted that the initial exchanges, that paved the way for remitting the formal application initiated approximately 6 months before the latter, and at the time of the FEI Board Decision, they were satisfied all the sufficient elements were present to review the application.

48. Additionally, the Tribunal also noted that the Appellants expressed concerns regarding the FEI Board Decision taking place outside of the two annual meetings notably on 23-25 June 2020 and 18 November 2020. In addition, the Appellant further clarified that the FEI mistakenly believed they took issue with the Board meeting taking place by videoconference however their concern was in relation to the Decision taking place outside of the set annual meetings.

In this sense, the FEI Tribunal took note of the Respondents arguments wherein they explained that albeit applications may be reviewed twice a year by the FEI Board (usually in the Spring and Fall), this year was different as no official in-person FEI Board meeting took place given the COVID-19 situation.

49. In this regard and as previously outlined the Tribunal deemed that the Policy exists to streamline the number of Series applications being submitted and ensure the National Federations and Stakeholders are aware of this process in the interests of fair process, transparency, clarity, and efficiency. Furthermore, having regard to the explanations submitted by the Respondents, it is understood that due to the unforeseen COVID-19 circumstances an in-person meeting was not possible and the FEI Board decided to review an application for this Series once it was satisfied that both FEI Headquarters and the FEI Jumping Committee were in agreement with the proposed Rules for the Series.

50. In this regard, the Panel agreed that the extraordinary situation experienced by workplaces globally justified adaptations of policies and protocols of meetings, in relation to the logistical changes in mechanisms of arrangements (e.g., in-person to a videoconference setting). It is noted that in the present case the body that approved, issued, and has the right to perform possible modifications of the Policy is the same body that has approved the Series now under debate with the considerations under discussion.

51. All in all, the Panel places a high value on the purpose sought by the Policy in question and emphatically understands that any restrictive approach which acts counter to the said core objective (*i.e.*, to deal with Series applications in a transparent, clear and efficient manner) specifically when living under the COVID-19 situation, should be avoided. Therefore, despite the Appellants arguments that such actions are in contravention of the clear terms of the FEI Policy and the mandatory language contained therein, for the reasons stated above the Tribunal does not accept the interpretation of the applicable timelines as a mean to invalidate FEI Board approval for a Series.

(iii) The supposed breach of the FEI Rules and Regulations in relation to the merits of their Decision namely;

a. Breach of past practice;

52. In respect of the supposed breach of past practice, the arguments raised by the Appellants were that the FEI Board acted inconsistently and against its own

past practice in issuing the Series Approval Decision, stating that the FEI “has a long-established practice of declining involvement (and therefore remaining neutral) where legal disputes are first initiated in jurisdictions outside of the FEI, until such time as the relevant dispute mechanisms have been exhausted” (Appeal Brief of Appellants dated 8 September 2021). They further stated that given the Appellants and MLSJ are engaged in ongoing federal litigation in which MLSJ is purported to have infringed the copyright of NEL, it remains unclear why the FEI and FEI Board did not take an impartial stance on the Approval of a Series given they were fully aware of the Complaint. They argued that by approving a Series when litigation is ongoing will raise future legal issues which may result in serious financial consequences.

53. In response to the above allegations, the FEI counter-argued that no examples were submitted by the Appellant in which the FEI Board demonstrated a “long-established practice of declining involvement (and therefore remaining neutral)” where legal disputes are first initiated in jurisdictions outside of the FEI, until such time as the relevant legal dispute mechanisms have been exhausted”. They furthered that the Appellants have failed to point to a single provision within the entire FEI rulebook where it is defined that the FEI Board has a responsibility to ensure copyright issues or claims under national law have been decided as a pre-requisite for obtaining FEI Board approval.

Taking the above points of both parties into consideration, on review the Panel failed to see a connection with past practice. Aside from the previously cited FEI Tribunal Decision Schmidt, Prunthaller et al v FEI - which the Tribunal already discussed at paragraphs 40-41 of this Decision, and its misinterpretation by the Appellants - in addition, the Tribunal noted that the Appellants failed to bring forward a single rule provision or former case, that might have obliged the FEI Board a responsibility to ensure that ongoing copyright litigation issues have been resolved under national law as a pre-requisite for approving a Series.

54. In this regard the Panel further noted that the role of FEI Board is an administrative one, limited in assessing the sport and technical requirements of the application for a new Series and whether the MLSJ had allegedly stolen or infringed any trademarks or copyright of third parties was not the responsibility of the FEI Board. The Panel also did not regard the FEI Policy for Approval of a Series as a mechanism to prevent applications from being reviewed where unrelated legal claims were pending. Therefore, the FEI Board

has not acted inconsistently with past practice in approving a series despite such allegations of the alleged historical deviations.

b. Breach of ethics and values:

55. The Tribunal also acknowledged the Appellant's submissions regarding breaches of the FEI's own ethics and values and arguments remitted that the Decision of the FEI Board, to approve MLSJ Series, does not comply with its mission of driving and developing equestrian sport globally, with guaranteed integrity and equal opportunity. As outlined in the earlier part of this decision, allegations were made by the Appellants that all FEI Rules and Regulations e.g., the principle of ethics as detailed in the FEI Statutes (24th Edition, effective 19 November 2019) Article 2.11 must be considered and not solely the sporting and technical rules. In accordance with Article 2.11 "The FEI and the National Federations encourage and support the promotion and implementation of ethics and of the basic principles of good governance (including but not limited to the IOC Basic Universal Principles of Good Governance of the Olympic and Sports Movement) in equestrian sport and in their organisations".

56. Taking the latter Article into account, the Appellants argued that the FEI's mission is entirely undermined if it permits Series Organisers to falsely obtain concepts and later claim them as their own and in this regard requested that the FEI Tribunal consider the code of ethics when adjudicating on these proceedings. They maintained that MLSJ produced this Series by unethical means through disclosing confidential information entrusted to them and therefore its approval runs contrary to the FEI's mission of integrity. The Tribunal noted that the FEI acknowledged these allegations of "unethical behaviour" in their submissions dated 8 December 2020 and asked MLSJ to provide information regarding such allegations. In response, MLSJ provided a detailed summary of their position and referred to this alleged "misleading" information submitted by the Appellants specifically in terms of league formats and rules. MLSJ maintained that such information is misleading and that they are a *bona fide* and beneficial show jumping league that was ready for launch a year after creation. They also stated that NEL and JumpingClash are using the FEI appeal process as an attempt to sabotage the MLSJ 2021 Season due to fact that the case in the American Court has no merit in their opinion.

57. Despite the allegations contained in these submissions, the Tribunal noted that the duty of the FEI Board when reviewing the application for a new Competition Series is limited to the elements set in the relevant Policy and in

line with which can determine whether it meets the criteria as regulated by the FEI. These elements are further expanded below at paragraphs 49 onwards.

58. In this sense, the Tribunal disagreed with the Appellants and considered that by merely referencing foreign litigation that is pending is not akin to providing categorical evidence sufficient to demonstrate alleged breaches of the FEI's values and ethics. Hence, any claims of breaches of such nature are unsubstantiated by the Appellants.

59. In this case, as far as the Tribunal is aware from the information currently relayed, possible copyright/ trademark breaches remain undecided by a foreign Court. As such, no illegality has been confirmed and the alleged allegations remitted could not be considered as sufficient elements to set that conclusion and even less to establish that the Decision of the FEI Board was unethical.

c. Breach of articles related to the actual approval of a series:

60. Considering the claims remitted, the Tribunal emphasised the importance of analysing the non-exhaustive list of factors to be considered in the Decision for the approval of a Series as set out in Article 10 of the Policy, which are the following:

- a) The Welfare of the horse is paramount;
- b) Compliance with the FEI Rules and Regulations;
- c) Compliance with the applicable international and national legislations;
- d) Any constraints or non-approval must be duly justified in order to achieve a legitimate sporting imperative, and must be proportionate, i.e., they go no further than is necessary to achieve that imperative.

61. The Appellants contended that the FEI in their submissions declared that the only relevant factors for the FEI Board to consider was whether the MLSJ Series met all the applicable sport and technical requirements. They furthered that this was clearly at odds with the clear and mandatory language of its own Policy which specifically lists various non-exhaustive factors (as outlined above) that the FEI Board was required to consider. The first three factors were considered by the parties in their submissions and will be analysed in further detail below.

a) The welfare of the horse is paramount:

62. In relation to the claims raised by the Appellants that the FEI Board must also ensure that Series are approved in compliance with the GRs and in particular Article 105.4 which provides that “the number of Series per Discipline and per category should be limited in order to have a well-structured Calendar and to avoid Horse welfare issues”, they stated that the FEI Board should not have approved two identical Series in the same region as doing so causes a strain on competing horse and jeopardises horse welfare. They stated that no evidence was provided by the FEI Board to take into account this aspect of Calendar logistics and the inherent increase and demand this Series places on the horses.

63. In response to such claims the FEI argued that approving or not approving MLSJ has nothing to do with the FEI Calendar and the number of events to take place every year and furthermore that whether an event is organised as a stand-alone event or as part of a Series, each individual organiser of an FEI must apply to the FEI to be included in the FEI Calendar. Likewise, the FEI stated that the “pool” of Athletes and Horses is big enough to have such number of high-level events in a calendar year. In addition, even if the FEI had not approved the MLSJ, each individual event would have taken place anyway as MLSJ is mostly linking existing individual events together. Therefore, the FEI did not accept the Appellant’s claims that there is an increased demand or welfare concerns placed on the Horses.

64. The Tribunal noted that by virtue of its nature, as a “claim” made by the Appellant alleging that FEI Board did not consider the issue of horse welfare in approving the MLSJ Series, the burden of proof rest on the Appellants to prove such assertions, i.e., that welfare issues were not considered by the FEI Board. In this regard, the Tribunal examined the different elements presented above surrounding the issues of horse welfare competing in this Series and confirmed that the claims presented were not substantiated and as such no elements were found that justify such claims. The Panel does not accept that by merely indicating that such competitions will affect the demand placed on the horses it would consequently affect their welfare and as such warrant a welfare concern.

b) Compliance with the FEI Rules and Regulations:

65. Having regard to the second factor outlined at 10.2 of the FEI Policy for approval of Series "Compliance with the FEI Rules and Regulations", the Tribunal noted that the appellants argued that the FEI Board failed to uphold FEI rules, regulations, and policies in approving the MLSJ Series. However, the Tribunal has already analysed these arguments in detail at paragraphs 42 to 51 of this decision and does support the Appellants reliance on approximate timeframes to invalidate the FEI Board's approval of a Series once the overarching legal objectives of such a Policy are met and bearing in mind the special circumstances surrounding the year.

66. The Tribunal noted that although the Appellants raised various issues surrounding supposed failure of the FEI Board to uphold FEI rules, regulations and policies in relation to the designated FEI Policy for Series Approval, they did not contest that any of the sport and technical requirements as regulated by the FEI were not fulfilled.

c) Compliance with the applicable international and national legislations:

67. In relation to the third factor referred to by the Appellants under Article 10.3 of the FEI Policy for approval of Series "Compliance with the applicable international and national legislations", the Tribunal noted that the appellants alleged that the FEI Board went against its own Policy in approving the MLSJ series while it was suspected to be in breach of national legislation. They maintained that the FEI Board was obliged to consider the alleged non-compliance with US federal trademark law and copyright legislation when deciding whether or not to approve the MLSJ Series and that no flexibility should exist for the board to opt out of the defined list of factors for approval of a series decision. Consequently, they stated that the FEI Tribunal Panel in its supervisory role must conclude that MLSJ breached the Appellant's copyright and exclusive rights and such non-compliance with US federal trademark law must be considered since "copyright" qualifies as national law.

68. The particulars presented above and allegations of non-compliance with national and international legislations in a given copyright claim are noted by the Tribunal however such disputes are pending legal disputes in front of a court in Florida, and it is not appropriate for the FEI Tribunal to comment on legal matters where it has no jurisdiction nor competency on US copyright law. Therefore, the FEI Tribunal cannot act on supposed of breaches of national and international law nor take any legal position as to who is right or wrong in

respect of a copyright infringement dispute already under the appropriate federal system.

69. Additionally, albeit the Tribunal is aware that such litigation is ongoing, it would be inappropriate for the FEI Tribunal to pre-empt the outcome of proceedings before a foreign court. Consequently, the Tribunal must reject all the allegations raised by the Appellants regarding the apparent lack of compliance with the applicable international or national legislations by the FEI Board, especially when such matters are currently remitted for and pending trial.

70. As detailed from all the particulars deliberated above, in relation to the FEI Board's Decision, the Tribunal concluded that insufficient evidence has been remitted by the Appellant to substantiate the absence of any of the non-exhaustive factors pertaining to article 10 of the Policy. In addition, the Panel would also like to highlight that as a forum the FEI Tribunal should not be used to expedite proceedings pending in Courts elsewhere.

71. Having reviewed all the facts, submissions and different arguments presented by the parties, the Tribunal concluded that the Decision of the FEI Board was passed in accordance with their discretionary powers of approval and the Appellants did not provide sufficient material elements on the merits of the case to justify overturning the Decision of the FEI Board.

X. DECISION

(i) As a result, the Tribunal therefore decided the Appeal as follows;

- 1) The Appeal is dismissed;
- 2) The FEI Decision is upheld and confirmed;
- 3) No Deposit shall be returned to the Appellants;
- 4) Each Party shall bear its own costs in these proceedings.

(ii) According to Article 165 of the GRs, this Decision is effective from the date of oral or written notification to the affected party or parties.

(iii) According to Articles 162.1 and 162.7 of the GRs, this Decision may be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. Any other: No

FOR THE FEI TRIBUNAL (three-panel member)



Mr. José A. Rodríguez Álvarez (MEX), Chairman;