

DECISION of the FEI TRIBUNAL  
dated 29 September 2021

(Reference No. FEI Tribunal: C20-0044)

Case 2021/HA04 Mr Andre SCHRODER–  
Allegation of Abuse of Horse and breach of the FEI Code of Conduct on the Welfare of the Horse.

In the matter of

FÉDÉRATION EQUESTRE INTERNATIONALE (“FEI” or “the Claimant”)

vs.

Mr Andre Schroder (“the Respondent”)

together “the Parties”

I. COMPOSITION OF PANEL

Ms Diane Pitts (USA), Chair  
Mr Cesar Torrente (COL), Member  
Mr Christopher Hodson (NZL), Member

II. SUMMARY OF THE FACTS

1. **Claim Brief:** By FEI Legal Department.
2. **Summary information provided by the Respondent:** The Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the Respondent.

3. **Oral hearing:** none.

### III. SUMMARY OF LEGAL AUTHORITY

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

Statutes 24<sup>th</sup> edition, effective 19 November 2019 (“**Statutes**”), Arts. 1.4 and 38.  
General Regulations, 24<sup>th</sup> edition, 1 January 2020, Arts. 118, 142, 159, 163, 164 and 167 (“**GRs**”).

Internal Regulations of the FEI Tribunal, 3<sup>rd</sup> Edition, 2 March 2018, Part III (Procedural Rules of the FEI Tribunal) (“**IRs**”).

FEI Jumping Rules 26<sup>th</sup> Edition, effective 1 January 2018 (“**JRs**”).

FEI Veterinary Regulations 14<sup>th</sup> Edition 2018, effective 1 January 2021 (“**VRs**”).

FEI Code of Conduct on the Welfare of the Horse.

2. **Respondent:** Mr Andre Schroder (FEI ID 10022310/UKR).

#### 3. Authority for Sanction:

**GRs Article 142.1:** No person may abuse a Horse during an Event or at any other time. “Abuse” means an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse, including, but not limited to:

- (i) To whip or beat a Horse excessively;
- (ii) To subject a Horse to any kind of electric shock device;
- (iii) To use spurs excessively or persistently;
- (iv) To jab the Horse in the mouth with the bit or any other device;
- (v) To compete using an exhausted, lame or injured Horse;
- (vi) To “rap” a Horse.
- (vii) To abnormally sensitise or desensitise any part of a Horse;
- (viii) To leave a Horse without adequate food, drink or exercise;
- (ix) To use any device or equipment which causes excessive pain to the Horse upon knocking down an obstacle.

#### **GRs Article 159.2:**

“The FEI Tribunal may impose the following sanctions, or, where appropriate, delegate the ability to do so to the FEI Secretary General and/or the FEI Legal Department:

b) A fine, taking into account the FEI Guidelines for Fines and Contributions towards Legal Costs;

[...]

e) Suspension of individuals and Horses for any period up to Suspension for life;”

#### **GRs Article 164.1 (Types of Sanctions):**

“The Sanction(s) imposed in any given case can consist of any of the Sanctions set out in Articles 164.2 – 164.10 below. The level of the Sanction shall be decided according to the guidelines mentioned in Article 164.13 below and to the circumstances of the case.”

#### **GRs Article 164.5 (Fine)**

“(a) A fine is appropriate particularly in cases where the offender has acted negligently [...]”

#### **Article 164.6 (Disqualification)**

“(a) Disqualification is appropriate when it is specified in the Statutes, GRs or Sport Rules, or if the circumstances require an immediate action. Disqualification from the Competition or Event may be retroactive. [...]”

#### **GRs Article 164.7 (Suspension):**

- a) “During the period of a Suspension the person, Horse or body suspended may take no part in Competitions or Events as an Athlete, Horse or Official or in the organisation of, any Event under the jurisdiction of the FEI or any Event under the jurisdiction of an NF in accordance with the Statutes or in any FEI related activity (e.g., FEI courses, meetings, General Assembly etc.).

- b) If so specified in the relevant Notification/Decision, the person may be barred temporarily or for a specific period of time from participating in or attending, in any capacity, including as a spectator, any Competition or Event that is authorised or organised by the FEI or any National Federation.
- c) The Suspension may be provisional or final and may be imposed on such terms and subject to conditions as the FEI Tribunal, the FEI Headquarters or the FEI Secretary General, as the case may be, may impose. In certain cases a Provisional or Final Suspension may be automatic under the Statutes, GRs or Sport Rules.
- d) As a general principle, a Suspension will start as of the date of notification of the Suspension. However, the body imposing or applying the Suspension may postpone the start date of the Suspension in order to ensure the effectiveness of the Suspension.”

**GRs Article 164.12:**

“In addition to breaches of specific provisions of the FEI Rules and Regulations, the following is a list of other offences that the FEI may sanction:

- (a) Incorrect Behaviour;
- (b) Abuse of Horse;
- (c) Acts defined as criminal by the national law and/or Swiss law (“Criminal Acts”);
- (d) Fraud of any kind;
- (e) Violence;
- (f) Failure to cooperate with an investigation undertaken by, or on behalf of, the FEI;
- (g) Conduct that brings the FEI and/or equestrian sport into disrepute, i.e. conduct that causes the public opinion of the FEI and/or equestrian sport to be diminished.
- (h) Breach of the FEI Code of Ethics;
- (i) Breach of the FEI Code of Conduct on the Welfare of the Horse;
- (j) Breach of the FEI Code on the Manipulation of Competitions;
- (k) Breach of the FEI Officials Code of Conduct;
- (l) Breach of the FEI Safeguarding Policy against Harassment and Abuse.

**GRs Article 164.13 (General Sanctioning Principles and Tables of Sanctions):**

“In deciding on the appropriate sanctions to be imposed and whether to categorise the offence in question as “low-end”, “mid-range”, “top-end” or “max”, the body imposing the Sanction shall consider the following factors, together with any other relevant factors:

- a) Whether the action or omission resulted in an unfair advantage to the offender or an Athlete.
- b) Whether the action or omission resulted in a material disadvantage to any other person or body involved.
- c) Whether the action or omission involved the maltreatment of Horses.
- d) Whether the action or omission affected the dignity or integrity of any person involved in the sport.
- e) Whether the action or omission involved Fraud, violence or abuse or similar criminal acts.
- f) Whether the action or omission was deemed to be deliberate.”

**GRs Article 164.14:**

“The following table sets out the sanctions that will apply for certain offences listed in Article 164.12 above. Where an offence is not listed in the table below, general sanctioning power will apply, and sanctions may be imposed in accordance with this Article 164.

[...]

Offence	Low-End	Mid-Range	Top-End	Max
Abuse of Horse	3 months	3 months – 2 years	2 – 5 years	Life
	CHF 1000 – 1,500	CHF 2,000 – 3,000	CHF 5,000 – 10,000	CHF 15,000

[...]

Offence	Low-End	Mid-Range	Top-End	Max
Criminal Acts, Fraud,	1 month	3 months – 2 years	2 – 5 years	Life

Violence	CHF 1000 – 1,500	CHF 2,000 – 3,000	CHF 5,000 – 7,500	CHF 10,000
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#### IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions and evidence. Although the Tribunal has fully considered all the facts, allegations, and arguments in the present proceedings, it refers only to the submissions and evidence it considers necessary to explain its reasoning in this Decision.

##### 1. Factual Background and Charges by the FEI

- 1.1 Mr Andre Schroder (**the Respondent**, and together with the FEI, **the Parties**) is an experienced jumping rider, who has been involved in equestrian sport on an International Level since 2006 and has participated in 1070 International Competitions.
- 1.2 Between the 6 and 9 May 2021, the Respondent competed with the Horse ALLEGRO (**the Horse**), at the CSI1\* in Samorin, Slovakia.
- 1.3 Pursuant to Article 156.2 of the GRs, all Athletes, Owners, Support Personnel, accredited persons at Events and any other person taking part in or benefiting from FEI activities accept the FEI Legal System and its dispute resolution mechanisms as a condition precedent to participation in FEI activities and/or to receiving any benefit from FEI activities. As such by virtue of his participation in International Events the Respondent is bound by the FEI Rules and Regulations.
- 1.4 The FEI Officials reported to the Claimant (**the FEI**) that before competing in the Grand Prix Competition at the Event, the Respondent used hind boots (**the Boots**) with sharp pressure points on the Horse. The FEI Officials issued a Yellow Warning Card to the Respondent for the offence of Abuse of Horse.
- 1.5 Further to a detailed review of the FEI Officials' Reports, the FEI deemed that the seriousness of the offence warranted additional sanctions in accordance with Article 164.3 (c) of the FEI General Regulations.

##### 2. Procedural Background (as at submission of the case file)

- 2.1 On 8 June 2021, the FEI notified the Respondent that Disciplinary Proceedings were opened against him for an alleged offence of Abuse of Horse in accordance with Article 142 (ix) and 164.12 (b) of the GRs and Breach of the FEI Code of Conduct on the Welfare of the Horse in accordance with Art. 164.12 (i) of the GRs **(the Notification Letter)**. In the Notification Letter the FEI proposed administrative measures in accordance with Article 30.2(a) of the IRs for the Respondent's consideration to admit the alleged infringements and, accept the sanctions proposed by the FEI in the Notification Letter;
- 2.2 On 17 June 2021, the Respondent replied to the Notification Letter **(the Reply)** wherein he stated that the Boots in question were attached to the Horse by the two Grooms of Ms. Singer (the Respondent's partner). According to the Respondent, he did not check the Boots at the time they were placed on the Horse by the Grooms. The Respondent added that he could not predict that the Grooms would put on the Boots in question. The Respondent alleged that he had never seen those Boots before, and they were not part of the utensils of his riding stables.
- 2.3 On 2 July 2021, in accordance with Article 30.4 of the IRs, the FEI submitted their Claim Brief to the FEI Tribunal **(the Tribunal)** in support of the disciplinary proceedings brought against the Respondent.
- 2.4 On 27 July 2021, in accordance with Art. 19.1 of the IRs, the Tribunal issued the Opening and Nomination letter (i) informing the Parties of the composition of the three-member Hearing Panel appointed for this case, (ii) granting the parties a deadline until 30 July 2021 to submit any objections to the constitution of the Panel, (iii) granting the Respondent a deadline until 16 August to file a Response to the FEI's Claim as per Article 30.5 of the IRs. In this regard, the Respondent was invited to submit his position containing a statement of defence, any submissions on jurisdiction, any evidence and substantiated motions for the admission of evidence upon which the Respondent intends to rely, as well as the Respondent's position with regard to the recommended sanction.
- 2.5 On 27 July 2021, the FEI confirmed they had no objection to the constitution of the nominated Hearing Panel.

- 2.6 On 28 July 2021, the UKR-NF confirmed they had forwarded the Opening and Nomination letter to the Respondent and that there was no further communication from the Respondent to date.
- 2.7 On 19 August 2021, the FEI wrote to the Tribunal and confirmed that in the absence of a Reply from the Respondent in respect of 2.4. (ii) and (iii) above, they did not request for a hearing to be held and were satisfied for the matter to be adjudicated based on the written submissions.

### **3. Factual circumstances and evidence giving rise to the FEI Rules violations**

- 3.1 On 8 May 2021, it was reported by the FEI Officials that the Assistant Chief Steward performed the Hind Boot Control process on all the Horses participating in the Grand Prix Competition of the Event. The Assistant Chief Steward visually controlled the Horses' equipment and manually examined both Horses' hind boots. The Hind Boot Control took place next to the entrance into the warming up arena. The Assistant Chief Steward provided her witness statement for the purpose of these proceedings.
- 3.2 It was reported that when the Respondent arrived with the Horse at the Hind Boot Control, the Assistant Chief Steward requested the Boots for inspection. The left hind boot was handed to her by the Respondent's Groom. The Assistant Chief Steward immediately noticed sharp pressure points on the inside of the Boot(s) and radioed the Chief Steward who arrived in 1-2 minutes. In the meantime, the Assistant Chief Steward requested an inspection of the right hind boot. The right hind boot was the same as the left one i.e., it featured sharp pressure points. The Assistant Chief Steward explained to the Respondent that such Boots are prohibited and do not comply with the FEI Rules and additionally may cause an Abuse of Horse offence due to the dangerous pressure points that would cause excessive pain and discomfort to a Horse. The Assistant Chief Steward stated that the Respondent argued that the Boots were okay, and that he was allowed to participate in the Longines ranking class using the boots in question. The Chief Steward stated that he informed the Respondent that they were not okay, and the Respondent informed the Officials that the Boots were purchased with those pressure points.
- 3.3 Afterwards, it was reported that the Chief Steward met with the Respondent and the Assistant Chief Steward. The Assistant Chief Steward handed over the Boots in



question to the Chief Steward for inspection. The Chief Steward put on a new pair of gloves and examined the Boots thoroughly. According to the Chief Steward: *"The boot had clear sharp objects inside, that when pushing gently against these objects with my fingers it caused pain in my finger."*<sup>1</sup> The Assistant Chief Steward and the Chief Steward photographed the hind boots. The FEI submitted the Chief Steward's witness statement and relevant excerpts of the Chief Steward's Report<sup>2</sup> to provide further detail on the initial discussions at the Event. It was then reported that the Chief Steward spoke with the Respondent and relayed that the reaction of the rider was very clear that this *"is a normal type of hind boots which he has used in many competitions previously and is the type (velcro without elastic), which is eligible for Young Horses"*. The Chief Steward also explained to the Respondent that according to the Rules no objects may be inserted inside boots and that the Boots in question are in breach of the Rules.

3.4 The FEI stated that the Respondent then proceeded attaching different hind boots to the Horse while inquiring with the Chief Stewards if the second hind boots met the requirements and were suitable for use. The Chief Stewards confirmed that the second hind boots complied with the Rules. Afterwards the Respondent proceeded to the warming up arena to prepare for the competition. The Chief Steward took one of the Boots under investigating to the Jury Box where it was inspected by the President of the Ground Jury who confirmed that there were holes on the inside of the Boots and inside each of the holes were sharp spikes. A decision was made to issue a Yellow Warning Card to the Respondent for the offence of Abuse of Horse pursuant to Article 158.4 (b) of the GRs. The FEI submitted the President of the Ground Jury's witness statement<sup>3</sup> to evidence this decision taken at the Event.

3.5 The FEI stated that the Chief Steward then returned to her duty at the Boot and Bandage Control. When the Respondent passed this area on his way to enter the Field of Play with the Horse, the Chief Steward returned the Boots to the Respondent's Groom. According to the Chief Steward, on this occasion the Respondent claimed that it was not his boot, and he has found it on the way to the warmup arena on the racetrack and used it just to protect his horse. It was further

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<sup>1</sup> Exhibit 6 and 7 of the FEI Claim Brief (The Chief Steward's Witness Statement and Relevant Excerpts of the Chief Steward's Report).

<sup>2</sup> Exhibit 6 and 7 of the FEI Claim Brief (The Chief Steward's Witness Statement and Relevant Excerpts of the Chief Steward's Report).

<sup>3</sup> Exhibit 8 President of the Ground Jury's Witness Statement.

reported that after finishing his performance, a full Boots and Bandage Control was carried out on the Horse. The Horse did not have any visual signs of the abuse and was not overly sensitive in his hind legs at this time. According to the Chief Steward the Respondent stated that the Horse didn't need the boots as he had jumped well.

- 3.6 The FEI confirmed that the President of the Ground Jury and the Chief Steward agreed to issue a Yellow Warning Card to the Respondent which the Respondent signed upon its receipt<sup>4</sup>.
- 3.7 The FEI also submitted photographs of the Boots taken by the Assistant Chief Steward and the Chief Steward, which correspond with the Officials' testimonies<sup>5</sup>. These photographs illustrate visible holes with sharp pressure points on the inside of the boots. There were 11 sharp pressure points identified on the inner side of the Boots which would sit on the front of the Horse's cannon bone where the Horse would hit the pole when not clearing the fence and would cause excessive pain and discomfort.
- 3.8 The FEI also submitted the relevant excerpt of the Foreign Judge's Report which explained the situation and the reasons for issuing a Yellow Warning Card: whereby on 8 of May 2021 in competition No 13. the Respondent entered the warmup arena with incorrect Boots. It was noted in the Report that the inside of the Boots had spikes which were sharp and could cause injury and pain for the Horse. It was also submitted that when the Respondent entered the warm-up arena the FEI Officials checked the Boots and requested for them to be removed. The Chief Steward then proceeded to give him a Yellow Warning Card for an apparent Abuse of Horse offence and the Respondent continued to participate in the competition with another set of hind boots.

## V. SUBMISSIONS BY THE PARTIES WITH THE RESPECTIVE POSITIONS

### 4. Written Submissions by and on behalf of the Respondent

- 4.1 On 17 June 2021, the Respondent replied to the Notification Letter (**the Reply**) and informed that on the day of the Event, when he got on his Horse to ride to the warm-up area, he noticed the gaiters were not yet attached. He furthered that he

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<sup>4</sup> Exhibit 9 Yellow Warning Card issued to the Respondent.

<sup>5</sup> Exhibits 10-13 photographs submitted in the Claim Brief.

complained about this to the two groom keepers and asked them loudly to fetch gaiters and put them on the horse. He asserted in his Reply that he did not look at the gaiters that were placed on the Horse and did not even put them on himself. He confirmed that the day after the Event on 9 May, the FEI steward came to him and explained that the gaiters removed in the Boot Control process were not in compliance with FEI regulations and he was issued a Yellow Warning Card. He understood that was the end of the matter and stated that he had never seen the gaiters complained about, nor did he put them on the horse.

The Tribunal notes that the Respondent did not submit any objections or acceptance of the constitution of the Panel, and he did not file any Response to the FEI's Claim as per Article 30.5 of the IRs. There have been no further written explanations and/or submissions remitted by the Respondent since the Claim was submitted to the Tribunal on the 2 July 2021.

## 5. Written Submissions by the FEI

- 5.1 As noted the FEI submitted its Claim Brief on 2 July 2021 to the Tribunal.
- 5.2 The FEI submitted that in accordance with Art. 118.3 of the FEI General Regulations the Athlete who rides the Horse at the Event is also the Person Responsible (**the PR**) for the Horse. As the PR, in accordance with Art. 118.6 of the FEI General Regulations, the Respondent is *"...responsible for any act performed in the stables to any Horse under his/her jurisdiction, by himself or by any other person with access to the Horse, and is responsible while riding, driving or exercising any Horse under his/her jurisdiction..."*. As such, the FEI submitted that the Respondent is responsible for any abuse of his Horse be it by himself or others.
- 5.3 The FEI submitted that the misconduct of the Respondent, as detailed in Section 3 of this Decision amounts to offences as per Article 142 (ix) and 164.12 (b)(i) of the GRs in respect of Abuse of Horse and a Breach of the FEI Code of Conduct on the Welfare of the Horse. In particular, the FEI asserts that by using the Boots with sharp pressure points, the Respondent engaged in an offence of Abuse of Horse within the meaning of the general provision of Article 142 (ix) and specifically in breach of Article 164.12(b). In addition, the FEI asserted that by those same actions the Respondent breached the *FEI Code of Conduct for the Welfare of the Horse* as he engaged in an abusive training method that causes fear and the use of Horse's

equipment to inflict pain and discomfort, resulting in a breach of Article 164.12(i) of the GRs.

- 5.4 The FEI furthered that in accordance with Article 142 of the GRs *"an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse"* is considered Abuse of Horse. The latter provision specifically prohibits the use of *"...any device or equipment which causes excessive pain to the Horse upon knocking down an obstacle."* The FEI continued that excessive pain in this context, implied pain above the level that a horse would normally feel upon knocking down an obstacle, which in line with Article 164.12 of the GRs that clearly specifies that such Abuse of Horse is a sanctionable offence.
- 5.5 The FEI maintained that when the Respondent used the Boots with sharp pressure points on the Horse at the Event, the location of the sharp pressure points in the Boots was not coincidental. The sharp pressure points were located on the inside of the Boots, where the boot would sit on the front of the Horse's cannon bone, a place where the Horse would hit the pole when not clearing the obstacle with his hind legs.
- 5.6 The FEI explained that horses' distal limbs are particularly sensitive to impact because of the lack of soft tissue coverage. When sharp pressure points are pressed against the cannon bone the nervous system (nociception) in this already sensitive area is further activated. In support of their arguments regarding the latter, the FEI submitted the Expert Statement of Gonçalo Paixão, FEI Veterinary Manager D.V.M. in this regard. Mr. Gonçalo Paixão, D.V.M. confirmed that: *"...the Equine periosteum (a membrane of connective tissue that covers the outer surface of bones) is very sensitive. The distal limbs are extremely susceptible to damage of the periosteum because of the lack of soft tissue protection. Trauma of the skin and underlying tissues, such as the periosteum, will trigger an inflammatory response and acute pain".*<sup>6</sup>
- 5.7 The FEI also explained that when placing Boots with sharp pressure point or sharp objects on the cannon bone, the Horse will experience pain, discomfort and psychological distress upon knocking down an obstacle. The skin may get inflamed or even punctured. To avoid the pain, the Horse will "over jump" with his hind legs.

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<sup>6</sup> EXHIBIT 15 – Expert Statement by Gonçalo Paixão, D.V.M., FEI Veterinary Manager

The FEI argued that the use of such hind boots presents an abusive method to make horses jump higher and more carefully with their hind legs with the intention of gaining a competitive advantage. They added that the sole purpose of such Boots is to inflict pain upon a horse in an attempt to force the Horse to perform abnormally.

- 5.8 The above is further confirmed by Mr. Gonçalo Paixão, D.V.M. (as noted in the statement [Exhibit 15] as noted previously in paragraph 5.6) wherein he stated that: *"The use of hind boots with sharp pressure points as in the present case is evidently causing pain, unnecessary discomfort and psychological distress to the horse upon any impact. Furthermore, it potentially is causing pain and unnecessary discomfort to the horse simply by placing them on the Horse. The latter will depend on how tight they have been attached to the horse. The use of equipment that deliberately causes pain and discomfort, over a particularly vulnerable area such as the dorsal distal limb, will make the horse abnormally sensitive and avoiding any sort of contact with the painful area. The sole purpose of using equipment that exerts unnecessary pressure and/or pain over the horse's limbs is to enhance the performance, since the horse will, due to its sensitivity, over-jump a fence in order to avoid contact with the obstacle, thus avoiding further pain and discomfort to its limbs."*
- 5.9 The FEI noted that taking into account the Expert Statement provided by the FEI Veterinary Manager such Boots are specifically prohibited both in Art. 142 (ix) of the FEI General Regulations as well as in Art. 2.4 and 2.5 of the FEI Jumping Rules: moreover they insist that – *"The inside of the boot must be smooth, that is, the surface must be even and there may not be any pressure points on the inside of the boot... No additional elements may be added to or inserted in the boot itself."*<sup>7</sup>
- 5.10 The FEI also considered that all three FEI Officials from the Event had provided important observations in relation to the location of the spikes and its potential effects. The President of the Ground Jury stated that: *"Inside each hole were sharp spikes which probably could have caused pain touching the pole in jump..."* The Chief Steward testified that: *"The boot had clear sharp objects inside, that when pushing gently against these objects with my fingers it caused pain in my finger."* Lastly, the Assistant Chief Steward stated that: *"It seems that the hind boots of Mr. SCHRODER had sharp pressure points on the side of the horse leg where the horse is touching the pole"*.<sup>8</sup>

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<sup>7</sup> FEI Jumping Rules 26th edition, effective 1 January 2018

<sup>8</sup> EXHIBIT 5 – The Assistant Chief Steward's Witness Statement

- 5.11 The FEI also stated that it is their position that the use of the Boots in question presents an *“an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse”* and furthermore qualifies as one of the specifically listed examples of Abuse of Horse i.e., *“use [of] any device or equipment which causes excessive pain to the Horse upon knocking down an obstacle.”* They furthered that notwithstanding the fact that the Respondent was prevented from jumping with the Boots in question, merely by intending to use the Boots on the Horse (i.e., placing them on the Horse) the Respondent committed the offence of *Abuse of Horse* as he intended to use equipment on his Horse to cause excessive pain upon knocking down an obstacle and furthermore likely had caused pain or unnecessary discomfort to the Horse.
- 5.12 The FEI submitted that any other interpretation of Art. 142 (ix) would go against the jurisprudence of the Court of Arbitration for Sport (CAS) where CAS clearly stated that hearing panels are obliged to interpret a rule with how the rule maker intended it and not in a way that would frustrate or run contrary to that intention (*“In addition, according to applicable CAS case law, the Panel is obliged to interpret the rules in question in keeping with the perceived intention of the rule maker and not in a way that frustrates it (see CAS 2001/A/354 & CAS 2001/A/355 para 68 with further references and most recently CAS OG 12/02 para 6.4).”*)<sup>9</sup> (emphasis added) This is in line with the general principles of legal interpretation under Swiss law. The FEI argued that contrary interpretations would place an impossible burden on the Claimant as a prosecutor if it would need to provide evidence of (i) that the Horse engaged in jumping, be it in the warm up arena or in the field of play, (ii) that the Horse knocked down an obstacle with his hind legs, and (iii) that the Horse hit the pole on the exact location where the sharp pressure point or objects are located in the hind boots, in order to be able to establish the Rule Violation.
- 5.13 The FEI also contended that it would additionally imply that the perpetrator would escape prosecution if caught by the FEI Official(s) prior to commencing to jump with the Horse, as in the present case. This would result in an incongruous situation where the FEI Officials would be forced to leave the culprit to carry out its abuse (to commence to jump) before being able to sanction him/her.

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EXHIBIT 6 – The Chief Steward’s Witness Statement  
EXHIBIT 8 – President of the Ground Jury’s Witness Statement

<sup>9</sup> EXHIBIT F: CAS 2012/A/2762 Bayer 04 Leverkusen v. Union of European Football Associations (UEFA), award of 15 March 2013, para 108

- 5.14 Furthermore, the FEI noted that the FEI Officials also agreed that the Respondent committed the offence of Abuse of Horse by merely placing the Boots in question on the Horse. Notably a Yellow Warning Card for the offence of Horse Abuse was issued accordingly by the FEI Officials.
- 5.15 The FEI also proposed that it cannot be excluded that the Boots in question (likely) caused pain or unnecessary discomfort to the Horse while not jumping as any impact to the Boots such as for example brushing or hitting one hind leg against the other while walking would have a similar effect, albeit potentially in different degree, as hitting a pole. This was also confirmed by Mr. Gonçalo Paixão, D.V.M. wherein he stated that any impact (be it by a pole of an obstacle or by hitting one hind leg against the other) on the hind boots with sharp pressure points would cause pain, unnecessary discomfort and psychological distress, wherein he added that: *"Furthermore, it potentially is causing pain and unnecessary discomfort to the horse simply by placing them on the Horse. The latter will depend on how tight they have been attached to the horse."*
- 5.16 Finally, the FEI confirmed that they are not convinced by the Respondent's Reply in which he stated that he never saw the hind boots in question. Furthermore, that he could not have foreseen that the Grooms would put these Boots on the Horse. The FEI also noted that both the Assistant Chief Steward and the Chief Steward confirmed that the initial reply of the Respondent during the Hind Boot Control was that the boots were ok to be used and more importantly that the Respondent stated that he had used them before in many competitions. The Respondent even explained where he purchased the Boots in question therefore the Respondent's statement that he never saw these Boots before and that he did not know what the Grooms placed on the Horse, is false.
- 5.17 The FEI argued that it is evident that it was in fact the Respondent's decision to use the Boots in question on the Horse regardless of whether they were placed on the Horse by the Grooms as alleged by the Respondent. The Respondent himself stated that he requested the Grooms to place the Boots on the Horse: *"I complained about this to the two keepers and asked them loudly to fetch gaiters and put them on the horse"*. Based on the Respondent's comments to the FEI Officials afterwards, the FEI considered that he undoubtedly knew which Boots he requested to be placed on the Horse.
- 5.18 The FEI further submitted that if the events took place as the Respondent

described, the Claimant would expect for the Respondent to be shocked or at minimum surprised by the discovery of the FEI Officials at the Hind Boot Control. On the contrary, the FEI noted that the Respondent was not surprised and started quarrelling with the FEI Officials that the Boots are compliant with the FEI Rules and that he had used them many times already before. According to the FEI Officials the Respondent then changed his explanation and stated that he found the Boots on the racetrack on his way up to the warmup arena and that he used them to protect the Horse. The FEI maintained that the latter argument does not correlate with the Respondent's recent assertions wherein he blamed the Grooms for choosing and putting on the Boots. Furthermore, since the Respondent continued to participate in the Event with alternative hind boots, it was clear to the FEI that he did not need to use, as alleged by the Respondent, foreign hind boots randomly picked up at the racetrack for the protection of his Horse, as he had another pair of his own with which he then proceeded to participate in the Competition.

- 5.19 The FEI have also noted that in his reply to the Notification Letter the Respondent provided a third version of the events that contradicted his prior statements and provided additional inconsistencies. Therefore, in the FEI's opinion the Respondent failed to convince them that the course of events was in any way different than as described by the FEI Officials and that in fact the Respondent has used the Boots in question with full consciousness and intention.
- 5.20 The FEI noted that this intentional use of the boots in question was also confirmed by the Respondent's comment to the Chief Steward after his performance wherein he incurred only one time penalty with no obstacles down and thereafter made the following comment to the Chief Steward *"that he doesn't need these boots, that the horse jumped well"*. The latter statement of the Respondent indicated that the Respondent knew fully what the intention of the Boots in question was and what effect they would have on the Horse. The FEI noted that it can be inferred from the Respondent's comment that if the Horse jumped bad (knocking down obstacles), these boots would be *"needed"* in order to force the Horse to over jump and improve his performance.
- 5.21 Finally, the FEI noted that the Respondent himself confirmed to the FEI Officials, with no remorse, that he had used the Boots in question already many times before in-competition. It was therefore clear to the FEI that the abuse was not a one-off incident but rather that it was reoccurring event and as such the FEI requested that it should be considered as an aggravating circumstance.



5.22 In conclusion, the FEI therefore asserted that the Respondent has committed at minimum, one count of Abuse of Horse as per Article 142 (ix) and Article 164.12(b) of the GRs.

## 6. Breach of the FEI Code of Conduct for the Welfare of the Horse

6.1 In respect of the FEI Code of Conduct for the Welfare of the Horse which requires *"all those involved in international equestrian sport to adhere to the FEI Code of Conduct and to acknowledge and accept that at all times the welfare of the Horse must be paramount..."*, the FEI deemed that the Respondent's misconduct is in breach of the *General Welfare* provision on *Training Methods* as per the Code as it presented a training method that is *"abusive or causes fear"*:

### *"b) Training methods*

*Horses must only undergo training that matches their physical capabilities and level of maturity for their respective disciplines. They must not be subjected to methods which are abusive or cause fear."*

Furthermore, it was noted that tack used on a horse must *"avoid the risk of pain and injury"*:

### *"c) Farriery and tack*

*Foot care and shoeing must be of a high standard. Tack must be designed and fitted to avoid the risk of pain or injury."*

6.2 As previously explained in detail in Paragraph 5.7 of this Decision, the FEI presented that the use of the Boots in question presents an abusive method to make the horses jump higher and more carefully with their hind legs. It causes psychological distress and fear in the Horse as the Horse in an attempt to avoid the pain is forced to perform above his normal ability. Furthermore, the FEI noted that equipment used by the Respondent was not designed to avoid the risk of pain and injury. On the contrary, it was designed with the specific purpose of inflicting pain on a Horse in order to force the Horse to perform abnormally. In conclusion, the FEI therefore asserted that Respondent also committed the following offence: *"Breach of the FEI Code of Conduct for the Welfare of the Horse"* as per 164.12(i) of the GRs.

## 7. FEI Submissions on the Applicable Sanction:

- 7.1 The FEI presented the Applicable Sanctions that shall apply in offences of Abuse of Horse and Criminal Acts:
- 7.2 Applicable Sanction for Article 164.14 of the GRs:

<i>Offence</i>	<i>Low-End</i>	<i>Mid-Range</i>	<i>Top-End</i>	<i>Max</i>
<i>Abuse of Horse</i>	<i>3 months</i>	<i>3 months – 2 years</i>	<i>2 – 5 years</i>	<i>Life</i>
	<i>CHF 1000 – 1,500</i>	<i>CHF2,000 – 3,000</i>	<i>CHF5,000 – 10,000</i>	<i>CHF15,000</i>

The FEI further pointed out that where an offence is not listed in the table above, such as the offence “*Breach of the FEI Code of Conduct for the Welfare of the Horse*”, general sanctioning power will apply, and sanctions may be imposed in accordance with Article 164 of the GRs. As such the general sanctioning provisions of Articles 159.2<sup>10</sup> and 164<sup>11</sup> of the FEI General Regulations are as follows:

### “Article 159.2

*2. The FEI Tribunal may impose the following sanctions, or, where appropriate, delegate the ability to do so to the FEI Secretary General and/or the FEI Legal Department: [...]*

*(b) A fine, taking into account the FEI Guidelines for Fines and Contributions towards Legal Costs [...];*

*(e) Suspension of individuals and Horses for any period up to Suspension for life; [...]*”

### “Article 164 (Types of Sanctions)

*164.1 The Sanction(s) imposed in any given case can consist of any of the Sanctions set out in Articles 164.2 – 164.10 below. The level of the Sanction shall be decided according to the guidelines mentioned in Article 164.13 below and to the circumstances of the case.”*

### “Article 164.13

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<sup>10</sup> Art. 161 of the 2018 and 2019 FEI General Regulations

<sup>11</sup> Art. 169 of the 2018 and 2019 FEI General Regulations provides basically the same factors as well as general guidelines to be taken into account when imposing sanctions.

## *General Sanctioning Principles and Table of Sanctions*

*164.13 In deciding on the appropriate sanctions to be imposed and whether to categorise the offence in question as “low-end”, “mid-range”, “top-end” or “max”, the body imposing the Sanction shall consider the following factors, together with any other relevant factors:*

*(a) Whether the action or omission resulted in an unfair advantage to the offender or an Athlete.*

*(b) Whether the action or omission resulted in a material disadvantage to any other person or body involved.*

*(c) Whether the action or omission involved the maltreatment of Horses.*

*(d) Whether the action or omission affected the dignity or integrity of any person involved in the sport.*

*(e) Whether the action or omission involved fraud, violence or abuse or similar criminal acts.*

*(f) Whether the action or omission was deemed to be deliberate.”*

### **“Article 164.5 (Fine)**

*“(a) A fine is appropriate particularly in cases where the offender has acted negligently. [...]”*

### **“Article 164.7 (Suspension)**

*[...]*

*(c) The Suspension may be provisional or final and may be imposed on such terms and subject to conditions as the FEI Tribunal, the FEI Headquarters or the FEI Secretary General, as the case may be, may impose. In certain cases a Provisional or Final Suspension may be automatic under the Statutes, GRs or Sport Rules.*

*(d) As a general principle, a Suspension will start as of the date of notification of the Suspension. However, the body imposing or applying the Suspension may postpone the start date of the Suspension in order to ensure the effectiveness of the Suspension.”*

The FEI also highlighted Article 164.13 of the GRs and concluded that the following

factors are present in the current case:

1. The Respondent's action involved the maltreatment of a Horse;
2. The Respondent's action was deliberate and pre-planned as the hind boots needed to be either purchased or "home-made" in advance;
3. The Respondent's action involved abuse of a Horse;
4. The intention of the Respondent's action was to gain an unfair advantage to the Respondent.

7.3 The FEI submitted that in order to determine the proportionate sanction for the Respondent's offences, they reviewed previous case law regarding Horse Abuse incidents, in particular the following:

- a) Case 2019/HA01<sup>12</sup> – the rider was sanctioned with 6 months suspension for hitting the horse twice with a water bottle;
- b) Case 2019/HA02<sup>13</sup> - the rider was sanctioned with 30 months suspension for excessive whipping with the reins and pushing an exhausted horse;
- c) Case 2019/HA04<sup>14</sup> – the rider was ultimately sanctioned with 8 months suspension in the appeal before CAS for pushing the horse by excessive kicking and pulling of the reins with high hands in order to push it forward;
- d) Case 2019/HA08<sup>15</sup> – the rider was sanctioned with 12 months suspension for excessive kicking and whipping the horse with the reins and threats to strike it with his left arm (while the horse was visibly exhausted);
- e) Case 2020/HA02<sup>16</sup>– the rider was sanctioned with 10 years suspension for using electric spurs on several horses over a long period of time;
- f) Case 2020/HA01<sup>17</sup>– the rider was sanctioned with 3 years suspension for riding a too small pony.

Notwithstanding that the Cases noted above are related to Horse Abuse Proceedings, the FEI confirmed that the current proceedings were the first case of

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<sup>12</sup> Decision of the FEI Tribunal 2019 HA01;

<sup>13</sup> Decision of the FEI Tribunal 2019 HA02;

<sup>14</sup> CAS 2019/A/6373 Abdul Rahman Saeed Saleh Al Ghailani v. FEI;

<sup>15</sup> Decision of the FEI Tribunal d2019 HA04;

<sup>16</sup> Decision of the FEI Tribunal 2020 HA02.

<sup>17</sup> Decision of the FEI Tribunal 2020 HA01.

Horse Abuse carried out with abusive hind boots. Nevertheless, they regarded any previous Horse Abuse case law as a useful benchmark when determining the appropriate sanction for these proceedings.

- 7.4 The FEI also noted that the GRs, effective as of 1 January 2021, in addition provided a table of sanctions<sup>18</sup> that applies for offences listed in Article 164.12 of the General Regulations and which provides additional guidance on the proportionate sanctions depending on whether the offences fall in the “Low-End”, “Mid-Range”, “Top-End” and/or “Max” of sanctions.

The FEI continued that when considering the proportionate sanction in the present case they took into consideration in particular the following elements of the Abuse of Horse: (i) the Boots needed to be either purchased or “home-made” in advance establishing intention and pre-planned abuse; the abuse was therefore not committed out of negligence or from momentary frustration (ii) the sole and main purpose of using the hind boots with sharp pressure points was to inflict pain to the Horse in order to force it to lift the hind legs abnormally (iii) the Respondent showed no remorse when this was discovered by the FEI Officials and furthermore confirmed through his behaviour and comments to the FEI Officials that for him the use of such Boots is perfectly acceptable (iv) as confirmed by the Respondent himself the abuse was not an one-off incident and the Respondent engaged in it already in several prior Competitions; the abuse was therefore repetitive and (v) the abuse occurred in-competition in an attempt to gain a competitive advantage over other competitors.

- 7.5 Taking all the above points into consideration, the FEI submitted that the Respondent’s misconduct fell between the ‘Mid-Range’ and ‘Top-End’ of sanctions in accordance with Article 164.14 of the FEI General Regulations and warranted at minimum – a 2-year ineligibility period (suspension) and a fine of 5’000 CHF.

The FEI also stated that they carried out a detailed proportionality analysis, considering the degree of the Respondent’s fault, the characteristics of the abuse and its repetitiveness, as well as the aggravating factors while clearly understanding that the recommended sanction should not go further than necessary to achieve the above stated objective.

## 8. FEI Submission in respect of Costs

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<sup>18</sup> As provided under para. 7.2 of this Decision

- 8.1 The FEI noted that the Tribunal has the power to order the Respondent to pay costs, pursuant to Article 159.4 of the GRs and Article 23.1(k) of the Internal Regulations of the FEI Tribunal.

Furthermore, they referred to the 'FEI Guidelines for Fines and Contributions towards Legal Costs' which indicate that if a person is sanctioned by the FEI Tribunal in a disciplinary case, then the usual costs award against that person should range between CHF 1,500 and CHF 7,500.

The FEI noted that according to the FEI guidelines, when assessing costs *"[t]he FEI Tribunal must always exercise judgment and discretion and consider appropriate aggravating and mitigating factors in determining appropriate fines and contributions to legal costs in every case. In addition, regardless of whether the fines and contributions to legal costs are within or outside of the range stated in the Guidelines, the FEI Tribunal must explain the basis for the fines and contributions to legal costs imposed. [...] The FEI Tribunal shall also take into consideration the following non-exhaustive list of factors when assessing the level of the fines and contributions to legal costs: The complexity of the case, whether outside counsels were involved, any extra work on procedural grounds (delaying the process), whether there was an in-person hearing, whether expert statements / witnesses were needed, etc."*

The FEI respectfully submitted that the Respondent is ordered to pay 2'000 CHF contribution towards legal costs.

## 9. Request for relief

- 9.1 The FEI respectfully requested that the FEI Tribunal:

- finds that the Respondent has breached Article 142 (ix), Article 164.12(b) and Article 164.12(i) of the FEI General Regulations;

as a consequence of such breach, impose on the Respondent:

- at minimum two (2) years suspension starting from the date of the FEI Tribunal's final Decision; and
- a fine of minimum five thousand Swiss Francs (5 000 CHF); and
- order the Respondent to pay a contribution towards the costs of these

proceedings in the amount of two thousand Swiss Francs (2,000 CHF).

## 10. Jurisdiction

### *Ratione materiae*

- 10.1 The Tribunal has jurisdiction *ratione materiae* over this matter pursuant to Art. 38.1 of the Statutes, Article 18.1 and 30 of the IRs and Article 163.1 of the GRs. The jurisdiction of the Tribunal remains undisputed.

### *Ratione personae*

- 10.2 The Respondent is a Member of the UKR-NF validly registered with the FEI, with reference FEI 10022310/UKR. It is undisputed that he is an international professional athlete, who has been competed in FEI events since 2006, at the time of the incident was competing in a FEI competition and as such, is bound by the FEI Rules and Regulations.

### *Ratione temporis*

- 10.3 The alleged offences committed by the Respondent took place in 2021, at a time when the applicable regulations were in place, as specified in Section III of the present Decision. Therefore, those regulations apply to the present matter.

## 11. The Decision

- 11.1 The facts of the present case are mostly undisputed since the Respondent did not file any Response to the FEI's Claim as per Article 30.5 of the IRs, did not submit evidence and did not request a hearing.
- 11.2 The Tribunal notes that the Respondent admitted the use of the Boots, on several occasions to the FEI Officials as detailed at paragraphs 5.16-5.21 of this Decision which is verified by the documentary evidence provided.<sup>19</sup> In particular he accepted that "is a *normal type of hind boots which he has used in many competitions previously*. Consequently, the Tribunal is in agreement with the FEI that it was the Respondent's decision to use the Boots in question based on the FEI's submissions

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<sup>19</sup> Exhibit 6 and 7 of the FEI Claim Brief (The Chief Steward's Witness Statement and Relevant Excerpts of the Chief Steward's Report).

<sup>19</sup> Exhibit 8 President of the Ground Jury's Witness Statement.

provided in the FEI Claim Brief albeit they deem that it is unclear as to the exact extent of their use throughout his equestrian career and training to date.

11.3 Furthermore, on 8 May 2021, the Tribunal notes that the Respondent admitted to the FEI Officials initially (both the Assistant Chief Steward and Chief Steward during the Hind Boot Control) at the Event that the Boots were the normal type of hind boots he used, that he used them already in many competitions and explained that he had purchased the Boots in a shop. Thus, the Tribunal agrees with the FEI that his assertions that he had never seen these Boots before or did not know what the Grooms placed on the Horse are false.

11.4 The Tribunal also notes the description of the Respondent's behaviour as evidenced in his Reply of 17 June 2021<sup>20</sup> wherein he instructed for the two Grooms to place the Hind Boots on the Horse:

*"I complained about this to the two keepers and asked them loudly to fetch gaiters and put them on the horse",*

*"...did not look at the gaiters that were placed on the Horse and did not even put them on myself",*

The Tribunal believes that instead of proving that he had no knowledge, these instructions further confirm that it was in fact the Respondent's decision to use these specific Boots on the Horse, irrespective of whether it was the Respondent or the Grooms that physically placed the Boots on the Horse as the Respondent undoubtedly knew which Boots, he selected for use on the Horse.

In any case, even if the boots would have been placed by the grooms, the Tribunal would have reached the same conclusion, because in accordance with Art. 118.3 of the GRs the Athlete who rides the Horse at the Event, as the PR, in accordance with Art. 118.6 of the FEI General Regulations, is *"...responsible for any act performed in the stables to any Horse under his/her jurisdiction, by himself or by any other person with access to the Horse, and is responsible while riding, driving or exercising any Horse under his/her jurisdiction..."*. Therefore, the PR is responsible for any abuse of his Horse be it by himself or others.

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<sup>20</sup> Exhibit 4 - The Respondent's Reply of 17 June 2021



- 11.5 In addition, the Tribunal acknowledges that pursuant to Article 164.3 of the GRs the President of the Ground Jury and the Chief Steward agreed to issue a Yellow Warning Card to the Respondent for the offence of Abuse of Horse which the Respondent signed upon receipt of same on 9 May 2021 (the FEI Officials were unable to find the Respondent the night of the competition on 8 May 2021 and issued a Yellow Warning Card the following morning)<sup>21</sup>.

Nonetheless, whilst the Tribunal applauds the Ground Jury for the prompt sanctioning measures imposed at the Event, the Tribunal wishes to highlight that additional appropriate action could have taken place at the time the offence was discovered. Furthermore, the Tribunal considers it regrettable that the matter was not dealt with more severely on the Ground, taking into account the seriousness of the violation and the sanctions available to the GJ pursuant to Article 158 of the GRs – “Ground Jury – Duties under the Legal System”. The Tribunal believes that as a matter of principle such matters should be dealt with more appropriately under the wide ambit of sanctioning measures available to the FEI Officials under the FEI regulations, since they are best placed to take the immediate necessary action to deter such practices occurring on the ground and bearing in mind the seriousness of the abuse.

- 11.6 With respect to the circumstances surrounding the incident, the Tribunal is convinced that the Respondent gave various contradictory and inconsistent explanations and also presented different versions of events to the FEI Officials during the competition and through his reply to the Notification Letter of the Legal Department in respect of the use the Boots in question. The Tribunal notes in particular the Respondent’s comments to the Chief Steward after his performance wherein he incurred only one-time penalty with no obstacles down<sup>22</sup>. The Respondent made the following comment to the Chief Steward *“that he doesn’t need these boots, that the horse jumped well”*. The Tribunal agrees that the latter statement establishes that the Respondent knew fully what the intention of the Boots in question was and what effects these Boots would have on a Horse. The Tribunal notes this perspective on the use of the Boots from the Respondent and agrees with the claims of the FEI that such comments to the Chief Steward infers

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<sup>21</sup> EXHIBIT 8 – President of the Ground Jury’s Witness Statement

<sup>22</sup> EXHIBIT 6 – The Chief Steward’s Witness Statement dated 24 May 2021

that if the Horse jumped bad (knocking down obstacles), these types of Boots would be “needed” in order to force the Horse to over jump and thus improve his performance.

- 11.7 The Tribunal also notes that in his reply to the Notification Letter of the Legal Department the Respondent outlined the personal difficulties he was encountering with his partner during the time of the events. For the Tribunal these factors are irrelevant and provide no excuse whatsoever for the use of abusive Boots on a Horse.
- 11.8 The Tribunal notes that the exact charges outlined by the FEI for this case of an alleged *Abuse of Horse* are in accordance with Article 142 and 164.12 (b) of the GRs and a Breach of the *FEI Code of Conduct on the Welfare of the Horse* in accordance with Article 164.12 (i) of the GRs as set out in paragraphs 5 and 6 of this Decision.

**Possible breach of Article 142 (ix) GRs**

- 11.9 Firstly, taking into account the Article 142 of GRs, wherein: *no person may abuse a Horse during an Event or at any other time. “Abuse” means an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse, including, but not limited to:*

[...]

*(ix) To use any device or equipment which causes excessive<sup>23</sup> pain to the Horse upon knocking down an obstacle”.*

For the Tribunal there is no doubt that the Respondent rode the horse while wearing the Boots. As noted in 5.15 above, the Boots would cause pain or unnecessary discomfort to the Horse *simply by placing them on the Horse* and even while not jumping as any impact to the Boots such as for example brushing or hitting one hind leg against the other while walking would have a similar effect, albeit potentially in different degree, as hitting a pole. Therefore, this act constitutes abuse; fortunately, the officials prevented the abuse from continuing in the warm-up and in the competition ring and taking a more severe turn.

In this respect, the Tribunal accepts that excessive pain would amount to pain above the level that a Horse would normally feel upon knocking down an obstacle

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<sup>23</sup> Article 169.6.2, 169.6.3, 169.6.4, and 163.9 of the 2018 and 2019 FEI General Regulations

and the location of the sharp pressure points in the Hind Boots as presented in the photographs and Expert Statement of the FEI Veterinary Manager exhibited in the FEI Claim Brief. Furthermore, that by placing Hind Boots with sharp pressure points such pain is created through the use of a device in such a sensitive area against the cannon bone of the Horse. Thus, in the Tribunal's view, the use of these Hind Boots is a clear case of Horse abuse and can be considered within the meaning of the present Article and the Tribunal is satisfied that the Respondent committed an Abuse of Horse within the general meaning of Article 142 of the GRs and specifically at point (ix) of the same Article. For the Tribunal such Boots are used with the sole purpose of inflicting pain upon a horse in an attempt to force him to perform abnormally and therefore are against all the applicable Rules mentioned herein and are not to be tolerated in any FEI competitions by Officials and, if used, appropriate sanctions must be imposed through the FEI legal system.

**Possible breach of Art. 164.12 (b) and (i) GRs**

11.10 Secondly, taking into account the list of other offences detailed at Article 164.12 of the GRs, wherein the FEI may sanction:

[...]

b) Abuse of Horse;

[...]

(i) Breach of the FEI Code of Conduct on the Welfare of the Horse.

The Tribunal notes that in respect of the misconduct of the Respondent at the Event, and that by using hind boots with sharp pressure points, the Respondent engaged in Abuse of Horse within the meaning of Article 164.12(b) and by those same actions the Respondent breached the *FEI Code of Conduct for the Welfare of the Horse* as he engaged in an abusive training method that causes fear and used equipment on the Horse that inflicts pain, in breach of Art. 164.12(i). In *casu*, the Training method used by the Respondent to enable the Horse to jump higher and more carefully was undertaken in clear violation of the aforementioned provisions of the FEI Code of Conduct for the Welfare of the Horse. In particular, the Tribunal notes that the Respondent used the Boots to inflict pain upon a Horse in an attempt to force the Horse to perform abnormally. This training method caused fear and was abusive.

11.11 The Tribunal is of the opinion that the Respondent's actions amounted to specific, and separate, breaches of the FEI Rules and Regulations. While Article 142 of the GRs, on Abuse of Horses, reprehend the fact of using any device or equipment which causes excessive pain to the Horse upon knocking down an obstacle, the FEI Code of Conduct on the Welfare of the Horse prohibits, expressly, specific Training methods which would cause the Horse fear or would be abusive, further specifying that abusive Boots, among others, will not be tolerated. Those separate breaches will be taken into account when considering the sanctions to be imposed on the Respondent.

## 12. Sanction

12.1 In accordance with Article 164.1 of the GRs, the Sanction will be decided according to the guidelines mentioned in Article 164.13 of the GRs, taking into account the circumstances of the case.

12.2 Article 164.13 provides a non-exhaustive list of relevant factors that should guide the body imposing a Sanction, to categorise the offence in question as "low-end", "mid-range", "top-end" or "max", pursuant to the table listed in Art. 164.14 of the GRs. As is applicable here, the Tribunal considers *inter alia* whether the action or omission involved the maltreatment of Horses Article (164.13 (c)), involved fraud, violence or abuse or similar criminal acts (164.13 (e)), and was deemed to be deliberate (164.13 (f)).

12.3 The Tribunal considers that the Respondent's behaviour amounts to an act of clear Abuse of Horse as well as the maltreatment of Horses. Such behaviour also amounts to the most severe offences that can be committed in the context of equestrian sport. Furthermore, the Tribunal deems the Respondent's actions were deliberate as it was confirmed by the Respondent that the Boots needed to be either purchased or "home-made" in advance. As noted before, the Respondent himself confirmed to the FEI Officials, with no remorse, that he had used the Boots in question already many times before in competition. Moreover, taking into account that the Respondent is an experienced rider who has been participating in the most high-profile competitions, he should be a role-model and ensure compliance with Article 100 of the GRs and Sport Rules which establishes that individual Athletes[.....]from different National Federations (NFs) may compete against each other under fair and equal conditions with the welfare of Horse as

paramount; however, his actions show quite the opposite. For the Tribunal, the sanction imposed hereby sends a clear message to the equestrian community that the use of Boots or other methods that cause unnecessary pain to horses, in an attempt to gain advantage of horses fear to jump higher, cannot be tolerated by the FEI nor by the FEI Tribunal.

- 12.4 Hence, in terms of the sanctions to be imposed, in accordance with case law cited by the FEI,<sup>24</sup> there is a widely accepted general principle of sports law that the severity of a penalty must be in proportion with the seriousness of the infringement. The FEI noted that CAS has evidenced the existence and the importance of the principle of proportionality on several occasions. In the cases *TAS 91/56 (S. v. FEI)* and *TAS 92/63 (G. v. FEI)*, the CAS stated that: *"the seriousness of the penalty [...] depends on the degree of the fault committed by the person responsible"* (Digest of CAS Awards 1986-1998, Staempfli Editions, Berne 1998, 96 and 121).

In the advisory opinion *TAS 93/109* of September 1994 (Fédération Française de Triathlon / International Triathlon Union), the CAS, quoting the IOC Charter against Doping in Sport, stated that all sports organisations must try to impose penalties graduated in accordance with the seriousness of the offence: *"All Sport Organisations must provide, in their respective regulations, for the imposition of balanced and realistic sanctions. Sanctions must be appropriate to the recognized offense, depending on its severity [...] Sport Organisations shall always seek to determine in which way the athlete has breached the rules, and adapted sanctions should be imposed on the respective offenders accordingly."*<sup>25</sup>

The Tribunal agrees with the FEI that proportionality in CAS case law has been understood to mean that: *"there must be a reasonable balance between the kind of misconduct and the sanction"* (CAS 2005/C/976 FIFA & WADA, para 138), or stated otherwise *"[t]o be proportionate, the sanction must not exceed what is reasonably required in the search of a justifiable aim"* (CAS 2005/C/976 FIFA & WADA, para 139).

- 12.5 Thus taking into account the latter factors raised regarding sanction (paragraphs 12.2-12.4), the FEI requests that the Tribunal should impose at a minimum a two

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<sup>24</sup> Arbitration CAS 99/A/246 W. / International Equestrian Federation (FEI), award of 11 May 2000.

<sup>25</sup> *"Tous les organismes sportifs doivent prévoir dans leurs règlements l'imposition de sanctions pesées et réalistes. Les sanctions doivent être suffisantes pour l'infraction reconnue, selon sa gravité, [...] les organisations sportives doivent toujours chercher à déterminer de quelle façon l'athlète visé a enfreint les règlements, et des sanctions modulées devraient être imposées à toutes les personnes incriminées"* (loose translation on the text of the Decision)

(2) year suspension on the Respondent as well as a fine of a minimum of five thousand Swiss Francs (5,000 CHF) fine in order to impose a sanction to reflect misconduct that falls between the 'Mid-Range' and 'Top-End' of the sanctions as per Article 164.14 of the FEI GRs.

- 12.6 In accordance with Article 164.14 of the GRs which stipulates the applicable range of sanctions for Abuse of Horse, the range for the varying level of offences warrants a suspension from minimum of three (3) months up to life and fines of one thousand Swiss Francs (1,000 CHF) to fifteen thousand Swiss Francs (15,000 CHF).

The Tribunal has taken into account the seriousness of the Respondent's infringements and finds that the Respondent compromised the Horse's welfare by intending to cause pain, psychological distress and fear for the Horse in an attempt to gain a competitive advantage due to the fact that the horse would jump higher in order to avoid pain when jumping. As already noted, Horse welfare is paramount in equestrian sports, and to preserve and protect a horse's welfare is one of the FEI's statutory objectives (Article 1.4 of the Statutes).<sup>26</sup> Accordingly, when determining the appropriate sanction, the Tribunal is guided, among others, by the rules established in Article 164 of the GRs but it is not bound by the conclusions of the Parties.

- 12.7 In terms of the sanction to be imposed and bearing in mind the arguments submitted by the FEI in respect of same, the Tribunal is of the opinion that the Respondent's offence with respect to Abuse of Horse falls within the "mid-range" category of the table provided at Article 164.14 of the GRs. Accordingly, a sanction between 3 months to 2 years should be the proportionate sanction to be imposed on the Respondent for this offence.

- 12.8 With respect to the infringements to the FEI Code of Conduct for the Welfare of the Horse, the Tribunal notes that such infringement is not specifically enumerated within the table of Art. 164.14 of the GRs, which therefore allows the Tribunal to sanction the offence using the "*general sanctioning power*", in accordance with Article 164 of the GRs.

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<sup>26</sup> Article 1.4: To preserve and protect the welfare of the Horse and the natural environment by establishing appropriate codes of conduct.

12.9 Therefore, based on the principle of proportionality and taking into all of the evidence considered by the Tribunal in addition to the mitigating circumstances of the Respondent of; no prior disciplinary history, that it remains unclear as to the precise extent these Boots were used over his equestrian career and that the matter had been dealt with promptly by Officials at the Event, more effectively and robustly at the Event by the Ground Jury, the Tribunal is imposing a **period of Suspension of (12) months** on the Respondent for breaching Articles 142.1 (ix), 164.12 (b) of the GRs, and for a violation of the FEI Code of Conduct for the Welfare of the Horse as per Article 164.12 (i) of the GRs.

12.10 In addition, the Tribunal confirms disqualification of the results of the Competition pursuant to Article 164.6 of the GRs bearing in mind the points raised at paragraph 11.5 of this Decision wherein the Tribunal supports the Ground Jury for the prompt sanctioning measures imposed at the Event, however the Tribunal highlights that more appropriate action could have taken place at the time the abusive Boots were discovered i.e., immediate disqualification of the Results of the Competition. The Tribunal notes that it is imperative that similar matters are dealt with more directly by the FEI Officials under the FEI Regulations on the ground at these Competitions to deter such practices occurring and bearing in mind the seriousness of the abuse.

The Tribunal also considers disqualification of results a proportionate sanction taking into account the intention of the Respondent to gain a competitive advantage by compelling the Horse to jump higher in order to avoid pain and furthermore that any such actions which pose a risk to the welfare of the Horse through the use of Boots or other methods that cause unnecessary pain to horses cannot be tolerated by the FEI nor by the FEI Tribunal and the results of the Competition should not stand.

12.11 With respect to the fine to be imposed, the FEI Guidelines for Fines and Contributions towards Legal Costs provide that “[t]he FEI Tribunal must always exercise judgment and discretion and consider appropriate aggravating and mitigating factors in determining appropriate fines and contributions to legal costs in every case. In addition, regardless of whether the fines and contributions to legal costs are within or outside of the range stated in the Guidelines, the FEI Tribunal must explain the basis for the fines and contributions to legal costs imposed”.

- 12.12 The Tribunal notes that pursuant to Article 164.14, the fine to be imposed on the Respondent would fall between CHF 1'000 to CHF 15,000 for an Abuse of Horse offence. In the present case, the Respondent has failed to provide any submissions with regard to his position on the recommended sanctions or fines to the Tribunal in response to the Opening and Nomination letter issued on the 27 July 2021. Consequently, taking into consideration all circumstances of the present case, the Tribunal considers that a five thousand Swiss Francs (CHF 5,000) fine is appropriate.
- 12.13 Finally, with respect to the costs of the proceedings, while no hearing took place, the Tribunal concurs with the FEI that the proceedings required complexity in investigating the various breaches and obtaining supporting evidence and statements of FEI Officials and the Veterinary Expert. The fact that the Respondent failed to submit any documents evidencing his financial situation was also unfavourable to the proceedings, since the FEI could not assess or submit reasons for a possible reduction of the proposed sanctions. Thus, the Tribunal orders that the Respondent bears the proceeding costs in the amount of two thousand Swiss Francs (2,000 CHF).

### **13. Terms of the Decision**

- 13.1 As a result of the foregoing, the Tribunal finds the Respondent's actions are considered as an offence of Abuse of Horse within the meaning of Article 142.1 (ix), Article 164.12 (b) of the GRs, as well as a Breach of the FEI Code of Conduct for the Welfare of the Horse in accordance with Article 164.12 (i) of the GRs.
- 13.2 For the above reasons, the Tribunal therefore decides as follows:
- 1) Mr Andre Schroder committed Abuse of Horse and thereby violated Article 142 (ix) and 164.12 (b) of the GRs.
  - 2) Mr Andre Schroder breached the FEI Code of Conduct on the Welfare of the Horse as per Article 164.12 (i).
  - 3) Disqualification of the results Mr Andre Schroder obtained in the Competition for which the Tribunal has been provided with evidence establishing the Respondents deliberate and pre-planned use of the abusive hind Boots to gain an unfair advantage. Consequently, the Respondent will forfeit all medals, points and prize money won pursuant to Article 164.6.



- 4) Consequently, Mr Andre Schroder is suspended for a total period of **twelve (12) months**, starting from the date of this Decision.
- 5) Mr Andre Schroder is fined **five thousand Swiss Francs (CHF 5,000)**.
- 6) Mr Ander Schroder is ordered to pay **two thousand Swiss Francs (CHF 2,000)** towards the cost of these proceedings.

13.3 During the period of a Suspension, the person, Horse or body suspended may take no part in Competitions or Events as an Athlete, Trainer, Coach, Horse or Official or in the organisation of, any Event under the jurisdiction of the FEI or any Event under the jurisdiction of an NF in accordance with the Statutes or in any FEI related activity (e.g., FEI courses, meetings, General Assembly etc.) pursuant to Article 164.7 (a) of the GRs. In addition, pursuant to Article 164.7 (b) of the GRS, for the period of Suspension the Tribunal further specifies that whilst the Respondent is barred from participating in or attending, in any official capacity, any Competition or Event that is authorised or organised by the FEI or any National Federation except in the circumstances where he attends as a spectator.

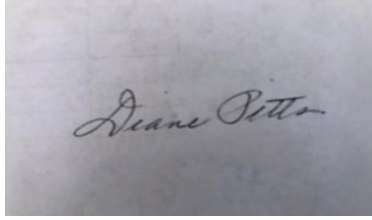
13.4 According to Articles 165 of the GRs, this Decision is effective from the date of its oral or written notification to the affected party or parties.

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

**VI. DECISION TO BE FORWARDED TO:**

- a. The person sanctioned: Yes
- b. The President of the NF of the person sanctioned: Yes
- c. FEI: Yes
- d. Any other: No

**FOR THE PANEL**

A rectangular image showing a handwritten signature in cursive script that reads "Diane Pitts". The signature is centered on a light-colored, slightly textured background.

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Ms. Diane Pitts, FOR THE FEI TRIBUNAL (Three-member Panel)