

DECISION of the FEI TRIBUNAL

dated 25 February 2021

(FEI Case number: FEI 2020/BS05-SNOWRUNNER)

FEI Tribunal Hearing Panel:

Ms Harveen Thauli

FEI Tribunal Reference: C20-0062

Horse/Passport: SNOWRUNNER /105JX73/THA

Person Responsible/ID/NF: Preecha KHUNJAN /10089939/THA

Event/ID: CH-Asian-CCI2*-L - Pattaya (THA), 2019_CH-AS_0002_C_S_01

Date of Event: 02-05.12.2019

Prohibited Substances: Desoximethasone, Isoflupredone

Bar Code Nos.: 5586355

I. Factual background

- 1.** Mr Preecha Khunjan (FEI ID 10089939), the Person Responsible (the **PR**), is a rider for Thailand.
- 2.** The Fédération Equestre Internationale (the **FEI** and together with the PR, the **Parties**), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).
- 3.** The PR participated with the horse, SNOWRUNNER (the **Horse**) at the event CH-Asian-CCI2*-L - Pattaya (THA), 2019_CH-AS_0002_C_S_01 on 2- 5 February 2019 (the **Event**).
- 4.** The Horse fell on his head after hitting a fence during the cross-country phase of the Event on 4 December 2019 and sustained a catastrophic injury to his skull. Although veterinarians attended within 45 seconds of the Horse's fall, the Horse was already non-responsive. The Horse was given Dexamethasone, which is noted on the FEI's "Veterinary Form A- Authorisation for Emergency Treatment".
- 5.** Blood samples were collected from the Horse on 4 December 2019 and sent to the FEI approved laboratory, the Hong Kong Racing Laboratory (the **laboratory**) in Sha Tin, Hong Kong, China, for analysis. The Horse's samples were divided into an "A sample" and "B sample".
- 6.** The laboratory analysis of the A sample reported adverse analytical findings of Desoximethasone and Isoflupredone, both of which are **Prohibited Substances** under the FEI's Equine Anti-Doping and Controlled Medications Regulations (the **EADCM Regulations**).
- 7.** Desoximethasone is a corticosteroid used to treat skin disorders in humans and is not licensed for veterinary use. Desoximethasone is classified as a **Banned Substance** according to the FEI Equine Prohibited Substance List (the **FEI List**) and subject to an equine anti-doping rule (**EAD Rule**) violation.
- 8.** Isoflupredone is a corticosteroid used to treat horses with skin disorders. Isoflupredone is classified as a **Controlled Medication Substance** according to the FEI List and subject to an equine controlled medication rule (**ECM rule**) violation.

9. The A sample also detected the presence of Dexamethasone, a Controlled Medication Substance. However, as discussed in section 4, Dexamethasone was authorised for emergency use after the Horse fell. Therefore, its presence in the Horse's system will not be discussed in this decision.

II. Initial Proceedings

10. On 22 January 2020, the FEI Legal Department officially notified the PR through the Equestrian Federation of Thailand (**THA-NF**), of the presence of the Prohibited Substances in the A sample, the rule violations and the potential consequences (the **Notification Letter**). The Notification Letter informed the PR that he was provisionally suspended from all competition until further notice and granted him the opportunity to be heard at a Preliminary Hearing before the Tribunal. The Notification Letter included a questionnaire for the PR to complete.
11. The PR was also informed in the Notification Letter of his right to request an analysis of the B sample, which he did not do. He also did not challenge the results of the A sample.

III. Further Proceedings

12. By email dated 16 December 2020, the FEI submitted its request to the FEI Tribunal for the appointment of a hearing panel.
13. On 18 January 2021, the FEI Tribunal informed the Parties of the appointment of a one-person hearing panel to decide this case. The Parties were asked to provide any objections to the constitution of the hearing panel by 21 January 2021. The PR was also granted the opportunity to respond to the FEI's allegations that Prohibited Substances were present in the Horse's system by providing a statement of defence and any supporting evidence by 28 January 2021. The PR was informed that should he fail to comply with this deadline, the hearing panel would decide this case based on the file material in its possession. Finally, the Parties were informed of their right to request an oral hearing.
14. On 18 January 2021, the FEI informed the FEI Tribunal that it did not have any objections to the constitution of the hearing panel.
15. On 20 January 2021, the Secretary General of the THA-NF acknowledged receipt of the Notification Letter and confirmed he would ask the PR to reply.
16. By email dated 21 January 2021, the PR provided his email address,

acknowledged receipt of the FEI's response and exhibits, and confirmed he had no objection to the constitution of the hearing panel.

17. Neither Party requested an oral hearing.

IV. Considering

A. Articles of the Statutes/Regulations which are, *inter alia*, applicable:

Statutes 24th edition, effective November 19th, 2019 (**Statutes**), Arts. 1.5, 38 and 39.

General Regulations, 24th edition, January 1st, 2020, Arts. 118, 143.1, 159, 164, 165 and 167 (**GRs**).

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

FEI Equine Anti-Doping and Controlled Medication Regulations (**EADCM Regulations**), 2nd edition, changes effective January 1st, 2020. The EADCM Regulations are comprised of the equine anti-doping rules (the **EAD Rules**) in the first half and the equine controlled medication rules (the **ECM Rules**) in the second half.

FEI Equine Anti-Doping Rules (**EAD Rules**), 2nd edition, changes effective January 1st, 2020.

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

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

FEI Code of Conduct for the Welfare of the Horse.

B. Person Responsible: Mr. Preecha Khunjan.

C. Justification for sanction:

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

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

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.8 below where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1".

EAD Rules Art. 3.1: "Burden and Standards of Proof. The FEI shall have the burden of establishing that an EAD Rule violation has occurred. The standard of proof shall be whether the FEI has established an EAD Rule violation to the comfortable satisfaction of the Hearing Panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these EAD Rules place the burden of proof upon the Persons Responsible and/or member of their Support Personnel to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except where a different standard of proof is specifically identified".

EAD Rules Art. 10.2: "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, the period of Ineligibility shall be two years".

EAD Rules Art. 10.8.6: "Violations involving both a Controlled Medication Substance or Method and a Banned Substance or Method. Where a Person Responsible and/or member of the Support Personnel based on the same factual circumstances is found to have committed a violation involving both (a) Controlled Medication Substance(s) or (a) Controlled Medication Method(s) under the ECM Rules and (a) Banned Substance(s) or (a) Banned Method(s) under these EAD Rules, the Person Responsible and/or member of the Support Personnel shall be

considered to have committed one EAD Rule violation and the Sanction imposed shall be based on the Banned Substance or Banned Method that carries the most severe Sanction”.

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

ECM Rules Art. 10.2: “The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be six months, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6”.

A Fine of up to CHF 15,000 and appropriate legal costs shall also be imposed for any Equine Anti-Doping or Controlled Medication violation”.

V. The Parties' Submissions

A. The Submissions of the PR

- 18.** On 7 February 2020, the PR submitted the questionnaire that was included with the Notification Letter. The PR answered the questions as follows:
- i. the Horse was stabled in a private stable;
 - ii. the Horse suffered from skin disorders, including a bedding allergy;
 - iii. the Horse did not receive any veterinary treatment for its skin disorders in the year before the Event;
 - iv. the Horse was fed Maxwin Proactive, Pangola and Timothy Hay and received Maxwin Electrolytes and Calcium Plus as supplements;
 - v. the Horse was not administered any Prohibited Substances in the year before the Event;
 - vi. in response to how the PR controlled and verified that feed, products or supplements did not contain any Prohibited Substances, the PR

responded: *"It is not in my authority as I am only expected to ride the horse: the care of the horses are under the veterinarian control"*;

- vii. in response to what procedures the PR had in place to avoid a positive finding of Prohibited Substances, the PR responded: *"To make sure through the guidance of the veterinarian"*;
 - viii. he suspected the source of the Desoximethasone may have been from using a Leovet Cold Pack on 30 November 2019. The PR did not know the origin of the Isoflupredone; and
 - ix. in response to how the PR would avoid future rule breaches, he stated that he would increase his awareness and interest of Prohibited Substances.
- 19.** By email dated 10 February 2020, the FEI advised the PR that according to the FEI's Veterinarian Department, the Leovet Cold Pack was not the likely source of the Desoximethasone. The FEI asked the PR to investigate how the Isoflupredone and Desoximethasone entered the Horse's body so that the FEI would be in a better position to evaluate his level of fault or negligence, if any, and determine if he merited any reduction of the otherwise applicable sanctions.
- 20.** The PR did not submit any further explanations.

B. Written Response of the FEI

- 21.** As stated, Desoximethasone is a Banned Substance and Isoflupredone is a Controlled Medication Substance. The relevant violations of the EADCM Regulations are as follows:
- a. Article 2.1 of the EAD Rules prohibits *"The presence of a Banned Substance or its Metabolites or Markers in a Horse's Sample"*. Similarly, Article 2.1 of the ECM Rules prohibits *"The presence of a Controlled Medication Substance or its Metabolites or Markers in a Horse's Sample"*.
 - b. Article 2.1.1 of the EAD Rules states that: *"It is each Person Responsible's personal duty to ensure no Banned Substance is present in the Horse's body. Persons Responsible are responsible for any Banned Substance found to be present in their Horse's Samples [...]."*
 - c. Article 2.1.1 of the ECM Rules states that: *"It is each Person*

Responsible's personal duty to ensure no Controlled Medication Substance is present in the Horse's body during an Event without a valid Veterinary Form. Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's Samples [...]."

- 22.** Article 10.8.6 of the EAD Rules specifically governs this situation where the PR committed violations involving both a Banned Substance and Controlled Medication Substance when based on the same factual circumstances, that is, the same samples taken from the Horse at the same Event. Article 10.8.6 states, in part, that the PR *"shall be considered to have committed one EAD Rule violation and the Sanction imposed shall be based on the Banned Substance [...]."* Given this wording, the FEI charged the PR with a violation of Article 2.1 of the EAD Rules based on the adverse analytical findings of all the Prohibited Substances found in the A sample. Given the single charge of Article 2.1 of the EAD Rules and the wording in Article 10.8.6, the FEI's submissions referred to the EAD Rules only.¹
- 23.** On 16 December 2020, the FEI provided its response to these proceedings.
- 24.** Article 3.1 of the EAD Rules makes it the FEI's burden to establish all the elements of the EAD Rule violation, to the comfortable satisfaction of the FEI Tribunal.
- 25.** The elements of Article 2.1 of the EAD Rule Violation are straightforward: *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an ECM Rule violation under Article 2.1."* Instead, it is a *"strict liability"* offence established simply by proof that a Banned Substance was present in the horse's sample. The results of the A sample confirmed the presence of Desoximethasone (the Banned Substance) and Isoflupredone (the Controlled Medication Substance) and constituted sufficient evidence of the violation of Article 2.1 of the EAD Rules. In any event, the PR did not dispute the presence of the Prohibited Substances in the A sample nor did he request an analysis of the B sample. Therefore, the FEI submitted it discharged its burden of establishing that the PR violated Article 2.1 of the EAD Rules.
- 26.** When a Prohibited Substance is found in a horse's sample, there is a clear and unequivocal presumption of fault under the EAD Rules that it was

¹ Paragraphs 21 and 22 were not included in the FEI's Written Response but are added here to provide context to the rules discussed by the FEI in its Written Response.

administered to a horse in a deliberate attempt to enhance its performance. As a result of this presumption, Article 10.2 of the EAD Rules provides that a Person Responsible with no previous doping offence, but who violates Article 2.1 of the EAD Rules, is subject to a period of "Ineligibility" of two (2) years, unless he can rebut the presumption of fault. If the PR fails to do so, the two (2) year period of Ineligibility applies.

- 27.** To rebut the presumption of fault, the EAD Rules stipulate, and the jurisprudence of the FEI Tribunal and CAS is very clear: it is a strict threshold requirement that the PR proves how the Prohibited Substances entered into the Horse's system before making any plea of No (or No Significant) Fault or Negligence. Indeed, this threshold requirement is strictly applied because without such proof, it would be impossible to assess the PR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Prohibited Substances in the Horse.
- 28.** The FEI submitted that the PR did not provide any substantiated explanation on how the Desoximethasone and Isoflupredone entered the Horse's body. The FEI further submitted that since the PR failed to establish, on a balance of probability, the "threshold requirement" of how the Prohibited Substances entered the Horse's body, it was not possible to evaluate the PR's level of fault or negligence under Article 10.5 and 10.6 of the EAD Rules. Therefore, no elimination or reduction of the period of Ineligibility was possible.
- 29.** The FEI submitted that the applicable period of Ineligibility imposed on the PR should be two (2) years.
- 30.** The FEI requested the following prayers for relief:
 - (i) upholding the charge that the PR has violated Article 2.1 of the EAD Rules;*
 - (ii) disqualifying the result of the PR and Horse combination obtained in the Event, and the consequent forfeiture of all medals, points, prize money, etc. won pursuant to Article 9 and 10.1.2 of the EAD Rules;*
 - (iii) imposing a period of Ineligibility of two (2) years on the PR, commencing from the date of the Final Decision (the Provisional Suspension already served by the PR shall be credited against the imposed Ineligibility period;*
 - (iv) fining the PR in the amount of 7'500 CHF; and*

- (v) *ordering the PR to pay legal costs of 2'000 CHF that the FEI has incurred in these proceedings.*

VI. Jurisdiction

- 31.** The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCM Regulations as well as Article 18 of the IRs. The PR is a member of the THA-NF, which is a member of the FEI; therefore, the PR is bound by the EAD Rules.

VII. The Decision

- 32.** Given the single charge of Article 2.1 of the EAD Rules against the PR and the wording of Article 10.8.6, this decision will refer to the EAD Rules only.
- 33.** As set forth in Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's sample. The Tribunal is satisfied that the laboratory reports relating to the A sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the laboratory are accurate. The Tribunal is further satisfied that the test results confirm the presence of a Banned Substance and a Controlled Medication Substance in the A sample taken from the Horse at the Event. The Tribunal also notes that the PR did not challenge the accuracy of the test results nor did he request a B Sample.
- 34.** As a result, the Tribunal finds that the FEI has established the adverse analytical findings and has sufficiently proven the objective elements of the violation in accordance with Article 3.1 of the EAD Rules.
- 35.** Pursuant to Article 10.2.1 of the EAD Rules, the period of Ineligibility for an Article 2.1 EAD Rule violation, *i.e.*, the presence of a Banned Substance in a horse's sample is two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules. The PR is also subject to a fine of up to CHF 15,000 and appropriate legal costs.
- 36.** In cases brought under the EADCM Regulations, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once the FEI has established a violation of Article 2.1 of the EAD Rules, the PR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation pursuant to Article 10.5 of the EAD Rules, or "*No Significant Fault or Negligence*" pursuant to Article 10.6 of the EAD Rules.
- 37.** In order for Articles 10.5 and 10.6 of the EAD Rules to be applicable, the

PR must establish, as a threshold requirement, how the Prohibited Substances entered the Horse's system.

- 38.** In accordance with various CAS panels as well as FEI Tribunal decisions, the PR must present facts substantiated with concrete evidence. Speculation or theoretical possibilities are not sufficient. Furthermore, it was suggested by various CAS panels that the 51% threshold was understood as meaning that panels should separately compare each alternative scenario with the scenario invoked by the PR. The PR's scenario must reach a 51% threshold for it to be successful.²
- 39.** The PR replied to the FEI questionnaire without providing any corroborating evidence. The PR speculated that a Leovet Cold Pack could have been the source of the Desoximethasone and he did not know how the Isoflupredone entered the Horse's body. Therefore, the Tribunal finds that the PR has not established – on a balance of probability - how the Banned Substance entered the Horse's body. The PR failed in his personal duty to ensure that no Banned Substance was present in the Horse's body.
- 40.** Where the first hurdle has not been met, *i.e.*, establishing the source of the Banned Substance, the Tribunal cannot continue with the second step and evaluate the PR's degree of fault. The Tribunal finds that no reduction under Articles 10.5 and 10.6 of the EAD Rules is warranted in this case. The Tribunal further notes that Article 10.6 of the EAD Rules was not invoked.
- 41.** The Tribunal further agrees with the FEI's recommendation for the fine and costs.

VIII. Disqualification of Results

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

² See for example Viret, M., "Evidence in Anti-Doping at the Intersection of Science & Law", Asser International Sports Law Series, Springer 2016, (pp. 521-538), as well as CAS 2011/A/2234 & 2386, UCI v. Contador & RFEC, and CAS 2010/A/2230, IWBF v. UKAD & Gibbs. See for example also Case 2017/BS32 SAURA DE FONDCOMBE, Final Tribunal Decision dated 24 February 2020.

IX. Sanctions

- 43.** In summary, the Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:
- a. upholds the charge that the PR has violated Article 2.1 of the EAD Rules;
 - b. imposes a period of Ineligibility of two (2) years on the PR. The period of the Provisional Suspension, effective from 22 January 2020 is credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible until the 21 January 2022;
 - c. the PR is fined **seven thousand five hundred Swiss Francs (CHF 7,500)**; and
 - d. the PR will contribute **two thousand Swiss Francs (CHF 2,000)** for costs that the FEI has incurred in these proceedings.
- 44.** No PR who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorised or organised by the FEI or any National Federation, or participate in any capacity in Competitions authorised or organised by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).
- 45.** Where a Person Responsible who has been declared Ineligible violates the conditions in section 44 during Ineligibility, the results of any such participation will be disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility will be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EAD Rules).
- 46.** According to Article 168 of the GRs, the present decision is effective from the day of the written notification to the Parties concerned.

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

FOR THE FEI TRIBUNAL

A handwritten signature in blue ink, appearing to read "H. Thauli", is centered on the page. The signature is written in a cursive, flowing style.

Ms Harveen Thauli, One-Member Panel