

DECISION of the FEI TRIBUNAL

dated 19 March 2021

in the matter of

Ms Maibrit Laustsen

(FEI Case number: FEI 2020/FT20 LILLIFEE)

FEI Tribunal Hearing Panel:

Ms Diane Pitts (USA) one-member panel

FEI Tribunal Reference: 2020/FT20

Horse/Passport: LILLIFEE AJK /106WC59/DEN

Person Responsible/ID/NF: Maibrit LAUSTSEN/10059680/DEN

Event/ID: CH-M-YH-CC12*-L-Le Lion d'Angers (FRA) 2020_CH-M_0009_C_YH_01

Date of Event: 15-18.10.2020

Prohibited Substance: Caffeine

Bar Code Nos.: 5592720

I. DESCRIPTION OF CASE FROM THE LEGAL VIEWPOINT

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

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

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

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

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

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

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

FEI Code of Conduct for the Welfare of the Horse.

B. Justification for sanction:

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

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

ECM Rules Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Controlled Medication Substance is present in the Horse's body during an Event without a valid Veterinary Form. Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's Samples, even though their Support Personnel will be considered additionally responsible under Articles 2.2 – 2.5 ECM Rules where the circumstances so warrant. It is

not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish a Rule violation under Article 2.1.”

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

II. Factual background

- 1.** Ms Maibrit Laustsen (FEI ID 10059680) is the Person Responsible (hereinafter called **“the PR”** in accordance with Article 118.3 of the FEI General Regulations) is a rider for Denmark.
- 2.** The Fédération Equestre Internationale (hereinafter called **“the FEI”** 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 LILLIFEE AJK (FEI ID 106WC59/DEN) (**the “Horse”**), in CH-M-YH-CC12*-L in Le Lion d’Angers, France, from 15-18 October 2020 (**the “Event”**). The PR is a member of the Danish Equestrian Federation (the **“Danish NF”**), which is a member of the FEI and therefore is bound by FEI’s Equine Anti-Doping and Controlled Medication Regulations 2nd edition, changes effective January 2020 (hereinafter called **“the EADCM Regulations”**).
- 4.** At the Event on 16 October 2020, the Horse was selected for an in-competition doping control test. Blood and Urine samples were collected from the horse and sent to the FEI approved Laboratory, the LGC Newmarket Road Laboratory (**“LGC”**), in Cambridgeshire, UK for analysis. The samples were divided into an “A sample” and “B sample”.

5. The urine analysis of the A Sample revealed the presence of Caffeine. Caffeine is a stimulant, which stimulates the central nervous system. Caffeine is classified as a **Controlled Medication Substance** under the FEI Equine Prohibited Substances List (the "**FEI List**").
6. The positive finding of Caffeine in the Horse's sample gives rise to a Controlled Medication Rule Violation. Such Controlled Medication Substances are designated as "Specified Substances". Specified Substances may enter a Horse's system inadvertently due to a credible non-doping explanation. This specific category allows the FEI and/or the FEI Tribunal more flexibility when prosecuting a case or when making a sanctioning decision.

III. Initial Proceedings

7. On 18 November 2020, the FEI Legal Department officially notified the PR and the Danish NF of the presence of the Prohibited Substances in the A sample, the rule violation and the potential consequences (the "**Notification Letter**"). The FEI also informed the PR that such proceedings were initiated under the Administrative Procedure process (also known as "Fast Track") due to the respective prerequisites pursuant to Article 8.3 of the ECM Rules for that type of procedure being fulfilled. However, the PR did not accept the Administrative sanctions offered to her.
8. The PR was also informed in the Notification Letter of her and the owner's right to request an analysis of the B sample. However, they did not request for a B Sample Analysis to be performed. By failing such request, the B Sample analysis was deemed waived in accordance with Article 7.1.4 (c) of the ECM Regulations.

IV. Procedural background in front of the FEI Tribunal

9. By email dated 17 February 2021, the FEI submitted the matter to the FEI Tribunal including the Settlement Agreement which was signed by the PR on 16 February 2021 and the FEI on 17 February 2021.
10. On 25 February 2021, the Parties were informed of the nominated Hearing Panel appointed to address this case and afforded the opportunity to submit objections to the constitution of the named panel by 3 March 2021.
11. On 25 February 2021, the Head of the Elite Department of the Danish NF, Kimi Gerd Nielsen replied via email confirming they had received the correspondence from the FEI Tribunal re: Agreement between parties – Case 2020/FT20 LILLIFEE AJK – Ms Maibrit Laustsen. No objections

regarding the composition of the Hearing Panel were expressly raised by the Danish NF on behalf of the PR within the 3-day deadline, which can be deemed as agreement to the constitution of the panel.

12. On 25 February 2021, the FEI also informed the FEI Tribunal that they had no objections regarding the composition of the Hearing Panel.

V. The Parties' Submissions

A. The Submissions of the PR:

13. The PR provided a written statement (dated 19 January 2021) to the Danish NF wherein she explained the following particulars regarding the case:
 - The PR does not have any personnel and handles the management of her horses by herself;
 - The PR keeps a record of administered medications, treatments, supplements and creams in a folder which are kept securely in her stable;
 - Each of the horses has its own coloured-coordinated bucket assigned to it. An automated feeding system is set up in each horse's stall. The automated feeding system is filled with each horse's own bucket by the PR only;
 - If any of the PR's horses require medication it is administered by a qualified veterinarian. The PR's veterinarian is aware of the EADCM Rules and keeps updated on these Rules;
 - If a horse is receiving medication prescribed by the veterinarian, the PR is the sole person administering such medication to the horses. Medications are securely held in a safe box in the saddle room;
 - If any of the horses receive oral medication it is given from a dedicated yellow bucket by the PR herself. Afterwards, the PR cleans and disinfects the buckets thoroughly;
 - Before the PR starts using any new feed or supplement, the PR thoroughly researches the content of the feed or supplement to ensure that they comply with the FEI List of Prohibited Substances;
 - Prior to the Event in question the Horse was fed with grain and Marstall Cornmuesli (hereinafter "**the Feed**");
 - After investigation, it has been discovered that the Feed had been contaminated with Caffeine and other substances derived from caffeine;
 - The PR provided an email from the manufacturer of the Feed that had been sent to the Danish distributor of the Feed explaining that one of the ingredients of the horse feed products i.e., apple

pomace, has been contaminated with Caffeine as it was processed in the same drying plant as tea. Thus, Caffeine, Theophylline or other substances derived from Caffeine could have been detected during a urine or blood test. The manufacturer reassured that no horse feed product manufactured as of middle of July is contaminated anymore;

- The PR submitted an invoice attesting to her purchase of the Feed in bulk order in the period before the Event;
- In addition, a photograph of the packaged feed alongside with the Batch no. and MHD date¹ attesting that the feed was produced in March 2020 was submitted.

B. The Response of the FEI highlighted the following:

- That they have been informed of several Adverse Analytical Findings of Caffeine involving horses in Denmark, Sweden and Germany arising from the contaminated Feed. In response to these alerts, on 18 December 2020, the FEI issued an "*FEI warning regarding contaminated batches of feed – Caffeine*" to all National Federations in order to alert the equestrian community that some batches of Marstall feed containing apple pomace were contaminated with caffeine. In this respect, the FEI advised the Athletes and their Support Personnel to carefully check the batch numbers of their feed and to keep samples of the feed if possible to enable a detailed investigation to be carried out should contamination be suspected;
- That the particular Feed in the present case i.e., Marstall Haferfei Muesli was one of the feed that included the apple pomace;
- Taking into account the explanation given by the PR in addition to the supplementary documents and the statement from the manufacturer/distributor, itself, dated 17 November 2020 regarding an inadvertent exposure of the feed to Caffeine and other substances derived from Caffeine, the FEI is satisfied that the PR has established, on a balance of probabilities, how Caffeine entered the Horse's system due to contaminated Feed;
- Furthermore, considering the totality of circumstances of this case the FEI is of the opinion that the PR did not know or suspect, and could not have reasonably known or suspected even with the exercise of utmost caution, that the feed was contaminated with a Controlled Medication Substance as no Caffeine and/or any other ingredient that would indicate Caffeine was listed on the list of ingredients of the Feed in question;
- Therefore, the FEI is satisfied that the PR has on a balance of

¹ The MHD date (Mindesthaltbarkeitsdatum) or Best Before Date is the time period up to which the manufacturer guarantees that the unopened product which was properly stored maintains its specific properties, such as smell, taste and nutritional reserves.

probabilities established that the PR bore no fault or negligence for the Rule Violation;

- That they wish to conclude this case in accordance with Article 7.6.1 of the ECM Rules which permits an agreement between the parties, subject to FEI Tribunal approval.

VI. The Decision

14. Agreement between the Parties:

Quote

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

- 3.1 *"In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR's horse LILLIFEE AJK at the CH-M-YH-CC12*-L-Le Lion d'Angers (FRA), from 15-18 October 2020, the PR and the FEI agree in accordance with 7.6.1 ECM Rules on the following:*
- (a) *The PR admits the violation of Article 2.1 of the ECM Rules (The presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample); and*
 - (b) *The PR established on a balance of probabilities how Caffeine entered the Horse's system; and*
 - (c) *The PR bears no fault or negligence for the Rule Violation and therefore the PR shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility (i.e., six months) shall be eliminated; and*
 - (d) *In accordance with Article 10.8.3 of the ECM Rules, this violation of the ECM Rules shall not be considered a prior violation for the purpose of Article 10.8 (Multiple Violations) of the ECM Rules;*
 - (e) *In accordance with Articles 9.1 and 10.1.2 of the ECM Rules the results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;*
 - (f) *The PR shall not incur any fines;*
 - (g) *No other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Articles, 9, 10.1.2 and 11 of the ECM Rules) will apply in this case;*
 - (h) *Each party will bear its own legal and other costs incurred in connection with these proceedings.*
- 3.2 *This agreement is made in accordance with Article 7.6.1 of the ECM*

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

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

*** End Quote***

VII. Jurisdiction

15.

- (a) The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCMRs, as well as Article 18 of the IRs.
- (b) The PR is a member of the Danish Equestrian Federation, and as such is subject to the FEI ECM rules.
- (c) Article 7.6.1 of the EADCMRs provides for agreements to be reached between parties.
- (d) As a result, the Tribunal has the requisite jurisdiction to approve and issue this Decision.

VIII. Approval of Agreement

- 16.** Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the PR has established on a balance of probabilities how Caffeine entered the Horse's system.
- 17.** The Tribunal also notes that the Parties agree pursuant to 7.6.1 ECM Rules that the PR bears no Fault or Negligence for the Rule Violation as the PR was able to establish a conclusive source of the Controlled Medication Substance.
- 18.** The Tribunal acknowledges that since the PR has been able to establish the source of the Controlled Medication Substance, the PR and the FEI

have agreed on terms for the closure of proceedings in accordance with 7.6.1 ECM Rules as detailed at section 14 above in this Decision. Taking the particulars of this case into account, no other sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Articles, 9, 10.1.2 and 11 of the ECM Rules) will be applied in this case. Thus, no sanction and no fine will apply in this case and the Tribunal also notes that each party will bear its own legal and other costs incurred in connection with these proceedings.

- 19.** The Tribunal wishes to highlight that the present agreement does not constitute jurisprudence, and as such when reviewing it did not consider previous case law. The Tribunal emphasises that the decision in this case depends on the particular circumstances disclosed as set out above.
- 20.** To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the ECM Rules.
- 21.** Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case 2020/FT20 LILLIFEE AJK.

IX. Decision

- 22.** The Tribunal rules that the Agreement reached between the FEI and the PR, Ms Maibrit Laustsen concerning the case 2020/FT20 LILLIFEE AJK is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Article VI above, which are incorporated into this Decision.
- 23.** This Decision is subject to appeal in accordance with Article 12.2 of the ECM Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 24.** This Decision shall be notified to the PR, to the President of the NF of the PR, and to the FEI.
- 25.** This Decision shall be published in accordance with Article 13.3 of the ECM Rules.

X. DECISION TO BE FORWARDED TO:

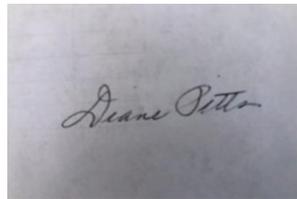
a. The Parties: Yes

b. The President of the NF of the person sanctioned: Yes

c. The President of the Organising Committee of the Event through his NF: No

d. Any other: No

FOR THE FEI TRIBUNAL

A rectangular box containing a handwritten signature in cursive script, which appears to read "Diane Pitts".

Ms Diane Pitts, One-Member Panel