

**DECISION of the FEI TRIBUNAL**

**dated 13 April 2021**

**(FEI Case number: FEI 2020/CM02-DONAUGRAAF)**

**FEI Tribunal Hearing Panel:**

**Mr Cesar Torrente**

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**FEI Tribunal Reference:** C21-0010

**Horse/Passport:** DONAUGRAAF/104ORR49/MEX (GUA IN 2020)

**Person Responsible/ID/NF:** Francisco LOMELIN/10032251/MEX

**Event/ID:** CSI3\*- Coapexan (MEX), 2020\_CI\_1143\_S\_S\_01

**Date of Event:** 15-18.10.2020

**Prohibited Substances:** Diclofenac, Caffeine

**Bar Code Nos.:** 5592261

## **I. Factual background**

- 1.** Mr Francisco Lomelin (FEI ID 10032251), the Person Responsible (**the PR**), is a rider for Mexico.
- 2.** The Fédération Equestre Internationale (**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 the horse DONAUGRAAF (FEI ID 104OR49), in the event CSI3\* - Coaexpan, Mexico between the 15-18 October 2020 (**the Event**). The PR is a member of the Mexican Equestrian Federation (**the MEX-NF**), the latter being a member of the FEI and therefore is bound by the FEI EADCM Regulations<sup>1</sup>.
- 4.** Blood and urine samples were collected from the horse on 18 October 2020 and sent to the FEI approved Laboratory, the LGC Laboratory (**the LGC**), in Cambridgeshire, UK, for analysis. The samples were divided into an A sample and B sample. The A Sample was analysed and identified the presence of Diclofenac and Caffeine.
- 5.** Diclofenac is a non-steroidal anti-inflammatory medication with anti-inflammatory and analgesic effects. Caffeine is a stimulant that stimulates the central nervous system. Both substances are classified as Controlled Medication Substances under the FEI Equine Prohibited Substances List (**the FEI List**). Caffeine remaining a Controlled Medication Substance, is a designated as a "Specified Substance", meaning that they may enter a Horse's system inadvertently due to a credible non-doping explanation. This specific category may allow the FEI and/or the FEI Tribunal increased flexibility on sanction when adjudicating on such a case.
- 6.** The positive findings of Diclofenac and Caffeine in the Horse's sample gave rise to a Controlled Medication Rule Violation which was communicated to the PR from the FEI via Notification Letter (**the Notification Letter**) dated 18 November 2020. The Notification Letter informed the PR, in his capacity of the Person Responsible, along with the MEX-NF of a violation of Article 2.1 (*The Presence of a Controlled Medication Substance and/or its Metabolites or Markers in the Horse's Sample*) of the FEI Equine Controlled Medication Rules (the "ECM Rules") based on the Laboratory's adverse analytical finding of Diclofenac and Caffeine.

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<sup>1</sup> FEI Equine Anti-Doping and Controlled Medication Regulations 2nd edition, changes effective 1 January 2020

7. As one of the Prohibited Substances found in the Horse's sample was a Specified Substance the PR was not provisionally suspended in accordance with Article 7.4.1 of the ECM Rules. However, the PR requested voluntarily suspension and as such, the suspension came into effect on 16 February 2021.
8. The PR was also entitled to request the Horse's B sample to be analysed but did not exercise this right nor challenge the results of the A sample.
9. The additional facts of the case will be referred to under section V below wherein the Settlement Agreement between the parties is detailed.

## **II. Procedural background in front of the FEI Tribunal**

10. By email dated 8 March 2021, the FEI submitted to the FEI Tribunal the Settlement Agreement signed by both parties dated the 8 March 2021.
11. On the 30 March 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 2 April 2021.
12. On the 30 March 2021, the FEI informed the FEI Tribunal that they had no objections regarding the composition of the Hearing Panel.
13. On the 31 March 2021, the PR, also confirmed receipt of said communication and issued no objections to the composition of the Hearing Panel.

## **III. Considering**

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

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

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

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

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

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

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

FEI Code of Conduct for the Welfare of the Horse.

**B. Person Responsible:** Mr Francisco Lomelin

**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."

**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 Controlled Medication violation.

**ECM Rules Art. 10.10.3:** "Where the Person Responsible and/or member of the Support Personnel (where applicable) promptly (which, for the *Person Responsible*, in all circumstances, means before the Person Responsible competes again) admits the ECM Rule violation after being confronted with the Rule violation by the FEI, the period of

Ineligibility may start as early as the date of Sample collection or the date on which another ECM Rule violation last occurred. In each case however where this Article is applied, the Person who committed the ECM Rule violation shall serve at least one-half of the period of Ineligibility going forward from the date Ineligibility is imposed or accepted.

This Article shall not apply where the period of Ineligibility has already been reduced under Article 10.6.3.

**ECM Rules Art. 10.10.5:** "If a Person Responsible and/or member of the Support Personnel voluntarily accepts a Provisional Suspension in writing for himself, herself or the Horse, and thereafter refrains from participating in equestrian activities, such Person or Horse shall receive a credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed. A copy of the voluntary Provisional Suspension shall be provided promptly to each party entitled to receive Notice of a potential ECM Rule violation. If a Provisional Suspension is voluntarily accepted, it can only be lifted by Decision of the FEI Tribunal".

#### **IV. The Parties' Submissions**

##### **A. The Submissions of the PR:**

- 14.** On 23 November 2020, the PR admitted the Rule Violation and submitted his explanation in addition to supporting documents explaining how Dicoflenac entered the body of the Horse. This can be summarised as follows:
- On 17 October 2020, when the Horse was being transported back from the Event to the stables, the PR's groom discovered a minor injury on the Horse's nose. The PR also provided a photograph of the minor injury;
  - The PR was informed of the minor injury that evening and he immediately asked one of his team's veterinarians to check the Horse. The PR provided the veterinarian's statement to support this;
  - After the veterinarian's check-up, the PR presented the Horse to the Chief Steward, to make sure the Horse was fit to compete. As both responses were positive the PR carried on with the Event;
  - Unbeknownst to the PR, the minor wound was immediately treated by the groom without the PR's knowledge with an ointment from the PR's personal first aid kit for his personal use. The product used was

Volfenac GEL, a topical, over-the counter medicine which contains diclofenac. It is used for alleviating the injury and preventing swelling. The PR provided two photographs of the product;

- The PR only became aware of the application of this ointment after the notification of the positive finding in his Horse. Once he learnt of its use he made it clear to all his grooms that there was a reason for having a horse's medical kit and a human's first aid kit, stating that no human medicine, of any kind, should be used on any of his horses, especially without his knowledge;
- In relation to the finding of caffeine, the PR failed to establish the source of the caffeine. The PR consulted with his whole team, especially the veterinarians, and they were not able to determine if any specific supplement or food was the source;
- The PR stated that he understands the seriousness of the matter and is aware of the FEI anti-doping rules, as well as the procedures and consequences;
- The PR also submitted that he checks the substances in all feed, supplements and medicines. In addition, the PR stated that a member of his team is constantly checking all the FEI Clean Sport related matters;
- Furthermore, the PR stated that all medicines and supplements are approved by a treating veterinarian and the team member that has completed the FEI Clean Sport course;
- He also noted that the horse is kept at a private stables located at his personal riding club and is fed with hard feed, ray grass and alfa-alfa. In addition, he confirmed that the Horse's feed is supplemented with 4 different supplements.

## **B. The Response of the FEI**

**15.** The FEI's main submissions are the following:

- That in relation with the positive finding of Diclofenac, the FEI acknowledged that the product Volfenac Gel contains the active substance of Diclofenac. Moreover, that if it is applied topically on the Horse's minor wound, a day prior to Sample Collection, it could potentially result in an Adverse Analytical Finding of Diclofenac in the Horse's sample;

- However, the FEI noted that the present Adverse Analytical Finding consists of two Prohibited Substances i.e., Diclofenac and Caffeine and in relation with the positive finding of Caffeine, the PR has failed to provide an explanation of the source of Caffeine;
- As the ECM Rules stipulate, the jurisprudence of the FEI Tribunal states it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proves how the Prohibited Substance(s) entered into the Horse's system. Thus, in the present case, as previously stated, the FEI submitted that the PR has not established how the Caffeine entered the Horse's system and therefore has not discharged his burden of proving how both Diclofenac and Caffeine entered the Horse's system. Consequently, the FEI stated that no elimination or reduction of the period of Ineligibility in this case is possible under Art. 10.4. or Art. 10.5 of the ECM Rules;
- The FEI also referenced that the PR has a prior Rule Violation 2019/BS12 DONAUGRAAF involving the Specified Banned Substance Synephrine, wherein, he was found to be at *No Fault or Negligence* for the Rule Violation. In accordance with Art. 10.8.3 of the EADCMRS such Rule Violation shall not be considered as a prior violation for the purpose of the Multiple Violations Article. In this regard, the FEI Submitted that the applicable period of Ineligibility imposed on the PR in the present case shall be six (6) months;
- The FEI recognised that the PR timely admitted the Rule Violation with regards to the Diclofenac and provided an explanation with supporting documents within 5 days after notification of the Rule Violation (within which time the PR did not compete) and was fully cooperative and transparent throughout the process. As a result, the FEI agreed to apply Art. 10.10.3 (Timely Admission) of the ECM Rules and start the period of Ineligibility as of 16 November 2020 i.e., backdating the start of the Period of Ineligibility for three months as of 16 February 2021 when the PR voluntarily provisionally suspended himself;
- The FEI also referenced Art. 10.10.5 of the ECM Rules below wherein the period of voluntary Provisional Suspension shall be credited against any Period of Ineligibility which may ultimately be imposed:

*"If a Person Responsible and/or member of the Support Personnel voluntarily accepts a Provisional Suspension in writing for himself, herself or the Horse, and thereafter refrains from participating in equestrian activities, such Person or Horse shall receive a credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed. A copy of the voluntary Provisional Suspension shall be provided promptly to each party entitled to receive Notice of a potential ECM Rule violation. If a Provisional Suspension is voluntarily accepted, it can only be lifted by Decision of the FEI Tribunal".*

- 16.** The FEI also noted that the PR submitted a request for lowering the fine due to his financial situation which was severely worsened by the Covid-19 pandemic. The PR provided ample documentation attesting to the fact that his revenue streams, which are relying on the hosting of events and the equine industry, were badly affected by the Covid-19 pandemic and related governmental restrictions. The PR also confirmed he had not received any governmental help in this regard. Taking these factors into consideration, the FEI agreed to lower the otherwise applicable fine to 1,500 CHF.

## **V. The Decision**

### **17. Agreement between the Parties:**

\*\*\* Quote\*\*\*

#### **3 NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR DISPOSAL OF THE ANTI-DOPING PROCEEDINGS:**

3.1 In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR's horse DONAUGRAAF at the CSI3\* in Coapexpan (MEX) on 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*);
- (b) The PR bears fault for the Rule Violation and the applicable period of Ineligibility shall be six (6) months, commencing as of 16 November 2020, and taking into account the already served period of provisional suspension;



- (c) 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;
- (d) Due to the application of Article 10.10.3 of the ECM Rules any and all results achieved by the PR between 16 November 2020 and 16 February 2020 are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
- (e) The PR shall pay a fine of 1`500 CHF;
- (f) Each party will bear its own legal and other costs incurred in connection with these proceedings;
- (g) No other Sanctions will apply in this case;
- (h) This violation of the ECM Rules shall be considered a prior violation for the purpose of Multiple Violations in accordance with Article 10.8 of the ECM Rules.

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 Decision will be made public by the FEI. The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings.

\*\*\*End Quote\*\*\*

## **VI. Jurisdiction**

### **18.**

- (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 Mexican National Federation, and as such is subject to the 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.

## **VII. Approval of Agreement**

- 19.** Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the FEI accepts on a balance of probability that the source of one of the prohibited substances in the Horse's sample – Diclofenac, was the administration of the medication "Volfenac GEL", a topical over-the-counter medicine. Volfenac was administered to treat alleviate a minor injury on the Horse's nose to prevent swelling by the groom.
- 20.** The Tribunal takes note that the Parties agree that pursuant to 7.6.1 ECM the PR has failed to discharge the burden of proving how caffeine entered the Horse's system. Consequently, no elimination or reduction of the period of Ineligibility in this case can be applied. Thus, the Parties agree that the applicable period of Ineligibility shall be six (6) months.
- 21.** The Tribunal also takes into consideration the FEI's recognition of timely admission of the Rule Violation by the PR with regards to the Diclofenac, the explanation provided and supporting documents submitted within 5 days after notification of the Rule Violation (within which time the PR did not compete). As a result of such actions, the FEI agreed to apply Article 10.10.3 (Timely Admission) of the ECM Rules and start the period of Ineligibility as of 16 November 2020 i.e., backdating the start of the Period of Ineligibility for three months as of 16 February 2021 when the PR voluntarily provisionally suspended himself and due to expire on 15 May 2021 at midnight;
- 22.** Furthermore, the Tribunal accepts that the parties agree that the PR admitted a violation of Article 2.1 of the ECM Rules (Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample).
- 23.** The Tribunal wishes to emphasise that it did neither evaluate whether the PR has met the burden of proof regarding the source of the Prohibited Substance that was established, nor his degree of fault. Furthermore, the Tribunal highlights that the present agreement does not constitute jurisprudence, and as such when reviewing it did not consider previous case law.
- 24.** 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.

- 25.** 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/CM02 DONAUGRAAF.

### **VIII. Decision**

- 1) The Tribunal rules that the Agreement reached between the FEI and the PR, Mr Francisco Lomelin, concerning the case 2020/CM02 DONAUGRAAF is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Article V above are incorporated into this Decision.
- 2) This Decision is subject to appeal in accordance with Article 12.2 of the ECM Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 3) This Decision shall be notified to the PR, to the President of the Mexican- NF of the PR, and to the FEI.
- 4) This Decision shall be published in accordance with Article 13.3 of the ECM Rules.

**FOR THE FEI TRIBUNAL**

A handwritten signature in blue ink, appearing to read 'Cesar Torrente', is written over a light blue circular stamp. The signature is fluid and cursive.

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**Mr Cesar Torrente, One-Member Panel**