

DECISION of the FEI TRIBUNAL

dated 2 November 2022
(Ref. no. FEI Tribunal: C22-0019)

In the matter of

FÉDÉRATION EQUESTRE INTERNATIONALE (the "FEI")

vs.

Ms. Alex Champoe & Ms. Valerie Kanavy (the "PR/APR")

together (the "Parties")

COMPOSITION OF THE FEI TRIBUNAL PANEL:

Mr Phillip Cornegé (NZL) Sole Panel Member

FEI Case Number: 2021/BS11 FINE CUT GOLD PR APR

Person Responsible/ID/NF: Alex SHAMPOE/10143173/USA

Additional Person Responsible: Valerie KANAVY/10014017/USA

Horse/Passport: FINE CUT GOLD/106HE48/CAN

Event/ID: 2021_CI_1984_E_YJ_03

Date of Event: CEIYJ3* 160 - Shamong NJ (USA), 01-02.10.2021

Date of sample collection: 02.10.2021

Prohibited Substance: Capsaicin

Bar Code No.: 5606534

I. Introduction

1. This FEI Tribunal Decision relates to: FEI CASE 2021/BS11 FINE CUT GOLD. On 16 March 2022, the FEI charged the PR and APR of a violation of Articles 2.1 and 2.2 of the Equine Anti-Doping Rules¹ (the "EADRs") - the Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample and Use or Attempted Use of a Banned Substance or a Banned Method. The FEI notified Ms Champoe and Ms Kanavy in their capacity as the PR and the APR respectively.

Applicable Rule Provisions:

Statutes 24th edition, effective 17 November 2021 ("Statutes").

General Regulations, 24th edition, 1 January 2020, updates effective 1 January 2022 ("GRs").

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

Veterinary Regulations, 14th edition 2018, updates effective 1 January 2020 ("VRs").

Endurance Regulations, 11th Edition, effective 1 January 2021 ("ERs").

FEI Equine Anti-Doping and Controlled Medication Rules, 2nd Edition, effective 1 January 2021 ("EADCMRs").

II. Factual background

2. In accordance with Articles 118.1 and 118.3 of the GRs, Ms Champoe (FEI ID 1014317) and Ms Kanavy (FEI ID 10014017) were considered the PR and APR of the Horse FINE CUT GOLD (FEI ID 106HE48) (the "Horse") in the CEIYJ3* 160 - Shamong NJ (USA), 01-02.10.2021 (the "Event").
3. The Fédération Equestre Internationale (the "FEI") is the sole IOC recognised international federation for equestrian sport, and together with the PR and the APR will be referred to as "the Parties". The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Para-Equestrian).

¹ FEI Equine Anti-Doping and Controlled Medication Rules 2nd edition, effective 1 January 2021.

4. The PR is an Endurance Rider for the United States and competed with the Horse at the CEIYJ3* 160 in Shamong NJ in the USA, on 1-2 October 2021. The APR was the registered Trainer of the Horse at the Event. By registering in the FEI Database as a Trainer, the registered person acknowledged and accepted the definition of a Trainer as per Article 800 of the ERs. Namely, persons registering as Trainers in the discipline of Endurance are the persons responsible for preparation of the Horse both physically and mentally for Competition.
5. The PR and APR are members of the United States Equestrian Federation (the "USEF") which is a member of the FEI. Accordingly, they are bound by the EADCMRs.
6. The Horse was selected for testing on 2 October 2021. Blood and urine samples were collected from the Horse and sent to the Laboratory of the Racing Chemistry (the "LRC"), in Utsunomiya City, Tochigi, Japan, for analysis.
7. The Laboratory analysed the Horse's A Sample, and the analysis of the urine sample revealed the presence of Capsaicin. Capsaicin is an analgesic used for pain relief and has hypersensitising properties and is classified as a Banned Substance under the 2021 FEI Equine Prohibited Substances List.
8. The positive findings of Capsaicin in the Horse's sample gave rise to an Anti-Doping Rule Violation (an "ADRV") pursuant to Articles 2.1 and 2.2 of the EADRs.
9. By Notification Letter dated 3 November 2021, the FEI informed the PR and APR, through the USEF of an alleged violation of Article 2.1 and 2.2 of the EADRS (*The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*) and the *Use or Attempted Use of a Banned Substance or a Banned Method*) based on the Laboratory's Adverse Analytical Finding (the "AAF") of Capsaicin in the Horse's Sample collected at the Event.
10. In accordance with Article 7.4.1 of the EADRs the PR and the APR were provisionally suspended (as of the date of the Notification Letter) as the EADR involved an AAF for a Banned Substance².
11. In the Notification Letter, the PR and the APR were informed of their right to request analysis of the Horse's B sample. Neither the PR nor the APR requested a B sample analysis thus the right to request for such analysis was considered waived in accordance with Article 7.1.5 of the EADRs.

² FEI EADRs Article 7.4.1 (i).

III. Procedural background in front of the FEI Tribunal

12. By email dated 28 April 2022, the FEI submitted their Response in respect of these proceedings to the FEI Tribunal (the "Tribunal") and requested that the Tribunal appoint a Hearing Panel (the "Panel") to adjudicate on this case. The FEI also confirmed that the PR and APR were provisionally suspended since 3 November 2021.
13. On 18 May 2022, the Parties were informed of the nominated Panel appointed to address this case and afforded the opportunity to submit objections to the constitution of the nominated Panel by 23 May 2022.
14. On 18 and 23 May 2022 respectively, the FEI and the PR/APR confirmed they had no objections to the composition of the Panel and confirmed their request for an oral hearing to be held in respect of these proceedings.
15. On 7 June 2022, the PR and APR submitted a second submission and additional evidence to the Tribunal.
16. On 22 June 2022, the FEI confirmed receipt of the additional submissions of the PR/APR and confirmed that given the new explanations and evidence, especially regarding the scientific evidence submitted, that the FEI must consult an external scientific expert to evaluate the plausibility of the new explanations provided. They confirmed that they would revert to the parties as soon as possible with such evaluation.
17. On 6 July 2022, the FEI submitted their Response to the second submission of the PR/APR, mainly addressing the science of the case and also requested the right to address any other new arguments and/or evidence set out in the PR's and APR's second reply at the oral hearing.
18. On 8 July 2022, the Tribunal wrote to all Parties and confirmed that a hearing would take place by videoconference (via Cisco WebEx) on the 27 July 2022 at 9pm (CET).
19. On 27 July 2022, the APR submitted a further submission to the Tribunal to be considered on the day of the hearing.
20. On 28 July 2022, on completion of the hearing phase of these proceedings and as discussed at same, the Tribunal confirmed the adjournment of these proceedings

for a period of two weeks until the further scientific evidence from Dr Harrison (the Scientific Expert for the PR/APR) was submitted.

21. On 28 July 2022, the FEI also noted the adjournment of the proceedings until the additional scientific evidence from the PR/APR was presented. The FEI also requested the opportunity to consult with their own scientific expert on Dr Harrison's submissions presented at the hearing and to reply to the additional material in due course, should there be any other new facts included.

IV. Submissions by the Parties with the Respective Positions

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

Submission of the APR:

22. The APR admitted the violation on the same day as the notification of the alleged ADRV³ from the FEI. She provided the following explanation to the FEI:

"I confirm that I found the prohibited substance Capsaicin in a roll on cream that was used during the competition at the Mustang event. I have used the particular cream for many years in the tube cream form which has no prohibited substances. When shopping the tube form was not available and I grabbed the roll on form. Stupidly, ignorantly, embarrassingly, I did not even think to look at or check the label to see if the formula or ingredients had changed. Capsaicin is not a product that we have ever intentionally purchased nor can be found in our stable except for the roll on cream I purchased by mistake."

23. On 3 December 2021, the APR also submitted a detailed brief to the FEI in which she outlined her background in endurance and her experience, which can be summarised as follows:

- For nearly 50 years she competed in the sport of endurance and was a two-time world champion. In 30 of those years, she has participated in the in the international arena under the FEI umbrella;
- She is an endurance trainer with great experience in this discipline, as well as horses, welfare, anti-doping, development of the endurance rules. She was also

³ FEI Response dated 28 April 2022, Exhibit 3 (Notification Letter from FEI to APR 3 November 2021).

a member of the FEI Endurance Committee, and an active member of various other endurance committees in the USA;

- She stated that she has *“worked tirelessly with many others in the FEI to make things stricter and safer for the horses in our sport”*. She explained that she has spent *“many hours, actually years, working with the rules and building a program to make the sport of endurance both safe for horses and respected for the athletic abilities and training necessary to ride horses long distances safely”*;
- She also stated that it was truly ironic that she was *“part of the committee that strengthened and expanded the person responsible part of the drug rules, which was the right thing to do and should be expanded to all the FEI disciplines”*;
- She explained that whilst she has worked for many years within the FEI, she also continuously works within USEF to help build and promote the sport of endurance and that *aside from “the suspension imposed by the FEI”, she was suspended and removed from all the NF committee’s and Boards”* she currently serves on;
- She stated that she has a professional farm where she breeds, owns, trains and competes horses, and organises events a few times a year. She stated that about 5 girls are working with her (one of whom was the PR). The APR also stated that she ensured that full economical support was given to those working with her, she provides them with the horses, trains them, educates them on horse welfare, anti-doping and drives them to competitions etc;
- The APR stated that now her main activity was to train, coach, and support young riders and hold annual “free” clinics where young riders attend and can meet other young riders. At these clinics, they learnt about all the different aspects of the sport, everything from farriery, training, feeding, electrolytes, to what to look for in their endurance horses. She shares the knowledge that she has acquired after over half a century of competing in the sport;
- She also noted that this year they were successful in putting together a young but strong team of riders that came together and trained at the farm to compete in Ermelo (a world championship), having the best showing in many years for the USA. She also stated that the horses and riders are frequently tested, at international and national competitions alike and that her horses have been tested hundreds of times;

24. In relation to the arnica cream used on the Horse the APR submitted that:

- She had used an arnica cream for about 30 years on most of her horses;
- That arnica is a legal homeopathic product that she had used for many years to massage into the horse's muscles. She used it to massage the horses both at home and also at events after a long endurance ride;
- For the last 10 years (approximately) she bought the cream in the same place, Walmart, in the same store and at the same location;
- At the time of the alleged violation, she explained that her usual arnica cream product was sold out. However, the same product was available in roll-on form. She looked at the package, considered whether a roll-on would be enough liquid for massage purposes;
- That she did not notice the red text stating Capsaicin on it. In fact, she admitted that even if she had noticed, she would not have known it was prohibited;
- She noted that the package indicated nothing under active ingredients, but then under inactive ingredients Capsaicin was listed. But as she was more focused on the package and whether it could be useful for her requirements, she did not do anything further to investigate the content and just purchased the same product in the roll-on form (instead of the cream);
- She stated that she "*made a serious mistake by not checking the prohibited drug list for capsaicin. It was clearly printed on the roll-on bottle*". However, she was so focused on the cream being presented in a roll-on form and wondered if enough of the cream would roll out to even be worth buying, that she completely overlooked the letters highlighted in red. She also explained that she was not sure that even if she had noticed that she would have recognised Capsaicin as a negative ingredient since it was something she had never used or had either in the stable or in the house."
- That the roll-on cream once purchased was then included, just like the cream she has used for so many years, in the daily care of the horses. It was applied for massaging the horses as per her instructions, at home and at events;
- That at the Event in question, the roll-on cream was applied to the Horse by a groom (a 3rd person neither her nor the PR). It was actually used on all the horses she had at the event (four horses in total), of which 3 were tested, but only this one Horse tested positive for the substance Capsaicin.

25. The APR also explained her stable management processes in detail, in her submissions which can be summarised as follows:

- That the feed and products routinely used are legal which can be demonstrated by many years of competing and remaining clean after undergoing numerous drug tests on her horses in addition to her use of reputable feed sources who are tested for contamination;
- She stated that *“making sure that my horses are sound and happy is a daily goal at Gold Medal Farms. If a horse is short striding, they get rested, evaluated, and treated if necessary. From the smallest nick to the deep injuries, the horses are not asked to do anything if they cannot do it without needing aids from medication or other therapies. Our horses do so well, because they are evaluated daily and not pushed past their limits or covered up with painkillers”*;
- That when examining a new product, she always checked the ingredients listed on the label, if one of the ingredients looked unfamiliar, she would consult with her veterinarians;
- That all the horses at her farm are under the care of the same veterinarians, who are consulted if there is any doubt about care/products to be administered etc;
- That her horses would never receive any medications in the week prior to any competition, and that she was *“also diligent and respectful of withdrawal times and evaluating the horses so that if a substance is necessary, then the horses would not attend the competition”*;
- That she would also *“consult with our veterinarian prior to administering any substance to our horses..... if rest is needed and if there are any withdrawal times for that substance. I can call the USEF (US federation drug division) directly or check with the veterinarian.”*
- That her stables kept a daily calendar book of all the activities in relation to the horses, everything from the medications and treatments to training hours and distance completed, how they looked and felt, and any other information that would be useful in these records for each horse.. In addition, she stated she had duly presented all such records for each horse in the APR's submission;
- That every support personnel working at the farm was an FEI registered rider, thus they were fully aware of the EADCMRs;
- That they had also recently completed a national crash course on this whole area of anti-doping education;

- Before starting to work at the farm, careful instructions and education was given to all employees, to safeguard that all the above procedures would be followed.

26. In relation to the PR, the APR submitted that:

- *“Alex Champoe is a disciplined and dedicated young rider with a bright future in the equestrian world who is but the victim of the trainer’s mistake.*
- *That Alex works at our stable full-time. She helps with everyday care, training and competing the horses. She is not responsible for purchasing feed, supplements, feeding or training protocols. She works under supervision and with Gold Medal Farms established programs.*
- *That Alex Champoe represents what we should hope all young riders will be and obtain throughout their careers. She promotes horse welfare and holds herself to high standards. Much higher morals than those who intentionally dope their horses. She did not know that the product was any different than what is normally used, and she did not purchase the cream. She plays a large role in the success of the horses, but she does not hold the responsibilities for the daily and competition regime.”*

27. The APR included a witness statement dated 26 November 2021 at page 31 of her submission brief⁴ to the FEI from a colleague that she worked with, lived with and travelled with for more than 13 years, and the following comments were submitted from this witness:

- *“Valerie holds many positions at home, with the horses, and within the national and international endurance federations. She burns the candle at both ends and is endlessly trying to make forward progress at home, at the stable, and within our sport of endurance. There are not many people who have devoted so much of their life to making advances and aiming to the betterment of the sport. It is also a rare privilege to know and work with someone with over 50 years of experience in our sport.”*
- *“Valerie has always put her horse’s welfare above the competition. For herself, and everyone she has mentored and worked with along the way, achieving the top goal with a sound horse trumps any victory that is taken, not earned, through cheating. The real satisfaction comes from knowing that all the hard work training and good care takes the horses to the top level. I have witnessed on many occasions Valerie retiring, not starting, or giving her horse to someone else whose horse was not able to compete. She selflessly contributes to building our sport of endurance in the United*

⁴ FEI Response dated 28 April 2022, Exhibit 4 (Submission of the APR 3 December 2021).

States, especially in bringing up the young riders. Giving opportunities to so many young riders that would not otherwise have the opportunity."

- In addition, the witness also provided feedback about the following and stated that:
- *"Alex Shampoe has grown into a skilled and sensitive young rider. Her number one concern is always the horse, and I can personally attest to the occasions where she has stopped or decided at home that the horse didn't feel right and should not go to the race. I am very selective about who I would let ride my own horse. Alex Shampoe is one of those very few people. I admire her dedication, her work ethic, and her capabilities. I am very pleased to have been part of helping her achieve top goals this year, and I know that she will continue to represent the sport of endurance how each of us would hope".*
- In relation to the use of the Capsaicin the witness also explained that:
- *"During the competition, we massage the horse's hamstrings and hind quarter muscles to help keep them loose, most often we do not have any muscle tightness, but we like to make sure, especially in the sandy rides. We had a young lady that rode one of our horses and began to crew after she was finished. Since there were only 5 of us, and four of us were riding, there was very limited crew, therefore once the shorter distances were finished, we started to crew the longer distance horses. During each hold, we gave the job of rubbing/massaging the horses hind quarters to the young lady. We have the cream that we normally use to keep from irritating the skin in our crew box, unknowingly the roll-on that we had with us had capsaicin in it, while the gel form did not. It was never the intention to use a product with a banned substance, it was by mistake that it was purchased."*

Submission of the PR:

28. The PR also admitted the ADRV once the APR had found the source of the Capsaicin. The PR explained in her submission⁵ that:
- She had known the APR since 2019, rode for the APR and qualified for the Young Rider World Championships with one of the APR's horses;
 - The PR also stated that *"Valerie's requirement for young riders is that in order to ride and compete her horses, we must be involved in their care and training. She aims to build young riders in all aspects, and that means not just being a jockey who shows*

⁵ FEI Response dated 28 April 2022, Exhibit 5 (Submission PR 7 February 2022).

up to hop on the horse for the race. My job at Gold Medal Farms is a rider during training. I do arena work with the horses that I compete, as well as their on-trail training. I communicate how the horses feel each day to help determine how they will train for the rest of the week, and to help catch any inconsistencies before they become an issue."

- That she was involved in the daily care and training of the horses at the farm and was aware of any treatments that the horses might receive;
- That the products the farm used were always the same. The daily products have been used for over 10 years and she was confident that none of these products contained any prohibited substances especially considering the amount of drug testing carried out on horses at both national and international events;
- The PR explained that if and when a new product was to be used, the ingredients were checked to see if any of these products that would test positive or contained banned substances;
- The PR confirmed that any treatments carried out on the horses were done so under the care, advice, and guidance of a veterinarian;
- The PR also confirmed that she would consult with the farm veterinarians, one of whom is based in Florida and was a four-star FEI vet, and another veterinarian based in Virginia, both of whom were team veterinarians at previous FEI championships. She stated that both veterinarians were very knowledgeable and well versed in withdrawal periods and categories of prohibited substances;
- In addition, the PR confirmed that she had the FEI Clean Sport app where she could search for any queries on anti-doping and prohibited substances;
- The PR stated that any medications or treatments administered, were only administered when a horse would have sufficient out of competition time to avoid competing within the withdrawal time frame;
- That during any competitions, the horses at their yard did not receive medical treatments, however if something urgent arose, then the foreign veterinarian, and the head veterinarian would be consulted to decide the best course of action in that situation;
- That the crew box they took to each competition was packed prior to leaving for each competition, and it was checked to make sure that only the products in this box were free from any prohibited substances. After each competition they

would remove all the contents, clean them, sanitize the crew box, and then repack the box for the next competition;

- That all the feed and water buckets were cleaned daily and sanitised weekly with bleach to make sure that they were clean and if any oral medications were given to prevent trace amounts from contaminating future feedings;
- That during the competitions the feed and water buckets are cleaned daily. In endurance, the PR confirmed that there are no stables at all for the events in the United States, so the horses would be on high ties to the trailer, or in small paddocks next to the trailer;
- That anyone would be able to walk by and drop something, but she was diligent about making sure that nobody except the grooms fed the horses, to limit the persons that are involved in feeding. These actions gave them extra confidence to know what the horses are consuming;
- That at the barn if a horse needs phenylbutazone, or flunixin meglumine they would make sure to either use gloves or wash their hands afterwards before touching any of the other horses to make sure no cross contamination occurred, especially in the week leading into a competition;
- That all training, treatments, and medications given were recorded in a logbook, so that they would know when each horse had a treatment or medication. These logs were referenced by date to make sure that if any medication was given, it was done so within the proper withdrawal timings, allowing additional time for the medications that accumulate in the system when administered for a period time;
- That when attending at competitions they keep the horses in their area, and would not let them mingle, nose with other horses or share feed from other competitors. But, since the sport required that they would be in close proximity throughout the entire competition to other horses, it was impossible to eliminate all possibilities of contamination, especially since they camp in fields a lot of the time. The PR also stated that a lot of these places were public, so you would not always know who was there before. The best practice under these facilities was that they made sure that they cleaned and sanitised where they could in these public areas;
- The PR also confirmed that she has completed two anti-doping courses as well as a refresher crash course again this past year prior to going to the Young Rider World Championships. She confirmed she also read the documents that were

available on the FEI Clean Sport app on anti-doping and horse welfare in addition to reading and reviewing what USEF and the FEI published on anti-doping and horse welfare;

- That she always put her equine partner first. If the horse did not feel 100% well, they would withdraw the horse from the competition, or they would not attend the competition because the welfare and well-being of any horse she rode trumped completing any competition;
- Finally, the PR also stated that *“Valerie (the APR) has taught me how to manage the horses and how much hard work goes into caring for, training, and competing top level equine athletes. Her horses have the best care and are competed based on their abilities. This whole experience has been devastating to me, to my friends and family because they all know that it was an accident. We do our best to make sure that we keep our environment at the stable and the competitions as well as the horses clean. Competing at the top well, knowing that our horses are clean, and knowing that our horses are physically and mentally fit, is much more rewarding than doing so knowing that rules were broken, or the horse's welfare was compromised. For me, my horse will always come first, and I am sure that I will be even more diligent in the future than I already am in making sure that everything is triple checked before it is used, even if we use it all the time.”*

Submission of the FEI:

29. In respect of the proceedings against the PR and APR - Article 2.1 and 2.2 of the EADRs, the FEI's position can be summarised as follows:
- that according to Article 3.1 of the EADRs, it was the burden of the FEI to establish all of the elements of the EADR violation charged, to the comfortable satisfaction of the FEI Tribunal;
 - The FEI noted that the elements of an Article 2.1 violation of the EADRs were straightforward, that *'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'*. Instead, it is a *'strict liability'* offence, established simply by proof that a Banned Substance was present in the Horse's Sample;
 - That the analysis of the A Sample taken from the Horse at the Event confirming the presence of Capsaicin constituted sufficient proof of the violation of Article 2.1 of the EADRs;

- In addition, the FEI noted that the use of a Banned Substance is a violation of Art 2.2 EADRs at any time;
- That the PR and the APR admitted the unintentional Use of the Capsaicin. Neither the PR nor the APR therefore disputed the presence of Capsaicin in the Horse's Sample, or the Use of Capsaicin was done so by mistake;
- Accordingly, the FEI submitted that it has discharged its burden of establishing that the PR and the APR have violated Article 2.1 and 2.2 of the EADRs.

30. The presumption of Fault:

Regarding the presumption of fault, the FEI referred to Article 10.2 of the EADRs which states that a PR/APR with no previous doping offences who violates Article 2.1 of the EADRs is subject to a period of Ineligibility of two years, unless they are able to rebut the presumption of fault. The FEI noted that in order to do this, the rules specify that the PR/APR must establish to the satisfaction of the FEI Tribunal (it being their burden of proof, on the balance of probability⁶) the following factors:

- How the Prohibited Substances (here, Capsaicin) entered into the horse's system; and
- That the PR/APR bears No Fault or Negligence for that occurrence, i.e., that they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had administered to the horse (or the horse's system otherwise contained) a Banned Substance (in which case, the presumptive two-year period of Ineligibility is eliminated completely pursuant to Article 10.4 of the EAD Rules); or
- That the PR/APR bears No Significant Fault or Negligence for that occurrence (in which case, the presumptive two-year period of ineligibility may be reduced by up to 50%, depending on her degree of fault, pursuant to Article 10.5 of the EADRs).

The FEI confirmed that if the PR/APR failed to discharge this burden, the presumption of fault would stand, and therefore the two-year ban under Article 10.2 would be applied.

⁶ Art 3.1 EADR

31. The 'threshold' requirement: proving how the Capsaicin entered into the Horse's system:

- The FEI submitted that the EADRs stipulated, and the jurisprudence of the FEI Tribunal and the CAS were very clear: that it was a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR and the APR were able to prove how the substance entered into the Horse's system;
- That this requirement must be strictly applied because without such proof it would be impossible to assess the PR/APR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Prohibited Substances in the Horse;
- The FEI submitted in this context that the PR/APR must provide clear and convincing evidence which demonstrated how the Capsaicin entered the Horses' system;
- The FEI confirmed that the PR/APR had clearly provided in the evidence submitted how Capsaicin entered the Horse's system;
- Consequently, the FEI submitted that the PR/APR established how the Prohibited Substance Capsaicin entered the body of the Horse and therefore the "threshold requirement" was met in this case.

32. Fault/Negligence for the rule violation

- In terms of the degree of Fault and Negligence by the PR/APR for the ADRV, the FEI noted that the starting point of any evaluation was the "personal duty" of the PR/APR following from Article 2.1.1 of the EADRs, i.e., a personal duty to ensure that "no Banned Substance is present in the Horse's body";
- Furthermore, the FEI noted that it was necessary to look at the definitions of *Fault*, as defined in Appendix 1 of the EADCMRs:

"Fault is any breach of duty or any lack of care appropriate to a particular situation ...the degree of risk that should have been perceived by the Person Responsible and the level of care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk... In assessing the Person Responsible's degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible's departure from the expected standard of behaviour." (Emphasis added)

“No fault - The Person Responsible establishing that he or she did not know or suspect and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse’s system otherwise contained, a Banned or Controlled Medication Substance.”

“No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EADCM Regulation violation... the Athlete must also establish how the Prohibited Substance entered the Horse’s system.”

- The FEI also highlighted that Banned Substances should never be found in a competition horse, as they were substances with no legitimate use with a high potential for abuse⁷. It was the PR’s/APR’s personal duty to ensure that no Banned Substance was present in the Horse’s body;
- The FEI submitted that for No Fault or Negligence to apply, pursuant to the Definition of No Fault or Negligence, the PR/APR had to establish that they did not know or suspect and could not reasonably have known or suspected even with the exercise of utmost caution, that they had administered to the Horse, or the Horse’s system otherwise, a product that contained, a Banned Substance. For obvious reasons, in accordance with the above definitions and Article 10.5 of the EADRs, No Fault or Negligence cannot be applied in the case at hand;
- In addition, the FEI explained that for No Significant Fault or Negligence to apply, pursuant to the Definition of No Significant Fault or Negligence, the PR/APR must establish, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, that their fault was not significant in relation to the EADR violation. The FEI was of the opinion that No Significant Fault or Negligence was applicable in this case.

33. Category of Fault/Negligence

The FEI furthered that in order to determine which category of fault or negligence was applicable in a particular case, previous caselaw at the Court of Arbitration for Sport (the “CAS”) considered it helpful to analyse both the objective and the subjective levels of fault. The FEI noted that while the objective element describes what standard of care could have been expected from a reasonable person in a

⁷ Veterinary Regulations Article 1055.

given situation, the subjective element describes what could have been expected from that particular person, with regard to his/her personal capacities (CAS 2013/A/3327 & 3335; CAS 2016/A/4416);

The FEI has carefully examined the facts of the case at hand and similar case law. In order to decide on the level of fault, the FEI referred to Court of Arbitration for Sport (the "CAS") case of Marin Cilic v ITF⁸, where the different degrees of level of fault or negligence were evaluated.

In the introduction of the case the Panel summarises:

"1. The decisive criterion based on which the period of ineligibility shall be determined within the applicable range of sanctions is fault. There are three degrees of fault which can be applied to the possible sanction range of 0 – 24 months: (a) significant degree of or considerable fault, with a sanction range from 16 to 24 months, and a "standard" significant fault leading to a suspension of 20 months; (b) normal degree of fault, with a sanction range from 8 to 16 months, and a "standard" normal degree of fault leading to a suspension of 12 months; (c) light degree of fault, with a sanction range from 0 to 8 months, and a "standard" light degree of fault leading to a suspension of 4 months. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities. The objective element should be foremost in determining into which of the three relevant categories a particular case falls. The subjective element can then be used to move a particular athlete up or down within that category. In exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however.

2. An athlete can be reasonably expected to follow all of the following steps: (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label with the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product, in the following circumstances: (a) for substances that are

⁸ CAS 2013/A/3327 Marin Cilic v. International Tennis Federation (ITF) & CAS 2013/A/3335 International Tennis Federation (ITF) v. Marin Cilic, award of 11 April 2014 (operative part of 25 October 2013)

prohibited at all times (both in and out-of-competition), because these products are particularly likely to distort competition, and (b) for substances prohibited in-competition only, when the prohibited substance is taken by the athlete in-competition.

4. Matters which can be taken into account in determining the level of subjective fault can for example be: an athlete's youth and/or inexperience; language or environmental problems encountered by the athlete; the extent of anti-doping education received by the athlete (or the extent of anti-doping education which was reasonably accessible by the athlete); any other "personal impairments" such as those suffered by (i) an athlete who has taken a certain product over a long period of time without incident; (ii) an athlete who has previously checked the product's ingredients; (iii) an athlete who is suffering from a high degree of stress; (iv) an athlete whose level of awareness has been reduced by a careless but understandable mistake".

Furthermore, the FEI noted that the Cilic case panel stated that

"At the outset, it is important to recognise that, in theory, almost all anti-doping rule violations relating to the taking of a product containing a prohibited substance could be prevented." "The athlete could always (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label with the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product".⁹

34. Factors to determine the level of Fault/Negligence

The FEI also stated that whilst each case will turn on its own facts, there are some examples of matters which can be taken into account in determining the level of fault¹⁰, *(i) an athlete who has taken a certain product over a long period of time without incident; (ii) an athlete who has previously checked the product's ingredients; (iv) an athlete whose level of awareness has been reduced by a careless but understandable mistake.* In the totality of the circumstances, and considering the above explanations, the FEI was of the opinion that the following are mitigating circumstances should be considered in these proceedings:

- The FEI submitted that the APR had used the same arnica cream over a very long period of time (30 years), without any incident of AAFs. The

⁹ Cilic para 74.

horses of the APR's farm had been tested over hundred times both at national and international level. She was previously assured that such cream was allowed to be used and she checked any new products both on the FEI Clean Sport app, directly with USEF and with her veterinarians;

- Due to the long-term use of this cream, the APR's level of awareness was naturally reduced, and she therefore made this mistake. Both the PR and APR have professional and effective preventive procedures in place both at home and at the events they attend. The products used at the farm had always been the same and had been used for a long period of time (over 10 years);
- All the feed was purchased from reputable sources; whereby any new product would be carefully checked, and ingredients were checked against the prohibited list with the farm veterinarians. Any medical treatment of the horses was carried out under veterinary care, advice, and guidance only, with detailed veterinary records being maintained;
- In addition, the FEI noted that logbooks of each horse were completed on a daily basis containing all details from training of the horses, the horses' condition, feed given, supplements and treatments, if any;
- At the events the PR/APR took great caution to avoid contamination, by adhering to strict cleaning and disinfection procedures; limiting the horses' contacts with unknown horses/spaces; meticulous planning by packing and re-packing the travel box containing feed, supplements, and gear. In the context of precaution and prevention, those procedures had proven to be both professional and effective to avoid an AAF;
- the FEI confirmed that the PR/APR would carry out all the checks that are expected from them, such as the following: *(i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label with the list of prohibited substances, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product.*
- The FEI stated that by virtue of the thorough procedures and precautions taken on a daily basis, which have proven to be very effective over the years, they agreed that the PR/APR made the error leading to an EADR violation by simply presuming it was the same product that the APR bought albeit in another format, and that product was then included in the daily care of the horses.

35. Standard of Care

The FEI submitted that the standard of care provided by the APR given her great experience in the sport was naturally higher than the standard of care provided by the PR. However, both the PR/APR were well aware of all the necessary procedures required by the FEI rules and regulations and followed such requirements strictly. The FEI also noted that duty of care expected was increased on such a high performing farm, especially for the APR given her experience, but also on the PR given her success in the sport lately.

With regard to the PR, the FEI noted that despite her young age, she had been educated on several occasions in anti-doping, both by USEF and by the APR. She was well aware of what was expected from her and was therefore very cautious in her daily work with the horses. The APR had further taught all the girls working at the farm about, anti-doping, horse welfare, training and grooming, and how important the procedures are in order to take the best possible care of the horses and that the welfare of the horse always comes first.

The FEI submitted that in relation to the objective element to assess the standard of care expected from a reasonable person in a given athlete's situation, and the subjective element to be expected from that particular athlete, with regard to her personal capacities, the FEI's opinion was that such expectations were met by the PR/APR, in a general context considering the vigilant procedures in place.

However, the FEI furthered that in relation to the particular purchase of a new, but similar product, namely the roll-on version of the ointment, the APR should have checked the full label of ingredients against the prohibited list. Also, the FEI submitted that the PR should have checked the new roll-on product before it was included in the daily care of the horses. In this way, the violation could have been avoided. Unfortunately, this simple step was missed, due to all the reasons set out in the above paragraphs.

36. Level of Fault

The FEI recognises that the objective level of fault is in the light range since the behaviour was the result of human error, and was not the result of intentional, imprudent or reckless behaviour. Also, the subjective level of fault was in the FEI's opinion in the light range due to the naturally reduced awareness following years of using the same product, being tested over and over again with no AAFs being returned and having strict procedures in place with everyone working with the horses and on-board with the same procedures, level of care and diligence.

Both the PR/APR were in a comfortable position to feel assured about the success of their procedures. The FEI submitted that it was merely a case where the level of awareness was reduced by a careless but understandable mistake. In totality of the circumstances, the FEI recognised that this was an honest mistake, despite being foreseeable, and carried a very low level of fault and negligence the PR and the APR.

37. In the case of No Significant Fault or Negligence in accordance with Article 10.6.2 EADRs, the applicable period of ineligibility can be reduced to one half of the otherwise applicable sanction. Therefore, the starting point is 12 months period of ineligibility, and there was no applicable ineligibility period between zero and the 12 months, thus, the lowest range for no significant fault was 12 months for Banned Substance cases.

38. **Degrees of Fault and Proposed Sanctions:**

In order to apply the principles of the World Anti-Doping Code (the "WADC") and the *Cilic case*' fault level and evaluation into the equine rules, the following ranges shall be applied:

- Significant degree of or considerable fault: 20-24 months
- Normal degree of fault: 16-20 months with a standard degree of fault of 18 months (i.e., the suspension in the acceptance of consequences)
- Light degree of fault: 12-16 months

As a consequence, the FEI was satisfied that the both the PR/APR established that they bore no significant Fault or Negligence for the EADR violation. The FEI submitted that in the totality of the circumstances the PR/APR's the level of fault was in the light range, namely from 12-16 months ineligibility period. However, the FEI requested the assessment of such range to be imposed on the PR/APR at the discretion of the Tribunal.

The FEI also requested that the Provisional Suspension served by the PR/APR to be credited against the imposed Ineligibility Period in accordance with Article 10.10.4 of the EADRs. Finally, the FEI stated they appreciated the prompt admission and great cooperativeness from both the PR/APR.

39. **Disqualification of Results**

The FEI referred to Article 9 of the EADRs where it states that *'in connection with a Test in a given Competition automatically leads to the Disqualification of the result of the*

PR and Horse combination obtained in that Competition with all resulting Consequences, including forfeiture of any related medals, points and prizes'.

This rule applies even if the period of Ineligibility is reduced or eliminated under Article 10 of the EADRs, e.g., on the basis of No (or No Significant) Fault or Negligence. Further, since this is a case involving Prohibited Substance occurring during or in connection with an Event, in order to safeguard the level playing field, the FEI may disqualify all of the PR's individual results obtained in that Event, with any and all Horses with which the PR competed, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article 10.1.2 EADRs.

40. Fine and Costs

The FEI referred to Article 10.2 of the EADRs and provided that for a violation of article 2.1 and/or 2.2 of the EADRs, a PR/APR shall be fined up to fifteen thousand (15'000) CHF and appropriate legal costs shall also be imposed.

The FEI respectfully requested that a fine of three thousand (3'000) CHF be imposed on each of the PR and the APR, and that each of the PR and APR be ordered to pay the legal costs that the FEI has incurred in pursuing this matter, namely one thousand five hundred (1'500) CHF.

V. Summary of the Hearing 27 July 2022 (9pm CET)– Position of the Parties

41. Preliminary issues

At the outset Hearing, the Tribunal acknowledged receipt of the submission received by the APR on 27 July 2022 and granted to FEI 14 days to consider the submission of the APR in detail and respond to same.

42. Submissions of the APR- opening statements

42.1 The APR opened the proceedings and confirmed that the error occurred on her side insofar as she had failed to read the label on an arnica cream she had used for a very long time as they had changed the packaging.

42.2 The APR also stated that she did not believe that the banned substance was ever present in the horse's body and that the AAF in the urine sample was a contaminated collective sample. Furthermore, that the ingredient in this cream was an inactive ingredient with no pharmaceutical or physiological affect, as it was a sales tactic to make people think this was a better product than it was.

42.3 The APR also acknowledged that she was too complacent and did not notice the differing of ingredients as the cream was not available in the usual form. In using an inactive ingredient, she argued there was no difference between using this cream or the other type of product. She believed it was a contaminated collection and had caused no influence on the horse or its performance and that her scientific witness Dr Harrison would attest same.

42.4 The APR also submitted the sanction was very severe for a slight mistake and she was shocked that slight negligence should not amount to 18 months and 4500 CHF penalty. She queried why were the FEI punishing good people and whilst she understood that the FEI want to be strong on enforcing anti-doping, in doing so they were driving innocent people away from the industry. Notwithstanding her views, she also wished to thank the FEI for their help throughout this process to date.

42.5 The PR also spoke briefly at hearing and agreed with the APR and confirmed the same arguments.

43. Submissions of the FEI- opening statements

43.1 The FEI noted that this case arose from an unfortunate mistake by the APR/PR. The FEI explained that the goal for this hearing was so that the parties felt their side of the story was thoroughly explained. However, the substance in question is a banned substance thus we are dealing with the standard 2 years suspension by way of a sanction.

43.2 The FEI also noted the definition of a Trainer under the Endurance Rules and that in Endurance *'the "Trainer" is defined as the person who is in charge of the preparation of the Horse both physically and mentally for Competition. Prior to the Event, the Trainer is responsible for the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate veterinary care and the administration of therapeutic substances under veterinary advice.'* (Article 800 of the Endurance Rules)¹¹ Due to the above specificities of the Endurance discipline with Trainers making relevant decisions about their horses, a Trainer is always regarded as an Additional Person Responsible in accordance with Article 118.3 of the General Regulations¹².

43.3 The FEI also explained that when they notified the PR/APR of a violation of Article 2.1 and 2.2 of the EADRs based on the Laboratory's AAF of Capsaicin in the Horse's Sample collected at the Event, they admitted the reason for this finding promptly and

¹¹ 11th Edition, effective 1 January 2021.

¹² 24th edition, 1 January 2020, updates effective 1 January 2021.

explained it was an honest mistake. Notwithstanding that this may have been an honest mistake, the FEI were bound by the rules and therefore must assess the case based on the level of fault. In this regard the FEI reiterated their submissions as outlined at paragraphs 29-40 of this Decision. As such the FEI was of the opinion that No Significant Fault or Negligence can be applied in this case with a sanction level between 12 months to 2 years.

43.4 In respect to the scientific evidence presented at hearing, the FEI noted that both the LRC and the FEI's external pharmacological expert expressed that that the possibility of contamination was highly unlikely. The reason for their conclusions was due to the following explanations from the LRC and the FEI:

- the conjugation study showed that the capsaicin was essentially present in "A" Urine Sample 5606534 in the conjugated (or metabolised) form rather than the free form, suggesting the capsaicin should have gone through the relevant horse body system. In other words, the possibility of contamination of "A" Urine Sample 5606534 with free capsaicin (from the capsaicin-containing products such as ointments and creams) was highly unlikely;

- that the Capsaicin roll-on/cream used topically could potentially result in the positive finding of 1 ng/mL in the horse's urine 5-6 hours after application. This indicated that capsaicin could penetrate a horse's skin and enter the circulatory system. As such it was deemed as highly unlikely that the roll-on applied topically on the body of the horse be transmitted to the tail and then into the urine sample as contamination, without passing through the body of the horse. This was because the urine subject sample contained almost exclusively a capsaicin conjugate metabolite, which was detected as capsaicin in the hydrolyzed subject sample. A metabolite of capsaicin indicates that capsaicin has passed through the horse's body and undergone a biotransformation to the metabolite. Therefore, they deemed it was highly unlikely that the urine has been contaminated in this case which also supported the explanation provided by the LRC.

43.5 The FEI also referred to the similar cases and circumstances at the 2008 Beijing Olympic games where four horses and their riders were suspended from Olympic show jumping due to positive doping/medication control tests that indicated the presence of Capsaicin in each horse. The substance was banned at the Olympics because it could also serve as a mild stimulant. These cases were considered in the low range level of fault also.

43.6 The FEI also acknowledged that mitigating factors existed in this case such as the long and habitual use of the same cream, prudent checks of all the feeds, high level of

welfare and care of all the horses stabled at the APR's premises, a good track record in any disciplinary history and as such they noted this was an honest mistake with a low level of fault on the part of the PR/APR.

Submissions of the witnesses for the PR/APR:

44. First witness: Ms Russell

- The FEI opened the questioning and asked the witness who was in attendance at the Event, to confirm the sample collection procedure was performed as normal. Ms Russell confirmed this was the case. In summary the witness confirmed that she did not see any irregularities in the testing procedure and collection of sample on the day the sample was taken.

45. Second witness: Dr Harrison

- Dr Harrison opened his testimony and explained that he had concerns about the conjugation of capsaicin which occurred in the sample due to poor collection technique. Dr Harrison believe that if dihydrocapsaicin was not identified in the urine sample, then the test was positive due to sample contamination. Therefore, it was his opinion that capsaicin was never present in the Horse but only in the urine of the Horse and that everything in the urine sample was from superficial contamination.
- Dr Harrison also raised another argument, where he claimed that the protein and enzymes naturally occurring in the urine of the horse could have caused the Capsaicin to conjugate. This was one of the main question-marks requiring clarification discussed during the hearing. The FEI asked Dr Harrison some questions to further understand the science behind his opinion/evidence that conjugation as opposed to metabolism occurred. He confirmed that conjugated was not the same as metabolised, but the FEI noted that their laboratory differed in their opinion on this and confirmed that it was found in the metabolised form and not the pre conjugated form.
- Dr Harrison disagreed with the FEI's position on the conjugation as opposed to metabolised argument and stated that the exact metabolites were not identified by the FEI as such no nameable metabolites existed. He furthered that conjugated Capsaicin would be too large to filter through and that the word conjugation meant to bind with protein. He stated that equine urine had a significant amount of protein and calcium etc, which when mixed together would bind the Capsaicin in the urine but not into the system of the horse itself.

- The FEI disagreed with these arguments and noted that according to their scientific evidence, from the FEI's perspective it was found in the metabolised form. Dr Harrison counter argued these assertions and stated that if it had metabolised it would have been possible to identify the actual metabolites which they did not, no nameable metabolites were produced according to Dr Harrison.
- The FEI asked Dr Harrison what his experience was with Capsaicin, and he stated that he had used products containing this substance over the years and had no issues. The FEI stated that conjugated or metabolised were the same thing and they did not understand his opinion in this regard. Dr Harrison argued that the scientific results the FEI had suggested were not possible, and to solve this issue he proposed that a compound study should be carried out by an analytical chemist on the cream used by the APR.
- The FEI stated that they had not seen any written statement on the new arguments presented by Dr Harrison, and as a result they have been unable to ask their scientists about these opinions and would need detailed evidence from Dr Harrison to check with their scientific experts .
- The Panel commented at this point and confirmed that all the scientific material being presented at the hearing was new and in the interests of fairness the FEI would need the opportunity to consult with their experts to prepare a response. The Panel granted the FEI more time to consider these new scientific arguments submitted by Dr Harrison. The Panel also spoke to the APR and noted that it would be her decision whether to further test the arnica product and that if this exercise could be carried out comparatively easily and without huge expense, it may be of some assistance.
- The FEI suggested that it would be helpful to have bullet points from Dr Harrison to explain his scientific arguments and the Tribunal asked him to prepare a short brief on this matter. Dr Harrison agreed and also queried whether the University of Kentucky would be a suitable laboratory to test the product, and if so, he would ask them to give us an answer within a week. The Tribunal agreed this was all in order and as such concluded the witness phase of the hearing.
- The Tribunal granted 2 weeks from the date of the hearing for any additional material and information regarding the testing from the University of Kentucky from Dr Harrison. None of the parties had anything further to raise at this stage and the proceedings were adjourned. Whilst it was agreed all Parties were awaiting further briefs and evidence to be submitted as a result of the discussions at hearing, the Tribunal confirmed there would be no need to reconvene these

proceedings orally and the Decision would be issued once all the new evidence can be reviewed.

Summary of additional correspondence arising from directions issued at the oral Hearing dated 27 July 2022:

46. On 12 August 2022, the PR/APR submitted the additional report of Dr Harrison to the Tribunal.
47. On 16 August 2022, the FEI objected to this report being submitted since it was filed after the deadline imposed by the Tribunal, (the deadline of 14 days as of the hearing date 27 July, was on 10 August 2022).
48. On 16 August 2022, the APR replied to the FEI's objection and stated that Dr Harrison's report was submitted within 14 business days and that some technical issues occurred when the report was submitted the report at the earlier date.
49. On 17 August 2022, the Tribunal issued an email to all Parties and confirmed that they had considered the recent submissions from Dr Harrison and subsequent issues regarding time delays of same between the parties. However, the Tribunal noted that taking into account that the PR and APR are subject to an interim suspension, and any delay in resolving this matter ultimately prejudices them, and not the FEI, the Tribunal was prepared to consider the material provided by Dr Harrison.
50. Nonetheless, the Tribunal acknowledged that what was anticipated in terms of a submission would be a bullet point summary from Dr Harrison of the matters he raised during the hearing (which the FEI had not had an opportunity to respond to). This was not what Dr Harrison submitted to the Tribunal. However, the Tribunal understood from Dr Harrison's letter that his position was that dihydrocapsaicin must be present in the urine sample for capsaicin to have been absorbed by the horse.
51. The Tribunal further granted the FEI two weeks from receipt of this direction (until 31 August 2022) to respond to the supplemental material submitted and any other matters raised by Dr Harrison during the hearing. If further time is required, the Tribunal requested that the FEI request same as soon as practicable.
52. On 17 August 2022, the APR submitted a further letter from Dr Ian Harrison containing bullet points of references in relation to their previous submissions filed on 12 August 2022 to the Tribunal.

53. On 19 August 2022, the FEI submitted their Third Response in reply to the two submissions of Dr Harrison.
54. On 22 August 2022, the APR noted the FEI'S Third Response, and queried the following:
- Why was there no capsaicin detected in the blood sample?
 - Why was there no dihydrocapsaicin detected in the urine sample?
 - What evidence refutes the possibility of formation of a capsaicin conjugate in the urine sample?
55. On 1 September 2022, the FEI noted the queries raised by the APR, and submitted a further reply from Professor Stuart Paine. The FEI also noted that normally, after a hearing had taken place, there would no further written submissions. However, the FEI agreed to an additional round of scientific submissions in order to clarify Dr Harrison's testimony in the hearing, since such testimony mostly contained completely new information not substantiated by any of the written submissions. However, the FEI noted there were further rounds of additional scientific exchanges, and as a result requested that no further submissions would be allowed in respect of these proceedings.
56. On 2 September 2022, the Tribunal acknowledged receipt of the final scientific expert responses and points raised and also confirmed they would not accept any further evidence or submissions by either party, and the pending final Decision will be based on the papers submitted to date and will be finalised in due course.

VIII. Legal Analysis

Jurisdiction

57. The 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. The PR and APR are members of the United States Equestrian Federation (the **USEF**) which is a member of the FEI, as such the PR and APR are bound by the EADRs. The jurisdiction of the Tribunal is undisputed.

Legal Discussion

58. There was no dispute that the test results showed the presence of Capsaicin. However, as set out above, the Parties focused most of their argument of the question of whether Capsaicin had entered the horse's system. The Tribunal received, and

heard, a considerable volume of complex scientific evidence. The PR/APR's argument was, ultimately, that because the Capsaicin did not enter the Horse's system (which was what Article 2.1 is designed to prevent), its presence in the sample must have been because of some contamination, most likely because the horse urinated on its tail.

59. It is very difficult for the Tribunal to resolve this issue. However, for the reasons discussed below, it is ultimately not necessary.
60. The Use of a Banned Substance is a violation of Article 2.2 of the EADRs at any time. The PR/APR admitted the unintentional Use of the Capsaicin. Importantly, under Article 2.2.2, the success or failure of the Use or Attempted Use of the Capsaicin is irrelevant. In this case, product containing Capsaicin was intentionally used. Whether Capsaicin entered the horse's system is not a defence to this charge. For the reasons discussed above, the PR/APR should have been aware that the product contained a Banned Substance. The Tribunal concludes that the PR/APR breached Article 2.2.
61. The penalties for breaching Articles 2.1 and 2.2 are the same. Given the finding that Article 2.2 was breached, there is no need to determine whether there was also a breach of Article 2.1

The Presumption of Fault

62. The Tribunal also notes that Article 10.2 of the EADRs provides that a PR/APR with no previous doping offences who violates Article 2.2 of the EADRs is subject to a period of Ineligibility of two years, unless he is able to rebut the presumption of fault and in order to rebut such presumption the rules specify that the PR/APR must establish to the satisfaction of the Tribunal (it being their burden of proof, on the balance of probability¹³):
 - i. How the Prohibited Substances (here, Capsaicin) entered into the horse's system; and
 - ii. That she bears No Fault or Negligence for that occurrence, i.e., that she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that she had administered to the horse (or the horse's system otherwise contained) a Banned Substance (in which case, the presumptive two-year period of

¹³ Art 3.1 EADR

Ineligibility is eliminated completely pursuant to Article 10.4 of the EAD Rules); or

- iii. That she bears No Significant Fault or Negligence for that occurrence (in which case, the presumptive two-year period of ineligibility may be reduced by up to 50%, depending on her degree of fault, pursuant to Article 10.5 of the EAD Rules).

The Tribunal notes that if the PR/APR failed to discharge this burden, the presumption of fault stands, and therefore the two-year ban under Article 10.2 of the EADRs applies.

The 'threshold' requirement: proving how the Capsaicin entered into the Horse's system

63. The Tribunal recognises that the EADRs stipulate, and the jurisprudence of the FEI Tribunal and the CAS were very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR/APR proves how the substance entered into the Horse's system.

The Tribunal also notes that this requirement must be strictly applied because without such proof it would be impossible to assess the PR/APR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Prohibited Substances in the Horse.

As confirmed by various CAS panels as well as FEI Tribunal cases, the PR/APR must present facts substantiated with concrete evidence to establish how the prohibited substance entered the Horse's system. Speculation or theoretical possibilities are not sufficient.

In these proceedings, the Tribunal considers that the PR/APR provided clear and convincing evidence to explain how Capsaicin entered the system of the Horse, i.e., via the application of an Arnica roll-on cream to the Horse at the Event.

Consequently, the Tribunal accepts that the PR/APR established how the Prohibited Substance Capsaicin entered the body of the Horse and fulfilled the "threshold requirement" in this case.

Fault/Negligence for the rule violation

64. The Tribunal must also assess the degree of Fault and Negligence by the PR/APR for the rule violation, the starting point of any evaluation is the "personal duty" of the PR/APR following from Article 2.1.1 of the EADRs, i.e., their personal duty to ensure

that “no Banned Substance is present in the Horse’s body”. Furthermore, the Tribunal takes into account the definitions of Fault, as defined in Appendix 1 of the EADCMRs¹⁴ and concludes the following;

- For No Fault or Negligence to apply, pursuant to the Definition of No Fault or Negligence, the PR/APR has to establish that they did not know or suspect and could not reasonably have known or suspected even with the exercise of utmost caution, that they had administered to the Horse, or the Horse’s system otherwise contained, a Banned Substance. For obvious reasons, this article cannot be applied in respect of this case;
- For No Significant Fault or Negligence to apply, pursuant to the Definition of No Significant Fault or Negligence, the PR/APR must establish, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, that their fault was not significant in relation to the EADR violation.

65. The Tribunal notes that in order to determine which category of fault or negligence is applicable it is useful to assess both the objective and the subjective levels of fault. While the objective element describes what standard of care could have been expected from a reasonable person in a given PR/APR’s situation, the subjective element describes what could have been expected from that particular person, with regard to their personal capacities¹⁵.

¹⁴ “Fault is any breach of duty or any lack of care appropriate to a particular situation ...the degree of risk that should have been perceived by the Person Responsible and the level of care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk... In assessing the Person Responsible’s degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible’s departure from the expected standard of behaviour.” (Emphasis added)

“No fault - The Person Responsible establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse’s system otherwise contained, a Banned or Controlled Medication Substance.”

“No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EADCM Regulation violation... the Athlete must also establish how the Prohibited Substance entered the Horse’s system.”

¹⁵ CAS 2013/A/3327 Marin Cilic v. International Tennis Federation (ITF) & CAS 2013/A/3335 International Tennis Federation (ITF) v. Marin Cilic, award of 11 April 2014 (operative part of 25 October 2013) ; CAS2016/A/4416 FIFA v Confederación Sudamericana de Fútbol & Brian Fernández award of 7 November 2016 (operative part of 8 July 2016).

66. The Tribunal has considered all the submissions and evidence presented to date both in writing and at the hearing on 27 July 2022 and deems that no significant fault or negligence applies to this case for the reasons detailed below.
67. The Tribunal has carefully evaluated the facts of the case at hand and similar case law. In order to decide on the level of fault, the Tribunal refers to the case of *Marin Cilic v ITF*¹⁶, where the different degrees of level of fault or negligence was evaluated as already detailed at paragraph 33 of this Decision.
68. In addition, the Cilic case panel stated that “At the outset, it is important to recognise that, in theory, almost all anti-doping rule violations relating to the taking of a product containing a prohibited substance could be prevented.” “The athlete could always (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label with the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product”.¹⁷
69. The Tribunal notes that similar to the case at hand, comparisons can be drawn, and criteria can be taken into account from similar particulars, to assist the Tribunal in determining the level of fault,¹⁸ for the present situation. These can be listed as follows: (i) *an athlete who has taken a certain product over a long period of time without incident*; (ii) *an athlete who has previously checked the product's ingredients*; (iv) *an athlete whose level of awareness has been reduced by a careless but understandable mistake*. Taking into account the latter criteria, the similar particulars presented by the PR/APR for the current proceedings, the Tribunal confirms that the mitigating factors detailed at paragraph 34 of this Decision have been taken into account.
70. Consequently, In the case of no significant fault or negligence in accordance with Art 10.6.2 EADRs, the applicable period of ineligibility can be reduced down to one half of the otherwise applicable sanction. Hence, the starting point is 12 months ineligibly period, and there is no applicable period between zero and the 12 months, resulting in that the lowest range for no significant fault or negligence being a 12-month suspension for Banned Substance cases.

¹⁶ CAS 2013/A/3327 *Marin Cilic v. International Tennis Federation (ITF)* & CAS 2013/A/3335 *International Tennis Federation (ITF) v. Marin Cilic*, award of 11 April 2014 (operative part of 25 October 2013) .

¹⁷ Cilic para 74.

¹⁸ Also *DE LA ROCHEFOUCAULD E.*, CAS Jurisprudence related to the elimination or reduction of the period of ineligibility for specific substances, CAS Bulletin 2/2013, p. 18, 24 et seq.

71. In order to apply the principles of the WADC and the *Cilic case's* fault level and evaluation into the equine rules, the following ranges are the standard ranges:
- Significant degree of or considerable fault: 20-24 months
 - Normal degree of fault: 16-20 months with a standard degree of fault of 18 months (i.e., the suspension in the acceptance of consequences)
 - Light degree of fault: 12-16 months
72. The Tribunal concludes that this ADRV, despite being foreseeable, resulted from inadvertent and an explicable mistake.
73. The Tribunal concludes that the PR and APR used a banned substance. Consequently, the success or otherwise of the use of that substance is irrelevant.
74. Furthermore, in the totality of the circumstances, the Tribunal considers that both the PR/APR have established that they bore no significant fault or negligence for the ADRV, and the level of fault is in the light range namely from 12-16 months period of ineligibility and that the minimum penalty of 12 months is an appropriate sanction.
75. The Provisional Suspension served by the PR and APR shall be credited against the imposed Ineligibility Period in accordance with Article 10.10.4 of the EADRs.

The Tribunal concludes that the APR should pay a fine in the amount of **three thousand Swiss Francs (3,000 CHF)** and costs of **one thousand five hundred Swiss Francs (1,500 CHF)**. Given the age of the PR, her lower financial means, and the APR's acceptance that she was principally responsible for the breach, the PR should pay half of the above amounts in respect of both the fine and the costs.

IX. Terms of the Decision

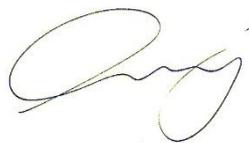
- 1) The Tribunal upholds the charge that the PR/APR violated Article 2.2 of the EADRs.
- 2) The Tribunal makes no finding on the charge that the PR/APR violated Article 2.1.
- 3) The PR shall incur:
 - i. a period of Ineligibility of twelve (12) months. The period of the Ineligibility will be effective from the day of the final decision (The Tribunal also notes that the Provisional Suspension served by the PR shall be credited against the imposed Ineligibility Period);

- 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 Articles 9 and 10.1.2 of the EADRs;
 - iii. a fine in the amount of **one thousand five hundred Swiss Francs (1,500 CHF)**; and
 - iv. contribute **seven hundred and fifty Swiss Francs (750 CHF)** for costs that the FEI has incurred in these proceedings.
- 4) The APR shall incur:
- i. a period of Ineligibility of twelve (12) months. The period of the Ineligibility will be effective from the day of the final decision (The Tribunal also notes that the Provisional Suspension served by the APR shall be credited against the imposed Ineligibility Period);
 - ii. a fine in the amount of **three thousand Swiss Francs (3,000 CHF)**; and
 - iii. contribute **one thousand five hundred Swiss Francs (1,500 CHF)** for costs that the FEI has incurred in these proceedings.
- 5) This Decision is subject to appeal in accordance with Article 13.2 of the EADRs. 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.
- 6) This Decision shall be published in accordance with Article 14.3 of the EADRs.

DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. The Secretary General of the NF of the person sanctioned: Yes
- c. Any other: No

FOR THE FEI TRIBUNAL



Mr. Phillip Cornegé (NZL), One-Member Panel