



## **DECISION of the FEI TRIBUNAL**

**dated 1 February 2010**

**Positive Medication Case No.:** 2009/24

**Horse:** YACKKLE

**FEI Passport No:** 1020N68

**Person Responsible:** Ryuma Hirota

**Event:** CSI 1\*- W Minami Soma, JPN

**Prohibited Substances:** Nandrolone; 5-alpha-estrane-3-beta; 17-alpha-diol

### **1. COMPOSITION OF PANEL**

Mr Philip O'Connor  
Prof. Dr. Jens Adolphsen  
Mr Alberto Hernán Mendez Cañas

### **2. SUMMARY OF THE FACTS**

**2.1 Memorandum of case:** By Legal Department.

**2.2 Summary information provided by Person Responsible (PR):**  
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.

**2.3 Oral hearing:** None: by correspondence.

### **3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

**3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:**

Statutes 22<sup>nd</sup> edition, effective 15 April 2007, updated 19 November 2009 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updated 1 January 2010, Arts. 118, 143.1 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

The Equine Anti-Doping and Medication Control Rules ("**EADMCR**"), 1<sup>st</sup> edition 1 June 2006, updated with modifications by the General Assembly, effective 1 June 2007 and with modifications approved by the Bureau, effective 10 April 2008.

Veterinary Regulations ("**VR**"), 11<sup>th</sup> edition, effective 1 January 2009, Art. 1013 and seq. and Annex II (the "Equine Prohibited List").

FEI Code of Conduct for the Welfare of the Horse.

### **3.2 Person Responsible:** Ryuma Hirota

### **3.3 Justification for sanction:**

GR Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes, in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Medication Control Rules."

EADMCRs Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Prohibited Substance is present in his or her Horse's body during an Event. Persons Responsible are responsible for any Prohibited Substance found to be present in their Horse's bodily Samples."

## **4. DECISION**

### **4.1 Factual Background**

1. YACKKLE (the "**Horse**") participated at the CSI 1\*-W in Minami Soma, JPN, on 5 July 2009 (the "**Event**") in the discipline of Jumping. The Horse was ridden by Ryuma Hirota, who is the Person Responsible in accordance with GRs Art. 118 (the "**PR**").
2. The Horse was selected for sampling on 5 July 2009.
3. Analysis of the urine sample no. FEI-0081701 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("**HKJC**"), by Mr. Colton Ho Fai WONG, Chemist, under the supervision of Mr. David Kwan Kon LEUNG, Head of Racing Laboratory. The analysis revealed the presence of Nandrolone, 5-alpha-estrane-3-beta and 17-alpha-diol (Test Report no 09-0762 dated 15 July 2009).
4. The Prohibited Substances detected are Nandrolone, 5-alpha-estrane-3-beta and 17-alpha-diol. Nandrolone is an anabolic steroid with anabolic and androgenic properties. 5-alpha-estrane-3-beta and 17-alpha-diol are metabolites of Nandrolone. Nandrolone and its metabolites 5-alpha-estrane-3-beta and 17-alpha-diol are "Prohibited

Substances" under the Equine Prohibited List (VR Annex II, the "Equine Prohibited List"), in the class of "Doping". Therefore, the presence of Nandrolone, 5-alpha-estrane-3-beta and 17-alpha-diol in the Horse's sample constitutes an *Anti-Doping* rule violation.

5. No request had been made to administer Nandrolone, 5-alpha-estrane-3-beta or 17-alpha-diol to the Horse, and no medication form had been submitted for any of these substances.

#### **4.2 The Proceedings**

6. The presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the PR by the FEI Legal Department on 6 August 2009.
7. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a preliminary hearing before the FEI Tribunal.
8. The PR did not request a preliminary hearing.

#### **4.3 The B-Sample Analysis**

9. Together with the Notification Letter of 6 August 2009, the PR also received notice that he was entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The PR was also informed of his right to attend or be represented at the identification and opening of the B-Sample.
10. The PR confirmed on 11 August 2009 that he wished for the B-Sample analysis to be performed.
11. The B-Sample Analysis was performed on urine on 13 August 2009 at the HKJC by Wai Him KWOK, Chemist, under the supervision of Emmie Ngai Man HO, Racing Chemist.
12. The PR did not attend the opening and identification of the sample and did not send a representative to the Laboratory. Therefore, Mr Jacky Tsang, Assistant Security Operations Manager at HKJC, witnessed the opening and identification of B-Sample no. 0081701.
13. In his witness statement, Mr Tsang certified that the sealed "B" Sample container "*shows no signs of tampering*" and "*that the identifying number appearing on the sample to be tested by the Hong Kong Jockey Club corresponds to that appearing on the collection documentation accompanying the sample*" (Witness Statement dated 13 August 2009).

14. The B-Sample Analysis of the urine confirmed the presence of Nandrolone, 5-alpha-estrane-3-beta and 17-alpha-diol (Test Report N° 09-0857 dated 24 August 2009).
15. The results of the B-Sample Analysis were notified to the PR on 14 September 2009 through the Japan Equestrian Federation (JPN).

#### **4.4 The Further Proceedings**

16. On 28 September 2009, the PR submitted a statement by himself, along with a statement by his treating veterinarian, Dr. Kozo Takeda. In his statement, the PR contends that he is unable to provide any explanation for the positive test result. He further states that he, along with his groom, who took care of the Horse at the Event, have made significant efforts not to violate FEI regulations. Dr. Takeda, in his statement, contends that the Horse was healthy and that no medication had been administered to it in the six-month period prior to the Event.
17. Following the transmission of the case file to the Tribunal on 6 November 2009, the Tribunal requested more detailed information from the PR.
18. On 26 November 2009, the PR submitted his answers to the FEI Questionnaire for completion by competitors. In the Questionnaire, the PR alleged that "any measures of security were taken in the qualifier games for World Cup held in Japan".
19. On 22 December 2009, the FEI responded to the stable security issues raised by the PR in his 26 November submission. The FEI highlighted that the PR had not previously raised stable security as an issue and in particular had not noted any concerns on the FEI Medication Control Form about the alleged lack of stable security. Further, that according to the FEI Veterinary Regulations, inadequate stable security does not diminish the Person Responsible's accountability for the horse or for the results of Medication Control tests. The PR was invited to further comment on the FEI submission.
20. On 7 January 2010, the PR submitted his comments, providing further details about the stable security issue. The PR explained that he did not mention the alleged lack of stable security on the Medication Control Form because no other riders had raised the issue. The PR reiterated that he could not explain how the Prohibited Substances had entered the Horse's sample.

#### **4.5 Jurisdiction**

21. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EADMCR.

#### **4.6 The Person Responsible**

22. The PR is the Person Responsible for the Horse, in accordance with Article 118 GRs, as he was the rider of the Horse at the Event.

#### **4.7 The Decision**

23. The Tribunal is satisfied that the laboratory reports relating to the A- and B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the HKJC are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of Nandrolone, 5-alpha-estrane-3-beta and 17-alpha-diol, which are Prohibited Substances, in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive finding.
24. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 of the EADMCRs. The Prohibited Substances found in the sample are classified as "Doping" Prohibited Substances.
25. In Doping and Medication cases, there is strict liability as described in Article 2.1.1 of the EADMCRs. When a positive case has been proven by the FEI, the PR has the burden of proof to show that he bears "No Fault or No Negligence" for the positive findings as set forth in Article 10.5.1 of the EADMCRs, or "No Significant Fault or No Significant Negligence," as set forth in Article 10.5.2 of the EADMCRs.
26. In order to benefit from any elimination or reduction of the applicable sanction under Article 10.5 of the EADMCRs, the PR must establish how the Prohibited Substance entered the Horse's body. This element is a prerequisite to the application of EADMCR Article 10.5. Considering the above, the Tribunal finds that the PR's allegations about the lack of stable security are insufficient to demonstrate how the Prohibited Substances entered the Horse's system, since the PR provides no explanation regarding the specific alleged stable security failures and/or how they might have caused the positive test result. To the contrary, as even the PR admits that no other riders raised the issue of a lack of stable security at the Event.
27. Moreover, the Tribunal refers to the FEI Veterinary Regulations cited by the FEI and emphasises that inadequate stable security does not diminish the Person Responsible's accountability for the horse or for the results of Medication Control tests.

28. The PR in every case has an absolute responsibility to ensure that all precautions are taken to be certain that his Horse participates in international competitions without Prohibited Substances in its system.
29. The Tribunal has repeatedly expressed the view that it is the responsibility of competitors to inform themselves of all relevant rules to compete in FEI events and of substances administered to Horses which are destined for participation in international events and to ensure that such Horses do not have any Prohibited Substances in their systems.
30. Accordingly, the Tribunal finds that the PR has acted negligently in performing his duties as competitor and Person Responsible.
31. According to Article 9 EADMCR, disqualification from the Events is automatic when there is a positive finding.
32. According to Article 173.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

#### **4.8 Disqualification**

33. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR from the Event and all medals, points and prize money won at the Event must be forfeited, in accordance with Article 9 EADMCR.

#### **4.9 Sanctions**

34. The FEI Tribunal has decided to impose the following sanctions on the PR, in accordance with Article 169 GRS and Article 10 EADMCR:
  - 1) The PR shall be suspended for a period of **10 months** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective since 6 August 2009, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible to participate in FEI activities through 5 June 2010.
  - 2) The PR is fined **CHF 1'800.-**.
  - 3) The PR shall contribute **CHF 1'500** towards the legal costs of the judicial procedure.

**5. DECISION TO BE FORWARDED TO:**

**5.1 The person sanctioned:** Yes

**5.2 The President of the NF of the person sanctioned:** Yes

**5.3 The President of the Organising Committee of the Event through his NF:** Yes

**5.4 Any other:** No

**FOR THE PANEL**



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**THE CHAIRMAN Philip O'Connor**