**DECISION of the FEI TRIBUNAL**

**dated 14 September 2010**

**Positive Medication Case No.:** 2009/25

**Horse:** CJS GAI FOREST **FEI Passport No:** GBR 42307

**Person Responsible:** Christine Yeoman

**Event:** CEI 3* Euston Park, GBR

**Prohibited Substances:** Ractopamine

## 1. COMPOSITION OF PANEL

Prof. Dr Jens Adolphsen
Mr Erik Elstad
Mr Pierre Ketterer

## 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:** 21 July - Geneva.

**Present:**

For the PR: Ms Christine Yeoman, PR
Mr. Jeremy Dickerson, Counsel for the PR
Mr. James Pheasant, Counsel for the PR
Dr. Mark Dunnett, BSc PhD MchromSoc, IEN (by telephone)
Ms Julie Evans, Consultant Forensic Toxicologist (by telephone)
Mr. Roderick Peter Stanning, Stable Manager
Mr. John Yeoman, Husband of the PR

For the FEI: Ms Lisa F. Lazarus, General Counsel
Ms Carolin Fischer, Legal Counsel

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

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

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

General Regulations, 23rd 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 ("**EADMCRs**"), 1st 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**"), 11th 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: Christine Yeoman

### 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. CJS GAI FOREST (the "**Horse**") participated at the CEI 3* Euston Park, GBR, on 9 August 2009 (the "**Event**") in the discipline of Endurance. The Horse was ridden by Christine Yeoman, who is the Person Responsible in accordance with GRs Art. 118 (the "**PR**").

2. The Horse was selected for sampling on 9 August 2009.

3. Analysis of the urine Sample no. FEI-110062 taken from the Horse at the Event was performed at the FEI approved laboratory, the Laboratoire des Courses Hippiques in Paris ("**LCH**"), by Ms Maëlle Bouscarel, Senior Analyst, under the supervision of Dr Yves Bonnaire, Director of the Laboratory. The analysis revealed the presence of Ractopamine (Certificate of Analysis dated 26 August 2009).

4. The Prohibited Substance at issue in this case is therefore Ractopamine, which is a Beta-Adrenergic typically used as a growth promoter. Ractopamine is a "Prohibited Substance" under the Equine Prohibited List (VR Annex II, the "*Equine Prohibited List*"), in the class of "*Doping*". Therefore, the presence of Ractopamine in the Horse's Sample constitutes an *Anti-Doping* rule violation.

5. No request had been made to administer Ractopamine to the Horse and no medication form had been submitted for this substance.

## 4.2 The Proceedings

6. The presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the PR by the FEI Legal Department on 16 September 2009.

7. The Notification Letter included notice that the PR was provisionally suspended and granted her the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.

8. A first Preliminary Hearing took place on 18 September 2010 by conference call. The PR argued that the test result of the A-Sample analysis was invalid because she had been granted a Medication Form 2 for the administration of Altrenogest to the Horse, and that the Altrenogest had not been detected by the analysis. The FEI argued that the fact that no Altrenogest had been detected by the analysis did not invalidate the positive test result for Ractopamine. Following the Preliminary Hearing, the Provisional Suspension was maintained by the Preliminary Hearing panel.

9. Upon request, the PR received from the FEI on 15 October 2009 various supplemental documents with respect to the A-Sample analysis.

## 4.3 The B-Sample Analysis

10. Together with the Notification Letter of 16 September 2009, the

PR also received notice that she was entitled to the performance of a B-Sample confirmatory analysis on the positive A-Sample. The PR was also informed of her right to attend or be represented at the identification and opening of the B-Sample.

11. The PR confirmed on 21 September 2009 that she wished for the B-Sample analysis to be performed. At that time, the PR further requested that the blood A-Sample, also taken from the Horse at the Event, be analysed as well.

12. On 28 September 2009, the FEI replied to the request to have the blood A-Sample tested, informing the PR that according to the FEI Rules, Article 1019 FEI Veterinary Regulations, 11th edition, effective 1 January 2009, a positive test result may be based on either a positive blood or a positive urine Sample. And that, accordingly, it was irrelevant whether the blood A-Sample was positive or negative. However, the FEI ultimately agreed, as a courtesy to the PR, to discuss her request with the Laboratoire des Courses Hippiques. When the PR's request was made to the Laboratory, the Director of the laboratory, Dr. Yves Bonnaire, advised the FEI that following the FEI standard blood A-Sample screenings for EPO, Reserpine and corticoids (all negative), insufficient A-Sample blood remained to properly perform further tests. In addition, that the remaining blood A-Sample had deteriorated for the most part and that it was highly likely that the blood B-Sample was in a similar, fragile estate.

13. Given the information provided by the laboratory, the Parties agreed that the laboratory would open the blood B-Sample and determine whether or not it was still possible to analyse it. The Parties further agreed that in light of the circumstances, the B-Sample analysis of the urine would be performed with and without hydrolysis for a more sophisticated understanding of the results. Hydrolysis is a process whereby the parent substance is separated from the conjugate and then recovered to confirm the positive Sample. When hydrolysis is performed it is done alongside a scientific control method without hydrolysis for comparison purposes.

14. The B-Sample Analyses were performed on 21 October 2009 at LCH by Ms Mylène Roche, Senior Analyst, under the supervision of Dr. Philippe Plou, Head of Technical Devision.

15. The PR did not attend the opening and identification of the Samples and did not send a representative to the Laboratory. Therefore, Mr Frederic Balssa, Quality Manager at LCH, witnessed the opening and identification of B-Sample no. 110062.

16. In his witness statement, Mr Balssa 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 Laboratoire des Courses Hippiques corresponds to that appearing on the collection documentation accompanying the sample"* (Witness Statement dated 21 October 2009).

17. The B-Sample analysis of the urine, performed with and without hydrolysis, confirmed the presence of Ractopamine. However, the data concerning the urine B-Sample analysis performed without Hydrolysis did not fulfil the AORC criteria for identification. The result of the blood B-Sample analysis was negative (Certificate of Counter Analysis No. 110062 dated 27 October 2009).

18. The results of the B-Sample Analyses were notified to the PR on 6 November 2009 through the British Equestrian Federation (GBR).

### 4.4 The Further Proceedings

19. On 5 November 2009, the PR submitted her explanations for the presence of the Prohibited Substance in the Horse's Sample. According to her submissions, the Prohibited Substance had entered into the Horse's Sample by way of contamination. Specifically, the PR alleged that the Horse had, prior to and after the Competition, received the supplement "Neigh Lox", and that the batch of "Neigh Lox" fed to the Horse prior to the Event had been contaminated with the Prohibited Substance Ractopamine. In support of her allegations, the PR submitted two separate test reports performed by the FEI accredited Laboratory HFL and by Independent Equine Nutrition (IEN), on two Samples of the allegedly contaminated batch of "Neigh Lox" LOT 9B04-408, MFG 2-4-09, EXP 8-2011. The Sample analysed by HFL had been provided by SARACEN, the UK supplier of "Neigh Lox". The Sample analyzed by IEN had been collected by IEN at the PR's stable. Both analyses performed by HFL and IEN on sub-Samples of 3 grams of the respective submitted Sample revealed the presence of Ractopamine in the Samples. The PR further submitted a statement by her stable manager, aiming at establishing the quantity of Ractopamine-contaminated "Neigh Lox" ingested by the Horse. The submission further contained two articles published on the internet, the first by Horse and Hound dated 4 November 2009, according to which SARACEN was recalling the apparently contaminated batch of "Neigh Lox". The second article contained a press release by Kentucky Performance Products (KPP), the US based manufacturer of "Neigh Lox", according to which KPP was aware of the contamination allegations but, having conducted its own first investigations, rejected them as unsubstantiated.

20. Following the submission, on 13 November 2009, a second Preliminary Hearing took place. Following the second Preliminary

Hearing, the Provisional Suspension was lifted on the grounds that the PR had brought forward potentially credible evidence of contamination. Consequently, the PR was provided more time to present scientific evidence on precisely how the Prohibited Substance had entered into the Horse's Sample.

21. The PR, on 7 December 2009, submitted further explanations and evidence in support of her allegation that the Prohibited Substance had entered the Horse's Sample by means of ingesting contaminated "Neigh Lox". The PR's submission further contained various statements and expert reports.

22. By its reply submission dated 1 and 8 March 2010, the FEI submitted two letters of particular importance to this case. The first, from SARACEN, establishing that SARACEN was not involved in the contamination. The second, from KPP, in which KPP admitted a degree of contamination in the concerned batch of "Neigh Lox". The FEI took the position that the PR had established to a certain extent that a specific batch of "Neigh Lox", supplied by SARACEN, had been contaminated with Ractopamine. That she had however not sufficiently established the amount of contaminated "Neigh Lox" ingested by the Horse. With regard to the question of fault or negligence for the rule violation, the FEI argued that the PR had assumed the risk of supplement contamination by choosing to administer "Neigh Lox" to her Horse, particularly since the FEI Competitor's Guide to Doping and Medication Control in Horses (the "Competitor's Guide") warns against the possible contamination of supplements. Further, the PR had not performed the necessary research before using the supplement, as suggested by the Competitor's Guide. The FEI took the position that even if the PR was able to prove contamination by the manufacturer, she had nonetheless shown a certain, low level of negligence by deciding to administer "Neigh Lox" to the Horse and by not following the specific directives of the Competitor's Guide.

23. On 5 May 2010, the PR submitted her final response in this case, including expert reports by Ms Julie Evans and Dr Mark Dunnett of IEN and various witness statements. The PR argued that she had established how the Prohibited Substance had entered the Horse's Sample (by way of manufacturer contamination) and that she did not bear any fault or negligence for the resulting rule violation.

24. The Final Hearing took place on 21 July 2010. During the hearing, the PR gave detailed testimony about the procedures and processes she has in place in order to ensure that her Horses do not ingest Prohibited Substances, including her substantial efforts to avoid contamination when using supplements such as "Neigh Lox". Ms Evans, Expert for the PR, and Dr. Mark Dunnett, IEN,

were heard on questions resulting from the report produced by Mr. Dunnett on behalf of IEN. Following the testimony of the two experts, it was common ground amongst the Parties that the contaminated "Neigh Lox" was more likely than not the cause of the adverse analytical finding in this case.

25. The PR and the FEI thereupon addressed the question of fault or negligence for the rule violation, both referring to the Anti-Doping Code of the World Anti-Doping Agency (the "Code") and various decisions of the Court of Arbitration for Sport ("CAS"). The FEI, relying in particular on the Comments to Article 10.5.1. and 10.5.2. of the 2009 WADA Code and CAS 2005/A/847 H. Knauss v/FIS, argued that the risk of using supplements was allocated to the PR and that accordingly, she bore the risk for even innocent contamination resulting from the use of supplements. Specifically, the FEI, relying on the Comments to Article 10.5.1 of the 2009 WADA Code, argued that sabotage was the only factual scenario that could result in a "no fault" factual finding in favour of the PR and that accordingly, she must be allocated some degree of fault, albeit small, for the anti-doping rule violation. With respect to the PR's precautions taken to avoid using contaminated supplements, the FEI argued that the marketing materials relied upon for "Neigh Lox" were insufficient in and of themselves, particularly since they promised no prohibited substances for race horses and not equestrian horses.

26. The PR conversely, referring to the CAS Advisory Opinion of 2006 issued by CAS upon request of FIFA and WADA and various CAS decisions, argued that the prerequisite of "No negligence no fault" had to be achievable and that a "reasonableness test" had therefore to be applied. She further argued that she had done everything reasonable in her power (short of declining to use supplements) to ensure that the supplement in question did not contain a Prohibited Substance.

### 4.5 Jurisdiction

27. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EADMCRs.

### 4.6 The Person Responsible

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

## 4.7 The Decision

29. The Tribunal is satisfied that the laboratory reports relating to the A-Sample and the B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of LCH are accurate. It is common ground amongst the Parties that Ractopamine, a Prohibited Substance, was detected 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.

30. The FEI has thus sufficiently proven the objective elements of an EADMCRs violation in accordance with Article 3 EADMCRs. The Prohibited Substance found in the Sample is classified as a "Doping" Prohibited Substance and the PR has not contested that classification.

31. Once the violation is proven, the PR may benefit from an elimination or reduction of the sanctions under Article 10.5 EADMCRs. In order to avail herself of the elimination or reduction, the PR has the burden of showing that she bears No Fault or No Negligence for the positive findings under Article 10.5.1 EADMCRs, or No Significant Fault or No Significant Negligence under Article 10.5.2 EADMCRs.

32. As a pre-requisite to the possible application of the defences available to the PR under Article 10.5. EADMCRs, the PR must establish how the Prohibited Substance entered the Horse's system. Under Article 3.1 EADMCRs this is to be established by the PR by *"a balance of probability"* (*"Where these Rules place the burden of proof upon the Person Responsible alleged to have committed an anti-doping or medication control rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability").* The Tribunal finds that the cumulative effect of all evidence in this case is sufficient for the PR to establish by a balance of probabilities that the positive test result was caused by manufacturer contaminated "Neigh Lox". Therefore, the Tribunal finds that the first prerequisite of Article 10.5. EADMCRs is met.

33. With regards to the question of fault or negligence, the Tribunal is of the opinion, in line with the CAS Advisory Opinion of 2006 issued by CAS upon request of FIFA and WADA, that the prerequisite of "No negligence no fault" has to be achievable and that a "reasonableness test" has therefore to be applied. The Tribunal is not of the opinion that the use of supplements is an optional additive to the horses' feed, and therefore if used is at the risk of the PR in each and every case. Even ordinary feed is often mixed and includes several additives which may be contaminated. Moreover, even feed without additives may be contaminated. Equestrian sport on a high level can be said to

require the use of feed supplements to properly care for such elite horses. In the Tribunal's opinion, Persons Responsible are not the proper party to bear the risk of supplements contaminated at the manufacturer level. With respect to the present case, the Tribunal considers that the PR has taken all necessary precautions to avoid the situation of her horses testing positive for Prohibited Substances. It is not decisive that she did not use supplements certified free of FEI Prohibited Substances, as the supplement used by her, provided it is not contaminated, is free of FEI Prohibited Substances. It is also considered unimportant that the PR did not discuss the possibility of contamination with her supplier SARACEN, as recommended by the FEI Competitor's Guide, as none of the batches of "Neigh Lox" used by her in the past resulted in a positive anti-doping test for any of her horses. Indeed, the PR has used this supplement for her horses since 2005, without any complications, and her horses have been tested on several occasions during this period.

34. Accordingly, the Tribunal finds that a violation of EADMCRs Article 2.1 has been proven but that the PR bears "no fault or negligence" as defined in EADMCRs Appendix I. She could not have known or suspected even with the exercise of utmost caution that the actual batch of "Neigh Lox" had been contaminated by the manufacturer during production.

## 4.8 Disqualification

35. 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 EADMCRs.

## 4.9 Sanctions

1) The FEI Tribunal is imposing no sanctions on the PR.

2) The PR shall not contribute towards the legal costs of the judicial procedure before the FEI Tribunal. Regarding the Parties' costs and expenses, the FEI Tribunal, taking into account that the governing body acted appropriately in prosecuting this case, is of the opinion that it is reasonable for each Party to bear their own costs and expenses.

3) The PR shall cover the costs of the Confirmatory analysis request in the amount of **CHF 750.-**.

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

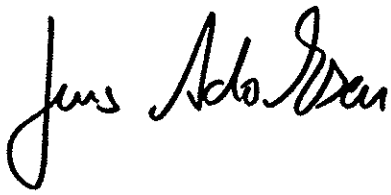
**5.1 The PR:** Yes

**5.2 The President of the NF of the PR** Yes

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

**5.4 Any other:** No

**FOR THE PANEL**



**THE CHAIRMAN** Prof. Dr. Jens Adolphsen