



DECISION of the JUDICIAL COMMITTEE of the FEI

dated 16 March 2006

Positive Medication Case: 2005/26

Horse / Passport: Captain Clever / NED05307

Person Responsible: Andreas Ostholt, GER

Event: CCI4* Luhmühlen, GER, 16-19.06.2005

Prohibited Substances: Hydroxy-lidocaine

1. COMPOSITION OF PANEL

Ms Helen Huggett
Mr Philip O'Connor
Mr Ken E. Lalo

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: by Legal Department.

2.2 Summary information provided by Person Responsible (PR): The Judicial Committee took into consideration all documents presented in the case file, as also made available to the PR through his National Federation.

2.3 Oral hearing: None, by correspondence.

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 21st edition, effective 21 April 2004, ("**Statutes**"), Arts. 001.6, 057 and 058.

General Regulations ("**GR**"), 21st edition, effective 1st January 2005, Arts. 142, 146.2 and 174.

Veterinary Regulations (“**VR**”), 9th edition, effective 1st January 2002, Art. 1013 and Annex IV.

FEI Code of Conduct for the Welfare of the Horse, 2004.

3.2 Persons Responsible: Mr Andreas Ostholt

3.3 Justification for sanction:

GR Art. 146.2: “Any horse found to have a Prohibited Substance in any of its tissues, body fluids or excreta at an event [...] is automatically disqualified, together with the competitor [...], from all competitions at that event, [...] unless the Judicial Committee decides based on the evidence to terminate the proceedings of the case.”

4. DECISION:

A. The Relevant Facts

- 1) Captain Clever took part at the CCI4* in Luhmühlen (GER), from 16th to 19th of June 2005 (the “**Event**”). Captain Clever was ridden by Mr Andreas Ostholt who is the Person Responsible in accordance with GR Article 142 (the “**PR**”).
- 2) Captain Clever was selected for sampling on 19 June 2005. Analysis of the urine sample taken from Captain Clever conducted by the FEI approved central laboratory, Laboratoire des Courses Hippiques (“**LCH**”), was found to contain Hydroxy-lidocaine. No confirmatory analysis was requested.
- 3) Hydroxy-lidocaine is a metabolite of lidocaine, a local anaesthetic acting, *inter alia*, on the (peripheral) nervous system and is graded “2” by the Medication Sub-Committee of the FEI (“**MSC**”) as evidenced by the MSC Report dated 14 July 2005.

B. Jurisdiction

- 4) The Judicial Committee has jurisdiction over this matter pursuant to Articles 057 and 058 of the FEI Statutes.

C. Analysis

- 5) The Judicial Committee is satisfied that the laboratory reports reflect that the tests were accurately performed in an acceptable method and that the findings of LCH are accurate. The Judicial Committee is satisfied that the test results show the presence of the prohibited substance, Hydroxy-lidocaine. The PR did not contest the accuracy of the testing methods or the test results and positive findings. The FEI has thus sufficiently proven the objective elements of a doping offence.
- 6) The establishment of the objective elements of a doping offence creates the presumption of guilt of the PR. The finding on analysis of a prohibited substance is presumed to be a deliberate attempt of the PR to affect the performance of the horse. The PR has the opportunity to seek to rebut this presumption.

- 7) In his letter of 16 September 2005, the PR's legal counsel declares that the PR admits to have administered a salve, called Kamistad Gel, to his horse. This gel was used to treat Captain Clever's flews that were superficially injured. The PR was aware of the fact that this medicament contained a prohibited substance in competition but was convinced, after having been accordingly informed, that this substance would be eliminated by the time of the Event. The PR declares have stopped the treatment the Saturday before the Event as he was informed that the substance should be decomposed after at most four days.
- 8) The PR's legal counsel produced a statement from Dr Björn Nolting from Tierärztliche Klinik für Pferde dated 7 October 2005 declaring that the detection time of a single application of lidocaine contained in a topical ointment is approximately of 36 hours but can vary greatly. Dr Nolting states that higher doses of lidocaine, the repeated use and the use of the Elisa-method for the analysis of lidocaine can lead to the fact that lidocaine remains in the urine of the horse for more than 5 days.
- 9) The PR declared not having contacted the veterinary official at the Event because he was convinced that he stopped the treatment of his horse early enough to not have any impact on his horse during the competition and therefore not be detectable any more.

D. Decision

- 10) The Judicial Committee accepts that the positive findings are the result of legitimate treatment of the horse and therefore, there was no deliberate attempt to affect the performance of the horse. However, the panel of the Judicial Committee is of the opinion that the PR was negligent in that he calculated the withdrawal time for the treatment wrongly and based on incomplete information.

E. Disqualification

As a result of the foregoing, the Judicial Committee has decided to disqualify the horse Captain Clever and the PR from the Event and all prize money won at the Event must be forfeited.

F. Sanctions

- Furthermore, the PR is suspended for a period of one (1) month to commence immediately and without further notice at the expiration of the period in which an appeal may be filed (30 days from the date of notification of the written decision) or earlier if the appeal is waived in writing by or on behalf of the PR.
- In addition the PR is fined CHF 2'000.- and is liable to pay CHF 750.- towards the costs of the judicial procedure.

[For the Judicial Committee]