



**DECISION of the FEI TRIBUNAL**

**dated 16 August 2010**

**Positive Doping Case No.:** 2009/27

**Horse:** LORO PIANA CHAMMARTIN

**FEI Passport No:** GBR 42113

**Person Responsible:** Giulia Martinengo Marquet

**Event:** CSI W – Verona, ITA

**Prohibited Substances:** Fluphenazine

**1. COMPOSITION OF PANEL**

Mr Ken Lalo  
Mr Erik Elstad  
Mr Patrick Boelens

**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, as well as evidence and testimony presented at the oral hearing.

**2.3 Oral hearing:** 27 May 2010 - Geneva.

**Present:**

For the PR: Ms Giulia Martinengo Marquet, PR  
Ms Lorenza Mel, Counsel for the PR  
Prof. Avv. Aldo Frignani, Counsel for the PR  
Dr. Oscar Ghizzoni, Chemist, Technical consultant  
Dr. Gabriele delli Veneri, Veterinarian  
Mr. Stefano Cesaretto, Husband of the PR

For the FEI: Ms Lisa F. Lazarus, General Counsel  
Ms Carolin Fischer, Legal Counsel  
Ms Sandra Menon Scoglio, Assistant Legal Department

### 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: Giulia Martinengo Marquet

#### 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. LORO PIANA CHAMMARTIN (the "**Horse**") participated at the CSI - W in Verona, ITA, from 5-8 November 2009 (the "**Event**") in the discipline of Jumping. The Horse was ridden by Giulia Martinengo Marquet, who is the Person Responsible in accordance with GRs Art. 118 (the "**PR**").
2. The Horse was selected for sampling on 7 November 2009.

3. Analysis of the blood and urine sample no. FEI-0096099 taken from the Horse at the Event was performed at the FEI approved laboratory, the HFL Sport Science ("HFL"), by R. Schiller, Senior Scientist, under the supervision of S. Maynard, Director. The analysis revealed the presence of Fluphenazine (Data Pack A-Sample no 0096099 dated 20 November 2009).
4. The Prohibited Substance detected is Fluphenazine. Fluphenazine is a human antipsychotic prescribed for behavioural modification. Consequently, it has a calming effect on horses. Fluphenazine is classified as a *Doping* Prohibited Substance. This constitutes an *Anti-Doping* rule violation.
5. No request had been made to administer Fluphenazine 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 26 November 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. The PR did not request a preliminary hearing.

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

9. Together with the Notification Letter of 26 November 2009, the PR also received notice that she was entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The PR was also informed of her right to attend or be represented at the identification and opening of the B-Sample.
10. The PR confirmed on 1 December 2009 that she wished for the B-Sample analysis to be performed.
11. The B-Sample Analysis was performed on blood on 21 December 2009 at the HFL by S. Hines, Senior Scientist, under the supervision of S. Maynard, Director.
12. The PR did not attend the opening and identification of the sample but sent Dr. Oscar Ghizzoni, Chemist, as representative to the Laboratory, who witnessed the opening and identification of B-Sample no. 0096099.

13. In his witness statement, Dr. Ghizzoni 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 HFL Sport Science (HFL) corresponds to that appearing on the collection documentation accompanying the sample"* (Witness Statement dated 21 December 2009).
14. Dr. Ghizzoni further issued a separate statement with respect to the B-Sample analysis, challenging, in a nutshell, the fact that as witness, he was not allowed to attend the entire B-Sample analysis procedure (Statement Dr. Ghizzoni dated 21 December 2009).
15. The B-Sample Analysis of the blood confirmed the presence of Fluphenazine (Certificate of Analysis No. 57951 dated 22 December 2009).
16. The results of the B-Sample Analysis were notified to the PR on 12 January 2010 through the Italian Equestrian Federation (ITA).

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

17. Based on discussions entered into by the parties outside the presence of the Tribunal, the FEI Legal Department submitted to the FEI Tribunal a Joint Recommendation on Sanctions from the Parties. The Joint Recommendation is as follows:
  1. The Ineligibility Period of the Person Responsible should be six (6) months and therefore expire on 25 May 2010.
  2. The Person Responsible should be fined CHF 10,000.
  3. The Person Responsible should be required to pay costs in the amount of CHF 10,000.
  4. The Person Responsible should be required to donate ten (10) hours annually of her time for three (3) consecutive years (2010-2013) towards supporting the FEI's Clean Sport and Anti-Doping initiatives. The Person Responsible and the FEI shall work together in good faith to determine the specifics around this obligation.

The FEI Tribunal acknowledged receipt of these Joint Recommendations on 30 June 2010.

#### **4.5 Jurisdiction**

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

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

19. 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**

20. 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 HFL are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of Fluphenazine, which is a Prohibited Substance, 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.
21. The FEI has thus sufficiently proven the objective elements of an EADMCR violation in accordance with Article 3. The Prohibited Substance found in the Sample is classified as a "Doping" Prohibited Substance and the PR has not contested that classification.
22. The FEI Tribunal specifically rejects the arguments that the B-Sample Analysis was flawed or illegally infringed the PR's constitutional rights. Article 7.1.3(d) of the EADMCRs specifically limits the rights of the Person Responsible's witness to attend the "identification" and "opening" of the B Sample and grants nothing further. Similarly, the FEI Tribunal rejects the PR's argument that the testing of the B Sample in the same lab that tested the A Sample infringed the PR's rights. These issues have been raised by Persons Responsible before and have each time been rejected<sup>1</sup>.
23. Having considered all of the evidence in this case, and having heard the detailed testimony of the Person Responsible, along with her explanations, as well as the testimony of her witnesses and her significant efforts to determine how the Prohibited Substance entered into the horse's systems, the Tribunal has decided to enforce the Joint Recommendation of the Parties in this case with regards to all elements except the donation of the PR's time to the FEI's Clean Sport initiative. While the FEI Tribunal hopes that the PR will choose to donate her time on her own initiative, it finds that it does not have the power under the relevant FEI rules to order her to do so. The Tribunal finds the Recommendation for Sanctions proportionate and acceptable compared to previous cases decided by the FEI Tribunal.

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<sup>1</sup> BEBABELOULA, Final Tribunal Decision dated 22 July 2009; CASTLE FORBES MAIKE, Final Tribunal Decision dated 7 May 2008; CAS 2008/A/1569, *Kürten vs. FEI*, 8 December 2008; CAS 2009/A/1768, *Hansen vs. FEI*, 4 December 2009.

#### **4.8 Disqualification**

24. 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**

25. The FEI Tribunal is therefore imposing 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 **six (6) months**, beginning 26 November 2009 and terminating on 25 May 2010.
  - 2) The PR is fined **CHF 10000.-**.
  - 3) The PR shall contribute **CHF 10000.-** towards the legal costs of the judicial procedure.
  - 4) The PR shall cover the costs of the Confirmatory analysis request in the amount of **CHF 750.-**.

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

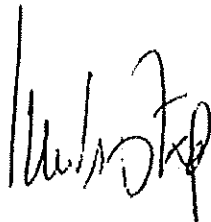
**5.1 The person sanctioned:** Yes

**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** Erik Elstad