



DECISION of the FEI TRIBUNAL

Dated January 6th 2009

Positive Medication Case No.: 2008/31

Horse: MY ROMANCE

FEI Passport No: CAN02449

Person Responsible: Mr Martien Van Der Hoeven US

Event: CSI2* - W Blainville, QC (CAN)
9 - 13 July 2008

Prohibited Substances: Stanazolol, 16 β -Hydroxy-Stanozolol

1. COMPOSITION OF PANEL

Mr Hernan Mendez Canas
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, as well as all testimonies, submissions and documents presented prior to and during the oral hearing.

2.3 Oral hearing: On December 19th 2008 per conference call.

Present: The FEI Tribunal Panel

For the FEI:

Ms Carolin Fischer, Legal Counsel FEI

For the PR:

Mr Martien Van Der Hoeven

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 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations ("**GR**"), 22nd edition, effective 1 June 2007, Arts. 142, 146.1 and 174.

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

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

Veterinary Regulations ("**VR**"), 10th edition, effective 1st June 2006, Art. 1013 and seq. and Annex III (the Equine Prohibited List).

FEI Code of Conduct for the Welfare of the Horse.

3.2 Person Responsible: Mr Martien Van Der Hoeven

3.3 Justification for sanction:

GR Art. 146.1: *"The use of any substance or method that has the potential to harm the horse or to enhance its performance is forbidden. The precise rules concerning Prohibited Substances and Medication Control are laid down in the EADMCRs."*

EADMCR 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. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Person Responsible's part be demonstrated in order to establish an anti-doping rule or medication control violation under Article 2.1."*

4. DECISION

4.1 Factual Background

1. MY ROMANCE (the "**Horse**") participated at the FEI World Cup Jumping, North American League, Blainville 2008, QC, Canada, from July 9th to 13th 2008 ("the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr Martien

Van Der Hoeven (the "PR").

2. The Horse was selected for sampling on July 13th 2008.
3. Analysis of the blood sample no. FEI-G14339 taken from the Horse, performed by the approved FEI laboratory, the U.S. Equestrian Federation Equine Drug Testing And Research Laboratory ("EDTRL"), carried out by Thomas F. Lomangino, Laboratory Director, revealed the presence of Stanazolol and 16 β -Hydroxy-Stanozolol (Test Report dated August 5th 2008).
4. The Prohibited Substances detected are Stanazolol, an Anabolic steroid, and 16 β -Hydroxy-Stanozolol, a metabolite of Stanazolol, both of which have anabolic and androgenic properties (Veterinarian Statement dated September 9th 2008) and, accordingly, are classified as a "Prohibited Substance" under the Equine Prohibited List (VR Annex III, the "**Equine Prohibited List**"), in the class "Doping".
5. No request had been made for the use of Stanazolol or 16 β -Hydroxy-Stanozolol on the Horse, and no medication form had been supplied for this substance.

4.2 The Preliminary Hearing

6. The presence of the Prohibited Substances, the possible rule violation and the consequences involved were duly notified to the PR on October 29th 2008.
7. The notification of October 29th 2008 included a notice that the PR was provisionally suspended and granted the opportunity to be heard at a preliminary hearing before the FEI Tribunal.
8. The PR confirmed that he wished the preliminary hearing to be held.
9. The preliminary hearing took place on October 31st 2008. The PR provided an explanation at the preliminary hearing regarding the presence of the Prohibited Substances and stated that the Horse had been administered two shots of the Prohibited Substance prior to the Event, the first one at the beginning of June 2008 and the second one some time mid June 2008. The PR stated that his veterinary had confirmed that the dose applied would have been calculated in a way so as to ensure a competition without Prohibited Substances in the horse's system.
10. The preliminary decision was rendered and communicated to the PR on November 4th 2008. The PR was informed that the preliminary panel had decided to maintain the

provisional suspension until the final decision of the FEI Tribunal Panel is issued.

11. In its preliminary decision, the preliminary panel stated that the Test Report from the EDTRL showed a positive test result for the Prohibited Substances Stanozolol and 16 β -Hydroxy-Stanozolol.
12. The preliminary panel stressed that it is a FEI policy to impose, in "Doping" and "Medication A" cases, a provisional suspension following a positive A-sample in the course of major events.
13. In light of the above the preliminary panel decided to maintain the provisional suspension.

4.3 The B-Sample Analysis

14. Together with the notification of October 29th 2008 ("Confirmatory Analysis Request"), the PR also received notice that the B-Sample analysis would, upon request by the PR, be carried out at the EDTRL. The PR was informed of his right to attend or be represented at the identification and opening of the B-sample.
15. The PR did not request a B-Sample analysis.

4.4 The Procedure up to the Final Hearing

16. On November 20th 2008, the PR submitted a Statement by his Veterinary Alan Manning, DVM according to which "the the last Stanzonol injection had been administered by the PR between June 18th, 2008 and June 23rd, 2008". Mr Manning further stated that "Martien Van Der Hoeven did administer the Stanzonol injection to "Southbound" (the former name of the horse) during a time which he assumed to be outside the FEI detection limits".
17. A Final Hearing was held on December 19th 2008, by means of a telephone conference. In the course of the Final Hearing the PR repeated regretting the positive testing results and that he had realized that he had committed some mistake. The PR further confirmed having discussed the administration of the Prohibited Substances with his veterinary. The PR also admitted that he is a professional rider.
18. The Tribunal accepted the evidence filed in this case. The Tribunal considered that the parties worked diligently and in an expedited manner to gather and provide evidence.

4.5 Jurisdiction

19. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GR and EADMCR.

4.6 The Person Responsible

20. The PR is the person responsible for the Horse, in accordance with GR Art. 142, as he was the rider of the Horse at the Event. He also admitted that he was the one who had administered the Prohibited Substances.

4.7 The Decision

4.7.1 The Positive Finding

21. The Tribunal is satisfied that the laboratory report relating to the A-Sample reflects that the analytical test was accurately performed in an acceptable method and that the findings of EDTRL are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of Stanozolol and 16 β -Hydroxy-Stanozolol, Prohibited Substances.
22. According to EADMCR Art. 3.2.1, FEI-listed laboratories *"are presumed to have conducted Sample analysis and custodial procedures in accordance with the FEI Standard for Laboratories"*. The PR may rebut this presumption by establishing that a departure from the FEI Standard for Laboratories occurred. The Tribunal accepts the FEI's position that, in this context, establishing means proving, and not merely suggesting by way of conjectures and suppositions. The PR did not contest the accuracy of the testing methods or the test results and positive findings
23. The FEI has thus sufficiently proven the objective elements of an offence in accordance with EADMCR Art. 3.
24. 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 eliminate or reduce the otherwise applicable period of ineligibility and other sanctions, establishing that he bears no fault and no negligence or no significant fault and no significant negligence, in accordance with EADMCR Article 10.5.
25. The PR has not proved to the degree of a balance of probability (Art. 3.1 EADMCR) that he bears no fault and no negligence or no significant fault and no significant

negligence. The PR admitted to be the one who had administered the final shot. Further, whereas the PR stated that his veterinary had confirmed that the dose applied would have been calculated in a way so as to ensure a competition without Prohibited Substances in the Horse's system, the Veterinary's statement dated November 19th 2008 however reveals that "Mr Van Der Hoeven did administer the Stanzonol injection" "during a time which he assumed to be outside the F.E.I. detection limits".

26. It is the PR's responsibility to ensure that his horse competes in an international competition free from Prohibited Substances in its tissues. This time the withdrawal time was miscalculated and thus the PR acted with gross negligence.
27. In deciding the sanctions the FEI Tribunal considered the level of the Event, the doping violation and the type of substances involved and the degree of negligence. The PR should be aware of the FEI Rules and Regulations when competing at an international level and is therefore supposed to know that he must keep his horses free of Prohibited Substances. The Tribunal also took into account that the PR is a professional rider.

4.7.2 Disqualification

28. As a result of the foregoing, the FEI Tribunal has decided to disqualify the Horse and the PR from the Event and that all medals, points and prize money won at the Event must be forfeited, in accordance with EADMCR Article 9.

4.7.3 Sanctions

29. As a consequence of the foregoing, the FEI Tribunal decides to impose on the PR the following sanctions, in accordance with GR Article 174 and EADMCRs Article 10:

- 1) The PR shall be suspended for a period of **four (4) months** to commence immediately and without further notice as of the day of the written notification of this decision. The period of Provisional Suspension shall be credited against the period of ineligibility imposed in this decision. The period of suspension shall therefore end on February 26th 2009.
- 2) The PR is fined **CHF 2000.-**
- 3) The PR shall contribute **CHF 1000.-** 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 Organizing Committee: Yes

5.4 Any other: No

FOR THE PANEL



**For and behalf of THE CHAIRMAN,
Dr. Alberto Hernán Méndez Cañas**