



## DECISION of the FEI TRIBUNAL

dated 27 August 2009

**Positive Medication Case No.:** 2008/37

**Horse:** TEDECHINE SEPT

**FEI Passport No:** BEL09245

**Person Responsible:** Mr Eddie Macken

**Event:** CSIO5\* Dublin (IRL)

**Alleged Violation:** Refusing to submit to Sample collection after notification or otherwise evading Sample collection

### 1. COMPOSITION OF PANEL

Mr. Ken E. Lalo  
Mr. Erik Elstad  
Mr. Patrick A. 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 well as the parties' oral presentations during the telephonic hearing. The entire case file that the Tribunal is relying on was also made available to the PR.

**2.3 Oral hearing:** On 10 July 2009, by means of a conference call.

Present: The FEI Tribunal Panel

For the FEI:

Ms Lisa F. Lazarus,  
FEI General Counsel

Ms Carolin Fischer,  
Legal Counsel FEI

Mr. Francisco Lima,  
Legal Counsel FEI

For the PR:

Mr. Joseph Boyle, Counsel for the PR  
Mr. Eddie Macken, PR

### **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, revision effective 15 April 2007, updated 21 November 2008 ("**Statutes**"), Arts. 1.4, 34 and 37.

At the time of the Event General Regulations ("**GR**"), 22<sup>nd</sup> edition, effective 1 June 2007, Arts. 142, 146.1 and 174; as of 1 January 2009: General Regulations, 23<sup>rd</sup> edition, effective 1 January 2009, 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**"), 10<sup>th</sup> edition, effective 1<sup>st</sup> 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 Eddie Macken

#### **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. 2.3.: "Refusing, or failing without compelling justification, to submit to *Sample* collection after notification or otherwise evading *Sample* collection."

## 4. DECISION

### 4.1 Factual Background

1. Mr. Eddie Macken (the "**PR**") participated with the horse TEDECHINE SEPT (the "**Horse**") at the Dublin CSIO5\* from 6 to 10 August 2008 (the "**Event**").
2. Two days prior to the Event, the Horse suffered from colic and was treated with Buscopam and Phenylbutazone. The PR requested permission to compete with the Horse at the Event and was informed that he would need to fill out "FEI Medication Form 1" in order to secure permission to compete. The PR failed to do so (see Foreign Judge Report, page 2; Foreign Veterinary Delegate Report dated 19 August 2008, page 2).
3. On Wednesday 6 August 2008, the PR was informed by the Chef d'Equipe of the Irish team, Mr. Robert Splaine, that the Ground Jury had refused permission for the Horse to start at the Event. Thereupon, the PR himself contacted Mr. Ronan Sugrue, President of the International Ground Jury, and asked if the decision could be reconsidered. After reconsidering the request, the decision to deny the Horse permission to participate was upheld. The PR then took the initiative to ask for a personal hearing to review the matter, which was granted (see the PR's letter to Ms. Fischer of 25 November 2008.)
4. This meeting and personal hearing for the PR was attended by Mr. Ronan Sugrue (President of the Ground Jury), Mr. Stephan Ellenbruch (Foreign Judge), three members of the Ground Jury, Mr. Dermont McIlveen (President of the Veterinary Commission), Mr. Howard Whelan (Member of the Veterinary Commission), Mr. Markus Müller (Foreign Veterinary Delegate), Mr. Robert Splaine (Chef d'Equipe Ireland), Mr. John Roche (FEI Director of Jumping) and the PR (see Witness Statement ("**WS**") of Mr. Müller, 3 December 2008). The PR presented his case, after which time he and Mr. Splaine were asked to leave the room. When they returned, they were informed that the Horse would be allowed to compete at the show, on two conditions: (1) the Horse would be tested during the show; and (2) the Horse would not be allowed to leave the show without the prior authorisation of the Ground Jury (WS of Mr. Sugrue dated 19 January 2009; the PR's letter to Ms. Fischer of 25 November 2008.).
5. On the following day, 7 August 2008, a document titled "Re Tedechine Sept [BEL09245]" was drafted and signed by the members of the Ground Jury ("**Letter of 7 August 2008**").

6. The first paragraphs of the "Letter of 7 August 2008" read as follows:

"Re Tedechine Sept [BEL09245]

Dear Robert,

The above horse is permitted to compete at CSIO 5\* Dublin 2008 but will be tested during the Show.

The horse may not leave the Show without the prior authorisation of the International Ground Jury."

7. The Letter of 7 August 2008 was originally signed by Mr. Sugrue and Mr. Müller, and was handed to Robert Splaine, Chef d'Equipe of the Irish team. Mr. Splaine read the contents of the letter to the PR and asked him whether he had "any issues with it". The PR replied that he did not have "any issues with it" (WS Mr. Splaine, 8 January 2009, page 1; WS Mr. Splaine dated 5 March 2009). Further, the PR testified at the hearing that it was typical for the Chef d'Equipe for Ireland, Mr. Splaine, to communicate information from the Ground Jury to the riders, including himself. This is confirmed by Mr. Splaine who provided in his written statement: "There was no further direct communication between Mr. Macken and I following this meeting, as in CSIO events, all communication and discussion regarding individual competitors must be carried out between the President of the Ground Jury and the riders' respective Chef des Equipes." (WS Mr. Sugrue, 19 January 2009, page 2).
8. On 8 August 2008, Mr. Splaine returned the Letter of 7 August 2008 back to Mr. Sugrue, having signed and dated it (WS Mr. Sugrue, 19 January 2009, page 1).
9. During the Event on 8 August 2008, the Horse was injured and it needed medical treatment. On the following day, the Horse suffered from colic and it was therefore decided by the Ground Jury and the Veterinary Commission that, for the welfare of the Horse, it would be tested on Sunday, 10 August 2008 which was also the last day of the Event (see Foreign Judge Report Ellenbruch, page 2; WS Mr. Sugrue, page 2). The Irish Chef d'Equipe, Mr. Robert Splaine was made aware of this decision (see WS Mr. Sugrue, 19 January 2009, page 2).
10. On Sunday, 10 August 2008, the Irish team Veterinarian, Mr. Shane Fouhy, examined the Horse at the stables at 08.45am and found the Horse to be in good shape. Testimony was provided that the Horse was in its box in the morning hours of 10 August 2008 when checked by the stewards on a number of occasions. During such time neither the PR nor his personnel were asked to provide the Horse for testing.

11. At 10.50am of the same morning, the Chief Steward, Mrs. Kate Horgan, met Mr. Shane Fouhy in the stable near the Horse's box and was told by Mr. Fouhy that the Horse was not in the box and that the PR's second horse was also not in its box (see Chief Steward Report; Foreign Veterinary Delegate Report). Mrs. Horgan testified that she has then conducted a search of the grounds for the Horse, searching the stable area, the secure arena, the exercise area, the international stables and its surrounding area, the national stables, the barn next to the secure stables, the national departure area, the lorries in departure, the PR's lorry that was on the grounds and the secure area of the exercise arena, but that she has not found the Horse. In addition, the stables were checked throughout the day and during those checks the Horse was not found in its box (see Chief Steward Report).
12. The PR's groom, Ms. Melissa Gaulton, testified that the Horse was on the show grounds during the whole Event until approximately 7 pm on 10 August 2008. She further testified that she was not asked to produce the Horse for testing during the Event. She went to pick up the passport in the early afternoon of 10 August 2008 but was not advised that the Horse was needed for testing (WS Ms Gaulton dated 13 April 2009).
13. The PR testified that the Horse was walked within the grounds and that the PR's horses left the show grounds only after the end of the Event. The PR also testified that the Horse was new to the European circuit and that he doubts whether any of the Officials could have recognized him outside the specific box at the stables.
14. In his 26 November 2008 submission, the PR stated that "the passport of the horse was not picked up until late Sunday afternoon after the Grand Prix had finished." According to the statement by Ms Melissa Gaulton, the PR's groom, she herself collected the Horse's passport during the early afternoon of 10 August 2008 (WS Ms Gaulton dated 13 April 2009).
15. "The Organising Committee tried several times to call Mr. Macken on his mobile phone, but never received an answer" (WS Mr. Ellenbruch, dated 7 January 2009). The Irish Chef d'Equipe, Mr. Pdraic Geraghty (who replaced Mr. Splaine,) also tried to contact the PR on the phone ("I was asked by the Foreign Vet could I produce your mare for testing and I replied 'No' as I could not contact you on your phone or in person"; WS Mr. Geraghty dated 26 March 2009). The PR testified at the Hearing that his mobile phone was turned on all day on 10 August 2008 and that he did not receive any calls, messages, or missed calls from the Organising Committee or Mr. Geraghty.
16. The PR was clearly at the Event including on 10 August 2008 as he had even been given an award in the main arena of the show on

that date. The PR testified that he was never approached during the Event by anyone asking for his Horse to be presented for testing and there was no evidence stating otherwise.

17. A formal demand was made by Mr. Sugrue to Mr. Geraghty to produce the Horse at the Testing Area only at about 6.50 pm and following the Grand Prix. At that time, Mr. Geraghty told Mr. Sugrue, Mr. Ellenbruch and Mr. Müller that he was not able to present the Horse for testing as he could not contact the PR by phone or in person (WS Mr. Sugrue, 19 January 2009, page 3; WS Mr. Geraghty, 26 March 2009).
18. Consequently, the Horse was not tested.
19. No contact was made between the PR and the head of the International Ground Jury, Mr. Sugrue, before the PR left the showgrounds on 10 August 2008.

#### **4.2 The proceedings**

20. The PR was notified of the alleged EADMCR violation by Notification Letter of 10 November 2008. This Notification letter included the following evidence:

Chief Steward Report dated 13 August 2008;

Foreign Veterinary Delegate Report dated 19 August 2008;

Foreign Judge Report.

21. Further, on 21 November 2008, the "Letter of 7 August 2008" was sent to the PR.
22. The PR provided his submissions on 25 November 2008. In his statement of 25 November 2008, Mr. Macken, in a nutshell, alleges having suggested during the meeting of 6 August 2008 that "the horse be tested each day if they wished as I had nothing whatsoever to hide". That there was ample opportunity to test the Horse during the days of the Event but that the Horse was not sought for testing. That on Sunday, 10 August 2008, the Horse had been out of its box and was hand walked so it could pick some grass. That he himself "for the remainder of that Sunday" had been "visibly in attendance at the show and on the show ground at all times" including receiving an award that was presented to him in the main arena. That he would "have no recollection of ever being told that my horse could not leave the show without the permission of the International Ground Jury". Further, that the Horse had "left the show grounds on Sunday after the show had finished".
23. Following the submission by the PR of 25 November 2008, the FEI Legal Department continued its investigations. Upon request by the FEI Legal Department, the following witness statements, referred

to above, were submitted:

1. WS by Markus Müller dated 3 December 2008;
  2. WS by Robert Splaine dated 4 December 2008;
  3. WS by Mr. Stephan Ellenbruch dated 7 January 2009;
  4. WS by Robert Splaine dated 8 January 2009;
  5. WS by Mr. Ronan Sugrue dated 19 January 2009;
  6. WS by Robert Splaine dated 5 March 2009.
24. With its submission dated 18 March 2009, the FEI contended that it was uncontested that Mr. Macken failed to seek prior authorisation from the International Ground Jury (see FEI Chief Steward Report; Foreign Veterinary Delegate Report) before the Horse left the show on Sunday, 10 August 2008. That the participation of the Horse at the Event had been made dependent upon two strict conditions:
- (1) that the Horse would be tested during the show; and
  - (2) that the Horse could not leave the show without the prior authorisation of the International Ground Jury.
25. The FEI concluded that, since the Horse left the showgrounds without prior authorization of the International Ground Jury and prior to being MCP tested, a violation of EADMCR Article 2.3 had been committed by the PR.
26. On 17 April 2009, the PR submitted his written response to the submission of the FEI. The explanations included a statement by the groom of the Horse, Ms Melissa Gaulton, dated 13 April 2009, and a statement by Mr. Padraic Geraghty, the replacement Irish Chef d'Equipe on duty on the Sunday of the Event, dated 26 March 2009.
27. The Tribunal accepted the statements filed in this case.
28. At the Hearing, the FEI argued that the PR either (1) evaded sample collection, or, at the very least, (2) failed without compelling justification to submit to Sample collection after notification. The FEI relied on WADA's official comment to Article 2.3 of the WADA Code 2009 which provides that "A violation of 'refusing or failing to submit to Sample collection' may be based on either intentional or negligent conduct while 'evading' sample collection contemplates intentional conduct by the athlete." The FEI further contended that the Letter of 7 August 2008 which allowed the PR to participate at the Event was notification to the PR that his

Horse would be tested. Further, that the PR was at least negligent in failing to submit to Sample collection by not presenting his Horse for testing prior to leaving the showgrounds and leaving without receiving permission to do so from the International Ground Jury.

29. The FEI argued that there was ample evidence in the record to establish that the PR intentionally evaded Sample collection, ensuring that his Horse could not be found anywhere on the show grounds on 10 August 2008. Alternatively, the FEI argued that as long as the Tribunal accepted the Letter of 7 August 2008 as notification, the mere finding of negligence was necessary to establish a violation.
30. Conversely, the PR argued unequivocally that both him and the Horse were at the show grounds throughout the entire Event including on 10 August 2008, but that he was not contacted or approached, that towards the end of the Event his groom picked up the Horse's passport without any notification that the Horse ought to be tested prior to leaving, and that he consequently has no liability whatsoever for the fact that his Horse was never tested at the Event.
31. PR's counsel advised following the hearing that the delays in this case may cause the PR additional suffering. The Tribunal notes that while the FEI took somewhat long to gather evidence and process the case, the PR made no clear efforts to speed up the finalization of the case. PR's counsel did not state clearly and unconditionally his client's wish to have a hearing (as is required under the rules) and it therefore took an unnecessarily long time to establish whether a hearing was sought. Once this was established, PR's counsel declined to agree to the earlier hearing dates suggested by the Tribunal. The Tribunal was aware of the upcoming Dublin 2009 Show, hence it made efforts to hold an earlier hearing. The Tribunal has finalized its decision within some six weeks of the hearing date.

#### **4.3 Jurisdiction**

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

#### **4.4 The Person Responsible**

33. The PR, Mr. Macken, is the Person Responsible for the Horse, in accordance with GR Art. 118, as he was the rider of the Horse at the Event.

#### **4.5 The Decision**

34. The Tribunal finds that the FEI could not establish that the PR evaded sample collection, as "evading" sample collection



contemplates intentional conduct by the Person Responsible. The evidence does not support any such evasive conduct by the PR.

35. The Letter of 7 August 2008 required that the Horse be tested during the Event. There was ample opportunity for the Horse to be tested at the Event which was spread over a number of days and it cannot be held that the PR had to chase officials and ask them to test the Horse. The PR is very well known, both internationally and more so in Ireland and officials could have easily approached him indicating the time of the test.
36. The Tribunal finds that the second condition of the Letter of 7 August 2008, requiring the Horse not to leave the show without receiving the permission of the International Ground Jury, although not very clearly drafted, has not been met by the PR. It was the PR that requested special and extraordinary consideration by requesting to participate with the Horse without properly submitting FEI Medication Form 1. As such, the Letter of 7 August 2008 was drafted for the benefit of the PR. Under those circumstances, the Tribunal looks at the plain meaning of the words and cannot accept the PR's argument that he did not leave the show without authorization because he left the show after it was over. The layman interpretation of "show" must be the show grounds. The plain meaning is clear – one should seek authorisation prior to leaving. This condition has not been met by the PR.
37. Therefore, the Letter of 7 August 2008 constitutes notification and by leaving the show grounds on Sunday afternoon without receiving the permission of the International Ground Jury, the PR technically failed without compelling justification to submit to Sample collection after notification in compliance with EADMCR Article 2.3. The PR was negligent in leaving the show grounds without receiving permission to do so from the International Ground Jury.
38. This must be viewed as an inadvertent technical violation by the PR, as he was clearly present at the Event, he could have easily been located or paged, his Horse could have been tested on a number of occasions, prior to 10 August 2008 or during the morning of 10 August 2008, and the Horse could have easily been located by notifying the PR's groom, prior to releasing the Horse's passport, that the passport would only be released after the Horse's Sample is taken. One could not expect the PR to search for officials and ask them to test his Horse. However, the PR should have sought simple permission for the Horse to leave the grounds, based on the agreement reached.
39. The Tribunal also notes that the "special arrangements" made in this case by allowing conditional participation when the proper form had not been submitted created the possibility of future

misunderstandings. Rules must be followed even when they involve well-known and accomplished riders. One cannot expect officials to draft in haste during an event legal documentation that will withstand later scrutiny. Therefore, it would have been better not to allow participation in the first place despite the possible hardship to the PR. Rules, timelines and formalities are to be observed and such observance will streamline the handling of events. The Tribunal is of the opinion that the education of officials and ensuring that no special treatment outside of the rules is offered even to known riders is an important issue to be resolved going forward.

#### **4.6 Disqualification and Sanctions**

40. A violation of the EAMCR automatically leads to disqualification of the individual result obtained at the Event with all resulting consequences, including forfeiture of any medals, points and prizes (see EADMCR Article 9).
41. According to EADMCR Article 10.4.1, in case of a violation of Article 2.3 (refusing or failing to submit to Sample collection), the sanctions set forth in EADMCR Article 10.1 shall apply. Such sanctions may be reduced (but not all together eliminated) under EADMCR Article 10.5.2, also in relation to an EADMCR Article 2.3 violation. As will be explained below, this is exactly the case where a technical breach by the PR does not warrant more than a minimal sanction.
42. The Tribunal concludes that there was no evasion of sample collection by the PR. There was merely a minor technical violation resulting from the PR's negligence. In considering the sanctions the Tribunal took these conclusions into account. The Tribunal further considered that the whole episode could have been avoided if:
  - a. The officials would have strictly observed the rules and not allowed participation without FEI Medication Form 1, as special cases are an opening for a later controversy;
  - b. The Letter of 7 August 2008 could have been more clearly drafted as to what the PR must clearly do and when;
  - c. The Horse could have been tested prior to 10 August 2008 or on 10 August 2008 in the morning when in his box;
  - d. The PR could have been easily located without the need to send a search party to find a Horse that may not be very well known;
  - e. Assuming such an intensive search throughout an entire day, one could have very simply ensured that the Horse's passport was not released and that the PR's lorry did not leave the show grounds.

At the same time, the PR was negligent in – despite the ineffectiveness of officials – not acting more carefully and making

an effort to seek permission before leaving the Event as he had clearly agreed as a condition of being granted a special dispensation to compete without having submitted the proper form under the rules.

43. As a result of the foregoing, the FEI Tribunal decides to disqualify results of the PR and Horse combination (the Horse in question only) at the Event. All medals, points and prize money won at the Event by the combination of the PR and the Horse must be forfeited, in accordance with EADMCR Article 9.

44. As a consequence of the foregoing, the FEI Tribunal decides to impose on the PR the following sanctions, in accordance with GR Article 169 and EADMCR Article 10:

- 1) The PR is fined **CHF 1,500.-**
- 2) 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 Mr Ken E. Lalo**