



DECISION of the FEI TRIBUNAL

dated 18 March 2009

Positive Medication Case No.: 2008/44

Horse: TOP GEAR I

FEI Passport No: JPN00219

Person Responsible: Mr Takamichi Mashiyama

Event: CSI1*-W Gotemba, JPN

Prohibited Substance: Mefenamic acid

1. COMPOSITION OF PANEL

Mr. Patrick A. Boelens
Mr. Ken E. Lalo
Mr. Alberto Hernán Méndez Cañas

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: None: by correspondence.

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

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

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 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 Takamichi Mashiyama

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."

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. TOP GEAR I (the "**Horse**") participated at the CSI 1*-W in Gotemba, Japan, on 18 October 2008 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr Takamichi Mashiyama, who is the Person Responsible in accordance with GR Art. 142 (the "**PR**").
2. The Horse was selected for sampling on 18 October 2008.
3. Analysis of the urine sample no. FEI-35362 taken from the Horse performed by the approved laboratory of the FEI, the Hong Kong Jockey Club Racing Laboratory ("**HKJC**"), in Hong Kong, under the supervision of David Kwan Kon Leung, Racing Chemist, revealed the presence of Mefenamic acid (Test Report no. 08-1088 dated 28 October 2008).
4. The Prohibited Substance detected is Mefenamic acid, which is a non-steroidal anti-inflammatory drug with analgesic and anti-inflammatory effect and is classified as a "Prohibited Substance" under the Equine Prohibited List (VR Annex III, the "Equine Prohibited List"), in the class "Medication A".

5. No request had been made for the use of Mefenamic acid on the Horse, and no medication form had been supplied for this substance.

4.2 The proceedings

6. The presence of the Prohibited Substance, the possible rule violation and the consequences involved were duly notified to the PR on 9 December 2008.
7. The notification of 9 December 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 did not request a preliminary hearing.

4.3 The B-Sample Analysis

9. Together with the Notification Letter of 9 December 2008, the PR also received notice that the B-Sample analysis would, upon request by the PR, be carried out at the "HKJC". The PR was informed of his right to attend or be represented at the identification and opening of the B-Sample.
10. The PR confirmed by fax of 11 December 2008 that he requested the B-Sample Analysis to be carried out.
11. The B-Sample Analysis was carried out on urine on 16 December 2008 at the HKJC by Chemist Wai Him Kwok, under the supervision of Mr. Terence See Ming Wan, Head of Racing Laboratory. Mr. Jacky Tsang, Assistant Security Operations Manager at the HKJC, witnessed the opening of the B-Sample.
12. In his witness statement, Mr. Jacky Tsang certified that the "B" Sample container *"shows no signs of tampering"* and *"that the identifying number appearing on the sample to be tested by the Racing Laboratory of the Hong Kong Jockey Club corresponds to that appearing on the collection documentation accompany the sample"* (Witness Statement dated 16 December 2008).
13. The B-Sample Analysis confirmed the presence of Mefenamic acid (Counter Analysis Report dated 19 December 2008).
14. The results of the B-Sample Analysis were notified to the PR on 5 January 2009 through the Japan Equestrian Federation.

4.4 The further proceedings

15. On 15 January 2009, the PR submitted a written statement including statements by his veterinarian, Mr. Yuyama Teruhiko, and

his groom, Mr. Haruko Kurosu, as well as a statement by Dr. Osamu Aoki, DVM, PhD, Chairman of the Veterinary Committee of JEF.

16. In his submission, the PR explained in detail the measures taken with respect to stable management. The PR explained further that during June 2008, the Horse had suffered a severe colic and that since *"he lingered between life and death", "in this situation our veterinarian gave as much medication as possible to Top Gear I to save his life. Our veterinarian administered Top Gear I several medicines including painkillers"*. The PR also stated that he had requested the JRA Laboratory of Racing Chemistry for two elective tests of the Horse, one on 10 October 2008 and the second one on 21 October 2008. With respect to the first test, the PR indicated that he had *"received verbal confirmation that a slight trace of flunixin was detected, but it was not at the level of doping"*. Regarding the second test, the PR commented: *"This test also resulted in negative, but a traceable amount of flunixin was still detected. I was told again it was not the amount we should worry about"*.
17. Mr. Yuyama Teruhiko, in his veterinarian statement, explained that he had never treated the Horse within the last four years except for the colic treatment during June 2008, stating further that he had never given the Horse any painkillers or curative medicines after the treatment of the colic during June 2008.
18. The PR's groom, Mr. Haruko Kurosu, stated that he always follows instructions given by the PR regarding daily stable management and that he never used any medicines, massage creams or other substances containing prohibited substances on the Horse, and that he did not use any oral medicines or anti-inflammatory analgesic plaster containing prohibited substances on himself.
19. Dr. Aoki, in his witness statement, stated that the test results of the two elective urine samples of the Horse taken were negative. Dr. Aoki further affirms knowing that *"the test results of those private elective testing are not significant for the judging to the positive result of the formal doping test at the FEI competition."*
20. By letter of 22 January 2009, the FEI Legal Department addressed some questions of clarification to the PR.
21. On 29 January 2009, the PR submitted his submission in response to the questions by the FEI Legal Department dated 22 January 2009. He explained in detail the treatment of the Horse for colic dated 19 June 2008. The PR further highlighted that his brother's horse – which had also been tested during the event in question, but had not received any positive results – would have been stabled next to the Horse during the competition in question.

22. Upon request by the FEI, on 4 February 2009, Mr. Andrew Higgins, BVetMed MSc PhD FIBiol MRCVS, Member of the FEI Veterinary Committee, submitted a Veterinary Statement addressing the explanations submitted by the PR. Dr. Higgins, in a nutshell, stated that Mefenamic acid has a very short plasma half-time, depending on the modality of administration and the amount of Mefenamic acid administered between 0.5 and 120 hours after administration (Expert Statement Mr. Higgins of 4 February 2009, page 1). Dr. Higgins further stated that the "*detection time after a single intravenous injection of Mefenamic acid differed according to the stable management*". Dr. Higgins further pointed out to a work according to which the urinary concentration of Mefenamic acid in horses whose stables have not been cleaned on a daily basis increased to 60 to 144 hours after administration of the substance, whereas for those horses that had their stables completely cleaned out and the straw replaced daily the Mefenamic acid was cleared from urine within two days.
23. Dr. Higgins concluded that "*the PR's explanation is plausible if contamination were to have been responsible for the positive test. However, the possibility cannot be excluded that MFA was given to the horse within days of the competition*". Dr. Higgins stated further that even if the Horse had been administered Mefenamic acid in the context of the colic treatment on 19 June 2008, "*the substance would not have been detected in the horse's urine several weeks following administration.*"
24. The above mentioned Veterinary Statement was submitted to the PR on 5 February 2009, inviting the PR to take position.
25. By letter received by the FEI Legal Department on 13 February 2009, the PR stated that he had "*no objection to the contents shown in the Veterinary Statement dated 6th February 2009*".
26. The PR did not request a hearing.
27. According to GR Art. 173.4, the present decision is effective from the day of written notification to the persons and bodies concerned.
28. The Tribunal accepted the statements and 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

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

4.6 The Decision

30. The Tribunal is satisfied that the laboratory report relating to both

the A-Sample and the B-Sample reflect that the analytical tests were performed in an acceptable method and that the findings of the HKJC are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of Mefenamic acid, which is a Prohibited Substance.

31. The FEI has thus sufficiently proven the objective elements of an offence in accordance with EADMCR Article 3. The Prohibited Substances is a "Medication A" class substance.
32. In doping and medication cases there is a strict liability as described in EADMCR Article 2.1.1. When a positive case has been proven by the FEI, the PR has the burden of proof to show that he bears No Fault or No Negligence for the positive findings, EADMCR Article 10.5.1, or No Significant Fault or No Significant Negligence, EADMCR Article 10.5.2.
33. The PR is not a first time offender as he was sanctioned by the FEI's Judicial Committee, predecessor of the FEI Tribunal, by a decision dated 27 September 2005, resulting in the PR being suspended for 8 months and having to pay a fine of 2000 CHF for the presence of 4 different prohibited substances at 4 different events within a period of 16 months.
34. One of the detected prohibited substances in the decision of 27 September 2005 was Mefenamic acid. Therefore, the PR should have been aware that the use of medication containing the prohibited substance may lead to a positive finding.
35. The Tribunal is somewhat disappointed that the PR did not draw the necessary conclusions from his past experience in regard to stable management and care in relation to Mefenamic acid required to ensure that the Horse was not competing with prohibited substances in its systems.
36. According to EADMCR Article 9 disqualification from the event is automatic when there is a positive finding.
37. In deciding the sanctions, the FEI Tribunal considered, on the one hand, the fact that this matter relates to Medication A violation and, on the other hand, the fact that the PR is a repeat offender and that he, apparently, did not draw the relevant conclusions regarding treatment of competition horses and stable management processes, from the proceedings before the FEI Judicial Committee during 2005.

4.7 Disqualification

38. 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 EADMCRs Article 9.

4.8 Sanctions

39. 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 **15 months** to commence immediately and without further notice from the date of the notification. The period of Provisional Suspension shall be credited against the period of ineligibility imposed in this decision.
- 2) The PR is fined **CHF 3,000.**
- 3) 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



THE CHAIRMAN, Mr Patrick A. Boelens