



DECISION of the FEI TRIBUNAL

dated 23 February 2009

Positive Medication Case No.: 2008/46

Horse: CRACK HANSGROHE

FEI Passport No: BEL42715

Person Responsible: Mr Kris Vervaecke, BEL

Event: CH-M-YHorses - CCI 1* Le Lion d'Angers, FRA, 16-19.10.2008

Prohibited Substances: Cation Ipratropium

1. COMPOSITION OF PANEL

Mr Ken E. Lalo
Prof Jens Adolphsen
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 and documents presented in the case file, as also made available by and to the PR.

2.3 Oral hearing: Waived by the PR. 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, effective 15 April 2007, ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 22nd 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 Rules ("**EADMCs**"), effective 1 June 2006.

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

FEI Code of Conduct for the Welfare of the Horse.

3.2 Person Responsible: Mr Kris Vervaecke

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 The Factual Background

- a. Crack Hansgrohe (the "**Horse**") participated at CH-M-YHorses - CCI 1* Le Lion d'Angers, FRA, from 16 to 19 October 2008 (the "**Event**"). The Horse was ridden by Mr Kris Vervaecke, who is the Person Responsible in accordance with GR Article 142 (the "**PR**").
- b. The Horse was selected for sampling on 17 October 2008. Analysis of the urine sample no. FEI-0084556 taken from the Horse, performed by the approved central laboratory of the FEI, the Laboratoire des Courses Hippiques ("**LCH**"), in France, revealed the presence of Cation Ipratropium (Certificate of Analysis 0084556 dated 14 November 2008).
- c. Cation Ipratropium is a bronchodilator that is indicated in horses for the treatment of reversible bronchospasm in recurrent airway obstruction (RAO), also known as chronic obstructive pulmonary disease (COPD), or 'heaves'. RAO is an allergic and inflammatory respiratory disease (common in older horses) leading to exercise intolerance and other progressive respiratory signs. Cation Ipratropium is an anti-cholinergic bronchodilator that acts by blocking muscarinic receptors in the lung so inhibiting bronchoconstriction and mucus secretion (see Veterinary Statement by Dr Andrew Higgins, BVetMed MSc PhD FIBiol MRCVS, Member of the FEI Veterinary Committee, dated 27 January 2009). Cation Ipratropium is specified in the Equine Prohibited List (VR Annex III) as a "Medication Class A" Prohibited Substance.

- d. A Confirmatory analysis has been waived by the PR and has, therefore, not been carried out (PR's statement dated 13 January 2009).
- e. No request had been made for the use of Cation Ipratropium on the Horse, and no medication form had been supplied for this substance.

4.2 The Preliminary Hearing

- f. The presence of the Prohibited Substance, the possible rule violation and the consequences involved were duly notified to the PR on 11 December 2008.
- g. The notification of 11 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.
- h. The PR confirmed that he wished the preliminary hearing to be held.
- i. The preliminary hearing took place on 16 December 2008 and the preliminary decision was rendered and communicated to the PR on 19 December 2008. The PR was informed that the preliminary panel had decided to maintain the provisional suspension until "16 February 2009, or until the production of a negative B-sample".
- j. On 16 February 2009, the FEI decided to continue the provisional suspension until 10 March 2009, granting the PR a right to another preliminary hearing in regard to the continuation of the provisional suspension. The hearing in regard to the continuation of the provisional suspension was scheduled for 23 February 2009.

4.3 Jurisdiction

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

4.4 The Person Responsible

- l. The PR, the rider of the Horse, is the person responsible for the Horse in accordance with GR 142. The PR is a 45 year old accountant and is to be considered an amateur rider.

4.5 The Decision

- m. This case was submitted by the FEI to the panel of the FEI Tribunal on 17 February 2009. The case was thus submitted

to the panel following the expiration of the provisional suspension decided on 19 December 2008. The FEI Tribunal dealt diligently and rapidly with the case, immediately following its submission to the panel, especially in view of the expiration of such initial period of provisional suspension.

- n. The PR waived his right to be heard in a final hearing on the merits of this case, by correspondence submitted on his behalf by the BEL NF, dated 26 January 2009.
- o. The Tribunal accepted all the evidence and briefs filed in this case, including the PR's statements dated 13 January 2009 and 13 February 2009, with attachments, a statement by Dr Emmanuelle van Erck, DVM, PhD, Dip ECEIM, of the Faculty of Veterinary Medicine, University Of Liege, Belgium, dated 9 January 2009, submitted on behalf of the PR, a statement by Dr Jef Desmedt, Veterinarian of the Belgian Equestrian team, dated 15 February 2009, submitted on behalf of the PR, a statement by Dr Andrew Higgins BVetMed MSc PhD FIBiol MRCVS, Member of the FEI Veterinary Committee, dated 27 January 2009, submitted on behalf of the FEI, correspondence and all other evidence included in the case file.
- p. The FEI Tribunal is satisfied that the laboratory report reflects that the tests were accurately performed in an acceptable method and that the findings of LCH are accurate. The FEI Tribunal is satisfied that the test results show the presence of the Prohibited Substance. 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 in accordance with EADMCRs Article 3. The Prohibited Substance is a "Medication A" class substance.
- q. The establishment of the objective elements of a doping offence creates the presumption of guilt of the PR. 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 EADMCRs Article 10.5.
- r. The PR explained that the Horse "is a sneezer" and "the week before the event he was nebulised with a homeopathic product", providing the list of substances included. Dr Higgins mentioned that "if correct, would be unlikely to have any effect on performance and would not per se give rise to a positive finding for ipratropium" (see statement by Dr Higgins dated 27 January 2009).

- s. The PR explained the process of inhalation therapy used on the Horse, the equipment involved and the fact that he owns only one such inhalation machine. The PR gave very detailed review of the last treatments of the Horse with the homeopathic product, the last such time being immediately prior to traveling to the Event, on 14 October 2008, some three days before the start of the Event.
- t. The PR further explained and provided evidence to show that another of his horses, NAG, a 7 year old gelding, was prescribed (inter alia) ipratropium bromide 2 x 0.5 mg ampoules to be nebulised 15 minutes before work over 1 week. This report was co-signed by Dr. van Erck. The PR testified that Nag was so treated on 12 October and on 13 October 2008.
- u. The PR testified that the Prohibited Substance was not used on the Horse and that the only plausible explanation was an accidental contamination as a result of the treatment of another of his horses with the Prohibited Substance days before the Event, using the same inhalation machine used to treat the Horse. Dr van Erck of the University of Liege, in a statement dated 9 January 2009, stated that nebulised agents "can diffuse in the surrounding air" which "implies that horses present in the immediate surroundings of a treated horse may accidentally inhale drug particles". Dr van Erck further stated that "if the delivery system is not perfectly washed between treatments or between each horse....a horse may be contaminated by drug particles....previously used to treat another horse".
- v. Dr Higgins providing a statement on behalf of the FEI testified that while "[b]oth of these statements are correct in principle. Nevertheless, there is no evidence provided by Mr Vervaecke to demonstrate unequivocally (1) when he last treated NAG, (2) whether the same equipment was actually used for both horses, (3) whether the horses were stabled adjacent to each other, or (4) for what length of time ipratropium particles in a device may still be detectable. The risk of contamination with ipratropium must be considered unlikely since the low dose used means detecting its normal use is very difficult, so inadvertent contamination with what would in effect be a much smaller amount is improbable, especially if this was more than 48 hours later" (see statement by Dr Higgins dated 27 January 2009). Some of these remarks were addressed in the PR's later statement dated 13 February 2009.
- w. Dr Higgins further stated that "[i]nhalation therapy is being used increasingly in the treatment of RAO in horses and very sensitive assays are required for the detection of drugs administered at very low levels by inhalation. Methods for

determining quaternary ammonium compounds (QACs) such as ipratropium in equine urine are not straightforward but effective methods have been described. QACs 'are known to be abused in equine sports' and 'in the years 1997 to 1999, there were 17 positive cases of quaternary ammonium drugs in equine sports as reported by the Association of Official Racing Chemists'. Since then, there have been some high profile positive cases in racing" (see statement by Dr Higgins dated 27 January 2009).

- x. Dr Higgins stated that "[w]hereas this [the PR's explanation regarding contamination of the inhalation machine] is plausible, it is equally possible that a dose of ipratropium could have been administered to CRACK HANSGROHE shortly before competing so giving rise to the positive result" (see statement by Dr Higgins dated 27 January 2009).
- y. The FEI Tribunal notes that the PR's evidence and arguments were well-documented. The FEI Tribunal is convinced, after consideration of all the evidence, of the possible causal link between the treatment of the PR's other horse with the Prohibited Substance some four days before the Event and the positive test result of the Horse. Considering all the evidence, the FEI Tribunal accepts the explanation of the PR and accepts that the positive result was caused by the PR's negligence of not cleaning the tubes of the inhalation machine. The FEI Tribunal considers that the positive result is sufficient to establish that despite the explanations given, the PR was negligent by not having ensured that no contamination occurs, which could have easily been prevented by properly cleaning the inhalation machine after each usage, and by not having ensured that the Horse was competing drug-free at the Event.
- z. In deciding the sanctions the FEI Tribunal considered, on the one hand, the type of event and, on the other hand, the substance at issue which is a medication A and not a doping substance, the PR's amateur "status", the level of the Event, the PR's cooperation in the investigation and the PR's explanation of the positive finding which is accepted by the Tribunal.

4.2 Disqualification

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.

4.3 Sanctions

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 **Two and One-Half months (namely, 75 days)** 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 23 February 2009.
- 2) The PR is fined **CHF 1,000.-**.
- 3) The PR shall contribute **CHF 1,000.-** 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

Date: 23 February 2009

FOR THE PANEL:



**THE CHAIRMAN,
Mr Ken E. Lalo**