



DECISION of the FEI TRIBUNAL

dated 19 April 2016

Positive Controlled Medication Case No.: 2015/CM04

Horse: WAKANA

FEI Passport No: GER28123/COL

Person Responsible/NF/ID: Constanza Jaramillo/10030186/COL

Event: CDI1* – Bogotá (COL)/2015_CI_1287_D_S_01_02

Date: 15 – 17 May 2015

Controlled Medication Substances: Theophylline, Caffeine

I. COMPOSITION OF PANEL

Mr. Erik Elstad, one member panel

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Case File: The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file and the oral hearing, as also made available by and to the PR.

3. Oral hearing: 13 April 2016 - Lausanne, Switzerland

Present:

The FEI Tribunal Panel
Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:

Ms. Constanza Jaramillo, PR

For the FEI:

Ms. Anna Thorstenson, FEI Legal Counsel
Mr. Michael Rentsch, FEI Legal Director

Ms. Aine Power, Legal Counsel

Others:

Ms. María Inés García

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable or have been infringed:

Statutes 23rd edition, effective 29 April 2014 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2015, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2015.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2nd edition, effective 1 January 2015.

Veterinary Regulations ("**VRs**"), 13th edition, effective 1 January 2015, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Ms. Constanza Jaramillo

3. Justification for sanction:

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with the World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

ECM Rules Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Controlled Medication Substance is present in the Horse body during an Event without a valid Veterinary Form. Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's Samples, even though their Support Personnel will be considered additionally responsible under Articles 2.2 – 2.5 ECM Rules where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish a Rule violation under Article 2.1."

2016 ECM Rules Art. 10.5.1.1: "Where the ECM rule violation involves a Controlled Medication Substance that is a Specified Substance, and the Person Responsible and/or member of the Support Personnel can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, six months of Ineligibility, depending on the Athlete's or other Person's degree of Fault. Where the Person Responsible and/or member of the Support Personnel intends to establish that he/she bears No Fault or Negligence, Article 10.4 shall apply."

IV. DECISION

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the Final Hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 WAKANA (the "**Horse**") participated at the CDI1* in Bogotá, Colombia, from 15 to 17 May 2015 (the "**Event**"), in the discipline of Dressage. The Horse was ridden by Ms. Constanza Jaramillo, who is the Person Responsible in accordance with Article 118 of the GRs (the "**PR**").
- 1.2 The Horse was selected for sampling on 17 May 2015.
- 1.3 Analysis of urine sample no. A07099 taken from the Horse at the Event was performed at the FEI approved laboratory, the United States Equestrian Federation Drug Testing Laboratory ("**USEF**"). Analysis of the urine sample revealed the presence of Theophylline and Caffeine.
- 1.4 The Prohibited Substances detected are Theophylline and Caffeine. Theophylline is a bronchodilator used to dilate the airways. Caffeine is a stimulant that stimulates the central nervous system. Both substances are Controlled Medication Substances under the Equine Prohibited Substances List.
- 1.5 No request had been made to administer Theophylline and Caffeine to the Horse, and no Veterinary Form had been provided by the PR for the use of the substances on the Horse. Therefore, the positive finding for Theophylline and Caffeine in the Horse's sample at the Event gives rise to a Controlled Medication Rule violation under the EADCMRs.

2. The Proceedings

- 2.1 The presence of the Prohibited Substances following the laboratory analysis, the possible Rule violation and the consequences implicated, were officially notified to the PR and the owners of the Horse, through the Federación Equestre de Colombia ("**COL-NF**"), by the FEI Legal Department on 9 September 2015. 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.

3. The B-Sample Analysis

- 3.1 Together with the Notification Letter of 9 September 2015, the PR and the owners of the Horse were also informed that they were entitled: (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 Neither the PR, nor the owners of the Horse, did request for the B-Sample to be analysed and accepted the results of the A-Sample analysis.

4. Preliminary Decision

- 4.1 During the Preliminary Hearing of 11 September 2015 the PR explained that with the exception to suspensory problems of the hind legs the Horse was completely healthy, and that it had only been treated with physiotherapy, and no other medication, since November 2014. Further that no horses had been infected in her stable, and – as far as she had been informed – neither at the Event. That therefore the only explanation she had for the positive finding was food contamination. In this respect the PR explained that only 3 to 4 food brands existed in Colombia, and that all brands produced their food in the same plant. In addition, that the plant also produced food for other animals. That as a result the PR believed that food contamination was very likely to occur in the plant. Moreover, that when food producers would lack one ingredient, this ingredient was replaced with another ingredient, such as cacao or calf flower etc., without the ingredient replacement being mentioned on the food label. That therefore clients, like herself, never knew which exact ingredients the food contained. Furthermore, that food regulation in Colombia did not allow for food imports. The PR further explained that Dr. Sergio Salinas, FEI Veterinarian, had informed her of two previous cases of food contamination which had already occurred in Colombia. Finally, the PR explained that due to the fact that she had only been notified of the positive finding in September, and the Event had taken place in May, she was no longer in possession of food from the same batch, i.e. the one fed to the Horse in May. In this respect she explained that she had contacted the plant to

obtain food samples produced in May from them. That the plant would however not store any food samples for longer than three months. That she could therefore only analyse food fed to the Horse at this point in time.

- 4.2 With regards to Fault and Negligence for the rule violation the PR explained that she took care of her horses herself, including the Horse. Further, that she had been competing on international level since 5 years and on national level since fifteen (15) years. Finally, that she understood that the Prohibited Substances detected would be used to stimulate horses, but that the Horse was already nervous by nature; and that in the discipline of Dressage, stimulation of horses would be counterproductive to enhance the performance.
- 4.3 The FEI explained that it was not unusual for sample analysis to take up to three months, particularly when more than one Prohibited Substance was involved. The FEI further argued that in accordance with Article 2.1.1 of the ECM Rules, it was the PR's personal duty to ensure that no Controlled Medication Substance is present in the Horse's body during an Event without a valid Veterinary Form.
- 4.4 On 18 September 2015, the Preliminary Hearing Panel decided not to lift the Provisional Suspension and to maintain it. The Preliminary Hearing Panel found that at the time, there was no reason for the lifting of the Provisional Suspension, as based on the information provided the presence of the Controlled Medication Substances Theophylline and Caffeine in the Horse's Sample was not disputed.

5. Written submission by the PR

- 5.1 On 29 October 2015 and on 7 December 2015, the PR submitted her written explanations to the positive finding. Together with her submission the PR provided laboratory results by NUTRIANALISIS LTDA., dated 1 October 2015. According to the analysis results of a sample of the product "CRESSE GLADIADOR" (a product which had been fed to the Horse, as outlined further below) the product contained Caffeine at a concentration of 14.27 mg/kg. The laboratory has not analysed the product for Theophylline.
- 5.2 The PR further provided results of a study conducted by the Colombian Federation of Equine Associations (the "**FEDEQUINAS COLOMBIA**"), under the supervision of the Colombian Agricultural Institute (the "**ICA**"), assessing the presence of methylxanthines in the blood of Colombian Criollo Paso horses which had been fed with products that might contain traces of caffeine/theobromine, amongst others pelletized alfalfa. The study concluded that the results of the analysis of the food samples (alfalfa, concentrated feed, hay) had shown the presence of caffeine and theobromine in the commercial products (alfalfa hay and pellets produced had been contaminated with Caffeine (7.8 and 6.7 mg/kg respectively) and a complete horse feed sample had been found to contain theobromine (9.6 mg/kg) and Caffeine (2.3 mg/kg)).

- 5.3 Moreover, the PR provided a "Report on Advisory for the Investigation of Theophylline in horse blood", conducted by Ms. Teresa Perez H., a Pharmaceutical Chemist from the ACLAB SAS. In that case a study had been conducted with the same horse at different times of exposition. The blood sample of the horse had been found to contain the metabolite Theophylline at 73.24 ng/ml, whereas a negative result for Caffeine had been reported. Following examination of the medicines and food administered to the horse, as well as the laboratory results, Ms. Perez concluded that the source of positive results had been the contamination with Caffeine of one of the food products, namely alfalfa.
- 5.4 The PR further provided a scientific opinion by Dr. Gonzalo Diaz DVM, MSc, PhD, professor and veterinarian, and statements by Ms. Margreet Voermans DVM, Dipl. ECVS, Dipl. ACVSMR, veterinarian and co-owner of the Horse, Mr. Jorge Raul Pajarito Molina, groom, as well as by the COL-NF.
- 5.5 Dr. Diaz stated that it was highly likely that the positive finding had been a result of feed contaminated with Caffeine (from coffee and/or cocoa husks or from contaminated alfalfa) and that the Theophylline in the urine sample had been simply a result of the normal metabolism of Caffeine into Theophylline in the Horse. More specifically, that Caffeine could have entered into the Horse's system either by the Horse ingesting the potentially contaminated product CRESSE GLADIADOR, or through contaminated alfalfa hay or alfalfa pellets. That however since more than three months had passed between the sampling and notification of the positive finding, feed samples of the product CRESSE GLADIADOR fed during the Event had no longer been available for testing. Dr. Diaz further explained that Colombia was the third largest coffee producer and the tenth largest cocoa producer in the world; that both coffee and cocoa by-products contained caffeine and that any of them had the potential to contaminate horse feed, either accidentally or by improper cleaning of feed plant equipment. Furthermore, that both alfalfa hay and pellets were fed to horses in Colombia and worldwide, and that it had been recently reported (unpublished) by the mass spectrometry laboratory, Universidad de Santander, UIS that alfalfa hay and pellets produced in Colombia had been contaminated with Caffeine and that a complete horse feed sample had been found to contain theobromine and Caffeine. That although more than sixty (60) different plant species were known to produce Caffeine, alfalfa was not amongst them; that it might however be possible that caffeine-producing weeds growing on the alfalfa fields ended up contaminating the alfalfa hay or pellets. Finally, that an unusual number of competition horses in Colombia had tested positive for Theophylline in the past; this suggested that the substances had not been intentionally administered to the horses but rather that the horses had been exposed to Caffeine or Theophylline from a common source such as contaminated feed.
- 5.6 In her statement Ms. Voermans explained that the Horse had been stabled at the stable of the PR's family since March 2015, and that since the end of April 2015, when the Horse had been treated with Mesotherapy, the Horse had received no other treatment. Further, that

generally, she never treated any competition horses with Caffeine or Theophylline, and that the Horse had no history of respiratory problems, i.e. Theophylline being a bronchodilator.

- 5.7 Mr. Pajarito explained that he had been a groom for over fifteen (15) years, and groom for the PR's family stable since 2000. That he was aware of the EADCMRs, and that since his role was to take care of the PR's horses – including the Horse -, which included feeding them, he always checked the composition and ingredients of any products prior to feeding them to the horses, in order to assure that they did not contain any Prohibited Substances. Further that since the Horse was allergic to oats it was fed CRESSE GLADIADOR, which did not contain any oats. That during the Event the Horse had been fed with this product, along with hay and alfalfa, and that he had personally bought and fed the Horse with this product. Finally that neither he nor the PR had intentionally administered any Prohibited Substances to the Horse, and that his only explanation for the positive finding was either contaminated food, or that a third party had administered Prohibited Substances to the Horse without their knowledge.
- 5.8 The COL-NF confirmed that Mr. Pajarito had been groom for the PR and the Horse for several national and international events where the PR had achieved good results; amongst others she had won the bronze medal at the 2011 Pan American Games.
- 5.9 Together with her submission the PR also provided two invoices of 31 March 2015 and of 6 May 2015 showing that the groom had – amongst others - bought the product CRESSE GLADIADOR (4 x 40 kg listed on both invoices). Furthermore the invoice of 6 May 2015 also included alfalfa pellets (4 x 40 kg). Moreover the PR provided a product description of the product CRESSE GLADIADOR. The product description does not list either Theophylline or Caffeine; it does however list alfalfa as an ingredient. In addition, the PR provided – amongst others – a Colombian newspaper article from September 2010 reporting that forty-three (43) (Paso Fino) horses had tested positive for Caffeine and Theophylline.
- 5.10 In essence the PR submitted that:
- a) She and her support personnel knew and upheld the EADCMRs, and that no violation had previously been recorded against her or her horses.
 - b) She had not administered any Theophylline or Caffeine to the Horse. That it made no sense to administer Theophylline to a horse that was not sick and competed in the discipline of Dressage - as it was the case in the case at hand - since Theophylline was a bronchodilator substance that increased lung capacity, which would not be necessary for a dressage test that lasted between 5 to 7 minutes. Moreover, that it would be counterproductive to administer a stimulant, i.e. Caffeine, to a horse competing in Dressage, since the discipline required total concentration from the horse. That therefore

the only possible explanation for the positive finding was either food contamination, or administration by a third party, without her or her support personnel's knowledge.

- c) Since 2010 – especially in the realm of Paso Fino horses - many cases for Caffeine and Theophylline findings had arisen in Colombia, and that it was said that alfalfa, as well as concentrated feed for horses produced in Colombia and containing the ingredient alfalfa, were contaminated with Caffeine and Theophylline. That Dr. Diaz had reaffirmed that the case at hand was related to contamination with Caffeine, either by the concentrated feed CRESSE GLADIADOR and/or the alfalfa which had been fed to the Horse prior to the Event. Further that analysis of the product CRESSE GLADIADOR demonstrated that it contained Caffeine. The PR further contended that no testing for Theophylline was conducted in Colombia due to the lack of required techniques. That given the time span between sampling and notification of the positive finding she had not been able to analyse a sample of CRESSE GLADIADOR from the package fed to the Horse prior to the Event. That it could therefore be concluded that the product fed to the Horse had contained caffeine components that had not been listed on the product label. That – as outlined by the ICA study – in Colombia concentrated feed, alfalfa – one of the ingredients of CRESSE GLADIADOR - and hay had been contaminated with Caffeine and theobromine. Furthermore that the study conducted by the ACLAB SAS had confirmed that the Theophylline in the horse's blood had been caused by the ingestion of caffeine-contaminated honey alfalfa. That according to this study it could therefore be assumed that Theophylline was also a component of alfalfa. As a result it was demonstrated that horses that consumed CRESSE GLADIADOR ingested Prohibited Substances without there being any significant fault or negligence on the part of the riders or support personnel.
- d) Since the positive finding resulted from contaminated feed fed to the Horse, No Significant Fault or Negligence on the part of the PR or her groom existed. Furthermore that Article 10.5.1 of the ECM Rules, a provision regarding contaminated products, applied in the case at hand, and that therefore only a reprimand and no period of Ineligibility had to be imposed on her. That the case at hand was similar to a previous case (Positive Medication Case 2005/17 LACANT - Decision of the Judicial Committee of the FEI dated 30 March 2006), that it was her first alleged rule violation, and that she had established how the Controlled Medication Substances had entered the Horse's system, namely through contaminated feed. That in any case, as the positive finding had not been promptly notified to her and since this delay was not attributable to her, in case the Tribunal decided to impose any period of Ineligibility, Article 10.10.1 of the ECM Rules was applicable in the case at hand.

6. Further proceedings

- 6.1 On 20 November 2015, the PR, in accordance with Article 7.4.4 of the Equine Anti-Doping Rules ("EAD Rules") submitted a petition to the FEI Tribunal for another Preliminary Hearing.
- 6.2 On 4 December 2015, the FEI explained that it had duly investigated the case at hand, and consulted a pharmacology expert to review the PR's submission. That, while it had not been able to finalize the review of the submission in its entirety, following a preliminary outcome of the review it was the FEI's position that the explanations provided by and on behalf of the PR did not explain the positive finding as (i) the metabolites that had been detected (Theophylline and Caffeine, but no paraxanthine) in the urine sample were not indicative of either Caffeine or theobromine administration to the Horse, either as a contaminant or medical grade product; (ii) the metabolites observed in the urine were consistent with Theophylline administration; and (iii) however no Theophylline had been detected in the sample of CRESSE GLADIATOR submitted for analysis.
- 6.3 The FEI further argued that given that the ECM Rules, as a general rule, foresaw a period of Ineligibility of six (6) months in similar cases (with the possibility of elimination/reduction/increase of this period), and since the PR had been provisionally suspended for roughly three (3) months, it did not object to the lifting of the Provisional Suspension after three months, i.e. as of 8 December 2015.
- 6.4 On 7 December 2015, the PR argued that she did not agree with the preliminary outcome and conclusions of the FEI, as according to Dr. Diaz, paraxanthine had not been found in the urine sample of the Horse, since the USEF had used GC-MS (gas chromatography-mass spectrometry) to determine caffeine and theophylline, and the mass fragments (known as MRM's or transitions) searched for were those corresponding only to Caffeine and Theophylline. That therefore it was not possible to rule out the presence of paraxanthine in the urine sample based on these results since paraxanthine had never been analysed for. Further that the metabolites found in the urine were also consistent with Caffeine administration from a contaminated diet; it was impossible to rule out that possibility based on the laboratory results. Finally, that the likelihood of original horse feed being contaminated with Caffeine was very high, and that explained both the presence of Caffeine and Theophylline in the Horse's urine, since Theophylline was a known Caffeine metabolite in the horse (theophylline was just Caffeine without one methyl group).
- 6.5 On 9 December 2015, the Preliminary Hearing Panel decided to lift the Provisional Suspension of the PR, as of 8 December 2015, midnight CET.

7. Written submission by the FEI

- 7.1 On 8 January 2016, the FEI provided its Response to the explanations of the PR. Together with its Response the FEI provided an expert statement by Dr. Stuart Paine BSc (Hons), PhD, MRSC, CCHEM, CSci, ACS. Dr. Paine explained that he had been provided with the analysis report by the USEF, analysis results by NUTRIANALISIS LTDA. for the product CRESSE GLADIADOR, and the expert review by Dr. Diaz. Furthermore, that he had been informed that the USEF estimated the concentration of Caffeine at approximately 101 ng/mL and of Theophylline at approximately 360 ng/mL in the A-Sample. That the USEF had further stated that they "did not see the typical xanthine "noise" including paraxanthine or theobromine along with what was detected and confirmed". Moreover, that he understood that the USEF – which had been contacted by the FEI with regards to a claim by the PR that paraxanthine had not been found in the sample because the method used by the laboratory had been looking to detect Caffeine or Theophylline exclusively, but not other substances – had confirmed (outlined further below) that both paraxanthine and theobromine had been looked for, but not detected. Dr. Paine came to the conclusion that the metabolites that had been detected (Theophylline and Caffeine but no paraxanthine/theobromine) in the urine sample were not indicative of either Caffeine or theobromine administration to the Horse either as a contaminant or medical grade product. That in his opinion the metabolites observed in the urine were more consistent with Theophylline administration either as a contaminant in feed or medical grade product. In this respect, Dr. Paine – referring to scientific papers (Todi et al, Budhraj et al (2007) and Machnik et al (2008) explained that if Caffeine had been administered to the Horse either inadvertently as a contaminant from feed or as an administration of pure Caffeine than the expected profile of metabolites (theophylline, theobromine and paraxanthine) in the urine was to be different to those observed. Moreover that even if the product CRESSE GLADIADOR – as alleged by the PR – had contained Caffeine and Theophylline (for instance a mix of 50:50 of the two substances), one still expected to see significant levels of theobromine and paraxanthine. That however, as this had not been the case in the case at hand, the main contaminant had to be Theophylline, and not Caffeine. Further that Theophylline was not only a metabolite of Caffeine – as asserted by the PR -, but could also itself be metabolised back to Caffeine, albeit in small quantities.
- 7.2 In essence, the FEI argued that:
- a) As Controlled Medication Substances, i.e. Caffeine and Theophylline, had been present in the Horse's A-Sample taken at the Event for which no valid Veterinary Form had been submitted, and since the PR had waived her right to the B-Sample analysis, a violation of Article 2.1 of the ECM Rules had been established.
 - b) During the on-going proceedings in the case at hand, Caffeine and Theophylline had been re-classified as "Specified Substances" – substances that have been considered by the FEI List Group as

being *"more likely consumed by Horses inadvertently and for a purpose other than the enhancement of sport performance"* - on the 2016 Equine Prohibited Substances List. That, even though Specified Substances were not to be considered less important or less dangerous than other Prohibited Substances, the FEI was of the opinion that the concept of "Specified Substances" and the respective rules thereof (2016 ECM Rules) may be applied - in form of the so-called "lex mitior" - in the case at hand, a case resulting from a 2015 rule violation.

- c) The FEI had not been involved in any testing of the product CRESSE GLADIADOR, and that no chain of custody regarding the testing had been provided by the PR. That therefore the respective test results could not be considered as genuine scientific evidence, since amongst others the origin of the sample of the product analysed, i.e. deriving directly from the manufacturer or kept at the PR's stable, and its state, i.e. sealed or opened and used beforehand, was not known.
- d) With regards to how the Prohibited Substances had entered the Horse's system, it did not agree with either the PR's explanation, i.e. through the administration of the product CRESSE GLADIADOR, which had been contaminated by Caffeine (and most likely also Theophylline), or Dr. Diaz's explanation, i.e. that the Theophylline finding resulted from a metabolism process of the Caffeine ingested by the Horse. That however, and following the conclusions of Dr. Paine, (i) the metabolites that had been detected (Theophylline and Caffeine, but no paraxanthine or theobromine) in the urine sample were not indicative of either Caffeine or theobromine administration to the Horse, either as a contaminant or medical grade product, (ii) Caffeine and Theophylline administration (assuming that also Theophylline was contained in the CRESSE GLADIADOR) would also lead to significant levels of theobromine and paraxanthine, and (iii) the metabolites observed in the urine were consistent with Theophylline administration. That the PR had therefore not established how the Caffeine and Theophylline had entered into the Horse's system, and that therefore the first prerequisite of Articles 10.4.1/10.5.1 of the ECM Rules had not been fulfilled.
- e) Even if the PR had established how the Caffeine and Theophylline had entered into the Horse's system, she could not sustain her burden of showing No (or No Significant) Fault or Negligence on her part. That the PR had not succeeded in establishing that the positive finding resulted from a contaminated product, and further that – assuming she had for the sake of determining her level of fault/negligence for the rule violation – according to the PR herself, the danger of feed, concentrated feed and alfalfa being contaminated with Caffeine and Theophylline had been long recognised in Colombia. The PR should therefore have made herself familiar with at least the most common and known risks of contamination of feed in her country, and should have taken preventive measure to avoid any such contamination. Finally, that the PR seemed to have failed to

ensure that no Controlled Medication Substances had come to be present in the Horse's system during the Event.

- f) The FEI suggested that given the circumstances of the case at hand, the Tribunal should impose a period of Ineligibility of six (6) months, taking into account the underlying objectives and rationale of the ECM Rules and FEI Medication Code, as well as principles of fair play. Moreover, the FEI argued that in 2006 an entirely different anti-doping system had applied, with both different categorisations of Prohibited Substances as well as much lower sanctions. That therefore the decision referred to by the PR was not adequate to provide any guidance in terms of sanctions. Finally, that even applying the 2016 EADCMRs as *lex mitior* in the case at hand, the sanction of the PR could only be entirely eliminated provided she established No Fault or Negligence for the rule violation.
- g) The prerequisites of Article 10.10.1 of the ECM Rules were not fulfilled, as in the opinion of the FEI the "hearing process" only started at the moment the proceedings had been initiated, and not with a potential delay of notification of the positive finding. Further that – as previously argued - it was not unusual for analysis results to be available only after 2-4 months after the sampling (roughly four months in the case at hand), as the time to issue an analysis report depended on the overall work load of the laboratory in question, but also for example on the complexity to the analysis, i.e. analysis involving two or more Prohibited Substances required more time than that of only one Prohibited Substance.
- h) If the Tribunal followed the explanation by the PR on how the Prohibited Substances had entered the Horse's system, in addition to the automatic disqualification of the result of the PR and Horse combination obtained in the Competition of 17 May 2015, i.e. the date of sampling (Article 9 of the ECM Rules), pursuant to Article 10.1.2 of the ECM Rules, also the results obtained on 16 May 2015 had to be disqualified. That if one followed the PR's explanation also the day prior to the sampling the Horse's system would have contained the Prohibited Substances, given that it had received the allegedly contaminated product for a long period of time prior to the testing.

8. Rebuttal submission by the PR

- 8.1 On 29 January 2016, the PR further submitted that the report of Dr. Paine should not be considered by the Tribunal, as he had based his entire report on the assumption that the laboratory analysis had included a search for paraxantine and theobromine, and that those substances had not been detected. That there existed however no evidence that the laboratory had searched for those substances; the Data Pack of the A-Sample did not include any information on this search.

- 8.2 Regarding the FEI's claim that the PR had not provided any chain of custody for the testing of the product CRESSE GLADIADOR, the PR argued that the laboratory results confirmed that the PR had personally handed the sample of CRESSE GLADIADOR to the laboratory on 17 September 2016. The PR further provided a statement by herself confirming that, after she had been notified of the positive finding, she had taken a sealed package of the product CRESSE GLADIADOR from the stables, where the Horse had been stabled, and personally delivered it to the laboratory NUTRIANALISIS LTDA on 17 September 2015 for it to be tested for Caffeine. That given the delay in notification of the positive finding, and since she no longer possessed a sample of the same package of the CRESSE GLADIADOR fed to the Horse during the Event, she had requested for a new and sealed package of the product to be tested.
- 8.3 Furthermore, the PR argued that the concentration of Caffeine found in the urine sample of the Horse was only one tenth of the threshold limit, i.e. 1000 ng/mL, to control and discern between metabolic and administered Caffeine concentrations, as suggested by Todi et al (1999).
- 8.4 The PR argued that she bore No Significant Fault or Negligence for the rule violation for the reasons as follows. To start with, the study by the Ministry of Agriculture, ICA and FEDEQUINAS had been published only on 20 October 2015, i.e. five months after the Event. That therefore it had been impossible for her to already know at the time of the Event that concentrated feed, alfalfa and hay had been contaminated with Caffeine and theobromine in Colombia. Further that the ECM Rules defined Contaminated Products as "*A product that contains a Prohibited Substance that is not disclosed on the product label or information available in a reasonable Internet search*". That therefore the caution or due diligence expected was just to verify the labels of the products, which was exactly what the groom had done in the case at hand. That in this respect it was also important to highlight that in Colombia it was not possible to find any imported horse concentrated feed, and that she had therefore been obliged to buy locally produced horse feed, which did not undergo the same level of quality control of products to be found in the United States or in Europe.
- 8.5 Finally, the PR argued that given that the analysis report by the USEF had been issued on 5 June 2015, the delay in notifying her of the positive finding was attributable to the FEI and not to the laboratory, as argued by the FEI. That this delay had severely affected her right of defence, especially with regards to the collection of evidence. That, as a result, in case the Tribunal decided to impose any period of ineligibility on her, Article 10.10.1 of the ECM Rules had to apply.

9. Final Hearing

- 9.1 During the Final Hearing both Parties maintained their positions submitted in writing prior to the hearing. Furthermore, the PR stated

that she had been affiliated to the COL-NF for thirty (30) years, competing internationally since 2001, and had been - among others - pre-qualified for the 2012 London Olympic Games. Further that she had various functions within the sport in Colombia, and that she was also teaching and developing the sport in Central and South America.

- 9.2 Furthermore, that – as previously explained – there existed only one plant, SOLLA, which produced feed for other companies, such as CRESSE, which among others sold the product CRESSE GLADIADOR. That SOLLA had confirmed to her, that, since it produced feed also for other animals, and even though it de-contaminated the plant in between, there still remained a risk of contamination. That the plant only stored feed samples for two (2) months, and that it was impossible for her, and Colombian riders in general, to have samples of each batch tested, also considering the cost for such testing, given that she was self-financing her riding. That for the future she was trying to find a way to import feed from Argentina, which was also of better quality than the Colombian one. That in this respect, it was not possible to feed horses only hay in Colombia, as the nutritional value was not sufficient for competition horses. In addition, CRESSE GLADIADOR was the only product in Colombia, which did not contain any oats, and that she had used the product since around September 2014 for the Horse only.
- 9.3 Moreover, the PR argued that she was aware of FEI Rules and Regulations, including the EADCMRs, and that she would never intoxicate any horse to win competitions, and neither risk the development of her career as a trainer, or the development of the sport in Colombia. That in this respect, and while being provisionally suspended, she had already lost out on some good opportunities. Further, that she kept records of all medications administered to her horses, including the Horse. That she had even brought in FEI registered veterinarians for the 2015 Pan American Games (where she did not compete due to lameness of the Horse) in order to assure that she complied with all FEI Rules and Regulations; generally she worked with Ms. Voermans, a very qualified veterinarian. The Horse had previously been tested in Europe (around three times) with negative results; the Horse had however never been tested in Colombia before, as tests in Colombia would only be conducted at qualifying events, such as the Event.
- 9.4 Finally, that prior to being notified of the positive finding she had not been aware of the high risk of feed contamination in Colombia. That only while investigating the case at hand she had learned about the positives of the Paso Fino horses, as they had not been made public, and since competitions with Paso Fino horses were governed by a different federation, i.e. FEDEQUINAS. That she and her groom had however always checked the labels of the feed in order to assure it did not contain any Prohibited Substances, prior to administering it to the horses, including the Horse, and that her groom had been very careful in this respect.

- 9.5 During the Final Hearing, the FEI further argued that the feed, i.e. CRESSE GLADIATOR, had only been tested for Caffeine, but not for Theophylline. That the PR had therefore not established that the feed had also been contaminated with Theophylline. In this respect, the Tribunal had previously found that it was not sufficient to prove contamination of the feed only, but that it was also necessary that a link between contaminated feed and the positive finding was established (Case 2013/FT02 HONKY TONK WHIZ, Final Tribunal Decision of 20 February 2014). The FEI was of the view that contamination was – next to administration – one possible scenario on how the Controlled Medication Substances had entered the Horse’s system; the PR had however not proven whether this was a plausible explanation. Moreover, that the USEF had indeed confirmed that it had looked for but not found any paraxanthine in the urine sample. As a result the PR had not established - on a balance of probability - how the Controlled Medication Substances had entered the Horse’s system.
- 9.6 With regards to the level of fault/negligence of the PR for the rule violation, the FEI argued that it seemed unreasonable not to have known regarding the risk of contaminated feed in her country. The FEI argued, that the PR, as a professional rider, should have made herself familiar with such potential risks.
- 9.7 Finally, the FEI acknowledged that that there had been a four-months gap between sample collection and notification of the positive finding. In this respect an internal investigation had shown that during that period of time the laboratory had been very busy with the Rio 2016 test event, which had slowed down the procedure. That the FEI Legal Department had only been informed of the positive finding on 1 September 2015, i.e. 8 days prior to notifying the PR. Furthermore, the FEI acknowledged that the manufacturer of the product CRESSE GLADIADOR had only kept feed samples for two (2) months. The FEI stated that, as a result and seen that the PR had not competed during that time period, it did not oppose to a backdating of the period of Ineligibility, starting as early as with the date of sample collection.
- 9.8 No party objected that they were not granted equal treatment or that their right to be heard had been violated.

10. Further proceedings

- 10.1 On 15 April 2016, - and as announced during the Final Hearing - the FEI submitted an email from the USEF, dated 14 December 2015. The USEF confirmed that it had looked for both paraxanthine and theobromine; no paraxanthine had been detected. Further that the laboratory had used the GC/MS method, and that, as such, was detecting ions and not m/z or transitions. Finally, that the laboratory employed ms/ms for quantitative analyses.

11. Jurisdiction

- 11.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and ECM Rules.

12. The Person Responsible

- 12.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as she had competed with the Horse at the Event.

13. The Decision

- 13.1 As set forth in Article 2.1.2 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A-Sample where the PR waives analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the USEF are accurate. The Tribunal is satisfied that the test results evidence the presence of Theophylline and Caffeine in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings. Theophylline and Caffeine are classified as Controlled Medication Substances under the Equine Prohibited Substances List. The presence of the two substances during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 13.2 The FEI has thus established an Adverse Analytical Finding for Theophylline and Caffeine and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the ECM Rules.
- 13.3 To start with the Tribunal takes note that during the proceedings in the case at hand, Theophylline and Caffeine had been re-classified as "Specified Substances" on the 2016 Equine Prohibited Substances List. It follows from the 2016 ECM Rules that in cases of Controlled Medication Substances that are classified as Specified Substances, the period of Ineligibility can be eliminated in case the PR establishes No Fault or Negligence (this has already been the case prior to 2016). Furthermore, the sanction imposed can be a warning, and the period of Ineligibility reduced to zero, in case the PR establishes No Significant Fault or Negligence. This is different for cases of Controlled Medication Substances under the 2015 ECM Rules – in those cases it is only possible to arrive at a zero point of Ineligibility provided that No Fault or Negligence under Article 10.4 of the ECM Rules is established. The Tribunal finds that, pursuant to Article 16.1.2 of the 2016 ECM Rules, it is appropriate to apply the principle of "lex mitior" and that, therefore,

the concept of Specified Substances and the 2016 ECM Rules shall apply in the case at hand. However, in order for Article 10.5.1.1 of the ECM Rules to apply, the PR has to establish that she bore No Significant Fault or Negligence for the rule violation, which is not the case in the case at hand (as outlined further below).

- 13.4 Moreover, it follows from Article 10.5.1.2 of the ECM Rules that where a Person can establish No Significant Fault or Negligence and that the detected Controlled Medication came from a Contaminated Product – as alleged by the PR in the case at hand –, then the period of Ineligibility shall be, a reprimand and no period of Ineligibility, and at a maximum, six months Ineligibility, depending on such Person’s degree of Fault.
- 13.5 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the ECM Rules. Once an ECM Rule violation has been established by the FEI, the PR has the burden of proving that she bears “No Fault or Negligence” for the rule violation as set forth in Article 10.4 of the ECM Rules, or “No Significant Fault or Negligence,” as set forth in Articles 10.5.1.1 or 10.5.1.2 of the ECM Rules.
- 13.6 However, in order to benefit from any elimination or reduction of the applicable sanction under Articles 10.4/10.5.1.1 of the ECM Rules, the PR must first establish how the Controlled Medication Substances entered the Horse’s system. This element is a prerequisite to the application of Articles 10.4/10.5.1.1/10.5.1.2 of the ECM Rules.
- 13.7 To start with the Tribunal takes note that the prerequisite on whether the PR has established how the Controlled Medication Substances had entered the Horse’s system remains disputed between the Parties. The Tribunal further takes note that the two experts, Dr. Paine and Dr. Diaz, largely disagree on this point also.
- 13.8 Whereas the Tribunal believes that feed contamination could have been one possibility for the positive finding, the Tribunal however finds that the PR has not succeeded in establishing such contamination on a balance of probability, as required under Article 3.1 of the ECM Rules.
- 13.9 However, even if the Tribunal would accept that the PR has established how the Controlled Medication Substances had entered the Horse’s system, the Tribunal finds that the PR has not established that she bore “No (Significant) Fault or Negligence” for the rule violation. Therefore no reduction or elimination of the otherwise applicable period of Ineligibility under Articles 10.4/10.5.1.1/10.5.1.2 of the ECM Rules is warranted.
- 13.10 In accordance with Article 2.1.1 of the ECM Rules, it is the PR’s personal duty to ensure that no Controlled Medication Substance is present in the Horse’s body during an Event. In this respect the Tribunal takes note of the PR’s claim that she had fulfilled her duty of care by checking the label of the product. The Tribunal however finds

that simply checking the label is not sufficient. The Tribunal finds that for the purpose of the EADCMRs, the main point of a "contaminated" product – as claimed by the PR - is that a Prohibited Substance(s) contained in that product is not outlined on the product label. The Tribunal holds that a professional rider – such as the PR in the case at hand – has to make him or herself familiar with the most common risks of contamination in his or her country; even more so when the PR is connected closely to the Equestrian community, and her National Federation, and developing the sport in that country.

- 13.11 Pursuant to the "No Fault or Negligence" and "No Significant Fault or Negligence" definitions in the EADCMRs, to establish No Fault or Negligence, a Person Responsible must show that he or she did not know or suspect, and could not have reasonably known or suspected even with the exercise of utmost caution, that he or she had administered to a horse, or the horse's system otherwise contained, a Controlled Medication Substance; while to establish No Significant Fault or Negligence, a Person Responsible must show that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relation to the violation of the ECM Rules in question. The Tribunal however finds that the PR could have known or suspected that there was a high risk of contamination of the product CRESSE GLADIADOR, or one of its components, i.e. alfalfa, if she done more than only checking the product label. As the PR pointed out herself, it had been known that there had been several cases where Colombian horses had tested positive for Caffeine and Theophylline; the situation seems to have been alarming, since the ICA had requested a study to inquire whether there was a possibility that Columbian horse feed had been contaminated with Caffeine and Theophylline. The Tribunal finds that, even if the final report in this respect had only been published after the Event, this issue had certainly been known earlier, and that this issue should have been taken seriously. As a result the Tribunal finds that the PR has not succeeded in demonstrating that she bore No Significant Fault or Negligence for the rule violation.
- 13.12 Accordingly, the Tribunal comes to the conclusion that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.
- 13.13 The Tribunal has taken note – as also acknowledged by the FEI - of the delays not attributable to the PR. Pursuant to Article 10.10.2 of the ECM Rules, the Tribunal finds that the period of Ineligibility shall commence with the date of sample collection, i.e. 17 May 2015. Furthermore, the period of Provisional Suspension, from 9 September 2015 to 8 December 2015, shall be credited against the Period of Ineligibility imposed.

14. Disqualification

- 14.1 For the reasons set forth above, the Tribunal is disqualifying the Horse and the PR combination from the Competition and all medals, points and prize money won must be forfeited, in accordance with Article 9 of the ECM Rules. Furthermore, and given that most likely, the Horse had carried the Prohibited Substance in its system for the entire duration of the Event, i.e. from 15 to 17 May 2015, the Tribunal is further disqualifying all of the Person Responsible's individual results obtained with the Horse in the Event, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article 10.1.2 of the ECM Rules.

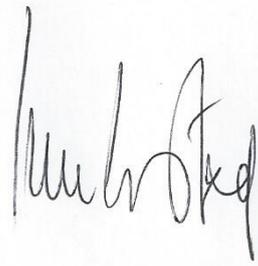
15. Sanctions

- 15.1 The FEI Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Articles 9 and 10 of the ECM Rules:
- 1) The PR shall be suspended for a period of **six (6) months** for the rule violation. The period of Ineligibility shall start with the date of sample collection, i.e. 17 May 2015. The period of Provisional Suspension, from 9 September 2015 to 8 December 2015, shall be credited against the Period of Ineligibility imposed in this decision.
 - 2) The Horse and the PR combination shall be disqualified from the entire Event, i.e. from 15 to 17 May 2015, with all consequences, including forfeiture of all medals, points and prizes.
 - 3) The PR is fined **one thousand Swiss Francs (CHF 1'000,-)**.
 - 4) The PR shall contribute **one thousand five hundred Swiss Francs (CHF 1'500,-)** towards the costs of the judicial procedure.
- 15.2 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 15.3 In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport ("CAS") within twenty-one (21) days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

FOR THE PANEL

A handwritten signature in black ink, appearing to read 'Erik Elstad', is centered on the page. The signature is written in a cursive style.

One member panel, Mr. Erik Elstad