



**Decision of the FEI Tribunal
dated 15 August 2019**

Positive Anti-Doping Case No.: 2018/BS18

Horse: SHADDAD

FEI Passport No: 103BW28/UAE

Person Responsible/NF/ID: Saeed Mohd Khalifa AL MEHAIRI/UAE/10082209

Trainer/ID/NF: Ismail MOHD/UAE/10017691

Event/ID: CEI3* - 160 – Euston Park (GBR)/2018_CI_0554_E_S_04

Date: 13 July 2018

Prohibited Substance(s): Testosterone

I. COMPOSITION OF PANEL

Dr. Armand Leone, one member panel

II. SUMMARY OF THE FACTS

- 1. Memorandum of case: By Legal Department.**
- 2. Summary information provided by Person Responsible (PR) and Trainer:** The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file and during the hearing, as also made available by and to the PR and Trainer.
- 3. Hearing:** On 8 August 2019, via telephone conference call.

Present:

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

For the PR and the Trainer:

- Dr. Jan Kleiner, Counsel for the PR and Trainer
- Dr. Mirjam Trunz, Counsel for the PR and Trainer

For the FEI:

- Ms. Anna Thorstenson, FEI Legal Counsel

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

Statutes 23rd edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2018, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2018.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2018.

Veterinary Regulations ("**VRs**"), 14th edition 2018, effective 1 January 2018, Art. 1068 and seq.

Endurance Rules ("**ERs**"), Updated 9th Edition, effective January 2018.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Saeed Mohd Khalifa AL MEHAIRI.

3. Trainer: Mr. Ismail MOHD.

Both, the PR and the Trainer are represented in these proceedings by Bär & Karrer Rechtsanwälte, Zurich, Switzerland.

4. Justification for Tribunal finding:

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)."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons*

Responsible are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.8 below where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1.”

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties’ written submissions, pleadings and evidence adduced during the 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 fully 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 SHADDAD (the “**Horse**”) participated at the CEI3* 160 Euston Park in the United Kingdom, on 13 July 2018 (the “**Event**”), in the discipline of Endurance. The Horse was ridden by Mr. Saeed Mohd Khalifa Al Mehairi, who is considered as the Person Responsible in accordance with Article 118.3 of the GRs (the “**PR**”). The registered trainer for the Horse at the Event was Mr. Ismail Mohd.
- 1.2 The Horse – a gelding - was selected for sampling during the Event on 13 July 2018.
- 1.3 Analysis of urine and blood sample no. 5573061 taken from the Horse at the Event was performed at the FEI approved laboratory, LGC, New Market Road, Fordham, United Kingdom (the “**Laboratory**”). The analysis revealed the presence of Testosterone in the urine sample, and the quantitative analysis revealed the concentration of free and conjugated testosterone to be greater than the internationally agreed threshold of 20 nanograms free and conjugated testosterone per millilitre in urine from geldings. The measured concentration of testosterone was 35 nanograms per millilitre in the urine.
- 1.4 Testosterone is an anabolic steroid with anabolic effects. Testosterone may potentially be endogenously produced by male horses. Testosterone – provided it is detected in a gelding’s Sample at a level above threshold (20 nanograms free and conjugated testosterone per millilitre) is classified

as a Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). Therefore, the positive finding for Testosterone above the threshold in the Horse's sample gives rise to an Anti-Doping Rule violation under the EADCMRs.

2. Notification Letters

- 2.1 On 8 August 2018, the FEI Legal Department officially notified the PR, through the United Arab Emirates National Federation ("**UAE-NF**"), of the presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the consequences implicated. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the Tribunal.
- 2.2 The Notification Letter further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 8 August 2018 until 7 October 2018. The Provisional Suspension of the Horse was not challenged, and the Horse was provisionally suspended for the two-months period previously outlined.
- 2.3 On 13 August 2019, the FEI Legal Department officially notified the Trainer that as registered Trainer of the Horse he qualified as a member of the Support Personnel, and he was the Additional Person Responsible for the rule violation. The Trainer was notified of an apparent EAD Rule violation under Article 2.2 of the EAD Rules. Further, the FEI informed the Trainer that since he had earlier EAD Rule violations (Case 2017/BS01 – RAFIK DE KERPONT, Case 2017/BS03 – CASTLEBAR LIGHTENING, and case 2017/BS06 – PREUME DE PAUTE) Article 10.8 of the EAD Rules might apply. The Notification Letter included notice that the Trainer was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the Tribunal.

3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 8 August 2018, the PR and the Owner 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 On 14 May 2018, the FEI notified the PR of the results of the B-Sample analysis carried out at the HKJC Laboratory in Hong Kong, which confirmed the presence of Testosterone at a level of 40.0 ng/mL.

4. Further proceedings

- 4.1 On 20 May 2019, together with their submission, the PR and the Trainer requested for the lifting of the Provisional Suspensions imposed on them.
- 4.2 On 22 May 2019, the FEI Tribunal Chair appointed a panel for the present case, which was accepted by both Parties. Further, the Tribunal proposed and the Parties accepted expedited proceedings in the case at hand, rather than having two proceedings, *i.e.*, proceedings concerning the lifting of the Provisional Suspensions and the merits in the case.
- 4.3 On 3 July 2019, the FEI submitted its Response in the case at hand.
- 4.4 On 16 July 2019, the PR and Trainer confirmed that they maintained their earlier hearing request.
- 4.5 On 8 August 2019, a hearing via telephone conference call was held.

5. Written submission on behalf of the PR and Trainer

- 5.1 On 20 May 2019, the PR and the Trainer provided their written explanations for the positive finding. They submitted the following Prayers for Relief:

i) Admitting the present Written Explanation;

ii) Declaring that the Second Claimant shall not be considered Person Responsible;

iii) In the alternative, declaring that the Second Claimant bears no Fault or Negligence for the Adverse Analytical Finding and that any and all sanctions connected thereto shall be eliminated;

iv) declaring that the First Claimant bears no Fault or Negligence for the Adverse Analytical Finding and that any and all sanctions connected hereto shall be eliminated;

v) In any event, ordering the immediate lifting of the Claimants' provisional suspensions;

vi) In any event, ordering the Respondent to bear the costs of the present proceeding and to pay an appropriate contribution towards the Claimants' legal costs and other expenses related to the present proceeding.

- 5.2 Together with their explanations, the PR and Trainer also submitted a statement by Mr. Saleem Khan, groom of the MRM stable for five years, and groom of the Horse during the Event. The groom stated that he was groom only for the Horse at the Event. On advise of a friend who had provided him with a cream, he has been using a cream on his shoulders

for muscle treatment every morning, including on the day of the Event. He did not know that the cream would affect the horse in his care. In this respect, the PR and Trainer also provided a certificate of analysis and a statement by the Equine Forensic Unit Laboratory, confirming that they had analysed a "yellow cream", which was found to contain Testosterone; a semi quantitation performed on the sample returned a concentration of approximately 3 micrograms of Testosterone/gram. The Laboratory further stated as follows: "*A yellow cream was tested in the laboratory and was found to contain Testosterone, If this cream is applied on any subject, this might result in the cream to be absorbed which may lead to adverse analytical findings.*" The PR and the Trainer provided in addition also photos of the cream and its label which states that the product contains "*Testosterone 2.5% 20 gm*".

5.3 In essence the PR and Trainer argued as follows:

- a) It was undisputed that the PR was the athlete who rode the Horse at the Event. It was however disputed that the Trainer shall be considered as an additional Person Responsible in accordance with Article 118.3 of the GRs. The FEI's practice to treat Endurance trainers differently than trainers of other disciplines violated equal treatment, and there was no justification for FEI's unequal treatment of Endurance trainers. The strict liability rule was based on the concept of one person (who is) Responsible; it cannot be many persons responsible with liability for faults. Finally, the Trainer did not take any relevant decision about the Horse. The Trainer was not only the trainer to the Horse but a total of 314 horses of the MRM stable. The Horse was selected by the stable management, treated by the stable vets and taken care of by the stable grooms.
- b) Regarding the source of the Banned Substance, the PR and the Trainer submitted that it has been demonstrated in the present proceedings that the only plausible source was by taking a cream, which the groom received by one of his friends, and by having close contact with the Horse on the day of the Event, the AAF was caused by the groom's use of a muscle treatment cream, which contained Testosterone. The PR and Trainer investigated various other scenarios for the source of the Testosterone: Contamination of Feed or Supplements, Medical Conditions of the Horse, Medical Treatment History, Sabotage and Deliberate Administration of the PR and the Trainer. All of these however turned out to be neither plausible or reasonable. Further, the Event was held a few weeks prior to the World Equestrian Games (WEG) 2018 in Tryon, and this had been the final test of the PR and Horse combination, and in their view it would not have made any sense to deliberately dope one of the best horses in Endurance with a substance.

- c) The PR and Trainer bore absolutely no responsibility for the EAD Rule violation at stake, as the AAF was caused by a contamination through an unauthorized use of medical treatment by a groom. They legitimately placed their trust in the groom for doing a proper job, who however without informing them acquired for personal use a cream containing Testosterone. Grooms working for the MRM stable were carefully selected, instructed and supervised by the MRM Management. Amongst others, the grooms are made aware of the possibility of contamination issues and were requested to report any possibly relevant substances they are taking for themselves.
- d) Furthermore, exceptional circumstances existed in the present case, as the AAF was caused by the misconduct of a third person and completely outside the sphere of influence of the PR and Trainer. Contamination had been accepted in numerous cases by the Tribunal as truly exceptional circumstances. Notably, this also included human contamination by third parties. The PR and Trainer could not reasonably have known of the incident, which made the circumstances of this case absolutely exceptional.
- e) The PR and Trainer have shown that in the present case all requirements for the applicability of Article 10.4 of the EAD Rules are satisfied, and consequently any and all sanctions otherwise applicable had to be eliminated.

6. Written submission by the FEI

- 6.1 On 3 July 2019, the FEI provided its Response to the submissions received by the PR and the Trainer. Together with its Response the FEI submitted an expert opinion by Dr. Stuart W. Paine, Associate Professor of Veterinary Pharmacology, University of Nottingham, United Kingdom.
- 6.2 Dr. Paine came to the conclusion that – based on his calculations based on literature evidence - it is highly implausible that the cream used by the groom for his muscle soreness (measured concentration of 3 micrograms Testosterone per gram of cream) could explain the 53 ng/ml Testosterone measured in the urine of the horse. Further, he explained that from a pharmacological point of view the most common medications used for muscle soreness would be a non-steroidal anti-inflammatory (NSAIDs) especially applied topically as a cream/gel to the muscle or an intramuscular administration of corticosteroid into the muscle. He was not aware of Testosterone being used for muscle soreness but he suggested that the expert opinion of a medical doctor should be sought for a more definitive answer.
- 6.3 Dr. Paine further stated as follows:

"According to the label on the box for the testosterone cream it contains 20 grams of cream at 2.5% testosterone. 2.5% refers to the weight of testosterone divided by the weight of the cream. So in 1 gram (1000 milligrams) of cream there would be 2.5% of this as testosterone which is equal to 25 milligrams (or 25,000 micrograms). However, according to the test analysis there was only approximately 3 micrograms testosterone per gram which is more than 8000 times lower than 25 milligrams. Clearly there is a discrepancy between the amount stated on the label and the amount actually measured by the laboratory."

- 6.4 More specifically, Dr. Paine explained that assuming the groom used the whole box of cream (20 grams) and rubbed it into the muscle, and 10 percent of this ends up on his hands, according to literature evidence, the expected concentration of testosterone in the urine would be 0.12 ng/ml testosterone. This urine concentration of testosterone is negligible compared to either the gelding threshold of 20 ng/ml or the observed urine sample measurement of 53 ng/mL.
- 6.5 In essence the FEI submitted that:
- a) Article 3.1 of the EAD Rules made it the FEI's burden to establish all of the elements of the EAD Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1"*. Instead it was a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A and B Samples taken from the Horse at the Event confirmed the presence of Testosterone, and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. In any event, the PR did not dispute the presence of the Testosterone in the Horse's sample. Accordingly, the FEI discharged its burden of establishing that the PR had violated Article 2.1 of the EAD Rules.
 - b) Regarding the Trainer, the FEI submitted that according to the definition of Trainer pursuant to Article 800.3-4 of the ERs, and due to the specificities of the Endurance discipline with Trainers making relevant decisions about the horse, the Trainer was regarded as an additional Person Responsible in accordance with Article 118.3 of the GRs. In addition, the Trainer was also considered as Support Personnel as per the definition in the EADCMRs. In the discipline of Endurance the Trainer has an important role and responsibility for each and every horse that he is training. It is therefore mandatory to register the Trainer in charge of each horse in the FEI database. Due to these specificities of the Endurance discipline the FEI is considering that the circumstances

always warrants for the Trainer to be considered additionally responsible under Articles 2.2-2.8 EAD Rules.

- c) In the UAE in particular, the Trainer actually has the main responsibility and control over the horse. He is in charge of and taking decision of the preparation of the horse both physically and mentally for competition and is performing the daily physical training of the horses registered under him. Prior to the competition, the Trainer is responsible for the conditioning of the horse for competition which involves the exercise programme, nutrition of the horse, seeking appropriate veterinary care and the administration of therapeutic substances under veterinary advice. In cases where a Banned Substance is found in a Horse, the Trainer was clearly guilty of Use and it was not necessary that intent, fault, negligence or knowing use was demonstrated to be at fault for the rule violation along with the PR.
- d) The Trainer has committed previous violations of the EADCMRs. The FEI therefore charged this Trainer for Use. In fact, it was the circumstances of more than one ADRV of a Trainer that warranted the rule violation charges and provisional suspension of such Trainer.
- e) Where a Banned Substance was found in a horse's sample, a clear and unequivocal presumption arose under the EAD Rules that it was administered to the horse deliberately in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EAD Rules provided that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless he was able to rebut the presumption of fault.
- f) The EAD Rules stipulate and the jurisprudence of the Tribunal and the Court of Arbitration for Sport ("**CAS**") are very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR/Trainer prove how the Testosterone entered into the Horse's system. The FEI submitted that the PR/Trainer have an obligation to provide clear and convincing evidence that proved how the Testosterone entered the Horse's system. In relying on Dr. Paine's expert opinion, the FEI submitted that the FEI finds the explanation provided by the PR and Trainer as highly implausible. The threshold requirement of proving how the substance entered the Horse's system, had therefore not been fulfilled.
- g) The FEI highlighted that Banned Substances are never to be found in a competition horse, they are substances with no legitimate use and have a high potential for abuse. This was in particular the case of anabolic steroids such as Testosterone in the case at hand.

- h) Equestrian sport is particular that way that it is difficult to keep control over what the horse ingests and in addition to have full control at all times. Despite this difficulty, the CAS case law has confirmed that the PR is in the best position to have this control and naturally also is the person to have strict liability in relation to a positive finding in the horse. It was therefore extremely important that the PR's and Trainer's duty of care is very high.
- i) Regarding the degree of Fault and Negligence by the PR and the Trainer for the rule violation, the starting point was the "*personal duty*" of the PR, and the Trainer as Support Personnel, along with the PR's duty, *i.e.*, their personal duty to ensure that "*no banned substance is present in the Horse's body*", following from Article 2.1.1 of the EAD Rules. There was a presumption that the Trainer in Endurance, due to their position, have the control over the decisions of the Horse, and the Trainer did not provide any proof otherwise.
- j) Further, the FEI clarified there was no breach of equal treatment, since each and every registered Trainer in Endurance was treated the same. Only the discipline of Endurance has the concept of Trainer as in the meaning of the ERs, and there were many discipline particular rules that only applied to the discipline in question. Further, it was the Trainer's own choice to be the registered Trainer for 314 horses, and he had to be aware that with this function there is a particular responsibility applying to him, even if he has delegated certain responsibilities to third persons. In any case, there has been no supporting evidence proving the contrary.
- k) Since the PR and Trainer have not provided any plausible explanation or causal link to the rule violation, the FEI did therefore not evaluate the PR's/Trainer's degree of fault, and no reduction of the standard ineligibility period of two (2) years (for both the PR and the Trainer) applies. The periods of provisional suspensions should be credited in the final period of Ineligibility.
- l) The FEI also requested the automatic disqualification of the results of the PR and Horse combination obtained in the Competition, and the entire Event.
- m) Finally, the FEI requested that the Tribunal fine the PR and the Trainer respectively in the amount of 7,500 CHF, and order the PR and the Trainer to pay the legal costs of 2,500 CHF each, as well as order the PR/Trainer to pay the cost of the B-Sample.

7. Hearing

- 7.1 During the hearing the Parties had ample opportunity to present their cases, submit their arguments and answer to the questions posed by the Tribunal. After the Parties' submissions, the Tribunal closed the hearing and reserved its Decision. The Tribunal heard carefully and took into consideration in its discussion and subsequent deliberation all the evidence and the arguments presented by the Parties even if they have not been summarized herein.
- 7.2 At the end of the hearing, the Parties acknowledged that the Tribunal has respected their right to be heard and their procedural rights.
- 7.3 During the hearing, and where not mentioned otherwise in the following, both Parties maintained their previous submissions.
- 7.4 The PR and Trainer further submitted that in addition to their written submission, and in the event the Tribunal did not accept the No Fault or Negligence submission, and in case the Tribunal considered the Trainer as additional Person Responsible, the period of Ineligibility imposed on them should not be longer than one (1) year, *i.e.*, the period of time they were already provisionally suspended; also in taking into consideration that the PR has missed the WEG, one of the most important events in his career.
- 7.5 They further argued that the FEI expert used the wrong value in its statement, *i.e.*, 53 ng/mL instead of the 35 ng/mL found in the A-Sample and the 40 ng/mL found in the B-Sample. The FEI argued that this concerned only a typo, the concentrations provided would be plus/minus 10 ng anyways, and most importantly there was a difference of a 100 times with regard to the concentrations found in the cream. Furthermore, the PR and the Trainer argued that the tube analysed was not the same as the cream used by the groom; the latter was empty and they had bought the same cream on the black market for the analysis purpose. Their aim had merely been to prove that this cream contains Testosterone, and that such a cream can be the source of the AAF.
- 7.6 They had provided a reasonable explanation, and this scenario, *i.e.*, human-horse contamination through the application of the Testosterone cream by the groom, was the most likely one. They had provided a clear, credible and convincing scenario, and met their required burden of proof, *i.e.*, on a balance of probability. It was known that grooms from different countries shared medicines, and would not always get a prescription for them. In addition, the composition of creams on the black market might vary from tube to tube, as also recognised by the FEI expert, who

confirmed that the concentration of Testosterone found was not the one written on the tube. The PR and the Trainer had a respectable reputation and would not have risked the participation in the WEG, and the Event was only a test for the WEG. With regard to the previous cases, the Trainer clarified that all of them concerned a feed producing manufactory error, *i.e.*, the feed had been contaminated at a manufactory level.

- 7.7 Neither the PR nor the Trainer bore any fault for the positive finding. The groom was carefully chosen and has worked diligently for 6 years. They had therefore no reason to believe that there was any risk. According to case law (referring to the *Sharapova case*) one may delegate certain tasks if the person is chosen carefully and instructed carefully, which in their view had been the case in the present case.
- 7.8 Finally, the Trainer argued that he could not be held accountable as an additional PR. Pursuant with Article 118.3 of the GRs, a Support Personnel, such as the Trainer “may” be regarded as additional PR, but only where this person has “decision making power”. In the case at hand, the Trainer had more than 300 horses to look after, he did not and could not make decisions for each and every of these horses. In particular, he could not be held accountable for the mistakes of the groom. Upon request by the Tribunal what instructions the groom had been provided, the legal representatives of the PR and the Trainer answered that while they could not provide details, all grooms were provided with information and normal instructions of stable management when starting to work at the MRM stable. Finally, the Trainer was of the view it was for the FEI to prove that he made relevant decisions. The FEI argues the opposite and puts forward that the Trainer has not provided any evidence that he was not responsible for the Horse.
- 7.9 The FEI highlighted that Testosterone is one of the most old-school anabolic steroids, which was known to be used in the build-up period for competitions in Endurance. Dr. Paine found the explanations of the PR and Trainer regarding the source “highly implausible” which meant impossible. No explanation as to why the groom needed this cream has been provided, nor a medical certificate submitted. The FEI also questioned why the groom did not wash his hands, or wear gloves when treating the horses, especially seen that he was on medication.
- 7.10 The FEI further clarified that the FEI has accepted certain human contamination cases in the past, but in those cases the scientific plausibility has been confirmed, which was not the case in the present case. Here, no transdermal studies from humans to horses have been presented. According to the FEI the PR and the Trainer did not provide any link of the plausibility in the present case.

- 7.11 In case the Tribunal accepted the explanations by the PR and the Trainer with regard to the source of the Banned Substance, the FEI argued that the PR and the Trainer have not provided any explanations on the daily handling of the horses, and what they do to avoid positive findings and contamination. Neither were they personally present at the hearing to answer questions.
- 7.12 Finally, the FEI explained that in Endurance a trainer has more responsibilities for the horse than the rider, especially in the Middle East. It was for example the trainer who prepares the horse for competition. If the Trainer in the present case cannot care for 300 horses, the FEI finds that he should not be the registered Trainer for all of them, and he could delegate his responsibilities. The FEI takes it for granted that the registered Trainer is employed to train the horses he is registered for.

8. Jurisdiction

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

9. The Person Responsible

- 9.1 In accordance with Article 118.3 of the GRs, the PR is the Person Responsible in the case at hand, as he competed with the Horse at the Event.

10. The Additional Person Responsible

- 10.1 In accordance with Article 118.3 of the GRs, Support Personnel may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. Pursuant to the definition of Support Personnel in the EADCMRs, trainers are included in the notion of Support Personnel. Furthermore, the term "Trainer" is defined in the ERs in Article 800.3-4 as *"the person who is in charge of the preparation of the Horse both physically and mentally for Competition. Prior to the Event, the Trainer is responsible for the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate Veterinary care and the administration of therapeutic substances under Veterinary advice"*.
- 10.2 The Tribunal notes, and it remains undisputed that the Trainer was the registered Trainer for the Horse at the Event. Furthermore, he was present at the Event. The Tribunal understands that the purpose of registering trainers in the discipline of Endurance is precisely in order to know and if necessary to hold accountable those persons who take the

actual decisions of the Horse in preparation for competitions. If a trainer is no longer responsible for a horse, or takes no responsibility for the horse in the meaning of Article 800.3-4 of the ERs, the Tribunal would expect such person to no longer be registered as the trainer for that horse. Claims to the contrary cannot be accepted as valid excuses, and can in any case not be considered without any evidence in this regard.

- 10.3 The Tribunal therefore finds the assertion that the Trainer had no decision role in the preparation of the Horse for the Event, and hence no responsibility for the positive finding, without merit.

11. The Decision

- 11.1 As set forth in Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A and B Sample. The Tribunal is satisfied that the laboratory reports relating to the A and B Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratories are accurate. The Tribunal is satisfied that the test results evidence the presence of Testosterone above the threshold in the urine sample taken from the Horse at the Event. The PR has accepted the accuracy of the test results and the positive finding. Testosterone is a Prohibited Substance on the FEI List and the presence of Testosterone in a gelding, such as the Horse, above the threshold is prohibited at all times under Article 2.1 of the EAD Rules.
- 11.2 As set forth in Article 2.2 of the EAD Rules, it is each Person Responsible's personal duty, along with members of their Support Personnel, such as the Trainer in the case at hand, to ensure that no Banned Substance enters into the Horse's body. The Trainer has accepted the accuracy of the test results and the positive finding.
- 11.3 As a result, the FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence by both, the PR and by the Trainer, in accordance with Article 3 of the EAD Rules.
- 11.4 Pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 or an Article 2.2 EAD rule violation, *i.e.*, the Presence of a Banned Substance in a Horse's sample, and the Use or Attempted Use of a Banned Substance, shall be two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.

- 11.5 In cases brought under the EADCMRs, a strict liability principle applies as described in Articles 2.1.1 and 2.2.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR and the Additional PR have the burden of proving that they bear "*No Fault or Negligence*" for the rule violations as set forth in Article 10.4 of the EAD Rules, or "*No Significant Fault or Negligence*," as set forth in Article 10.5 of the EAD Rules.
- 11.6 In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR and the Trainer must establish as a threshold requirement how the Prohibited Substance entered the Horse's system.
- 11.7 To start with, the Tribunal has taken note of the PR's and Trainer's explanations as to the source of the Testosterone, namely that the groom rubbed a cream containing Testosterone on his shoulder for muscle treatment and that a human-horse contamination occurred. The Tribunal however notes and finds that the level of Testosterone in the Horse's system or urine respectively was not explainable by the alleged contamination with the Testosterone cream used by the groom. Furthermore, the Tribunal also finds the use of the Testosterone cream for sore muscles as not plausible. As a result, the Tribunal does not find the explanations put forward by the PR and Trainer as more likely than not, and thus finds that the PR and Trainer have not met the required standard of proof, *i.e.*, on a balance of probability. Therefore, these individuals have not established how the Testosterone entered the Horse's system.
- 11.8 Not having met this first hurdle, the Tribunal does not have to decide on the degree of fault of the PR and the Trainer. Nonetheless, the Tribunal finds that – even if the Tribunal would accept the explanations as to how the Testosterone entered the Horse's system, which it does not – there was no evidence presented to the Tribunal on the issue of fault which would allow the Tribunal to find that there was sufficient exercise of caution to allow any mitigation.
- 11.9 The Tribunal comes to this conclusion for the reasons as follows. Firstly, the PR and/or the Trainer provided no testimony or statement to the Tribunal. Secondly, it has not been established by the PR or the Trainer that they provided education to the grooms in the stable, and in particular to the groom in question, on the issue of Clean Sport and how to prevent Prohibited Substances from entering horses. Thirdly, neither the PR or the Trainer provided any evidence of oversight of the activities of the grooms who were responsible for the horses, and in particular of the groom who cared for the Horse. Forth, neither individual provided any evidence of any procedures in place to prevent Prohibited Substances from entering horses, and in particular the Horse in question. And finally, the Tribunal

notes that no Medication Logbook for the Horse was provided.

- 11.10 As a result, the Tribunal finds that no reduction under Articles 10.4 and 10.5 of the EAD Rules would be warranted in this case for either the PR or the Trainer. Further, no reduction in accordance with Article 10.6 of the EAD Rules is warranted, and has neither been claimed in the present case.

12. Disqualification

- 12.1 Since the EAD Rules have been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination from the Competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the EAD Rules.

13. Sanctions

- 13.1 As a result of the foregoing, the period of Ineligibility imposed on the PR and the Trainer for the present rule violation shall be two (2) years.

- 13.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:

1) The PR shall be suspended for a period of **two (2) years**. The period of Provisional Suspension, effective from 8 August 2018 shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **until 7 August 2020**.

2) The Trainer shall be suspended for a period of **two (2) years**. The period of Provisional Suspension, effective from 13 August 2018 shall be credited against the period of Ineligibility imposed in this decision. Therefore, the Trainer will be ineligible **until 12 August 2020**.

3) The PR is fined **seven thousand five hundred Swiss Francs (CHF 7,500)**.

4) The Trainer is fined **seven thousand five hundred Swiss Francs (CHF 7,500)**.

5) The PR and the Trainer each shall contribute **two thousand five hundred Swiss Francs (together CHF 5,000)** for the cost in these proceedings. In addition, the PR and the Trainer together shall bear the cost of B-Sample analysis.

- 13.3 No Person Responsible and/or member of the Support Personnel, *i.e.*, the Trainer, who has been declared Ineligible may, during the period of

Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).

- 13.4 Where a Person Responsible or member of the Support Personnel who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EAD Rules).
- 13.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 13.6 In accordance with Article 12 of the EAD 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 persons sanctioned: Yes**
- b. The President of the NF of the persons sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

FOR THE PANEL



Dr. Armand Leone, one member panel