

**DECISION of the FEI TRIBUNAL
dated 22 January 2020**

Positive Controlled Medication Case No.: 2018/CM11

Horse: QANAI DU TIPI **FEI Passport No:** 103EJ63/FRA

Person Responsible/NF/ID: Marie Pierre Peroteau/FRA/10055507

Event/ID: CEI2* 120 – Castelsagrat (FRA)/2018_CI_1391_E_S_02

Date: 20 May 2018

Prohibited Substances: Caffeine, Theophylline

I. COMPOSITION OF PANEL

Mr. Cesar Torrente, one member panel

II. 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 Controlled Medication Regulations ("**ECM Rules**"), 2nd edition, effective 1 January 2018.

Veterinary Regulations ("**VRs**"), 14th edition 2018, effective 1 January 2018, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Ms. Marie Pierre Peroteau.

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)."

GRs Art. 118.3: "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunge shall be an additional Person Responsible."

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's* 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."

ECM Rules Art. 7.6.1: "In cases where the Administrative Procedure, as set out in Article 8.3 below, is not available, at any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an anti-doping rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these ECM Rules or (where some discretion as to Consequences exists under these ECM Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3."

III. DECISION

1. Parties

- 1.1 The Person Responsible ("PR"), Ms. Marie Pierre Peroteau, is a rider registered with the French NF.
- 1.2 The Fédération Equestre Internationale (the "FEI" and together with the PR, the "Parties"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).

2. Further proceedings

- 2.1 On 15 January 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the context of the Case 2018/CM11 QANAI DU TIPI and submitted the Agreement (together with the Case Summary and the Full Reasoning for the Agreement, as well as the Annexes outlined throughout this Decision) to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.6.1 of the EADCMRs.

3. Agreement between Parties

- 3.1 The Parties reached the following Agreement:

*** Quote***

3 NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR THE CLOSURE OF THE PROCEEDINGS:

- 3.1 In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR's horse QANAI DU TIPI (the "Horse") at the CEI2* 120 in Castelsagrat, France, on 20 May 2018 (the "Event"), the PR and the FEI agree in accordance with 7.6.1 ECM Rules on the following:
 - (a) The PR admits the violation of Article 2.1 of the ECM Rules (*The presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*); and
 - (b) The PR established on a balance of probabilities how Caffeine and Theophylline entered the Horse's system; and

- (c) The PR bears no fault or negligence for the Rule Violation and therefore she shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility (i.e. six months) shall be eliminated; and
 - (d) In accordance with Article 10.8.3 of the ECM Rules, this violation of the ECM Rules shall not be considered a prior violation for the purpose of Article 10.8 (Multiple Violations) of the ECM Rules;
 - (e) In accordance with Articles 9.1 and 10.1.2 of the ECM Rules the results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
 - (f) The PR shall not incur any fines;
 - (g) No other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Articles, 9, 10.1.2 and 11 of the ECM Rules) will apply in this case;
 - (h) Each party will bear its own legal and other costs incurred in connection with these proceedings.
- 3.2 This agreement is made in accordance with Article 7.6.1 of the ECM Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the ECM Rules.
- 3.3 The parties acknowledge and agree that, pursuant to Article 13.3 of the ECM Rules, the Decision will be made public by the FEI. The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings.

End Quote

I – Case Summary and Reasons (as provided to the Tribunal by the Parties as part of the Agreement)

- “2.1 Ms. Marie Pierre Peroteau (FEI ID 10055507), the Person Responsible (“PR”) in accordance with Article 118.3 of the FEI General Regulations, is a rider for France.
- 2.2 The Fédération Equestre Internationale (the “FEI” and together with the PR, the “Parties”), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the

FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para Dressage and Para Driving).

- 2.3 The PR participated with the horse QANAI DU TIPI (FEI ID: 103EJ63) (the "Horse") in CEI2* 120 in Castelsagrat, France, on 20 May 2018 (the "Event"). As a member of the French Equestrian Federation (the "French NF"), the latter being a member of the FEI, the PR was bound by the FEI Equine Anti-Doping and Controlled Medication Rules, 2nd edition, changes effective 1 January 2018 ("EADCMRs").
- 2.4 The PR was the registered Trainer of the Horse at the time of the Event.
- 2.5 The Horse was selected for testing on 20 May 2018. Blood and urine samples were collected from the Horse and sent to the FEI approved LGC Newmarket Road Laboratory ("LGC") in Cambridgeshire, UK for analysis.
- 2.6 Analysis of the urine sample revealed the presence of Caffeine and Theophylline in the urine sample. Caffeine is a stimulant which stimulates the central nervous system. Theophylline is a bronchodilator used in the treatment of respiratory disease. Caffeine and Theophylline can be direct metabolites of each other. Both substances are Controlled Medication Substance under the FEI Equine Prohibited Substances List. Caffeine and Theophylline remaining a Controlled Medication Substances are also designated as a "Specified Substance".
- 2.7 The FEI has with effect from 1 January 2016, amended the EADCMRs to introduce the concept of "Specified Substances". The introduction of the category of Specified Substances is to recognize that it is possible for certain substances to enter a Horse's system inadvertently, due to a credible non-doping explanation, and therefore to allow the FEI and/or the FEI Tribunal more flexibility when prosecuting a case or when making a sanctioning decision.
- 2.8 By notification letter dated 28 June 2018, the FEI informed the PR, in her capacity as the Person Responsible, and the French NF of a violation of Article 2.1 (*The Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*) of the FEI Equine Controlled Medication Rules (the "ECMRs") based on the Laboratory's adverse analytical finding of Caffeine and Theophylline in the Horse's Sample collected at the Event. (Exhibit 1)
- 2.9 The PR and the Owner of the Horse were provided with the right to request a B Sample analysis of the positive sample. Neither of them requested the B-Sample Analysis to be performed.

2.10 The PR provided the completed FEI Questionnaire, wherein she explained the following: (Exhibit 2)

- The Horse is stabled at home in an « active stable », together with other horses in a group. All the horses are fed with the same hay and grains from the same distributor (Equideos);
- There are no Prohibited Substances in the stable. If necessary after an accident or illness, the horses are treated by a veterinarian, and the medications are given separately in a specific bucket just for medication;
- The PR has after extensive investigation discovered that the substance in question entered the Horse's system through the horse's hard feed;
- The PR had three of her feeds analysed at the Laboratoire Frank Duncombe – Labeo in Caen, France. The analysis confirmed the presence of Caffeine, Theophylline and Theobromine in Endurance feed and the presence of Caffeine in Club GR feed while Floc feed tested negative. All three feeds are produced by the manufacturer Equideos; (Exhibit 3)
- The Horse has been tested many times (4x) in the past and there was never any problem. The only thing that has changed in December 2017 was the grain distributor. Until December 2017 for many years the PR ordered feed from Lambey;
- The PR has since discovering the source of the positive finding disposed of the contaminated feed, cleaned all the feed buckets and grains feeding automat. The PR has as well switched to another manufacturer of feed;
- The PR has provided a statement by the Horse's treating veterinarian attesting that the Horse since 2016 underwent only one antibiotic treatment in August 2017; (Exhibit 4)
- An additional statement was provided by a veterinarian who performed acupuncture on the Horse in April 2018 confirming that no other treatments or medications have been used on the Horse on that occasion; (Exhibit 5)

2.11 Based on the above and in particular taking into account the results of the feed analysis the FEI is satisfied that the PR has established, on a balance of probabilities, how Caffeine, Theophylline entered the Horse's system.

2.12 The FEI has reviewed the website of the feed manufacturer. Equideos is one of the three branches of the company Vital Concept that was established in 1996 and has its seat in France. It specializes in providing equine feed and equipment for the horse and rider. It is explained on their website: "...*Today, we have the capacity to offer you a full range of efficient and safe products. The nutritional value and stability of the formulas are guaranteed in each bag of Équideos foods. It is our role to offer you feeding programs adapted to the activity of your horses in order to meet their nutritional needs, so that they reach their maximum sporting capacities and that they remain in good health...*" [Translated to English]

- Based on the above and taking into account the totality of circumstances of the case in question, the FEI is of the opinion that the PR did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that the feed was contaminated with a Controlled Medication Substance as no Caffeine and Theophylline or any other ingredient that would indicate the content of Caffeine and Theophylline was listed on the list of ingredients of the feed in question. Therefore the FEI is satisfied that the PR has on a balance of probabilities established that she bore no fault or negligence for the Rule Violation.

2.13 Article 7.6.1 of the ECM Rules permits an agreement between the parties, subject to FEI Tribunal approval."

4. Jurisdiction

4.1 Pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCMRs, as well as Article 18 of the IRs, the Tribunal has jurisdiction over this matter.

4.2 As a member of the French NF, the latter being a member of the FEI, the PR is bound by the EADCMRs.

4.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.

4.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

5. Approval of Agreement

5.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Tribunal has – among others – taken note, that the FEI accepts that the PR has established the source of the Prohibited Substances, namely contamination of two "food mixes"

given to the Horse. While the Tribunal notes the laboratory results of the analysis of those two "food mixes", the Tribunal has not been informed whether or not the same batches of the "food mixes" given to the Horse during the Event were the ones in fact analysed by the laboratory.

- 5.2 Furthermore, the Tribunal takes note that the FEI accepts that the PR bore No Fault or Negligence for the rule violation.
- 5.3 Following from Article 10.4 of the ECM Rules, where a PR establishes that she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility (6 months) and other sanctions (apart from Article 9) may be eliminated.
- 5.4 However, the Tribunal wishes to clarify that it did not evaluate the degree of fault of the PR, nor did it take into account previous case law.
- 5.5 Moreover, the Tribunal is surprised by the length of the proceedings and/or negotiations by the Parties respectively, given that the laboratory analysed the "food mixes" in July 2018, and the results of the analysis are presumed to therefore have been known to the Parties since that date.
- 5.6 Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement as set forth in Article 3 above. Further, this Decision shall terminate the present case 2019/CM11 QANAI DU TIPI.

6. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Ms. Marie Pierre Peroteau, concerning the case 2019/CM11 QANAI DU TIPI is hereby - pursuant to Article 7.6.1 of the EADCMRs - approved by the Tribunal with the consent of the Parties and its terms are incorporated into this Decision. Namely, the Parties agreed as outlined in Article 3 above.
- 2) This Decision is subject to appeal in accordance with Article 12.2 of the ECM Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 3) This Decision shall be published in accordance with Article 13.3 of the ECM Rules.

IV. DECISION TO BE FORWARDED TO:

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

FOR THE PANEL

A handwritten signature in blue ink, appearing to read 'Torrente', with a large, stylized flourish above it.

Mr. Cesar Torrente, one member panel