DECISION of the FEI TRIBUNAL

dated 25 October 2019

Positive Controlled Medication Case No.: 2018/FT34

Horse: EAUNOIRE COOKIES  FEI Passport No: 104HK46/BEL

Person Responsible/NF/ID: Jacques SABEAU/BEL/10105939

Event/ID: CEI1* 100 – Bullange (BEL)/2018_CI_1600_E_S_01

Date: 30 June 2018

Prohibited Substances: Harpagoside

And

Positive Controlled Medication Case No.: 2018/CM13

Horse: EAUNOIRE COOKIES  FEI Passport No: 104HK46/BEL

Person Responsible/NF/ID: Jacques SABEAU/BEL/10105939

Event/ID: CEI2* 70+(2) – Wimmenau (FRA)/2018_CI_0837_E_S_03

Date: 1 – 2 September 2018

Prohibited Substances: Harpagoside

I. COMPOSITION OF PANEL

Dr. Armand Leone, 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, changes effective 1 January 2018.

FEI Controlled Medication Rules ("ECM Rules"), changes 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: Mr. Jacques SABEAU, represented by Mr. Etienne Gras, lawyer in Jumet, Belgium.

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 lunger 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.”

EADCMRs APPENDIX 1 – Definitions:

“Fault. Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Person Responsible and/or member of the Support Personnel’s degree of Fault include, for example, the Person Responsible’s and/or member of the Support Personnel’s experience, whether the Person Responsible and/or member of the Support Personnel is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Person Responsible and/or member of the Support Personnel and the level of care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk. In assessing the Person Responsible’s and/or member of the Support Personnel’s degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible’s and/or member of the Support Personnel’s departure from the expected standard of behaviour. Thus, for example, the fact that the Person Responsible would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Person Responsible only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.”

“No Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse’s system otherwise contained, a Banned or Controlled Medication Substance or he or she had Used on the Horse, a Banned or Controlled Medication Method or otherwise violated an EAD or ECM Rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.”
III. DECISION

1. Parties

1.1 The Person Responsible ("PR"), Mr. Jacques SABEAU, is a rider for Belgium.

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 21 October 2019, the FEI informed the Tribunal that the Parties had reached an agreement in the context of the cases 2018/FT34 and 2018/CM13 EAUNOIRE COOKIES, 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***

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 Findings related to the samples, which were collected from the PR’s horse EAUNOIRE COOKIES at the CEI1* 100 - Bullange in Belgium on 30 June 2018 and at the CEI2* 70+(2) – Wimmenau in France on 2 September 2018, the PR and the FEI agree in accordance with 7.6.1 ECM Rules on the following:

(a) The PR admits the violations 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 the Harpagoside entered the Horse’s system; and

(c) The PR bears no fault or negligence for the Rule Violations and
therefore he shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility shall be eliminated; and

(d) In accordance with Article 10.8.3 of the ECM Rules, these violations of the ECM Rules shall not be considered as prior violations 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 Events 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 Disqualifications of the Horse’s results at the Events 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 “Mr. Jacques Sabeau (FEI ID 10105939), the Person Responsible (“PR”) in accordance with Article 118.3 of the FEI General Regulations, is a rider for Belgium.

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 EAUNOIRE COOKIES (FEI ID: 104HK46) (the “Horse”) in CEI1* 100 - Bullange in Belgium on 30 June 2018 and in CEI2* 70+ (2) – Wimmenau in France between 01-02 September 2018 (the “Events”). As a member of the Belgian Equestrian Federation (the “Belgian NF”), the latter being a member of the FEI, the PR was bound by the EADCM Regulations.

2.4 The Horse was selected for testing on 30 June 2018 and 2 September 2018. On both instances 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.

2.5 Analysis of both urine samples revealed the presence of Harpagoside, an anti-inflammatory with analgesic effects. Harpagoside is a Controlled Medication Substance under the FEI Equine Prohibited Substances List.

2.6 Harpagoside is the active ingredient in the plant Harpagophytum procumbens, also known as devil’s claw. The plant is native to Southern Africa and is exported worldwide for use in human and animal medicine due to its anti-inflammatory effects.

2.7 By notification letter dated 31 July 2018, the FEI informed the PR, in his capacity as the Person Responsible, and the Belgian 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 Harpagoside in the Horse's Sample collected at the Event – Case: 2018/FT34 EAUNOIRE COOKIES. (Exhibit 1)

2.8 The proceedings were initiated under the so-called Administrative Procedure (also known as “Fast Track”) due to the respective prerequisites under Article 8.3 of the ECM Rules for that type of procedure being fulfilled. The PR did not accept the Administrative sanctions offered to him.

1.1 By notification letter dated 1 October 2018, the FEI informed the PR, in his capacity as the Person Responsible, and the Belgian 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 Harpagoside in the
Horse's Sample collected at the Event – Case: 2018/CM13 EAUNOIRE COOKIES. (Exhibit 2)

2.9 On both instances, the PR was provided with the right to request a B Sample analysis of the positive samples. The PR did not exercise his right to a B-sample analysis.

2.10 After extensive investigation, the PR provided his written submission wherein he explained the following:

- The PR discovered that the substance in question entered the Horse’s system through an equine product called Polyphytum; [Polyphytum is a cooling gel used to relax, loosen and relieve the muscles and is applied topically on the horse’s legs.]
- The PR applied the gel on the Horse during both Events;
- The product was beforehand chosen by the PR based on the recommendation of his treating veterinarian specifically for use in competition;
- The product did not contain any Prohibited Substances according to the label on the product;
- In addition, the PR consulted the manufacturer prior to first use of the product (the PR’s wife herself was a sales representative of the manufacturer) and it was confirmed to the PR that the product was safe to use;
- After the PR was notified of the Adverse Analytical Findings, the PR himself and separately his legal counsel, contacted the manufacturer inquiring whether the product, nonetheless, contained Harpagoside despite the substance not being declared on the label;
- The manufacturer replied that no Harpagoside was present in the product;
- However, after the contact was made with the manufacturer, the PR noticed that the manufacturer amended the section “Instructions on use” for the product Polyphytum in the product catalogue by adding “Ne pas utiliser 24 heures avant l’épreuve sportive” (eng.: Do not use 24 hours before competition) which raised additional doubts with the PR on the veracity of the manufacturer’s reply;

2.11 The FEI has on its own initiative contacted the manufacturer on 4 September 2019 in an attempt to obtain some clarity on the (non)presence of Harpagoside in the product. On 12 September 2019, the manufacturer replied to the FEI confirming that the product
Polyphytum contained 0.5 % dry extract of Harpagophytum which equals to 5 % of Harpagoside or 125 mg of Harpagoside per 500 ml bottle packaging. (Exhibit 5)

2.12 Given the above, the FEI is therefore satisfied that the PR has established on a balance of probabilities how Harpagoside entered the body of the horse.

2.13 The FEI has as well consulted the manufacturer’s website, wherein, the English version of the website indeed contains a warning advising not to use the product 24 hours before the competition. The composition and list of active ingredients however do not indicate any Prohibited Substances.

2.14 The FEI is of the opinion that the PR acted in accordance with the standard of care that is expected from a Person Responsible by considering carefully which product to choose for use during the competitions and by checking the product with his treating veterinarian and in addition contacting the manufacturer before the first use of the product. In the FEI’ view the PR did not know or suspect, and could not reasonably have known or suspected that the product contained a Controlled Medication Substance.

2.15 Taking into account the totality of circumstances of the case in question, the undertaken effort of the PR in investigating the source of the Adverse Analytical Findings and the actual presence of Harpagoside in the product, the FEI is of the opinion that the PR has on a balance of probabilities established that he bore no fault or negligence for the Rule Violation in accordance with Art. 10.4. of the Equine Controlled Medication Rules. For avoidance of doubt, and based on particular circumstances of the cases, the FEI does not consider this particular product to be a Supplement.”

4. Jurisdiction

4.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, the GRs and the EADCMRs.

4.2 As a member of the Belgian National Federation, the latter being a member of the FEI, the PR was 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 the PR's explanations for the source of the Prohibited Substance, and that the PR established – on a balance of probability, as required under the EADCMRs – how the Prohibited Substance entered the Horse’s system.

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 he bears No Fault or Negligence, then the otherwise applicable period of Ineligibility and other sanctions (apart from Article 9) may be eliminated in regard to such Person.

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 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 cases 2018/FT34 and 2018/CM13 EAUNOIRE COOKIES.

6. Decision

1) The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Jacques Sabeau, concerning the cases 2018/FT34 and 2018/CM13 EAUNOIRE COOKIES 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

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Dr. Armand Leone, one member panel