DECISION of the FEI TRIBUNAL

dated 4 October 2019

Positive Anti-Doping Case No.: 2019/BS17

Horse: AMITIE DES DOUCES FEI Passport No: 105DZ83/FRA

Person Responsible/NF/ID: Fanny SKALLI/FRA/10034759

Event/ID: CSI2* - Gorla Minore (ITA)/2019_CI_0584_S_S_01

Date: 6 – 10 March 2019

Prohibited Substance: Ergonovine

I. COMPOSITION OF PANEL

Mr. Henrik Arle, one member panel

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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


General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2019, 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 2019.


Veterinary Regulations ("VRs"), 14th edition 2018, effective 1 January 2019, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.
2. **Person Responsible**: Ms. Fanny Skalli.

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.”

   **EAD Rules Art. 2.1.1**: “It is each Person Responsible’s personal duty to ensure that no Banned Substances 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.”

   **EAD Rules Art. 7.6.1**: “At any time during the results management process the Person Responsible and/or member of the Support Personnel and/or Owner against whom an EAD 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 EAD Rules or (where some discretion as to Consequences exists under these EAD 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.”

“No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his 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 relationship to the EADCM Regulation violation. Except in the case of a Minor, for any violation of Article 2.1 of the EAD Rules, the Athlete must also establish how the Prohibited Substance entered his or her system.”

III. DECISION

1. Parties

1.1 The Person Responsible ("PR"), Ms. Fanny Skalli, is a jumping rider for France.
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 30 September 2019, the FEI informed the Tribunal that the Parties had reached an agreement in the context of the case 2019/BS17 AMITIE DES DOUCES, 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 EAD Rules.

3. Agreement between Parties

3.1 On 30 September 2019, the Parties reached the following Agreement:

*** Quote***

NOW, THEREFORE, THE PARTIES HAVE AGREED 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 AMITIE DES DOUCES (the "Horse") at the CSI2* Gorla Minore (ITA) from 6 to 10 March 2019 (the "Event"), the PR, Ms. Fanny Skalli and the FEI agree in accordance with 7.6.1 EAD Rules on the following:

(a) The PR admits the violation of Article 2.1 of the EAD Rules (The presence of a Banned Substance and/or its Metabolites or Markers in a Horse’s Sample); and

(b) The PR established on a balance of probabilities how the Ergonovine 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. two years) shall be eliminated; and

(d) In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 8 (Multiple Violations) of the EAD Rules;
(e) In accordance with EAD Rules Articles 9.1 and 10.1.2 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) Each party will bear its own legal and other costs incurred in connection with these proceedings;

(h) 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 EAD Rules) will apply in this case.

3.2 The parties hereby kindly request that the FEI Tribunal issue a Decision incorporating the terms of this agreement.

3.3 The parties acknowledge and agree that, pursuant to Article 13.3 of the EAD Rules, the Decision will be made public by the FEI.

3.4 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. Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.

3.5 This agreement is made in accordance with Article 7.6.1 of the EAD 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 EAD Rules.

***End Quote***

3.2 Furthermore, the Parties submitted the following Case Summary and Reasoning:

"2A. How the substance entered the body of the Horse"

2.1 The PR has provided the feed details of the Horse (Exhibit 3), which states that the Horse was fed 1kg Hypona 788 Optimal, 3 times a day, hay 3 times a day, and carrots and oil on a daily basis. The Horse is only fed with Hypona 788 Optimal and no other supplements or medication.
2.2 The PR has also provided the Medication Logbook of the Horse (Exhibit 4), which only contains the compulsory influenza vaccine and a statement from her veterinarian, who confirms that the Horse has never been treated except from with influenza vaccine. (Exhibit 5).

2.3 The Opinion of Professor Fürst (Exhibit 6) states the following important facts to be considered for this case:

- "It is a well-known fact, that microorganisms, especially fungi, produce low-molecular-weight compounds as secondary metabolites with some toxic properties and so-called mycotoxins. Mycotoxins in general pose a potential hazard to human and animal health. Aflatoxin, Fusariotoxins, Zearalenone and other mycotoxins are very well-known food contaminants and thoroughly controlled. Regardless of decades of extensive research, fungi infection still remains a challenging problem in agriculture."

- "Different kind of fungi of the genus Claviceps produces alkaloids, which then can be found in wheat, barley, oat and triticale given to horses. Among others ergonovine or also called ergometrine can be found. There is a high probability that an infestation of this fungus occurs in horse’s pastures, causing reduction in the quality and quantity of the grain and hay. Horses can be exposed to these mycotoxins by eating contaminated food. The extent of contamination depends on the amount of the contaminated element ingested and on the concentrations of mycotoxins present in the food."

- "Ergonovine has no possible therapeutic use in equine medicine but horses can get contaminated by eating different kind of grains."

2.4 The list of ingredients of the feed Hypona 788 Optimal, confirms that the feed contains wheat, barley and oat. Scientific articles on the Ergot alkaloids also explains that the Ergonovine can originate from grains of wheat, barley and oat. (Exhibits 7)

2.5 In the search for the source of the positive finding the PR requested the feed company to perform testing of the feed. The feed company submitted a letter which confirms that the feed Hypona 788 Optimal was tested, together with the conclusions and the laboratory’s analysis results. (Exhibit 8)

2.6 The letter confirms that Ergometrine/Ergometrinine also known as Ergonovine was found in the feed. The statement further explains that the laboratory has screened for Ergonovine and other Ergots, and that
the laboratory’s analytical detection limit for Ergonovine is 3.0 µg/kg. “The values found in the prepared feed are below the analytical detection limit of <3.0 µg/kg of ergometrine/ergometrinine.” and thus the exact quantity is not known.

2.7 The FEI has in addition consulted with its external expert Professor Stuart Paine on the plausibility of the contamination of Ergonovine based on the above explanations. The estimated concentration of Ergonovine in the sample was in the range of 20-30ng/ml. The estimated finding in the feed was below 3 µg/kg, (3 µg micrograms is 3000 ng nanograms). If the Horse ingested 3 kg of the feed per day on a daily basis, it is plausible to get a concentration in the Horse’s urine in the ng/ml range.

2.8 The scientific evidence therefore concludes that this finding is a plausible source of the Ergonovine in the Horse.

2B. Fault and Negligence for the rule violation

2.9 Ms Skalli has provided statements (Exhibit 9 & 10) where she explains her daily procedure, at home and at the shows. The PR is stabled at her fiancé Mr. Steve Guerdat’s stables and they have extreme precautionous procedures in place in order to avoid positive findings. Her main concern is the welfare of her horses, and she is surrounded by top professional people who are all well aware of contamination issues. She also explains that she is well aware of the strict rules on doping regulations and she is willing to follow them no matter how strict they are, and trying hard, together with her team, to control everything, but the truth is that there are still things that they simply have no control over (ie hay at shows).

2.10 Some of the policies the PR has in place to avoid contamination is as follows:

- All horse products, such as cream, gel vitamins or food supplements stored in the barn are meticulously labelled.

- All horses have their own individually labelled feed buckets which are carefully washed each day and disinfected twice a week, if they get any medication in the feed that is given in separate feed buckets, and written on our white board so that everyone is aware.

- Only the stable manager and the competition grooms are authorized to prepare the horse feed.
• If any horse is receiving a topical treatment, all grooms must use doctor grade gloves to apply it, discard the gloves (garbage area is purposely remote from horses) and then wash their hands before making contact with any other horse or person.

• All washing places and tack up places are cleaned and disinfected every day.

2.11 In addition, the PR explains in relation to the Event in question that:

• She travelled to the show with her groom and the horses, in her truck. The Horse was on the truck together with 3 horses from our stables. The truck is getting cleaned, washed and disinfected after every single show.

• The Horse was fed with its home food, Hypona 788 Optimal and with the hay that was bought at the show. No further analysis of the hay could be done since the OC did not have any hay samples left.

2.12 Mr Steve Guerdat, the PR’s fiancée explains in his statement (Exhibit 11), that:

• They live together since 2 years, and that he is both the trainer of Ms Skalli and the trainer and manager of the Horse.

• All the PR’s horses are under his supervision and they get exactly the same treatment, care and training program as all his other top horses.

• His training philosophy, which Ms Skalli shares 100%, is based on horse welfare and doing everything they can to keep their horses happy, on a very natural way trying to let them be horses and enjoy their life as much as possible.

• He further confirms that she follows the same protocol as he does for his top horses, having everything such as material, food buckets, washing places and truck disinfected after every use, educated professional staff and every possible step to avoid a positive case.

• Despite all careful steps and procedures in place there are still 2 things that is out of their control, namely, the hay provided by the OCs and the accessibility to stables at events.

2.13 In addition, the PR has eliminated the possibility for the positive finding of Ergonovine to be originating from any other source than the analysed feed which was given to the Horse on a daily basis. She has
done everything in her power to avoid a positive test. The PR has had no reason to suspect that the daily feed provided by a reputable feed producer could contain any Prohibited Substances especially since the company also screen for Ergonovine among other prohibited substances.

2C. Conclusions of the Parties

2.14 Based on the evidence and documentation supplied by the PR and the scientific information provided by the experts, the parties conclude that there is a plausible source of the Ergonovine in the Horse’s sample, via the daily feed of the Horse.

2.15 The parties conclude that the criteria for the application of Article 10.4 of the EAD Rules has been met and that the PR has established:

(a) on a balance of probabilities, a plausible explanation of how the Ergonovine entered the Horse’s system, which was via the daily feed of the Horse;

(b) 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 contained a Banned Substance;

(c) in consequence the FEI is satisfied that the PR established that she bore no Fault or Negligence for the Rule Violation.

2.16 Article 7.6.1 of the EAD Rules permits for an agreement between the parties, subject to FEI Tribunal approval.”

4. Jurisdiction

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

4.2 As a member of the French National Federation, the latter being a member of the FEI, the PR was bound by the EAD Rules.

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 source of the Prohibited Substance was the feed fed to the Horse containing Ergometrine/Ergometrinine also known as Ergonovine, and that the PR submitted analysis results from that feed - Hypona 788 Optimal - confirming its presence. Further, the Tribunal has taken note of the FEI’s expert confirming the plausibility of the contamination of Ergonovine. As a result, the Tribunal accepts the explanation given regarding the source of the Prohibited Substances.

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 Articles 10.5.1 and 10.4 of the EAD Rules, where a PR establishes that she 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, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case 2019/BS17 AMITIE DES DOUCES.

6. Decision

1) The Tribunal rules that the Agreement executed by the FEI and the PR, Ms. Fanny Skalli, concerning the case 2019/BS17 AMITIE DES DOUCES is hereby ratified by the Tribunal with the consent of the Parties and its terms set out in Article 3 above are incorporated into this Decision.

2) This Decision is subject to appeal in accordance with Article 12.2 of the EAD 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 EAD 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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Mr. Henrik Arle, one member panel