

**DECISION of the FEI TRIBUNAL
dated 2 April 2020**

Case: 2018/BS16

Horse/Passport: TRYNYTEE DES AUNETES/104UI94/FRA

Person Responsible/ID/NF: Sarah Marcel Dirickx/10095832/FRA

Event/ID: CSI1* - La Baule (FRA)/2018_CI_0137_S_S_02

Date of Event: 17 – 20 May 2018

Prohibited Substance(s): O-Desmethyl Venlafaxine

I. COMPOSITION OF PANEL

Mr. Chris Hodson QC, 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 Equine Anti-Doping Rules ("**EAD 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. Sarah Marcel Dirickx.

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 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."

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."

III. DECISION

1. The Parties

- 1.1 The Person Responsible ("**PR**") in accordance with Article 118.3 of the GRs, Ms. Sarah Marcel Dirickx, is a 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. Factual Background

- 2.1 The PR competed with the horse TRYNYTEE DES AUNETES (the "**Horse**") at the CSI1* in La Baule, France, from 17 to 20 May 2018 (the "**Event**").
- 2.2 During the Event, in-competition samples (blood and urine) were collected from the Horse. Subsequent analysis of the samples revealed the presence of O-Desmethyl Venlafaxine in the urine.
- 2.3 On 11 July 2018, the FEI notified the PR of an adverse analytical finding and alleged a violation of Article 2.1 of the EAD Rules. Together with the Notification Letter, the PR was informed that she was provisionally suspended and was provided with the opportunity to request a Preliminary Hearing. In addition, the Horse was also provisionally suspended for 2 months, from 11 July 2018 until 10 September 2018.

3. Further proceedings

- 3.1 On 1 August 2018, following a Preliminary Hearing, the Preliminary Hearing panel decided to lift the Provisional Suspension of the PR, but to maintain the Provisional Suspension of the Horse.
- 3.2 On 25 March 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the context of the Case 2018/BS16 TRYNYTEE DES AUNETES, and submitted the Agreement to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.6.1 of the EAD Rules.
- 3.3 On 30 March 2020, the FEI Tribunal Chair nominated a panel for the case at hand. Neither party objected to the constitution of the panel.

4. Agreement between Parties

- 4.1 On 25 March 2020, the Parties reached the following Agreement:

*** Quote***

- 3.1 In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR's horse TRYNYTEE DES AUNETES (the

"Horse") at the CSI1* in La Baule, France, from 17 to 20 May 2018 (the "Event"), the PR 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 O-Desmethylvenlafaxine 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 10.8 (Multiple Violations) of the EAD Rules;
- (e) In accordance with Articles 9.1 and 10.1.2 of the EAD 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 EAD 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 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.

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. 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

- 4.2 In addition, the Parties submitted the following case summary and full reasoning for this case:
- 2.1 Ms. Sarah Marcel Dirickx (FEI ID 10095832), 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 TRYNYTEE DES AUNETES (FEI ID: 104UI94) (the "Horse") in CSI1* in La Baule, France, from 17 to 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 EADCM Regulations, 2nd edition, changes effective 1 January 2018.
- 2.4 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.
- 2.5 Analysis of the urine sample revealed the presence of O-Desmethylvenlafaxine, a metabolite of Venlafaxine. Venlafaxine is an antidepressant agent, categorised as a serotonin and noradrenaline re-uptake inhibitor (SNRI). In humans it is used to treat major depression and generalised anxiety disorder. Venlafaxine is a Banned Substance under the FEI Equine Prohibited Substances List.
- 2.6 By notification letter dated 11 July 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 Banned Substance and/or its Metabolites or Markers in a Horse's Sample) of the FEI Equine Anti-Doping Rules (the "EADRs") based on the Laboratory's adverse analytical finding of O-Desmethylvenlafaxine in the Horse's Sample collected at the Event. (Exhibit 1)
- 2.7 On 12 July 2018, the PR requested a Preliminary Hearing and submitted the following arguments for the lifting of the Provisional Suspension of the PR and the Horse: (Exhibit 2)
- The PR is not a professional rider and rides only out of love for the horses and their wellbeing, while respecting the anti-doping rules which are very important to the PR;

- The PR has 6 horses and competes in Jumping during the summer and holidays;
- The substance that was found in the Horse is an anti-depression medication used in humane medicine and was never administered to the Horse;
- The substance does not enhance the performance of a horse;
- Upon initial investigation the PR did not find a reasonable explanation for the Adverse Analytical Finding, however, upon discussing the Rule Violation with her friends, one of the friends that was invited by the PR to attend the Event as a VIP guest, admitted urinating in the box of the Horse. That friend is taking an anti-depressant called Effexor;
- The PR's friend explained that that the queue for the toilet was too long and as she did not want to miss the beginning of the CSI5* she urinated in the box of the Horse;
- The PR's friend provided a statement (Exhibit 3) and a copy of the prescription for the medication with the daily dosage (Exhibit 4);
- The PR's friend as well provided her VIP accreditation for the Event (Exhibit 5);
- The PR states that the concentration found in the Horse was low and is proving that the Horse had ingested the contaminated hay;
- The Horse has been previously tested negative under the EADCMRs in December 2017;
- The PR provided a statement by the treating veterinarian attesting that the Horse had not been prescribed Venlafaxine. To the knowledge of the treating veterinarian the substance hasn't been tested or used for horses in show jumping. The horse has been followed by the clinic since September of 2016 and has had only normal care (vaccination, vermifuge, dentistry...) (Exhibit 6);
- The PR provided as well a statement from a jumping steward for the French federation attesting to the PR's commitment to the welfare of her animals and respect of the anti-doping rules (Exhibit 7);
- The PR in addition provided a statement of her trainer who is also the manager of the stable where the Horse is accommodated, attesting to the PR's commitment to the anti-doping rules. The Trainer explained that the PR has closed the passage to the boxes of her horses so that they are never fed by unauthorized persons. In addition she has a disinfection protocol in place for the horse's

equipment. All veterinary treatments, for example vaccinations, have been performed on the PR's horses by a veterinarian and the trainer has never seen the PR administering a medication to her horses by herself. The PR's horses are all in good health and without particular health problems (Exhibit 8);

- 2.8 The FEI consulted its expert on the plausibility of the provided explanation taking into account the daily dosage of the medication that the PR's friend was taking, time of ingestion of the medication, time of urination and the estimated concentration of O-Desmethylvenlafaxine in the Horse's sample. The FEI's expert confirmed the plausibility of the explanation namely that the estimated concentration of O-Desmethylvenlafaxine could have resulted from that person urinating in the stable of the Horse.
- 2.9 Due to the above the FEI did not oppose to the lifting of the Provisional Suspension of the PR, however, the FEI opposed to the lifting of the Provisional Suspension of the Horse emphasizing welfare of the horse considerations.
- 2.10 The Preliminary Hearing Panel issued a decision on 1 August 2018, lifting the provisional suspension of the PR in accordance with Article 7.4.4 (ii) EADR while maintaining the provisional suspension of the Horse. (Exhibit 9)
- 2.11 The Preliminary Hearing Panel was satisfied that the PR established:
 - (a) a plausible explanation of how the O-Desmethylvenlafaxine entered the Horse's system, which was through contamination of the hay in the Horse's box, as the person having been prescribed this Prohibited Substance had urinated in the Horse's box; and
 - (b) that the period of Ineligibility otherwise imposed might be either reduced or completely eliminated.
- 2.12 The FEI is satisfied that the PR has established, on a balance of probabilities, how O-Desmethylvenlafaxine entered the Horse's system.
- 2.13 Furthermore, taking into account the totality of circumstances of the case in question and the submitted arguments and evidence, 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. 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 her invited guest would urinate in the box of the Horse.

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

5. Jurisdiction

- 5.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the EADCMRs, as well as Article 18 of the IRs.
- 5.2 As a member of the French National Federation, the latter being a member of the FEI, the PR was bound by the EAD Rules.
- 5.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.
- 5.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

6. Approval of Agreement

- 6.1 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. The Tribunal has also taken note of the expert opinion in this regard. The Tribunal accepts that the source of the Prohibited Substance has been established in this case.
- 6.2 Furthermore, the Tribunal takes note that the FEI accepts that the PR bore No Fault or Negligence for the rule violation.
- 6.3 Following from Article 10.4 of the EAD Rules, where a PR establishes that she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility (2 years) and other sanctions (apart from Article 9) may be eliminated.
- 6.4 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 jurisprudence, as it did not enter into the merits of the case.
- 6.5 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 2018/BS16 TRYNYTEE DES AUNETES.

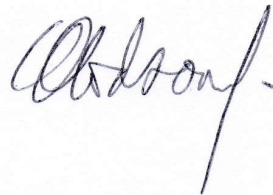
7. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Ms. Sarah Marcel Dirickx, concerning the case 2018/BS16 TRYNYTEE DES AUNETES is hereby ratified by the Tribunal with the consent of the Parties and its terms set out in Article 4 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



Mr. Chris Hodson QC, one member panel