



DECISION of the FEI TRIBUNAL

dated 30 November 2017

Cases

1.1 Case 2017/BS01 – RAFIK DE KERPONT

Horse/Passport: RAFIK DE KERPONT/103ZQ05/UAE
Person Responsible/ID/NF: Amy Louise McAuley/10066318/IRL
Trainer/ID/NF: Ismail Mohd/10017691/UAE
Event/ID/Date: CEI2* 120 Ladies – Abu Dhabi, Al Wathba
(UAE)/2016_CI_1822_E_S_01_01/26 November 2016
Prohibited Substances: Caffeine, Theobromine, Paraxanthine, Theophylline
Sample/type/Laboratory: 5552754/blood/HKJC Racing Laboratory

1.2 Case 2017/BS02 – MRASEEL

Horse/Passport: MRASEEL/104ED73/UAE
Person Responsible/ID/NF: Sh Hamed Dalmook Al Maktoum/10073722/UAE
Trainer/ID/NF: Mohd Ahmed Ali Al Subose/10028065/UAE
Event/ID/Date: CEI2* 120 – Abu Dhabi, Al Wathba
(UAE)/2016_CI_1824_E_S_01_01/17 December 2016
Prohibited Substances: Caffeine, Theobromine, Paraxanthine, Theophylline,
Flumetasone
Sample/type/Laboratory: 5552737/blood/HKJC Racing Laboratory

1.3 Case 2017/BS03 – CASTLEBAR LIGHTNING

Horse/Passport: CASTLEBAR LIGHTNING/UAE41150/UAE
Person Responsible/ID/NF: Saeed Sultan Shames Al Maamri/10048603/UAE
Trainer/ID/NF: Ismail Mohd/10017691/UAE
Event/ID/Date: CEI2* 120 – Abu Dhabi, Al Wathba
(UAE)/2016_CI_1824_E_S_01_01/17 December 2016
Prohibited Substances: Caffeine, Theobromine, Paraxanthine, Theophylline
Sample/type/Laboratory: 5552757/blood/HKJC Racing Laboratory

1.4 Case 2017/BS04 – INTISAAR

Horse/Passport: INTISAAR/ESP40786/UAE
Person Responsible/ID/NF: Sh Rashid Dalmook Al Maktoum/10034071/UAE
Trainer/ID/NF: Mohd Ahmed Ali Al Subose/10028065/UAE
Event/ID/Date: CEI2* 120 – Abu Dhabi, Al Wathba
(UAE)/2016_CI1824_E_S_01_01/17 December 2016
Prohibited Substances: Caffeine, Theobromine, Paraxanthine, Theophylline
Sample/type/Laboratory: 5552096/blood/HKJC Racing Laboratory



1.5 Case 2017/BS05 – SALAM BANQUETOL

Horse/Passport: SALAM BANQUETOL/103YG68/UAE
Person Responsible/ID/NF: Abdulla Ghanim Al Marri/10054553/UAE
Trainer/ID/NF: Khalifa Ghanim Al Marri/10040564/UAE
Event/ID/Date: CEI2* 120 – Abu Dhabi, Al Wathba
(UAE)/2016_CI_1825_E_S_01_01/24 December 2016
Prohibited Substances: Caffeine, Theobromine, Paraxanthine, Theophylline
Sample/type/Laboratory: 5551941/blood/HKJC Racing Laboratory

1.6 Case 2017/BS06 – PREUME DE PAUTE

Horse/Passport: PREUME DE PAUTE/103OZ88/UAE
Person Responsible/ID/NF: Saif Ahmed Al Mozroui/10092314/UAE/Minor
Trainer/ID/NF: Ismail Mohd/10017691/UAE
Event/ID/Date: CEI2* 120 – Abu Dhabi, Al Wathba
(UAE)/2016_CI_1825_E_S_01_01/24 December 2016
Prohibited Substances: Caffeine, Theobromine, Paraxanthine, Theophylline
Sample/type/Laboratory: 5552761/blood/HKJC Racing Laboratory

1.7 Case 2017/BS07 – TOM JONES TE

Horse/Passport: TOM JONES TE/104ER04/UAE
Person Responsible/ID/NF: Abdulla Ghanim Al Marri/10054553/UAE
Trainer/ID/NF: Khalifa Ghanim Al Marri/10040564/UAE
Event/ID/Date: CEI2* 120 – Abu Dhabi, Al Wathba
(UAE)/2017_CI_1514_E_S_01_01/14 January 2017
Prohibited Substances: Caffeine, Theobromine, Paraxanthine, Theophylline
Sample/type/Laboratory: 5552101/blood/HKJC Racing Laboratory

1.8 Case 2017/BS08 – ASPENVIEW AMIR

Horse/Passport: ASPENVIEW AMIR/104OZ13/UAE
Person Responsible/ID/NF: Saeed Ahmad Jaber Al Harbi/10084918/UAE
Trainer/ID/NF: Khalifa Ghanim Al Marri/10040564/UAE
Event/ID/Date: CEI2* 120 – Abu Dhabi, Al Wathba
(UAE)/2016_CI_1825_E_S_01_01/14 January 2017
Prohibited Substances: Caffeine, Theobromine, Paraxanthine, Theophylline
Sample/type/Laboratory: 5551954/blood/HKJC Racing Laboratory

1.10 Case 2017/CM06 – TIM AMI

Horse/Passport: TIM AMI/104DP61/UAE
Person Responsible/ID/NF: Abdulla Ghanim Al Marri/10054553/UAE
Trainer/ID/NF: Mohd Ahmad Mohd Ghanim Al Marri/10081984/UAE
Event/ID/Date: CEI3* 160 – Dubai (UAE)/2017_CI_1513_E_S_01_01/7 January
2017
Prohibited Substance: Caffeine
Sample/type/Laboratory: 5552563/blood/Laboratoire des Courses Hippiques



I. COMPOSITION OF PANEL

Mr. Laurent Niddam, chair

Mr. Henrik Arle, member

Mr. Erik Elstad, member

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Relevant Articles of the Statutes/Regulations:

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 2016, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2017, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2016.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2016.

FEI Controlled Medication Regulations ("**ECM Rules**"), 2nd edition, effective 1 January 2016.

Veterinary Regulations ("**VRs**"), 13th edition, effective 1 January 2016, Art. 1055 and seq.

Veterinary Regulations ("**VRs**"), 13th edition, effective 1 January 2017, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. 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."

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 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."

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.

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 12.2.2 and published as provided in Article 13.3.”

III. DECISION

1. Parties

- 1.1 The Persons Responsible (the “**PRs**”), Mr. Sh Hamed Dalmook Al Maktoum, Mr. Saeed Sultan Shames Al Maamri, Mr. Sh Rashid Dalmook Al Maktoum, Mr. Abdulla Ghanim Al Marri, Mr. Saif Ahmed Al Mozroui and Mr. Saeed Ahmad Jaber Al Harbi are Endurance riders for UAE, except form Ms. Amy Louise McAuley who rides for Ireland, including the Horses RAFIK DE KERPONT, MRASEEL, CASTLEBAR LIGHTNING, INTISAAR, SALAM BANQUETOL, PREUME DE PAUTE, TOM JONES TE, ASPENVIEW AMIR and TIM AMI.
- 1.2 The Trainers, (Additional Person Responsible and/or Support Personnel in accordance with article 2.2.1 EAD Rules), Mr. Ismail Mohd, Mr. Mohd Ahmed Ali Al Subose and Mr. Khalifa Ghanim Al Marri are Trainers registered for UAE (the “**Trainers**”).
- 1.3 The Fédération Equestre Internationale (the “**FEI**” and together with the PRs and Trainers, 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. Preliminary Decisions

- 2.1 On 27 March 2017, the Preliminary Hearing Panel – following a Preliminary Hearing upon request by the PRs and Trainers – found that



the prerequisites for the lifting of the Provisional Suspension under Article 7.4.4 of the EAD Rules had not been met at the time. The Preliminary Hearing Panel therefore decided to maintain the Provisional Suspension of the PRs and Trainers.

- 2.2 On 28 April 2017, the Preliminary Hearing Panel – following a request for lifting of the Provisional Suspension by the FEI, and after the FEI had provided further background information on the Prohibited Substance Paraxanthine (as outline further below) – decided to lift the Provisional Suspensions of the PRs and Trainers. The Preliminary Hearing Panel took note that the Prohibited Substance Paraxanthine would most likely be reclassified from a Banned Substance on the 2017 Prohibited List to a Controlled Medication and Specified Substance in 2018. The Preliminary Hearing Panel agreed with the FEI that in such case the *lex mitior* principle shall apply. Hence, the reclassification of Paraxanthine might lead to a shorter period of Ineligibility as predicted for a Banned Substance case, and Article 7.4.4 (ii) of the EADCMRs could therefore be applied.
- 2.3 The Preliminary Decision also referred to an FEI submission (in Art. 3.5), where the FEI reserved its rights *"to ask for longer suspensions of Mr. Abdulla Ghanim Al Marri and Mr. Khalifa Ghanim Al Marri, since they both had several earlier anti-doping rule violations"* (as outlined further below).

3. Further proceedings

On 7 November 2017, the FEI informed the Tribunal that the Parties had reached an agreement in the context of the cases 2017/BS01 – BS08 and 2017/CM06 and submitted the Agreement (together with the Case Summary and the Full Reasoning for the Agreement to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.6.1 of the EADCMRs.

I – Case Summary (as provided to the Tribunal by the Parties as part of the Agreement referred to Article 4 below)

3.1 The cases at hand concern seven (7) Endurance riders and nine (9) horses from three (3) different stables, and three (3) different trainers.

3.2 The PRs took part with the horses in several various endurance events in the UAE between 26 November 2016 and 14 January 2017 (the "Events").



3.3 The PRs and Trainers as members of the Emirates Equestrian Federation (the "UAE NF"), and of Horse Sport Ireland (the "IRL NF"), both NFs being a member of the FEI, the PRs and Trainers were bound by the EAD Rules.

3.4 On 30 January 2017, Provisional Suspensions were imposed on the PRs, in accordance with Article 7.4.1 of the EAD Rules, following the positive finding of the Prohibited Substances Caffeine, Theobromine, Paraxanthine, Theophylline (and Flumetasone in the Case 2017/BS02 – MRASEEL, and only Caffeine in the Case 2017/CM06 TIM AMI) in the samples of the Horses ridden by the PRs.

3.5 On 30 January 2017, Provisional Suspensions of two (2) months, i.e., until 29 March 2017, were also imposed on the Horses.

3.6 On 30 January 2017, in addition, Provisional Suspensions were imposed on the Trainers, In accordance with Article 7.4.1 of the EAD Rules.

3.7 The Horses were selected for testing at the Events and the resulting samples were transported to the FEI approved Hong Kong Jockey Club Laboratory ("HKJC") in Hong Kong, China for analysis. (The sample in case CM06 was analysed at the Laboratoire des Courses Hippiques, in Paris, France – "LCH".)

3.8 *Paraxanthine*, is a stimulants which simulates the central nervous system, and was at the time of the violation classified as a Banned Substance under the FEI Equine Prohibited Substances List. *Caffeine*, is a stimulants which simulates the central nervous system. *Theobromine* is a vasodilator used in the treatment of hypertension and angina. *Theophylline* is a bronchodilator used in the treatment of respiratory disease. Caffeine, Theobromine and Theophylline are classified as a Controlled Medication Substances FEI Equine Prohibited Substances List. Further, Caffeine can be a direct metabolite of Theophylline. Theobromine and Paraxanthine can be metabolites of Caffeine. Theophylline, Caffeine and Theobromine are Specified Substances. A positive finding for Caffeine, Theobromine, Paraxanthine, Theophylline, in a Horse's Sample constitutes a *prima facie* Equine Anti-Doping Rule violation.

Flumetasone is a corticosteroid used in treatment of skin disease, (only relevant in case BS02).

3.9 Neither the PRs nor the Trainer or Owners requested the B sample analysis to be carried out. According to Art. 7.1.4 (c) of the EADCM Regulations the right to promptly request the B sample analysis has been given and by failing such request the B sample analysis is deemed waived.

3.10 On 7 March 2017 a Preliminary Hearing took place where the Panel decided in a First Preliminary Decision of 27 March 2017, (Annex 1) to reject the request to lift the provisional suspensions of the PRs, Trainers and Horses, on the basis that the prerequisites for a lifting of the Provisional Suspension under Article 7.4.4 of the FEI Equine Anti-Doping Rules (the



"EAD Rules") had not been met. (See further details in the First Preliminary Decision.)

3.11 On 26 April 2017, the FEI requested the lifting of the Provisional Suspension of both the PRs and Trainers. The FEI provided the following background with regard to the Prohibited Substance Paraxanthine:

"Caffeine is a Controlled Medication and Specified Substance according to the FEI Prohibited List. Paraxanthine is the main metabolite of Caffeine, and currently classified as a Banned Substance. The FEI has received requests to reclassify Paraxanthine from Banned Substance to Control Medication and Specified Substance. This is logical since the main substance Caffeine is already classified as a Controlled Medication and a Specified Substance.

The FEI Equine Prohibited Substance List is "revised by a group of experts (List Group) who propose changes to the FEI Bureau once a year". (Definition of the Prohibited List). In accordance with Art 4.2 EADCMR "The FEI may revise the List from time to time but at least once annually by posting the new List on the FEI website... Each new version of the List shall also be sent by email to National Federations and to National Head FEI Veterinarians. The List shall be published by the FEI at least once a year, with an opportunity for National Federation and stakeholder feedback.

The List Group had its annual meeting in March 2017 where they agreed on reclassifying Paraxanthine as mentioned above. This decision was then approved by the FEI Bureau on 12 April 2017. This change has not been formally published yet but the FEI does not anticipate that there will be any changes of such decision, in relation to Art.4 EADCMR. The reclassification will be effective as of 1 January 2018."

3.12 The FEI argued, given that the substance Paraxanthine is classified as Banned Substance on the 2017 Prohibited List, and given the decision for it to be listed as Controlled Medication and a Specified Substance in 2018, the "lex mitior" principle should apply. Further, that the PRs and Trainers had been provisionally suspended for three (3) months as of 30 April 2017. The FEI was of the opinion that the reclassification of Paraxanthine to a Controlled Medication and Specified Substance, would lead to a shorter period of Ineligibility as predicted for a Banned Substance case and Article 7.4.4 (ii) of the Equine Anti-Doping and Controlled Medication Regulations (the "EADCMRs") and could therefore be applied.

3.13 The Panel agreed to such lifting in a Second Preliminary Decision of 28 April 2017 (Annex 2). The Preliminary Hearing Panel took note that the Prohibited Substance Paraxanthine would most likely be reclassified from a Banned Substance on the 2017 Prohibited List to a Controlled Medication and Specified Substance in 2018. The Preliminary Hearing Panel agreed with the FEI that in such case the "lex mitior" principle shall apply. Hence, the reclassification of Paraxanthine might lead to a shorter period of Ineligibility as predicted for a Banned Substance case and Article 7.4.4 (ii) of the EADCMRs could therefore be applied.



3.14 Further, after the National Federations' ("NF") procedure to comment on proposed changes of the FEI Equine Prohibited List (the "List"), the NFs accepted the suggested changes and the FEI Bureau confirmed the proposed change to the List regarding Paraxanthine on 5 September 2017. The new List has to be published at the latest three months before it enters into force, and was done so by the FEI on 27 September 2017 (Annex 3), and hence in force as of 1 January 2018.

3.15 The Legal Counsels of the PRs and Trainers submitted several statements from 6 March until 10 July 2017. In essence the following explanations were provided:

3.16 Investigations confirmed that in September 2016, the head of Zabeel Feedmill (the "Feed Supplier"), was requested by the management of three stables: MRM Stables, F3 Stables and M7 Stables to produce a supplement mix (the "Mix"). The following ingredients, all commercially available, would fit the need of the horses' best:

- Cell E Premium with Selenium from Kohnke's Own Products;
- Pure Vitamin C from TRM;
- Stamox Vet (Beet Root Powder) from Stamox;
- Pure DMG from TRM; and
- Cosequin ASU Plus from Nutramax Laboratories.

3.17 After preparation of the Mix, the whole batch was distributed to the three abovementioned Stables. To assist the trainers and stable managers, a basic information of the daily dosage and handling/storage instructions were added to the Mix. Since the positive results came from the Horses belonging to the three Stables the Feed Supplier reasoned that the only item which could have caused these test results was the Mix and that during the investigations carried on by the Feed Supplier, it came to light that another substance was accidentally also added to the Mix. In detail, another herbal product called Super Elixir, containing 8.5 micrograms/gram Caffeine, usually used for the wellness of humans, was accidentally added to the Mix.

3.18 The Feed Supplier is without doubt the most renowned feed producer and supplier in the region. For now more than 30 years it is supplying feed, hay and supplements to over 2000 flat racing horses, 3000 endurance horses and 5000 racing camels, all of which are subject to extensive forensic tests. Until this date, Feed Supplier never had been accused in connection with doping violations. There are various reasons for this record. For example Feed Supplier has its own quality control procedures and frequently gets their feed and procured hay analysed by renowned third party laboratories (within the country as well as overseas).

3.19 The contamination occurred away from the stable, away from the eyes or the circle of responsibility of Appellants, and in fact at the level of the feed producer, which all the Stables have used for many years.

3.20 To conclude: The PRs and Trainers respectfully submit that according



to the standard of proof applicable (balance of probabilities), they provided in all respects sufficient information which evidences that the source of the Prohibited Substances, Caffeine and its metabolites Theobromine, Paraxanthine and Theophylline, arises from the product Super Elixir. This product was added by accident in relation to a one-time request to produce a Mix.

3.21 In relation to Case BS02, the substance Flumetasone was administered by way of an intra-articular injection (joint injection) with 2ml of Flumetasone (Fluвет) by the responsible Veterinarian. However, it is believed that this therapeutic measure was taken well prior to the date of competition."

II – Full Reasoning for the Agreement (as provided to the Tribunal by the Parties as part of the Agreement referred to in Article 4 below)

"4.1 According to Article 10.2 of the EAD Rules, the period of ineligibility imposed for the violation of Article 2.1 shall be, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, two years. A fine of up to CHF 15,000 shall also be imposed and appropriate legal costs.

4.2 The first requirement to fulfil in order to have a reduction of the period of ineligibility is to establish how the substances entered the Horses' system. The FEI is of the opinion that the PRs and Trainers have, on a balance of probabilities, proven how the substances entered the body of the Horses, hence the threshold requirement is fulfilled. It is concluded that it was due to a contamination of the supplement feed mix which took place at the feed mill outside the PRs and Trainers control. Further, the PRs and Trainers were not aware of such contamination and had no possibility to be aware of it. Some facts that supports the explanations and evidence are that the three Stables had used the same feed producer for many years, all three Stables had purchased the same supplement feed mix during the same period of time, and all nine Horses tested positive for Caffeine and all its metabolites during the same period of time. (With exception from the case CM06 where only Caffeine was present.) The FEI is therefore satisfied with the evidence that contamination of the supplement feed mix took place at the feed producers mill and that it is the only plausible explanation for how the Prohibited Substances entered the Horses' system. Since the presence of Caffeine and all its metabolites indicate contamination, the FEI is thus satisfied that the requirement of establishing how the Prohibited Substances entered the Horse's system has been fulfilled.

4.3 The FEI has proceeded to evaluate the level of Fault and Negligence of the PR. Article 10.4 of the EAD Rules states *"If the Person Responsible and/or member of the Support Personnel (where applicable) establishes in an individual case that he/she bears No Fault or Negligence for the EAD Rule violation, the otherwise applicable period of Ineligibility and other Sanctions (apart from Article 9) shall be eliminated in regard to such Person. When a Banned Substance and/or its Metabolites or Markers is*



detected in a Horse's Sample in violation of Article 2.1 (presence of a Banned Substance), the Person Responsible and/or member of the Support Personnel (where applicable) must also establish how the Banned Substance entered the Horse's system in order to have the period of Ineligibility and other Sanctions eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the EAD Rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.6 below." Article 10.4 of the EAD Rules also states that it "only applies in exceptional circumstances".

Further that *"No Fault or Negligence does not apply in the following circumstances:*

(a) where the presence of the Banned Substance in a Sample came from a mislabelled or contaminated supplement. Persons Responsible are responsible for what their Horses ingest and have been warned about the possibility of supplement contamination."

4.4 Based on the evidence and documentation supplied by the PRs and Trainers (as described in Section 3 above), the FEI has evaluated whether or not Article 10.4 was applicable. The FEI has considered whether the PRs and trainers have established how the Prohibited Substance(s) had entered the Horses' system through a contaminated feed supplement mix. In this regard, the FEI finds that the PRs and Trainers have proved with a plausible explanation as to how the Prohibited Substance(s) entered the Horses' system. But since the Horses actually were given Caffeine in the supplement feed mix, the FEI believe that *No Fault or Negligence*, cannot be applied in accordance with Article 10.4 (a) of the EADCM Rules. Further, the rules are clear, *No Fault and Negligence* Article 10.4 of the EADCM Rules, cannot be applied in relation to supplements, nor in cases where the PRs and Trainers have delegated the responsibility of their Horses to the Stables and the veterinarian (in accordance with Article 10.4 (b) EADCM Rules.

4.5 Instead it is necessary to evaluate the fact under 10.5 of the EAD Rules, *No Significant Fault and Negligence*, where *"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..."*

4.9 The FEI is satisfied that the PRs and Trainers have demonstrated that they bore *No Significant Fault or Negligence* in accordance with Article 10.5.2.1 since they had procedures in place in order to prevent positive findings, and the fact that the PRs and the Trainers could reasonably not have suspected that the supplement feed mix given to the Horses was contaminated at the feed mill. The FEI is of the opinion that the circumstances of the cases are unfortunate and could not have been foreseen by neither the PRs nor the Trainers, being the Persons Responsible.

4.10 The FEI accepts that the circumstances of the cases to be exceptional



on the basis that the Banned Substance Paraxanthine will be considered to be only a Controlled Medication rule violation in 2018. Since the PRs and Trainers have been able to establish that there is a connection between the Caffeine and all its metabolites in the cases at hand, it is most likely that they would have been eligible for the Administrative Procedure under Article 8.3 of the ECM Rules in 2018, where the sanction consist of a fine and legal costs only. Nevertheless, Paraxanthine was a Banned Substance at the time of the violations and the FEI is of the opinion that the sanctions for a normal Controlled Medication case should apply.

4.11 Since the proceedings were opened against the PRs and Trainers, the FEI Equine Prohibited List (the "List") has been amended in order to downgrade Paraxanthine form Banned Substance to Controlled Medication Substance and reclassify it as a Specified Substance. This has been approved by the FEI Bureau on 5 September 2018, and will be in force with effect from 1 January 2018.

4.12 The relevance of the reclassification is that:

- (a) The use/administration of Banned Substances in equine sports is regulated by the EADRs (i.e. anti-doping rules).
- (b) The use/administration of Controlled Medications in equine sports is regulated by the Equine Controlled Medication Rules (the "ECMRs").
- (c) The reclassification thus means that the use of Paraxanthine will no longer be considered an anti-doping rule violation.
- (d) The sanctions for violations of the EADRs are significantly greater than the sanctions for violations of the ECMR. For instance, the maximum period of ineligibility that can be imposed for the presence of a Banned Substance in the sample of a horse – for a first time violation under the EADRs – is 2 years. By contrast, the maximum period of ineligibility that can be imposed for the presence of a Controlled Medication in the sample of a horse – for a first time violation under the ECMRs – is 6 months.
- (e) Thus, the maximum sanction applicable for the use of Paraxanthine under the ECRMs will be 6 months and, in fact, could result in no period of ineligibility at all if the Person Responsible elects to proceed with an Administrative Procedure under Article 8.3.1.
- (f) Further to the application of the principle of *lex mitior*, the PRs and Trainers would be entitled to the benefits of the reclassification since the use of Paraxanthine is:
 - (i) no longer to be considered an anti-doping rule violation; and
 - (ii) is to be regulated by far less severe sanctions under the ECMRs.

4.13 Due to this fact the FEI is satisfied that it would be appropriate to apply the principle of "Lex Mitior" in accordance with Article 16.1.2 of the EADCM Rules.

4.14 In the case of Flumetasone BS02 it has been confirmed by the veterinarian that the Horse was injected. But as the rules clearly states (article 10.4 (b) ECM) No Fault and Negligence cannot be applied in a case



where the administration of a Controlled Medication Substance was done by the PR's veterinarian. The FEI is of the opinion that the PR therefore should be accountable for the acts of his veterinarian and a six (6) months ineligibility period should apply in the case of Flumetasone, BS02. However, due to the changes of the Paraxanthine to be downgraded and reclassified, there has been delays in the procedure not attributable to the PR.

4.15 Article 10.10.2 of the EAD Rules states that:

"Delays Not Attributable to the Person Responsible or member of the Support Personnel Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Person Responsible and/or member of the Support Personnel alleged to have committed the EAD Rule violation, the Hearing Panel may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another EAD Rule violation last occurred. All competitive results achieved during the period of Ineligibility including retroactive Ineligibility shall be disqualified."

4.16 In this particular case the procedure of reclassify a substance and amending the List is long. Firstly, the FEI Equine Prohibited Substance List is revised by the List Group, who need to agree to any proposed changes. The List Group had its annual meeting in March 2017 where they agreed on reclassifying Paraxanthine from Banned Substance to Controlled Medication and Specified Substance. The List Group then proposes changes to the FEI Bureau. Secondly, the Bureau need to approve the proposed changes by the List Group and such decision was approved by the FEI Bureau on 12 April 2017. Thirdly, each new version of the List shall also be sent to all National Federations and to the National Head FEI Veterinarians for feedback. Finally, once this procedure has been followed the Bureau once more need to approve the List, before it is published at least three months before it is in force. The Bureau approved the List for publication on 5 September 2017, to be in force as of 1 January 2018.

4.17 Further, in this case despite the fact that the PR tried directly to investigate his case further he had difficulties in obtaining information from the Feed Supplier and the treating veterinarian, which lead to a substantial delay in the procedure that was not attributable to him as PR.

4.18 The FEI is of the opinion in such cases the rules allow for the period of ineligibility to start as early as the date of the sample collection. Any results achieved by Mr Sh Hamed Dalmook Al Maktoum in the period from sample collection, 17 December 2016, and the date of notification, 30 January 2017 and the remaining period after the lifting of the Provisional Suspension on 30 April 2017 and 16 June 2017, shall therefore be disqualified.

4.19 The FEI is satisfied that the criteria for the application of Article 10.5 of the EAD Rules had been met in that (i) the PRs and Trainers have established how the Prohibited Substances came to enter the Horses'



system, (ii) the PRs and Trainers have demonstrated that they bore No Significant Fault or Negligence and (iii) the circumstances of the cases are exceptional and that, therefore, the otherwise applicable period of Ineligibility (i.e. two years) should be in the spectrum of reprimand to six (6) months ineligibility period.

4.20 In addition, the Disqualification of the Horses' results at the Events in accordance with Article 9 and Article 10.1.4 and of the EAD Rules) should apply.

4.21 Article 10.2 of the EADCM Rules provides that a Person Responsible for an Articles 2.1 violation should also be fined up to CHF 15,000 'unless fairness dictates otherwise' and should be ordered to pay 'appropriate legal costs'. The FEI respectfully submits that fairness does not dictate that no fine be levied in this case, and duly requests that a fine of 1 500 CHF be imposed on each of the PRs and Trainers, and that the PRs and Trainers be ordered to pay the legal costs of 1 000 CHF that the FEI has incurred in pursuing this matter."

4. Agreement between Parties

On 7 November 2017, the Parties reached the following Agreement, based on the facts as detailed above:

*** Quote***

- 5.1 All capitalised terms used in this Agreement but not defined herein shall have the meaning ascribed to such term in the the FEI Equine Anti-Doping and Controlled Medication Rules ("EADCM Rules")
- 5.2 In the matter of the Adverse Analytical Finding of Caffeine and all its metabolites related to the samples of the Horses, collected at the Events, the Persons Responsible and the Trainers as Additional Persons Responsible, and the Fédération Equestre Internationale (the "FEI" and together with the PRs and the Trainers, the "Parties") agree, in accordance with Article 7.6.1 (*Agreement between Parties*) of the EADCM Rules, on the following:
- 1) The **Presence of the Prohibited Substance(s)** in the Horse's sample constitutes a violation of Article 2.1 of the EAD Rules.
 - 2) **Ineligibility Period:**
 - (a) The Parties agree that the prerequisites for Article 10.5 of the EAD Rules (and to some extent Article 10.5 of the ECM Rules which would be applicable to the cases as of 1 January 2018, given the reclassification of the substance Paraxanthine) - (*Reduction of the Period of Ineligibility based on No Significant Fault or Negligence*) are fulfilled in the cases at hand and as a

matter of fairness and further to the principle of proportionality, the period of ineligibility shall be reduced to two (2) months ineligibility for the PRs and Trainers.

- (b) Except from the Case BS02, the PR Mr Sh Hamed Dalmook Al Maktoum, where the ineligibility period shall be six (6) months ineligibility, starting from the date of the sample collection, 17 December 2016 and ended on 16 June 2017.
- (c) In accordance with EADCM Rules Article 10.10.4 (*Credit for Provisional Suspension or Period of Ineligibility Served*), the period of ineligibility shall be deemed to have commenced on 30 January 2017 (i.e. the date on which the provisional suspension was imposed on the PR's and Trainers) and ended on 31 March 2017, (except from the case BS02 as per above).

3) **Provisional Suspension of the Horses:**

The PRs accept that the Provisional Suspension imposed on the Horses remained in place until 29 March 2017.

4) **Disqualification of Results:**

- (a) In accordance with Articles 9 and 10.1.4 of the EAD Rules, all the results achieved by the PRs with the Horses at the Events are disqualified, including forfeiture of medals, points and prizes.
- (b) In relation to the case BS02 and Mr Sh Hamed Dalmook Al Maktoum all results in the period from sample collection - 17 December 2016 until the date of notification - 30 January 2017, and the remaining period after the lifting of the Provisional Suspension - 30 April 2017 until 16 June 2017, shall also be disqualified, including forfeiture of medals, points and prizes.

5) **Full Settlement and Resolution:**

- (a) This agreement resolves and settles all outstanding matters between the FEI and the PRs, Ms Amy Louise McAuley, Mr Sh Hamed Dalmook Al Maktoum, Mr Saeed Sultan Shames Al Maamri, Mr Sh Rashid Dalmook Al Maktoum, Mr Abdulla Ghanim Al Marri, Mr Saif Ahmed Al Mozroui and Mr Saeed Ahmad Jaber Al Harbi, including the horses RAFIK DE KERPONT, MRASEEL, CASTLEBAR LIGHTNING, INTISAAR, SALAM BANQUETOL, PREUME DE PAUTE, TOM JONES TE, ASPENVIEW AMIR and TIM AMI.
- (b) This agreement resolves and settles all outstanding matters between the FEI and the Trainers Mr Ismail Mohd, Mr Mohd Ahmed Ali Al Subose and Mr Khalifa Ghanim Al Marri, including the above mentioned Horses.
- (c) 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.

- 6) **Fine and Legal Costs:**
- (a) The PRs and Trainers shall each contribute with a fine of 1 500 CHF and the legal costs of 1 000 CHF.
 - (b) No further Sanctions than those mentioned in this agreement should apply to the PRs and Trainers in relation to the above mentioned cases.
 - (c) Each of the Parties shall bear their own legal costs.
- 7) **Right of Appeal:**
- This Agreement will constitute the decision for this case. 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

5. Further proceedings

- 5.1 On 16 November 2017, the Tribunal requested further information on how the alleged "*several earlier anti-doping rule violations*" of Mr. Abdulla Ghanim Al Marri and Mr. Khalifa Ghanim Al Marri, as previously submitted by the FEI, have been taken into consideration in the Agreement.
- 5.2 On 22 November 2017, the FEI on one hand and the PRs and Trainers on the other hand, responded to the Tribunal request. In essence both Parties agreed that the "*several earlier anti-doping rule violations*" had been taken into consideration in the Agreement, and that the Parties had come to the conclusion that neither the provision on Multiple Violations (Art. 10.8.4.1 of the EAD Rules), nor the provision on Aggravating Circumstances (Art. 10.7 of the EAD Rules) applied in the cases at hand.
- 5.3 The FEI argued in this respect as follows:

"(...) BS01-BS08 were notified on 30 January 2017. The FT01 was notified on 11 January 2017 and the CM06 case was notified on 8 February 2017.

In relation to the case 2017/FT01 - TOM JONES TE, it was not included in the agreement, since this horse did not contain any caffeine at this competition. At the time of notification the FEI did count it as a first violation and the following BS cases as a second violation. However, looking closer at the matter, in fact the FEI notified the FT case to the UAE NF on 11 January. The UAE NF received it at that date, but did not notify the PR until the 15 January. Hence, when the PR competed again on 14 January with the same horse, he was not aware of his first



violation. (2. Email from NF to PR)

The very same thing applies to the CM06 case which took place on 7 January 2017, but the PR was only notified of the FT case on 15 January, the BS cases on 30 January and of the CM case on 8 February.

The FEI is of the opinion that none of the PRs or Trainers could have been aware of the earlier violations, since they had not been notified about the first violation before the second violation took place. The violations shall therefore be considered together as one single violation per each of the PRs and Trainers in accordance with Article 10.8.4.1 of the EADR."

- 5.4 The FEI also provided an email, dated 15 January 2017, from the UAE-NF to the stables of the PR in the case 2017/FT01 - TOM JONES TE, forwarding the stables/PR the Notification Letter.
- 5.5 Furthermore, the FEI argued that, since these cases concerned cases with a plausible explanation of contamination at the feed mill, which was outside the control of the PR and Trainers, and there was then no intent to dope the horses, the FEI was of the point of view that aggravating circumstances should not be applied in such cases.
- 5.6 The representatives of the PRs and Trainers argued along the lines of the FEI with regard to why none of the present Cases (2017/BS05, 2017/BS07 and 2017/CM06) may be considered as a second violation, namely because Mr. Abdulla Ghanim Al Marri did not commit these violations after he received notice pursuant to Article 7 of the EAD Rules, but before receiving such notice. Consequently, according to Article 10.8.4.1 EAD Rules, all of Mr. Abdulla Ghanim Al Marri violations had to be considered together as one single first violation, and Article 10.8 EAD Rules (Multiple Violations) did not apply.
- 5.7 Regarding aggravating circumstances, the representatives of the PRs and Trainers argued that those provisions, which could lead to stricter sanctions, could only apply if the PR knowingly committed the Rule violation at stake. However, in the cases at hand, neither the PRs nor the Trainers were aware of the contamination of the feed with caffeine; even the feed supplier was not aware of said contamination prior to further investigations in the cases at hand.
- 5.8 In addition, the representatives of the PRs and Trainers argued as follows:

"The Appellants wish to highlight that this is in fact not a typical case.



The antidoping violation occurred due to a simple human error committed by an employee of the feed supplier, from which all of the involved PRs and Trainers purchased their feed. Consequently, this matter must be viewed as a "collective offense", meaning that each of the PRs and Trainers bear the same level of fault and innocence, respectively. The mere fact that someone is involved more often in the present matter does not make him or her a typical repeat offender and thus more guilty. Rather, it was just a coincidence that some of the PRs involved were tested more often during the relevant time period than others. Therefore, it would be highly unfair to treat Mr Abdulla Ghanim Al Marri or Mr Khalifa Ghanim Al Marri differently than the other PRs and Trainers. In view of this and after having carefully analyzed the particular circumstances of the present matter, the Parties agreed to treat all the PRs and Trainers in the caffeine cases equally."

- 5.9 Furthermore, that it was disputed between the Parties, whether the PRs and Trainers could be held responsible for the contamination as the latter happened at the premises of a third party, *i.e.*, the feed supplier. In particular, it was disputed whether in doping matters the FEI's strict liability approach of "*immediate, automatic and irrebutable*" imputation of a third party's fault to the PR was compliant with the CAS jurisprudence (referring to several cases in this respect). However, during the settlement discussions, the representatives of the PRs and Trainers agreed to refrain from questioning the FEI's interpretation of the EADCMRs, and in return requested for the PRs and Trainers to be treated equally and fairly, also under the FEI's approach of responsibility.

6. Jurisdiction

- 6.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, the GRs and the EADCMRs.
- 6.2 As members of the UAE National Equestrian Federation and the National Equestrian Federation of Ireland, both National Federations being members of the FEI, the PRs and Trainers were bound by the EAD Rules.
- 6.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.
- 6.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

7. Approval of Agreement

- 7.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, as well as the further explanations and reasoning by the Parties, the Tribunal finds no grounds to object to or disapprove the terms of the Agreement and is satisfied the Agreement constitutes a *bona fide* settlement of the present case.
- 7.2 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 4 above. Further, this Decision shall terminate the present cases 2017/BS01-BS08 and 2017/CM06.

8. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PRs, Ms. Amy Louise McAuley, Mr. Sh Hamed Dalmook Al Maktoum, Mr. Saeed Sultan Shames Al Maamri, Mr. Sh Rashid Dalmook Al Maktoum, Mr. Abdulla Ghanim Al Marri, Mr. Saif Ahmed Al Mozroui and Mr. Saeed Ahmad Jaber Al Harbi, including the horses RAFIK DE KERPONT, MRASEEL, CASTLEBAR LIGHTNING, INTISAAR, SALAM BANQUETOL, PREUME DE PAUTE, TOM JONES TE, ASPENVIEW AMIR and TIM AMI, and the Trainers Mr. Ismail Mohd, Mr. Mohd Ahmed Ali Al Subose and Mr. Khalifa Ghanim Al Marri, concerning the cases 2017/BS01-BS08 and 2017/CM06 is hereby ratified by the Tribunal with the consent of the Parties and its terms 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 Persons Responsible: Yes**
- b. The President of the NFs of the Persons Responsible: Yes**
- c. The Trainers: Yes**
- d. The President of the NFs of the Trainers: Yes**
- e. The Organising Committee of the Events through the NFs: Yes**
- f. Any other: No**

FOR THE PANEL

A handwritten signature in blue ink that reads 'L A Niddam'. The signature is written in a cursive style and is underlined with a blue horizontal line.

THE CHAIRMAN, Mr. Laurent Niddam