

DECISION of the FEI TRIBUNAL
dated 26 June 2020

Banned Substance Case No.: 2020/BS09

Horse: LINKIN PARK

FEI Passport No: 105RH03/MEX

Person Responsible/NF/ID: Nicolas PIZARRO/10002381/MEX

Event/ID: CSI2* - San Miguel de Allende (MEX)/2020_CI_1134_S_S_01

Date: 12 - 15 March 2020

Prohibited Substance(s): Ractopamine

And

Banned Substance Case No.: 2020/BS10

Horse: COME BACK

FEI Passport No: 104SH43/MEX

Person Responsible/NF/ID: Nicolas PIZARRO/10002381/MEX

Event/ID: CSI2* - San Miguel de Allende (MEX)/2020_CI_1134_S_S_01

Date: 12 - 15 March 2020

Prohibited Substance(s): Ractopamine

I. COMPOSITION OF PANEL

Ms. Valérie Horyna, one member panel

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 24th edition, effective 19 November 2019 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 24th edition, 1 January 2020, Arts. 118, 143.1, 159, 164 and 165 ("**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 2020.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, changes effective 1 January 2020.

Veterinary Regulations (“**VRs**”), 14th Edition 2018, effective 1 January 2020, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Nicolas Pizarro, represented by Morgan Sports Law, London, United Kingdom.

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**"), Mr. Nicolas Pizarro is a rider for Mexico.
- 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 LINKIN PARK (the "**Horse 1**") and with the horse COME BACK (the "**Horse 2**", together the "**Horses**") at the CSI2* in San Miguel de Allende, Mexico, from 12 to 15 March 2020 (the "**Event**").
- 2.2 During the Event in-competition samples (urine and blood) were collected from the Horses. Subsequent analysis of the samples revealed the presence of Ractopamine in the urine samples of both Horses.
- 2.3 On 21 April 2020, the FEI notified the PR of adverse analytical findings and alleged violations of Article 2.1 of the EAD Rules. Together with the Notification Letter the PR was informed that he was provisionally suspended, and provided with the opportunity to request for a Preliminary Hearing. In addition, the Horses were also provisionally suspended for two (2) months, until 20 June 2020.

3. Further proceedings

- 3.1 On 23 June 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the context of the cases 2020/BS09 LINKIN PARK and 2020/BS10 COME BACK 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.
- 3.2 On 25 June 2020, the FEI Tribunal Chair nominated a panel for the case at hand. Both Parties confirmed that they accepted the constitution of the panel.

4. Agreement between Parties

- 4.1 On 22 June 2020 the Parties reached the following Agreement:

*** Quote***

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

3.1 The PR:

- (i) admits a violation of Article 2.1 of the EAD Rules;
- (ii) waives his right to a final hearing; and
- (iii) agrees to cooperate with the FEI fully with respect to his case.

3.2 The FEI is satisfied that the PR has established:

- (i) how the Ractopamine entered the Horses' systems;
- (ii) that he bore No Fault or Negligence for the rule violation; and
- (iii) that the circumstances of the case are exceptional, such that the PR could not reasonably have known that LINKIN PARK and COME BACK's feed was contaminated with Ractopamine.

3.3 The Parties agree that:

- (a) the PR bears no fault or negligence for the violation. The PR shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility (i.e. two years) shall be eliminated;
- (b) 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;
- (c) in accordance with EAD Rules 9.1 and 10.1.2,¹ the results

¹ EAD Rules 9.1 and 10.1.2 provide as follows:

9.1 A violation of these EAD Rules in connection with a test in a given Competition automatically leads to the Disqualification of the result of the Person Responsible and Horse combination obtained in that Competition with all resulting Consequences, including forfeiture of any related medals, points and prizes. [...] Even if a Sanction is reduced or eliminated under Article 10 below, such reduction or elimination shall under no circumstances reverse the automatic Disqualification of Individual Results mandated by this Article 9.

10.1.2 At Events other than those listed above: an EAD Rule violation occurring during or in connection with an Event may lead to Disqualification of all of the Person Responsible's individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.4.

achieved by the PR and the Horses at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes; and

- (d) that the PR shall not incur any fines or legal costs.
 - (e) Each party will bear its own legal and other costs incurred in connection with these proceedings.
 - (f) No other Sanctions (other than the Disqualification of the results at the Event in accordance with Article 9 and Article 10.1.2 and of the EAD Rules) should apply in this case.
- 3.4 The parties hereby request that the FEI Tribunal issue a Decision incorporating the terms of this agreement.
- 3.5 The parties acknowledge and agree that, pursuant to Article 13.3 of the EAD Rules, that 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. 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.
- 3.6 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.
- 3.7 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.
- 3.8 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 Furthermore, the Parties provided the following Case Summary and Full Reasoning for the case at hand:

“Mr Nicolas Pizarro is the Person Responsible (“**PR**”) in accordance with Article 118.3 of the FEI General Regulations.

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).

The PR participated with the horses LINKIN PARK and COME BACK (together, the "**Horses**") at the CSI2* in San Miguel de Allende, Mexico, from 12 to 15 March 2020 (the "**Event**"). As a member of the Mexican Equestrian Federation (the "**MEX NF**"), the latter being a member of the FEI, the PR was bound by the FEI Equine Anti-Doping and Controlled Medication Regulations (the "**EAD Rules**").

The Horses were selected for testing at the Event. Analysis of the samples revealed the presence of Ractopamine. Ractopamine is a beta adrenoceptor agonist used to promote growth and leanness in certain food-producing animals and is classified as a Banned Substance under the 2020 FEI Equine Prohibited Substances List.

By notification letter dated 21 April 2020, the FEI informed Mr Nicolas Pizarro, in his capacity as the Person Responsible, and the MEX 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 EAD rules based on the Laboratory's adverse analytical finding.

The PR was provisionally suspended as of the date of notification, and a provisional suspension of 2 months was imposed on the Horses.²

The most plausible source of the Ractopamine is contamination, which occurred at a feed manufacturing plant in Mexico (and which has already been involved in a FEI contamination case 2019/BS46).

Ractopamine is a feed additive, which is legal for certain animal consumption in the USA and Mexico, but illegal in most parts of the world.

The manufacturing plant in question produces both pig and horse feed. The pig feed intentionally and legally contains Ractopamine. The manufacturer adds Ractopamine to the pig feed and such pig feed contains 10g/t of Ractopamine, and it is listed as an ingredient of the pig feed.

Ractopamine is not added to the horse feed. It is therefore not listed as an ingredient on the horse feed. However, the two types of feed are both produced and stored in close proximity.

² Exhibit 1-2

The manufacturer in the present case is the same as in the FEI case 2019/BS46. In FEI case 2019/BS46, the manufacturer provided a statement which:

- (i) confirms the above facts; and
- (ii) accepts the plausibility of contamination occurring at the plant.³

The PR has submitted a witness statement which, *inter alia*:

- (i) confirms that he has never had any incident with the FEI before;
- (ii) confirms that he has stopped feeding the Horses with the feed; and
- (iii) contains a certificate of analysis, dated 4 May 2020, which confirmed that the feed contained Ractopamine.⁴

The PR's Stable Manager has submitted a witness statement which, *inter alia*:

- (i) explains that the PR's Horses were, prior to and during the Event, given the same feed involved in FEI case 2019/BS46;
- (ii) provides the invoices for the feed purchased; and
- (iii) confirms that she has stopped ordering from the manufacturer.⁵

The statements are supported by a scientific report, which confirms that the detection of Ractopamine in the Horses' samples is consistent with the contaminated feed ingested.⁶

5. Jurisdiction

- 5.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCMRs, as well as Article 18 of the IRs.

³ Exhibit 3

⁴ Exhibit 4

⁵ Exhibit 5

⁶ Exhibit 6

- 5.2 As a member of the Mexican 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 that the most plausible source of the Ractopamine is contamination, which occurred at a feed manufacturing plant in Mexico, and that the FEI is satisfied that the PR has established how the Ractopamine entered the Horses' systems. In addition, the Tribunal notes that the feed has been analysed and returned positive for Ractopamine.
- 6.2 Furthermore, the Tribunal takes note that the FEI accepts that the PR bore No Fault or Negligence for the rule violations.
- 6.3 Following from Article 10.4 of the EAD Rules, where a PR establishes that he 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 case law.
- 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 cases 2020/BS09 LINKIN PARK and 2020/BS10 COME BACK.

7. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Nicolas Pizarro, concerning the cases 2020/BS09 LINKIN PARK and 2020/BS10 COME BACK 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



Ms. Valérie Horyna, one member panel