



## **DECISION of the JUDICIAL COMMITTEE of the FEI**

**dated 6 March 2006**

**Positive Medication Case:** 2004/45

**Horse:** Picasso 202

**FEI Passport No.:** GER21123

**Person Responsible:** Mrs Kirsten Graf

**Event:** CH-M-V Stadl Paura (AUT), 5-8.08.2004

**Prohibited Substance:** Betamethasone

### **1. COMPOSITION AND FORMAT OF PANEL AND HEARING**

#### **Panel of the Judicial Committee:**

Mr Erik Elstad  
Ms Helen Huggett  
Mr Philip O'Connor

#### **Present at hearing on 23 February 2006 in Lausanne, Switzerland:**

Mr Kai Vorberg, Vaulteur  
Mr Kai Bemann, Legal counsel for the vaulteur  
Mrs Kirsten Graf, Lungers (by telephone)  
Mr F-Eckart Klawitter, Legal counsel for the lungers  
Dr Arnold Hulse, Veterinarian  
Interpreter for the Vaulteur, the Lungers and their legal representatives  
Mr Alexander McLin, FEI General Counsel  
Ms Annie Cormier Smith, FEI Legal Counsel  
Mr Mikael Rentsch, FEI Legal Counsel

### **2. SUMMARY OF THE FACTS**

Case file prepared by the FEI Legal Department, including correspondence produced at the hearing.

### 3. RULES CITED

#### Applicable articles of the Statutes/General Regulations/Veterinary Regulations:

Statutes 20<sup>th</sup> edition, effective 17 April 1999, revision April 2001, and 21<sup>th</sup> edition, effective 21 April 2004 (together, “Statutes”), Arts. 001.6, 057 and 058.

General Regulations (“GR”), 20th edition, revision April 2001, Arts. 142.2, 146.2, 174.7 and 174.12.

Veterinary Regulations (“VR”), 9<sup>th</sup> edition, effective 1 January 2002, Arts. 1013, 1014, 1017, 1018, 1022 and Annex IV.

FEI Code of Conduct for the Welfare of the Horse, 2004.

### 4. DECISION:

#### A. The Relevant Facts

- 1) Picasso 202 took part at the CH-M-V in Stadl Paura (AUT), from the 5<sup>th</sup> to the 8<sup>th</sup> of August 2004 (the “**Event**”). Picasso 202 was vaulted by Mr Kai Vorberg and lunged by Mrs Kirsten Graf.
- 2) Picasso 202 was selected for sampling on 8 August 2004. Analysis of the urine sample taken from Picasso 202 conducted by the approved central laboratory, the Laboratoire des Courses Hippiques, France (“**LCH**”), was found to contain betamethasone. LCH finding was confirmed by the Racing Laboratory of the Hong Kong Jockey Club (“**HKJC**”). The confirmatory analysis was conducted in the presence of the witness appointed by Mr. Vorberg, Prof. Wilhem Schänzer.
- 3) Betamethasone is an anti-inflammatory corticosteroid acting *inter alia* on the locomotor system and is graded “3” by the Medication Sub-Committee of the FEI (“**MSC**”).
- 4) The Judicial Committee is satisfied that the laboratory reports reflect that the tests were accurately performed in an acceptable method and that the findings of LCH and HKJC are accurate. The Judicial Committee is satisfied that the test results show the presence of the prohibited substance, betamethasone.
- 5) The accuracy of the laboratory analyses was not challenged.
- 6) The Judicial Committee Panel noted the evidence of Mr Kai Vorberg, the vaulter, and also via conference call the evidence of Mrs Kirsten Graf, the lunging of the horse Picasso 202, and in addition the signed statement of Mrs Graf handed in to the Panel.

- 7) The Panel noted the absolute denials by both the lugner and the vaulter as to involvement in the administration of the substance betamethasone and as to any knowledge of same.
- 8) The Panel further noted the detailed legal submissions on behalf of the FEI by Mr McLin and by Mr Klawitter and by Mr Bemmann representing Mrs Graf and Mr Vorberg respectively.
- 9) The parties accepted that the Judicial Committee has jurisdiction over this matter pursuant to Articles 057 and 058 of the FEI Statutes.
- 10) Mr Vorberg being the vaulter denies any responsibility as GR Art. 142.2 states that the Person Responsible ("PR") is the lugner. Mrs Graf pleads that FEI did not implement VR Art. 1018.1 which provides as follows:

"Once a horse has been selected for sampling, a member of the Veterinary Commission/Delegate or deputy, or the MCP Testing Veterinarian or deputy, must first inform the Person Responsible. The Person Responsible (or his/her representative) is responsible for the supervision of the horse. From the moment of notification, an authorised assistant or technician must accompany the horse at all times until the sample is collected."

She states that there was no notification to her and that she was nearby and available.

### **C. Analysis**

- 11) The Judicial Committee accepts the evidence of the PR Mrs Graf that she has not been notified. The omission of the notification to the PR as specifically detailed in the VRs is in our view a fundamental flaw in the initial stages of the sampling process.
- 12) VR Art. 1018.1 specifies that it is the PR who is to be notified of the selection of the horse for sampling and not any other person or body. In contrast, elsewhere in the same Article there are two requirements where an alternate for the PR is specified, namely a "representative". VR Art. 1022.4 refers to the PR or his National Federation.
- 13) VR Art 1014 provides as follows:

"The Sampling Procedure and instructions for collecting samples, as contained in the sampling kit, have been carefully drawn up so that all concerned appreciate their roles and understand the procedures involved. All aspects must be strictly followed."
- 14) In our opinion, this omission removes certain protections available to the PR. Such an omission is to be distinguished from, for example, some minor inexactitude in the taking of a sample or in the equipment involved.

- 15) It is with regret that we note that in the first instance the then FEI administration incorrectly identified Mr Vorberg as the PR and initially notified him of the positive findings of the A-sample. GR Art. 142.2 states that in vaulting the PR is the lunger (and in certain alternative circumstances the owner is the PR).
- 16) The regulations relating to prohibited substances impose a strict liability on each PR in FEI disciplines. It is our opinion that in exercising its jurisdiction the FEI must do so in conformity with its own regulations. To ignore a primary requirement identified in uncomplicated terms such as the requirement to notify the PR that his/her horse has been selected for sampling would be unwise.

**D. Decision**

Accordingly, having carefully considered the evidence presented and the legal submissions, including the relevant case law, we terminate the proceedings pursuant to GR Art. 146.2. As a result, the placings in the Event remain unaltered. Each party bears its own costs.

We recommend that further efforts be made to bring to the attention of all relevant persons the need for compliance with VR Art. 1018. There may be a need for the FEI to review the relevant regulations and the practicalities of their application.

The Judicial Committee is grateful to the lawyers present for their valuable assistance.

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[For the Judicial Committee]