



DECISION of the FEI TRIBUNAL

dated 20 March 2008

Positive Human Medication Case No.: 2007/02

Athlete/NF: Mark Armstrong / GBR

FEI ID: 10000415

Event: CSI 2* Braintree, GBR, 15-18.11.2007

Sampling Date: In Competition test on 18 November 2007

Prohibited Substance:

Salbutamol

1. COMPOSITION OF PANEL

Mr Erik Elstad
Mr Patrick A. Boelens
Mr Ken E. Lalo

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

2.2 Summary information provided by the Athlete: The FEI Tribunal took into consideration all evidence and documents presented in the case file, as also made available by and to the Athlete.

2.3 Oral hearing: An oral hearing has not been requested in the case, and the case has been decided by correspondence.

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:

Statutes 22nd edition, effective 15 April 2007, ("**Statutes**"), Arts. 34 and 37.

General Regulations, 22nd edition, effective 1 June 2007 ("**GR**"), Arts. 145 and 174.

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

FEI Anti-Doping Rules for Human Athletes, 1st edition, effective 1st June 2004, revised July 2005 ("**ADRHAS**"), Introduction and Arts. 2, 3, 4, 5, 7.1.9, 8, 9 and 10.

World Anti-Doping Code, version effective March 2003.

3.2 The Athlete: Mr Mark Armstrong

3.3 Justification for sanction:

GR Art. 145.1: "Subject to prior authorisation by the FEI, the use of any Prohibited Substance by a competitor is forbidden."

GR 145.3: "The rules and list of Prohibited Substances existing from time to time and laid down in the World Anti-Doping Code and any all annexes and modifications thereto and in the Anti-Doping Rules for Human Athletes apply, subject to modifications by any of the governing bodies of the FEI as may be published from time to time.

Art. 2.1.1 ADRHA: "It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body. *Athletes* are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their bodily *Specimens*. Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on the *Athlete's* part be demonstrated in order to establish an antidoping violation under Article 2.1."

4. DECISION

4.1 Consideration of the evidence:

- a. Mr Mark Armstrong (the "**Athlete**") participated at CSI 2* Braintree, GBR from 15 to 18 November 2007 (the "**Event**").
- b. On 18 November 2007, the Athlete was selected for in-competition testing which test was notified by Mr Alex Ward, Chaperone for UK Sport. Analysis of the urine sample no. A1077636 taken from the Athlete and performed by the Drug Control Centre, Kings College, London ("**DCC**"), a WADA accredited laboratory, was found to contain salbutamol at a concentration measured as 610 ng/ml.
- c. The Athlete has not requested a confirmatory analysis and one has not been conducted.
- d. The Athlete has not requested an oral hearing. In an email

dated 10 March 2008 to the FEI his legal counsel wrote that
"to limit costs for all concerned my client will not require a hearing in person or by telephone."

- e. The 2007 Prohibited List of the World Anti-Doping Code classifies salbutamol as a Beta-2 Agonist, which is a specified and a threshold substance prohibited in competition when its concentration in urine is greater than 500 ng/ml (see WADA 2007 Prohibited List, WADA Technical Document – TD2004MRPL and letter of Dr Olivier Rabin, WADA Science Director, to the laboratory Directors dated 24 November 2006).
- f. The FEI Tribunal is satisfied that the laboratory report reflects that the tests were accurately performed in an acceptable method and that the findings of DCC are accurate. The FEI Tribunal is satisfied that the test results show the presence of the Prohibited Substance. The Athlete did not contest the accuracy of the testing methods or the test results and positive findings. The FEI has thus sufficiently proven the objective elements of a doping offence pursuant to ADRHA Article 2.1.1, in accordance with ADRHA Article 3.
- g. Under the WADA Code and pursuant to ADRHA Article 10.2, the period for a first breach of the Code is a period of two years' ineligibility. However, salbutamol is a "specified substance", namely one of the substances which are particularly susceptible to unintentional Anti-Doping Rule violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents (see WADA 2007 Prohibited List and ADRHA Article 10.3).
- h. Under ADRHA Article 10.3, if the Athlete can establish that the use of a specified substance *"was not intended to enhance sport performance"*, the period of ineligibility of two years does not apply. On a first violation, as in the present case, where the Athlete can establish - on a balance of probability - that the use of the substance was not intended to enhance sports performance, the range of sanctions available to the FEI Tribunal are, at a minimum, a warning and reprimand and, at a maximum, one year ineligibility.
- i. In his written explanation dated 28 January 2008 the Athlete states that he is a professional show jumper and that he has been competing internationally for approximately twenty years. He explains that he has suffered from asthma since childhood and that to manage the condition he has to use Ventolin Evohaler. This is confirmed by Dr. Barry Grimaldi's statement dated 22 January 2008, who is his General Practitioner, and who

specifies that the Athlete has been using an inhaler since the age of twenty on a regular basis of up to 10 puffs a day.

- j. The Athlete mentions that, at the Event, his condition was exacerbated by extremely cold weather conditions and a chest infection, for which he had been prescribed antibiotics. His doctor, Dr Grimaldi, supports this fact by specifying that the Athlete's asthma *"is precipitated by cold weather, dust, infections and ammonia fumes from the horses' excretions"*. He adds that he was consulted by the Athlete on 14 November 2007 with a severe upper respiratory tract infection for which he prescribed antibiotics and salbutamol, and that without these medications the infection would have progressed into pneumonia.
- k. The Athlete acknowledges that it was his responsibility to obtain a Therapeutic Use Exemption ("**TUE**") and expresses his deep regret and apology for this omission. He, however, expresses his disappointment that his National Federation ("**NF**") *"did not direct [him] proactively to obtain a TUE as, through [his] involvement in their elite squad, [he is] quite certain they knew [he's] asthmatic and required Ventolin"*.
- l. As soon as the Athlete was notified orally by the Performance Assistant and Anti Doping Liaison Officer at the British Equestrian Federation ("**BEF**"), of his need to apply for a TUE, the Athlete applied for a national TUE with UK Sport and for an international TUE with the FEI. His International TUE was granted on 21 January 2008 by the FEI TUE Committee ("**TUEC**") with an approval expiry date of 31 December 2009. The Athlete assures that he had no intention to enhance his performance and that his omission to obtain a TUE and his rule violation were unintentional.
- m. In his written statement, dated 1 February 2008, Dr Craig Ferrell, Chairman of the FEI Medical Committee, proffers that *"Mr Armstrong was found to have a level of Salbutamol considered therapeutic, but not a level that would be considered doping, per se, if he had obtained an ATUE in advance of participation. I believe that his use of the medication was appropriate, medically indicated, and necessary based on the medical information provided. I do not believe that he was placed at any competitive advantage by using this medication. Actually, he may have needed the medication to treat his asthma in the hope of restoring his lung function to his normal level."*
- n. Dr Ferrell also states that *"[...] I believe this was a case of inadvertent use of a medication without prior approval. This was medically appropriate and offered no competitive advantage to the rider. [...]"*.

- o. The FEI Tribunal notes that the Athlete's evidence and arguments were well documented and, therefore, accept his explanation in the case.
- p. According to ADRHA, Art 2.1.1 an objective rule violation has been committed, which must be sanctioned as such.
- q. The Tribunal accepts that the Athlete in this case had no intention to enhance sport performance by using this medication. Sabutamol is a "specified substance" falling under ADRHA Art 10.3.
- r. Even if the Athlete is able to explain the source of the prohibited substance, and while it is accepted by the FEI Tribunal that the Athlete established that the use of such "specified substance" was "*not intended to enhance sport performance*", the FEI Tribunal determines that the Athlete was negligent in competing at the Event after he knowingly consumed the prohibited substance without first obtaining a TUE. Since this is not a case of second or third violation of ADRHA, the Tribunal is not required to review whether ADRHA Art 10.5 should apply. On the other hand, considering ADRHA Art 10.1.1, the Tribunal finds it clear that there was negligence in this case and the "*No Fault or Negligence*" Article does not apply in this case.
- s. In deciding the sanctions, the Tribunal takes into consideration the fact that the Athlete has suffered from asthma since childhood and that he has used Ventolin that contains Salbutamol as an inhaler since the age of twenty. When the Event took place the weather was cold and because of the Athlete's physical conditions his medical practitioner prescribed the treatment that led to the positive findings. Even if competing at the Event following the use of this medication and without having obtained first an appropriate TUE may be considered as a negligent action, it may be understood on the background of the continued use of Ventolin by the Athlete, required to relieve his medical condition. With the TUE that he has now obtained, there would have been no anti-doping case. The use of the Prohibited Substance did not give the Athlete a competitive advantage in the competition but has relieved the Athlete of an ailment from which he suffers. This is the Athlete's first ADRHA violation.

4.2 Disqualification

As a result of the foregoing, the Tribunal decides to disqualify the Athlete from the Event and that all medals, points and prize money won at the Event must be forfeited, in accordance with ADRHA Article 9.

4.3 Sanctions

As a consequence of the foregoing, the FEI Tribunal decides to impose on the Athlete the following sanctions, in accordance with GR Article 174 and ADRHA Article 10:

- 1) The Athlete shall be warned and reprimanded.
- 2) The Athlete shall contribute **CHF 1'000.-** towards the legal costs of the judicial procedure.

5. DECISION TO BE FORWARDED TO:

5.1 The person sanctioned: Yes

5.2 The President of the NF of the person sanctioned: Yes

5.3 The President of the Organising Committee of the event through his NF: Yes

5.4 Any other: Yes, Counsel

6. THE SECRETARY GENERAL OR HIS REPRESENTATIVE:

Date : 20 March 2008

Signature: 