



DECISION of the FEI TRIBUNAL

dated 21 February 2008

Positive Medication Case No.: 2007/03

Athlete / NF: Daniel Pinto, POR

FEI Rider ID: 10000035

Event: CDI-W London Olympia, GBR, 17-22.12.2007

Sampling Date: In-competition test on 17 December 2007

Prohibited Substance:

Marijuana

1. COMPOSITION OF PANEL

Mr Ken E. Lalo
Mr Patrick A. Boelens
Mr Pierre Ketterer

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: None: 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, Arts. 145 and 174 ("**GR**").

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

The 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 Daniel Pinto

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 Daniel Pinto (the "**Athlete**") participated in CDI-W London Olympia, GBR from 17 to 22 December 2007 (the "**Event**").
- b. On 17 December 2007, the Athlete was selected for in-competition testing. Analysis of the urine sample no. A1077511 taken from the Athlete performed by the Drug Control Centre, King's College, London ("**DCC**"), a WADA accredited laboratory, was found to contain 28 ng/mL of 11-nor-delta-9-tetrahydrocannabinol-9-carboxylic acid ("**Marijuana**").
- c. The Athlete has not requested a confirmatory analysis and

one has not been conducted.

- d. The Athlete has not requested a hearing and one has not been held.
- e. The 2007 Prohibited List of the World Anti-Doping Code classifies Marijuana as part of the Cannabinoids' category, prohibited when its level is greater than 15 ng/mL (WADA Technical Document – TD2004MRPL).
- 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 the DCC are accurate. The FEI Tribunal is satisfied that the test results show the presence of the Prohibited Substance in a quantity which exceeds the threshold level. 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 mandatory period for a first breach of the Code is a period of two years' ineligibility. However, cannabis 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 such specified substance "*was not intended to enhance sport performance*", the normal period of ineligibility of two years does not apply. On a first violation, as this is, 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 penalties 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 31 January 2008 the Athlete states that he has been competing in Dressage competitions since 1992 and that he has taken part at many Championships, as well as at the Olympic Games. The Athlete explains that, as an international rider, he and his horses have been tested many times and that all these tests were reported negative.

- j. In order to explain the presence of the substance in his body, the Athlete states that about ten days before the Event, he attended a social event in Seville, Spain, where other people started smoking a cigarette of marijuana. The Athlete decided to smoke it too.
- k. The Athlete assures that he was never before a consumer of any kind of drugs, that it was an isolated act, that he had not thought of the consequences and repercussions of his conduct and that it will never happen again. The Athlete adds that he regrets his attitude and behaviour and explains that he wishes to admit clearly his fault as a pedagogical example to young riders trained by him.
- l. While 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, at the very least, grossly negligent in competing at the Event some 10 days after he knowingly consumed the prohibited substance for no therapeutic reasons.
- m. In deciding the sanctions the FEI Tribunal considers, on the one hand, the doping violation, the type of substance, the Athlete's knowing action, the Athlete's professional status and the level of the Event and, on the other hand, the fact it is a "specified substance", the Athlete's prior clean record and the Athlete's full cooperation in the investigation.

4.2 Disqualification

As a result of the foregoing, the Tribunal has decided 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 ADRHAs 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 suspended for a period of **three (3) months** to commence immediately and without further notice at the expiration of the period in which an appeal may be filed (30 days from the date of notification of the written decision) or earlier if the appeal is waived in writing by or on behalf of the Athlete.

- 2) The Athlete is fined **CHF 1'000.-**.
- 3) 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 : *21 February 2008*

Signature: 