



Arbitration CAS 2006/A/1043 Holger Hetzel v. Fédération Equestre Internationale (FEI), award of 28 July 2006

Panel: Prof. Michael Geistlinger (Austria), President; Mr Martin Schimke (Germany); Mr Quentin Byrne-Sutton (Switzerland)

Equestrian (jumping)

Horse doping (gabapentin)

Absence of legitimate treatment of the horse

Deliberate attempt to affect the performance of the horse

Proportion of the sanction

- 1. A Person Responsible (PR) has not established that the adverse analytical findings are the results of legitimate treatment of a horse or of one or more parts of his body as required by the applicable FEI General Regulations if the banned substance used on the horse is unknown as an appropriate treatment for horses and cannot be viewed as risk free for the horse, its rider and the public. Furthermore, the failure to seek authorization to use such substance on the horse from the Veterinary Commission/Delegate upon arrival at the venue constitutes a violation of the anti-doping rules.**
- 2. A reasonable person treating a horse with a banned substance for a recurring ailment affecting its nervous system, signalled by epileptiform seizures, should realize that such treatment might be deemed to cause an unfair advantage due to the temporary improvement of the horse's natural capacities resulting from the treatment. The intent to nonetheless treat the horse, must be considered to fall within the definition of a deliberate offence defined by the FEI General Regulations.**
- 3. The proportion of a suspension can be assessed by taking into account the grade of a human medication used on a horse, the fact that the substance used had been scientifically tested or not before its use and whether it was therefore of an unknown risk for the horse, the rider and the public, and the other cases decided by the FEI.**

The Appellant, Mr Holger Hetzel, is a professional rider of Germany, who has been competing at international level for 25 years. He took part in the CSI2* Event in Neuendorf, Switzerland from 24 – 26 June 2005 (“the Event”) with his horse Oreade de Fontin (“the Horse”). The horse is a 7 year-old novice show jumper, which was delivered to the Appellant by its owner for schooling on 15 March 2005.

The Respondent, the Fédération Equestre Internationale (FEI), is the IOC-recognized international federation for equestrian sport. The FEI has the mission to promote, regulate and administer humane and sportsmanlike competition in the traditional equestrian discipline.

On 25 June 2005 the Horse was submitted to a medication control test at the Event. An analysis of the sample taken from the Horse conducted by the Laboratoire des Courses Hippiques in Verrières le Buisson/France revealed the presence of Gabapentin. Gabapentin is a prohibited substance, being a human anti-epileptic drug which is also used for the control of neuropathic pain. As it acts *inter alia* on the nervous system, it falls under the list of prohibited substances defined by article 1013 of the FEI Veterinary Regulations and annex IV thereof. Gabapentin has been classified by the Chairman of the FEI Medication Sub-Committee as a substance with a high potential to affect performance (highest class on a scale 1 – 5). The most commonly reported adverse effects associated with Gabapentin in veterinary literature are somnolence, dizziness, ataxia and fatigue.

The Appellant did not request a B-analysis and admitted by letter dated 26 August 2005 to the FEI that he had administered the last dose of the substance Gabapentin to the Horse five days before the Event upon the instructions of his veterinary surgeon. The Horse had occasionally demonstrated episodes of unusual behaviour and was treated from 5 April 2005 onwards. According to the Statement of Appeal this unusual behaviour happened in the box for a period of several minutes and was constituted by the Horse grinding its upper and lower jaws together in an atypical manner. The Horse's eyelids trembled distinctively and the Horse was unsteady on its feet. The equine veterinary surgeon had diagnosed epileptiform seizures. The Appellant declared that Gabapentin was contained in the human medication Neurontin (Gabapektin) which was prescribed when various therapies had shown no success, thus in a case of a therapeutic state of emergency. The Appellant stated he had not been informed of the contents of Neurontin before he received the result of the doping test. The equine veterinary surgeon had recommended that he cease administering the medication as a precautionary measure five days before the Event. The administration had been done by an employee of the Appellant. Both the equine veterinary surgeon as well as the employee confirmed the explanation of the Appellant by statements of 19 August 2005 and of 18 June 2005, respectively. The veterinary surgeon viewed renal failure and extremely high temperatures during the Event as possible reasons for the substance appearing in the body fluids despite the administration having been stopped at the right moment. The employee stated that the treatment with the medication was continued after the Event.

In a memorandum of 13 October 2005 the head of the Veterinary Department of the FEI commented to the Legal Department of the FEI that "*epileptic seizures*" "*is an 'almost unheard of' clinical condition*" of which only one case has been reported to him in a period of thirty years. If a horse would have such condition to a level which would request that a prohibited substance would be required in order to compete in a FEI event he holds "*that such a horse would pose serious inherent welfare risks and possibly safety risks for the public*". It should not be considered to be fit to compete. The equine Veterinary surgeon "*should have advised to report the situation immediately upon arrival at the event, so that the Veterinary Official would have had an opportunity to check the horse and consider if a medication form 1 was called for*". The medication form 1 is used for the authorisation of emergency treatment. He expected, however, that the veterinary official would not have authorised such type of treatment.

In a letter of 16 October 2005 the equine veterinary surgeon of the Appellant criticised that the FEI memorandum of 13 October 2005 did not differentiate “*epileptiform*” from “*epileptic*” seizures. He cited “The Equine Manuel”, edited by A. J. Higgins and I. M. Wright, the respective pages of which were submitted to the CAS Panel by letter of the Appellant of 24 May 2006. The Appellant holds that on pages 761 to 767 and on pages 970 and 971 the Manuel describes “*epileptiform seizures*”, the medical condition diagnosed by the equine veterinary surgeon and “*suggests treatment with the human medication Diazepam. Diazepam – like the human medication Gabapentin – is not expressly licensed for the treatment of horses*”. In a witness statement of 28 March 2006 the head of the Veterinary Department of the FEI declared that the cited manual only deals with juvenile cases of epilepsy and can, therefore, not be adduced to give evidence that cases of “*epileptic or epileptiform seizures in adult horses*” are not rare. By another witness statement of 23 March 2006 submitted by the FEI, an associate professor in Equine Internal Medicine at the Faculty of Equine Sciences of the Utrecht University in the Netherlands reported that in a number of approximately 4000 horses treated in equine internal medicine per year 1- 2 or less cases of confirmed epileptiform seizures in horses occur. This statement has been confirmed by a witness statement of a professor of the Division of Equine Studies of the University of Liverpool of 24 March 2006 who finds a rate of 1: 2000 an approximate realistic prevalence of cases of epileptiform seizures in horses compared to the overall number of horse hospital admissions at his university. Both witnesses hold that horses with seizures are never fit to compete. The Liverpool professor finds the treatment of seizures with Gabapentin “*bizarre*”.

By means of a supplementary statement of the employee attached to the Appellant’s letter of 24 May 2006 it was stated that these seizures “*only occurred in rest phases and ceased altogether when treatment with Gabapentin commenced*”. The equine veterinary surgeon of the Appellant held in his letter of 16 October 2005 “*that the use of non registered substances for the treatment of horses in general cannot be regarded as a forbidden proceeding*”. The head of the Veterinary Department of the FEI reports in his witness statement of 28 March 2006 that the FEI had two positive cases for Gabapentin in 2005 and that the FEI has issued a warning as to the use of Gabapentin for horses in the FEI Bulletin 04/2005.

The Judicial Committee of the FEI, based on articles 057 and 058 of the FEI Statutes, decided on 26 January 2006 that there was a case for legitimate presumption of a “*deliberate attempt*” of the Person Responsible to affect the performance of the horse as specified in article 174 para 6.2.1 of the FEI General Regulations and that the Person Responsible could not rebut this presumption by proving that the treatment of the Horse was a “*legitimate treatment of the horse*” within the meaning of article 174 para 6.2.2 of the FEI General Regulations. Therefore, the Horse and the Appellant, being the Person Responsible in the meaning of the FEI law, have been disqualified from the Event and all prize money won at the Event was to be forfeited. In addition, the Appellant was suspended for a period of five (5) months, to commence immediately and without further notice from the end of the period in which an appeal may be filed or earlier if the appeal is waived in writing by the Appellant. The Appellant was held liable to pay CHF 1,000 towards the costs of the judicial procedure.

In his submissions before the CAS the Appellant focused on further developing evidence showing that the use of Gabapentin was a legitimate treatment which did not create any risks, that the use of Gabapentin did not improve the performance of the Horse, that Gabapentin was not a prohibited substance when the Horse was tested positive, and that the sanction imposed on the Appellant was incorrect and inappropriate in view of other cases of the FEI.

The Respondent in his Answer to the Appeal of 27 March 2006 points at FEI law and CAS decisions with regard to FEI which confirm that the liability of a rider for the presence of a prohibited substance in his horse is a no-fault liability. The Appellant, therefore, in the view of the Respondent is strictly required to know and comply with the FEI Regulations and is responsible for this. Gabapentin is not a threshold substance pursuant to the definition in article 1013 para 2 FEI Veterinary Regulations. The only issue seen in dispute by the Respondent is the sanction imposed on the Appellant by the FEI Judicial Committee. The Respondent holds, however, that the sanction imposed is legitimate under article 174 para 6.2.1 FEI General Regulations. The finding of a prohibited substance is “presumed to be a deliberate attempt of the Person Responsible to affect the performance of the horse”. According to the Respondent the Appellant did not rebut this presumption which gave the right to the FEI Judicial Committee to decide a suspension from 3 months up to 24 months. Actually 5 months have been given. There was no legitimate treatment of the Horse. Gabapentin was not approved for horses and had not been tested scientifically. The Appellant endangered the welfare of the Horse and, thus, also counteracted FEI policy.

LAW

The Jurisdiction of the CAS

1. None of the parties dispute the jurisdiction of the CAS in the present case. The Panel holds that the requirements set forth in Article 059 FEI Statutes 21st edition as in effect of 21 April 2004 have been met. The provision reads as follows:

“1. The Court of Arbitration for Sport (CAS), as an independent court of arbitration, shall judge all appeals properly submitted to it against decisions taken in the first instance by Appeal Committees and decisions of the Judicial Committee, as provided in the Statutes and the General Regulations. The parties concerned shall comply with the Statutes and Regulations of the CAS, and accept and enforce its decision in good faith. The parties concerned acknowledge and agree that the seat of the Court of Arbitration is in Lausanne, Switzerland and that procedures before the Court of Arbitration are governed by Swiss Law.

2. The rules of procedure of appeal before the CAS are set down in the Statutes and Regulations of the CAS, which can be obtained from the FEI Secretariat or the CAS.

...

4. Appeals shall be admissible provided:

4.1. The Appellant seeks the reduction or cancellation of a penalty or decision on the grounds that it was unfair or unreasonable or that it was not in accordance with the Statutes, Regulations and Rules.

...”

The Applicable law

2. Pursuant to article R58 of the Code, the Panel shall decide the dispute according to the applicable rules and regulations. The applicable rules and regulations in the present case are the FEI Statutes, the FEI General and the FEI Veterinary Regulations. According to article 059 FEI Statutes the parties to the procedure consider Swiss law as the applicable law of the CAS in the absence of other rules.
3. Although, for procedural reasons, the letter of the Appellant dated 7 July 2006 referring to Swiss civil law, Swiss cartel law, and Swiss constitutional law has not been admitted on record, the principle **jura novit curia** allows the Panel to consider whether Swiss law has been violated. However, the Panel finds the Appellant has not factually established any breach of Swiss law. Consequently, the Panel's reasoning below is focused on determining the meaning of the relevant provisions of the FEI regulations and whether the FEI Judicial Committee erred in its application of such provisions.

The Merits

4. In the absence of counter evidence and any dispute on this issue it can be assumed that, pursuant to article 002 para. 4 FEI Statutes, the Appellant was subject to the Statutes, Regulations and Rules of the FEI as a “competitor” before and during the Event.
5. The FEI Judicial Committee’s competence to impose a sanction derives from article 058 paras. 6 and 8 FEI Statutes.
6. It is not disputed by the parties that according to article 142 FEI General Regulations the Appellant is to be considered as the Person Responsible for the Horse.
7. Article 146 FEI General Regulations provides for a system to be followed by Persons Responsible for safeguarding medication control and protection of horses.
8. Article 1006 FEI Veterinary Regulations reinforces the foregoing provisions.
9. The FEI did not make use of its authority of including examples of prohibited substances until the adoption of the new FEI Equine Anti-Doping and Medication Control Rules together with an Equine Prohibited List, which both entered into force on 1 June 2006, i.e. after the alleged doping offence in this case. The 2006 Equine Prohibited List enumerates examples of substances, *inter alia* “antipsychotic, anti-epileptic and antihypertensive substances including reserpine, gabapentin, fluphenazine, and guanabenz...”.
10. The FEI points at having drawn the attention of all stake-holders to Gabapentin in number 4/2005 of the FEI Bulletin. However, this issue of the bulletin appeared only on 9 September 2005, which was also after the alleged doping offence occurred. Nevertheless, as a human anti-epileptic drug acting *inter alia* on the central nervous system, Gabapentin fell within the general

definition of banned substances at the time the alleged offence occurred, although an explicit warning with regard to Gabapentin had not yet been given by the FEI.

11. With regard to treatment of horses article 1027 FEI Veterinary Regulations rules as follows:

“Treatment with a Prohibited Substance

1. When treatment with a prohibited substance is required, the Treating Veterinarian must consult with the Veterinary Commission/Delegate, prior to treatment, on the condition of the horse, its fitness to compete and the preferred treatment. The Veterinary Commission/Delegate will consider whether the horse is still fit to compete and whether it may have a possible unfair advantage as a result of treatment. Consultation of the Veterinary Commission/Delegate must be carried out on a case-by-case basis. The welfare of the horse must have first priority. If in agreement, medication form 1 (see Annex VII) must be completed and countersigned by the President of the Ground Jury. A copy of the form must be added to the veterinary report that is sent to the FEI upon completion of the event. If possible, a copy of the form must be available during the event for presentation to a steward, if requested. The form must also be completed if the horse is already withdrawn from competition but still resides at the competition venue. In this case, counter-signing by the President of the Ground Jury is not required.

2. If a horse must be treated with a prohibited substance prior to arrival at the event (e. g. during transport), the Veterinary Commission/Delegate must be consulted by the Person Responsible as soon as possible upon arrival at the venue. On such occasions, a signed statement describing the reason for treatment, the substance, dose and the exact time of administration must be provided by the person who administered the treatment. The Veterinary Commission/Delegate will carefully consider the lag time between treatment and competition and any possible unfair advantage that the horse may have as a result of treatment. If satisfied that the horse will not have an unfair advantage as a result of the treatment the Veterinary Delegate is entitled to complete medication form 1 retrospectively. Countersigning by the President of the Ground Jury is required”.

12. Annex VII to the FEI Veterinary Regulations (Guide to the Use & Authorisation of Veterinary Treatment during an FEI Event) contains three different forms for treatment of horses: Medication form 1 for authorisation of emergency treatment; medication form 2 for treatment with altrenogest; and medication form 3 for authorisation for the use of medication not listed as prohibited under FEI regulations. In the section on medication form 1 it is ruled that the “*use of a Prohibited Substance can only be authorised for treatment during an event in exceptional circumstances ...*”. The respective provision further requires that the “*Veterinary Commission/Delegate must always be consulted if medication is required for a horse competing under FEI Rules*” and includes a chapter on “*Authorisation before the start of competition*” which reads as follows:

*“Form 1 may also be used for retrospective authorisation of medication given **before** the start of the event providing such medication will not affect the horse’s performance by the time it is due to compete. In principle horses should not be treated with a Prohibited Substance before competition if the substance or its metabolites are likely to be detectable once the horse is under FEI rules. However, there may be some circumstances (e. g. during transport, mild spasmodic colic) when medication is deemed appropriate on veterinary grounds. On such occasions the treating veterinarian must provide a signed statement describing the substance administered, the dose, route of administration and the reason for treatment. The Veterinary Commission/Delegate will need to consider carefully whether the time lag between treatment and competition could give the horse an unfair advantage and must advise the Ground Jury accordingly”.*

13. With regard to the sanctions article 174 FEI General Regulations rules as follows:

“... ”

6.2. The finding on analysis of a Prohibited Substance as defined in Art. 146 (Medication Control and Protection of Horses) will entail the disqualification of the horse from the event and the forfeiture of any prize money won by that competitor on that horse in the same event. The competitor will be disqualified on that horse and may be disqualified altogether;

6.2.1. The finding on analysis of a Prohibited Substance as defined in Art. 146 is presumed to be a deliberate attempt of the Person Responsible to affect the performance of the horse and will entail the suspension of the Person Responsible from 3 to 24 months. A fine of CHF 1,000.- to 15,000.- can also be imposed.

6.2.2. If the Person Responsible can prove that it was not a deliberate attempt to affect the performance of the horse or that the findings are the results of legitimate treatment of the horse or of one or more parts of his body, the sanction may entail a fine up to CHF 15,000.- but a suspension from 1 to 3 months may also be imposed;

... ”

9. The penalty imposed in any given case can consist of a combination of fine, suspension and disqualification. The amount of a fine and the duration of a suspension shall be decided according to the guidelines mentioned in paragraph 6 above and to the circumstances of the case”.

A. Gabapentin – a Prohibited Substance?

14. Prior to the entry into force on 1 June 2006 of the FEI's more detailed list of banned prohibited substances, CAS jurisprudence relating to cases involving the FEI has deemed the generic listing, under annex IV of the FEI Veterinary Regulations, of the categories of prohibited substances according to their effects to be a valid basis for finding a doping offence, providing the substance in question is proven to have one of the defined effects (see e.g. CAS 2005/A/829, p. 7 paras 8.7, 12.2, 12.5 (3) and 12.17 ff; CAS 2000/A/313, p. 2 para. 4, p. 10 para. 32, p. 16 para. 60; CAS 2000/A/275, pp 8 f. paras 21 f.; TAS 98/204, pp 6 ff paras 4 a ff). In the case CAS 2005/A/829 critics have been raised that the relevant anti-doping regulations of the FEI are too vague and uncertain in order to serve as a sufficiently determined legal basis. Although this Panel welcomes the additional clarity deriving from the new FEI list, it considers that the previous system (applicable in this case) is valid where a prohibited effect is unambiguously identified in annex IV and proven to be caused by the substance found in the horse. Not only does the wording of annex IV make it clear that such is the system, but article 146 para 2 FEI General Regulations and article 1027 para 2 FEI Veterinary Regulations in conjunction with annexes IV and VII to the FEI Veterinary Regulations, provides a system whereby any rider who has a doubt regarding whether or not a substance is prohibited can enquire with the Veterinary Commission/Delegate of the FEI before the event.
15. In the present case, it is undisputed that Gabapentin acts on “*the nervous system*”, which is one of the effects listed in annex IV. Furthermore, the fact that the Appellant and his veterinary surgeon decided to stop the treatment within a period they deemed sufficiently safe before the Event indicates that they must have understood that the substance might have a prohibited

effect. Despite this, there is no evidence that the Appellant attempted to consult with the Veterinary Commission/Delegate before the Event.

16. For the above reasons, the Panel finds that Gabapentin was a prohibited substance as defined in the applicable regulations and that the Appellant committed an anti-doping rule violation by having allowed and ordered the Horse to be treated with the prohibited substance Gabapentin.

B. Legitimate Treatment of the Horse?

17. The Appellant has contended that he has not committed a deliberate anti-doping rule violation, but that he administered Gabapentin as a legitimate treatment of the Horse, relying on the opinion of his veterinary surgeon. He argues this with reference to the human medication Diazepam and § 56 para 2 of the German Pharmaceuticals Act (Arzneimittelgesetz). However, in view of the expert evidence adduced by the parties, the Panel finds that Gabapentin is presently unknown as an appropriate treatment for horses. Consequently, and because of the obvious possible dangers linked to the epileptiform seizures which the Horse was suffering from, the use of Gabapentin to enable the participation of the Horse in the Event could not be viewed as risk free for the Horse, its rider and the public.
18. Moreover, as indicated above, the FEI regulations provide a procedure that has the purpose of enabling the FEI Veterinary Commission/Delegate to consider whether a horse is fit to compete under a proposed treatment or whether it must be withdrawn. According to CAS jurisprudence this procedure should be accorded due weight (see e.g. CAS 2005/A/829, p. 23 para 12.17 (iii) with further reference).
19. Instead of relying on this procedure, which entails filing Medication Form 1 (see article 1006 para. 7 FEI Veterinary Regulations) and results in the President of the Ground Jury making his decision on the recommendation of the Veterinary Commission/Delegate, the Appellant preferred to rely on his own expertise. A Person Responsible who ignores the procedure must provide convincing reasons for doing so. In the present case, except for stating that he believed himself to be on the safe side due to having suspended the treatment with Neurontin five days before the competition, the Appellant gave no explanation for his failure to seek authorisation by the Veterinary Commission/Delegate upon arrival at the venue.
20. For the above reasons, the Panel finds that the Appellant has not established that the adverse analytical findings “*are the results of legitimate treatment of the horse or of one or more parts of his body*” as required by article 174 para. 6.2.2 FEI General Regulations.

C. Deliberate Attempt to Affect the Performance of the Horse?

21. According to article 174 para 6.2.1 FEI General Regulations “*The finding on analysis of a Prohibited Substance as defined in Art. 146 is presumed to be a deliberate attempt of the Person Responsible to affect the performance of the horse and will entail the suspension of the Person Responsible from 3 to 24 months...*” and

according to article 174 para. 6.2.2 a reduced period of suspension may be imposed if “*the Person Responsible can prove that it was not a deliberate attempt to affect the performance of the horse*”.

22. As indicated by its clear wording and confirmed by CAS jurisprudence, article 174 para. 6.2.1 FEI General Regulations constitutes a legal presumption that the Person Responsible acted deliberately; meaning that the Person Responsible has the burden of proving she/he did not.
23. The Panel must, therefore, examine whether the Appellant has adduced such proof. In doing so, the Panel considers that article 1027 FEI Veterinary Regulations must also be accounted for because, in effect, it provides for a form of “Therapeutic Use Exemption” (TUE) for horses. It is noteworthy in this relation that under the heading “*Doping control for animals competing in sport*”, article 16 of the World Anti-Doping Code (WADC) requires that relevant International Federations “*establish and implement rules that are generally consistent with Articles 1, 2, 3, 9, 10, 11, 13 and 17 of the Code*”. However, article 4 of the WADC, which deals with TUE, is not cited. The Panel understands this as meaning that International Federations governing sport involving animals can establish their own procedures for TUE and this is precisely what article 1027 FEI Veterinary Regulations represents.
24. The rules on TUE for human beings can nonetheless be helpful in interpreting the objectives and conditions “*for treatment with a prohibited substance*” stipulated under article 1027 FEI Veterinary Regulations.
25. The main rules applicable to TUEs are contained in the “*International Standard for Therapeutic Use Exemptions*” (1 January 2005) (“International Standard”), wherein according to article 4.0 and 4.3: “*An exemption will be granted only in strict accordance with the following criteria: [...] The therapeutic use of the Prohibited Substance or Prohibited Method would produce no additional enhancement of performance other than that which might be anticipated by a return to a state of normal health following the treatment of a legitimate medical condition*”.
26. Article 4.0 of the International Standard implies that when an athlete applies for a TUE he must establish through medical evidence and to the satisfaction of the Commission examining the application that the requested therapy will have no enhancement effect. The strict burden of proving the absence of any enhancing effect as a pre-condition to obtaining a TUE has been confirmed by CAS in the case *TAS 2005/A/965*.
27. To a large degree, article 1027 FEI Veterinary Regulations resembles the foregoing provision of the International Standard, since it requires that the Person Responsible consult the Veterinary Commission/Delegate before the Event and, on the basis of “Form 1” apply for the authorization to use the substance, while the Veterinary Commission/Delegate has the responsibility, among others, to ensure that the therapy would not result in a “*possible unfair advantage that the horse may have as a result of the treatment*”.
28. In the present case, the Panel considers the Appellant understood the treatment of the Horse might have an enhancing effect and might therefore be prohibited, since he accepted his veterinary’s advice to stop the treatment 5 days before the Event. Furthermore, a reasonable

person treating a horse for a recurring ailment affecting its nervous system, signalled by epileptiform seizures, should have realized that such treatment might be deemed to cause an unfair advantage due to the temporary improvement of the horse's natural capacities resulting from the treatment, i.e. by the handicap of the seizures being overcome. Nevertheless, the Appellant administered (through the persons for whom he is responsible) Gabapentin to the Horse without consulting the Veterinary Commission/Delegate prior to the Event.

29. For the above reasons, the Panel finds that the Appellant did not and could not rule out the possibility that the treatment be deemed to provide an unfair advantage and finds that the Appellant's intent to nonetheless treat the Horse, must be considered to fall within the definition of a deliberate offence defined at article 174 para 6.2.1 FEI General Regulations.
30. Thus the Appellant was not successful in disproving that he deliberately attempted to affect the performance of the Horse.

D. Incorrect and Inappropriate Sanction in View of Other Cases of the FEI?

31. Article 174 para. 6.2 FEI General Regulations rules on automatic disqualification of the horse from the event and forfeiture of any prize money won by that competitor on that horse in the same event. These automatic consequences of an FEI anti-doping rule violation are not disputed by the Appellant. The Appellant, however, considers that a suspension for five (5) months in a possible range from three (3) to twenty-four (24) months together with a fine of CHF 1,000.- in a possible range from 1,000.- to CHF 15,000.- are entirely inappropriate, as it is not a case of deliberate doping, as the Appellant has never previously been in violation of anti-doping regulations, as the Appellant has fully cooperated in the clarification of the issue, as there was no performance enhancing effect of the substance, as the sanctions have a direct negative impact on the Appellant's ability to earn his living and when compared to sanctions previously imposed on other show jumpers.
32. The Panel has found that the Appellant has not been successful in disproving a deliberate attempt to affect the performance of the Horse. The Panel, thus, must evaluate whether the sanctions imposed are in proportion with the seriousness of the anti-doping rule violation. The Appellant and the Respondent referred to a number of decisions of the FEI Judicial Committee, which indicate that upon fixing the sanction that body notably accounts for the grade of the substance in terms of its performance enhancing effects, the danger resulting from a substance, whether it was the first anti-doping rule violation of a Person Responsible and other circumstances on a case-by-case basis.
33. Given the fact that the Appellant used a human medication graded 1 by the MSC on a scale of 1 to 5, given the fact that the substance used had not been scientifically tested before and therefore was of an unknown risk for the Horse, the rider and the public and considering other cases decided by the FEI Judicial Committee, the Panel finds it proportionate to confirm the suspension of five (5) months decided by the FEI Judicial Committee. Based on article 173

para. 4 of the FEI General Regulations, the Panel rules that the suspension shall commence on the date of this decision.

The Court of Arbitration for Sport rules:

1. The Appeal filed by Mr Holger Hetzel on 24 February 2006 is dismissed.
2. The disqualification of Mr Hetzel's horse, Oreade de Fontin, from the CSI2* Neuendorf Event in June 2005 and the forfeiture of any prize money won by Mr Hetzel on his horse Oreade de Fontin in that Event are confirmed.
3. Mr Hetzel is hereby suspended for a period of 5 (five) months. The period of suspension shall commence on the date of this decision.

(...).