

DECISION of the FEI TRIBUNAL

dated 10 June 2021

(Reference No. FEI Tribunal: C20-0060)

In the matter of

FÉDÉRATION EQUESTRE INTERNATIONALE (“FEI” or “the Claimant”)

vs.

Mr Andrew Kocher (“the Respondent”)

together “the Parties”

- I. COMPOSITION OF THE FEI TRIBUNAL PANEL
Mr Cesar Torrente, Chair (COL)
Mr Christopher Hodson (NZL)
Mr Martin Gibbs (GBR)

- II. SUMMARY OF FACTS

Claim Brief: By FEI Legal Department.

Case File: The Tribunal duly took into consideration all the Parties’ written submissions and communications received up to date, as well as oral arguments presented during the hearing on 14, 15 and 16 April 2021.

Hearing: 14,15,16 April 2021 at 5.30pm daily (Central European Time) by videoconference (via Cisco WebEx).

Present:

- a) Mr Cesar Torrente, FEI Tribunal Panel Chair

- b) Mr Christopher Hodson, FEI Tribunal Panel
- c) Mr Martin Gibbs, FEI Tribunal Panel
- d) Ms Hilary Forde, FEI Tribunal Clerk

For the FEI:

- e) Mr Mikael Rentsch, FEI Legal Director
- f) Ms Ana Kricej Power, FEI Legal Counsel
- g) Ms Katarzyna Jozwik, FEI Legal Counsel

FEI Witnesses

During the preliminary matters at the hearing, the FEI requested that the names of the witnesses be omitted from the final written decision. The Tribunal agreed this request and accordingly, the witnesses appear as follows:

- h) Witness A
- i) Witness B
- j) Witness C
- k) Witness D
- l) Witness E

Respondent:

- m) Mr Andrew Kocher

Counsel for the Respondent:

- n) Mr Michael R. Romm

III. DESCRIPTION OF THE CASE FROM A LEGAL VIEWPOINT

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

Statutes 24th edition, effective 19 November 2019 ("**Statutes**").

General Regulations 23rd edition, effective 1 January 2013-2019 ("**GRs**").

General Regulations 24th edition, effective 1 January 2020 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 ("**IRs**").

FEI Veterinary Regulations 14th edition, effective 1 January 2018-2020 ("**VRS**").

FEI Code of Conduct on the Welfare of the Horse

2. The Relevant Legal Provisions:

FEI Statutes Article 1.4:

“To preserve and protect the welfare of the Horse and the natural environment by establishing appropriate codes of conduct”;

FEI Statutes Article 38.1:

“Subject to Articles 38.2 and 38.4, the FEI Tribunal shall decide all cases submitted to it by or through the Secretary General, whether Appeals from or matter not otherwise under the jurisdiction of the Ground Jury or Appeal Committee. These cases may be:

- i. Any infringement of the Statutes, General Regulations, Sport Rules, or Procedural Regulations of a General Assembly or of violation of the common principles of behaviour, fairness, and accepted standards of sportsmanship, whether or not arising during an FEI meeting or Event;
- ii. Any issue of interpretation of the Statutes, General Regulations, and Sport Rules;
- iii. Notwithstanding anything to the contrary in this Article, the FEI Tribunal may review and decide upon any matter involving abuse of horses”.

FEI Statutes Article 38.3:

“All disputes shall be settled in accordance with Swiss law”.

GRs Article 142.1:

No person may abuse a Horse during an Event or at any other time. “Abuse” means an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse, including, but not limited to:

- (i) To whip or beat a Horse excessively;
- (ii) To subject a Horse to any kind of electric shock device;
- (iii) To use spurs excessively or persistently;
- (iv) To jab the Horse in the mouth with the bit or any other device;
- (v) To compete using an exhausted, lame or injured Horse;
- (vi) To “rap” a Horse.
- (vii) To abnormally sensitise or desensitise any part of a Horse;
- (viii) To leave a Horse without adequate food, drink or exercise;

(ix) To use any device or equipment which causes excessive pain to the Horse upon knocking down an obstacle.

GRs Article 159.2:

"The FEI Tribunal may impose the following sanctions, or, where appropriate, delegate the ability to do so to the FEI Secretary General and/or the FEI Legal Department:

b) A fine, taking into account the FEI Guidelines for Fines and Contributions towards Legal Costs;

[...]

e) Suspension of individuals and Horses for any period up to Suspension for life;"

GRs Article 163.1:

"The FEI may, in its sole discretion, open a disciplinary case against a person or persons for any alleged breach of the FEI Rules and Regulations and/or any of the offences listed in Article 164.12 (Offences) below".

GRs Article 164.1 (Types of Sanctions):

"The Sanction(s) imposed in any given case can consist of any of the Sanctions set out in Articles 164.2 – 164.10 below. The level of the Sanction shall be decided according to the guidelines mentioned in Article 164.13 below and to the circumstances of the case."

GRs Article 164.5 (Fine):

"(a) A fine is appropriate particularly in cases where the offender has acted negligently [...]"

GRs Article 164.7 (Suspension):

a) "During the period of a Suspension the person, Horse or body suspended may take no part in Competitions or Events as an Athlete, Horse or Official or in the organisation of, any Event under the jurisdiction of the FEI or any Event under the jurisdiction of an NF in accordance with the Statutes or in any FEI related activity (e.g., FEI courses, meetings, General Assembly etc.).

- b) If so specified in the relevant Notification/Decision, the person may be barred temporarily or for a specific period of time from participating in or attending, in any capacity, including as a spectator, any Competition or Event that is authorised or organised by the FEI or any National Federation.
- c) The Suspension may be provisional or final and may be imposed on such terms and subject to conditions as the FEI Tribunal, the FEI Headquarters or the FEI Secretary General, as the case may be, may impose. In certain cases, a Provisional or Final Suspension may be automatic under the Statutes, GRs or Sport Rules.
- d) As a general principle, a Suspension will start as of the date of notification of the Suspension. However, the body imposing or applying the Suspension may postpone the start date of the Suspension in order to ensure the effectiveness of the Suspension."

GRs Article 164.12:

"In addition to breaches of specific provisions of the FEI Rules and Regulations, the following is a list of other offences that the FEI may sanction:

- (a) Incorrect Behaviour;
- (b) Abuse of Horse;
- (c) Acts defined as criminal by the national law and/or Swiss law ("Criminal Acts");
- (d) Fraud of any kind;
- (e) Violence;
- (f) Failure to cooperate with an investigation undertaken by, or on behalf of, the FEI;
- (g) Conduct that brings the FEI and/or equestrian sport into disrepute, i.e. conduct that causes the public opinion of the FEI and/or equestrian sport to be diminished.
- (h) Breach of the FEI Code of Ethics;
- (i) Breach of the FEI Code of Conduct on the Welfare of the Horse;
- (j) Breach of the FEI Code on the Manipulation of Competitions;
- (k) Breach of the FEI Officials Code of Conduct;
- (l) Breach of the FEI Safeguarding Policy against Harassment and Abuse.

GRs Article 164.13 (General Sanctioning Principles and Tables of Sanctions):

“In deciding on the appropriate sanctions to be imposed and whether to categorise the offence in question as “low-end”, “mid-range”, “top-end”, or “max”, the body imposing the Sanction shall consider the following factors, together with any other relevant factors:

- a) Whether the action or omission resulted in an unfair advantage to the offender or an Athlete.
- b) Whether the action or omission resulted in a material disadvantage to any other person or body involved.
- c) Whether the action or omission involved the maltreatment of Horses.
- d) Whether the action or omission affected the dignity or integrity of any person involved in the sport.
- e) Whether the action or omission involved Fraud, violence or abuse or similar criminal acts.
- f) Whether the action or omission was deemed to be deliberate.”

GRs Article 164.14:

“The following table sets out the sanctions that will apply for certain offences listed in Article 164.12 above. Where an offence is not listed in the table below, general sanctioning power will apply, and sanctions may be imposed in accordance with this Article 164.

[...]

Offence	Low-End	Mid-Range	Top-End	Max
Abuse of Horse	3 months	3 months – 2 years	2 – 5 years	Life
	CHF 1000 – 1,500	CHF 2,000 – 3,000	CHF 5,000 – 10,000	CHF 15,000

[...]

Offence	Low-End	Mid-Range	Top-End	Max
Criminal Acts, Fraud, Violence	1 month	3 months – 2 years	2 – 5 years	Life
	CHF 1000 – 1,500	CHF 2,000 – 3,000	CHF 5,000 – 7,500	CHF 10,000

IRs of the FEI Tribunal Article 18.1:

“In accordance with Article 38 of the FEI Statutes, the FEI Tribunal has the competence to hear and determine any matter properly submitted to it, including, but not limited to, Claims (as provided for in Article 30 of these Internal Regulations of the FEI Tribunal), those matters specified in Article 163 (Protests and Disciplinary cases) and Article 162 (Appeals) of the FEI General Regulations and all disputes and procedures arising under the FEI Anti-Doping Rules for Human Athletes and the FEI Equine Anti-Doping and Controlled Medication Regulations. The FEI Tribunal also has jurisdiction to decide upon cases referred to it by the Independent Election Committee in accordance with the process set out in the Code of Conduct for FEI Elections”.

IRs of the FEI Tribunal Article 30.1-30.5:

(Setting out the specific procedure applicable to claims)¹.

IRs of the FEI Tribunal Article 32.1:

“The Claimant shall have the burden of proving that the Respondent committed the infringement(s) alleged in the Claim”;

IRs of the FEI Tribunal Article 32.2:

“Unless otherwise stated in the relevant rules, the standard of proof on all questions to be determined by the Hearing Panel shall be by the comfortable satisfaction of the Hearing Panel”.

IV. DECISION

3. Below is a summary of the relevant facts, allegations and arguments based on the Parties’ written submissions, pleadings and oral testimony submitted throughout the proceedings and at the oral hearing held on 14, 15 and 16 April 2021. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence presented in these proceedings, the Tribunal will only refer to the submissions and evidence it considers necessary to explain its reasoning in this decision.

¹ New Internal Regulations of the FEI Tribunal- Final - 2 March 2018.pdf

V. FACTUAL BACKGROUND

4. The Respondent is a jumping rider (FEI ID: 10064248) competing for the United States of America (USA) and has been competing at international level since 2010. He has represented the United States at both the FEI Jumping World Cup™ Final and FEI Jumping Nations Cup™ Final. At the time when the FEI submitted the Claim in these disciplinary proceedings brought against the Respondent (26 November 2020), he was ranked 88th on the Jumping Rankings (N° 238 - 31/10/2020) and 44th on the Jumping - Jumping FEI World Cup™ Standings (N° 13 - 08/03/2020) North American Eastern Sub-League (2019/20).
5. In May 2020, a witness reported that the Respondent had been using an Electric Shock Device (the **Electric Shock Device**) on several horses at international and national events to the Equestrian Community Integrity Unit (the **ECIU**). In addition, it was alleged that the device was used by the Respondent in training. It was also suspected that the Respondent had been using an Electric Shock Device for several years. The ECIU was provided with photographic and video material to support these allegations. In addition, during the time when the investigation was taking place into these allegations, two more witnesses came forward and provided testimonies to the ECIU in support of these allegations.
6. On 26 June 2020, the French equestrian journal Grandprix.info.fr (the **Grandprix**) published an article titled “Andrew Kocher suspected of using electric spurs in competition [original: Andrew Kocher soupçonné d’avoir utilisé des éperons électriques en concours]” wherein the working of the device allegedly used by the Respondent was explained. Grandprix documented the allegations against the Respondent with several in-competition photos exhibiting elements of what could be an Electric Shock Device. After this article was published, it was picked up by many equestrian journals/media sources, as a result of which the ECIU and the FEI received numerous photographs of the Respondent from various national and international shows from both amateur and professional equine photographers.
7. In conjunction with the ECIU investigation, the FEI carried out further investigations into the alleged use of an Electric Shock Device by the Respondent. On 29 June 2020, the FEI informed the Respondent that he was being investigated following allegations of horse abuse reported to the ECIU and raised in the article published on Grandprix.info.fr referred to above.

8. On 15 July, after an extension to the deadline was granted, the Respondent replied to the FEI, wherein he denied the allegations set out in the FEI's letter of 29 June 2020. On 20 July 2020, the FEI replied with an Acknowledgment Letter confirming that once their investigation was concluded he would be informed accordingly and provided with the evidence that the FEI will rely on should disciplinary proceedings be opened.
9. On 16 October 2020, the ECIU issued a Report with an Appendix (the **ECIU Report**) which was a part of the FEI Claim and will be referenced throughout this decision.
10. On 28 October 2020, the FEI sent a Notification Letter to the Respondent in accordance with Art. 30.1-2 of the IRs wherein:
 - a) The FEI informed the Respondent that disciplinary proceedings had been opened against him for the offences of (i) Abuse of Horse, (ii) Criminal Act, (iii) Conduct that brings the FEI and/or equestrian sport into disrepute, (iv) Breach of the FEI Code of Conduct on the Welfare of the Horse, (v) Breach of the FEI Code on the Manipulation of Competitions and (vi) Incorrect Behaviour in accordance with Art. 30 of the IRs and Art. 142 and 164.12 of the FEI General Regulation;
 - b) The FEI summarised the facts and evidence gathered during the investigation;
 - c) The FEI proposed administrative measures in accordance with the Art. 30.2(a) of the IRs for the acceptance of the Respondent.
11. In the Notification Letter the Respondent was given the option, as stipulated at 10 (c) above and in accordance with Article 30.2 of the IRs to: (a) Admit the alleged infringements and, accept the sanctions proposed by the FEI; in which case he would have no right of Appeal against such measures; or (b) Admit the alleged infringements and have the sanctions determined by a Hearing Panel; or (c) Deny the alleged infringements and have liability and (if applicable) sanctions determined by a Hearing Panel. The Respondent was also given a 10-day deadline i.e., by 9 November 2020 as required under Art. 30.3 of the IRs of the FEI Tribunal to submit his initial response.
12. On 9 November 2020, the Respondent then represented by Morgan Sports Law requested a one-month extension of the deadline to submit his Reply and in response to such a request, on 11 November 2020, the FEI Legal Department informed the Respondent that pursuant to Article 30 of the IRs relating to

commencement of Claim Proceedings, the Claimant did not have the right to extend the deadlines as stipulated in Article 30 of the IRs. Therefore, the Respondent had to provide his initial response (if any) under the procedural timeframe set out therein, as described in paragraph 11 above.

13. In accordance with Article 30.4 of the IRs, on 26 November 2020, the FEI submitted the Claim Brief to the Tribunal in support of the disciplinary proceedings brought against the Respondent for (i) Abuse of Horse, (ii) Criminal Act, (iii) Conduct that brings the FEI and/or equestrian sport into disrepute, (iv) Breach of the FEI Code of Conduct on the Welfare of the Horse, (v) Breach of the FEI Code on the Manipulation of Competitions and (vi) Incorrect Behaviour.

14. The factual circumstances that gave rise to the violations listed above materialised from the ECIU investigation which concluded that the Respondent had been using an Electric Shock Device on multiple occasions and on numerous horses throughout his career in competition and in training. The following evidence was provided by the FEI to support these violations:

- a) Photographic evidence – numerous photographs were provided to the ECIU and form an integral part of the ECIU Report and the Claim;
- b) Video evidence – two videos were provided to the ECIU, one video was additionally obtained by the ECIU from the Event Organiser and one video was provided to the FEI - all four videos form a fundamental part of the Claim;
- c) Witness evidence – in total five (5) witnesses provided their testimonies in relation with the current proceedings: three (3) of them provided their testimonies to the ECIU (and form an integral part of the ECIU Report).

15. According to the FEI, the evidence submitted proved that the Electric Shock Device used by the Respondent was a modified electrical power bank, to which a trigger button and cables with exposed endings were attached. The Electric Shock Device was strapped to the Respondent's body with the trigger cable running down the arm and with the trigger placed into the hand. Two other cables were fed down the legs of the Respondent with the exposed cable endings connected to his spurs. When the trigger was activated, the cables had live electricity passing through them. Electricity was conducted through the cable to the metal spurs and subsequently gave an electric shock to the horse.

16. Further explanations from the FEI provided that the Electric Shock Device would force the horse to be more sensitive i.e., reactive to riding aids such as legs in

order to move forward and accelerate (exempting the instances where the horse would not comply with this abusive aid resulting in increased bolting, rearing, bucking of the horse etc. when compared to aids that would be used normally). In addition, the aim of the user of these devices would be to change unwanted behaviour and that when the device was triggered its activation had several purposes. For example in the case of the Respondent, the benefit of triggering the device was to provide an immediate acceleration in between obstacles or within an A-B or A-B-C combination in order to avoid having a rail down resulting in penalty points, to prevent a hesitant or nervous horse to stop in front of an obstacle resulting in penalty points, whether be it in front of a particular obstacle where a horse would be more reluctant to jump (due to its specific colours, shape, positioning...) or throughout the course on the approach to obstacles in cases of very nervous horses and to force a tired horse to continue in a certain pace when normally a horse would start slowing down or be more "flat" etc.

17. Following the publicity of the allegations against the Respondent the FEI received lots of photographic, video and witness evidence. These can be summarised as follows:

- a) Photographic evidence: approximately one thousand photographs were provided to the ECIU by various members of the equestrian community and a sample of 81 photographs that underwent additional analysis. In 73 out of 81 photographs, a trigger button was identified. In several photographs, a cable which runs down the Respondent's arm, was visible. The submitted photographs were taken at various National and eight International (FEI) Events.
- b) Video evidence: two videos were submitted to the ECIU, and two other videos were obtained by ECIU. For the purposes of this Decision the Tribunal only relied on the following videos:

Video 1: (V001 in the ECIU Report)² exhibited an Electric Shock Device and how it worked, this video showed an electrical power bank connected to three cables. It was noted that the main cable had a trigger button at the end and the other two cables had ends with exposed wirings. It is shown in the video that upon pressing of the trigger button electricity would run through the cables releasing an electric charge at the exposed ends demonstrated by an electric spark toward the end of the video. The exposed ends would be connected to

² ECIU Report prepared for the FEI (October 2020)

the spurs resulting in an electric shock being inflicted upon the horse. It was reported that this Electric Shock Device was found at a farm of one of the witnesses where the Respondent trained. It was allegedly common knowledge within the team that the Respondent used these devices during training.

Video 2: (V002 in the ECIU Report)³ showed the Respondent's old boots (the **Boots**) that he wore during competitions and training. One of the FEI witnesses had kept these Boots after they were replaced by a new pair. The video showed small holes visible on the inside of the Boots where the cables would allegedly run through, and the position of the holes matched the place where the spurs would need to be positioned.

Video 4: (V004 in the ECIU Report)⁴ was submitted to the FEI directly and displayed the Respondent's Boots that were sprayed gold by a witness to the proceedings and were kept with the intention of creating a museum dedicated to the Respondent. A video of these Boots was created on 9 October 2019 and shared by a witness in a WhatsApp group entitled "Jumping Amsterdam". The Respondent was a member of that group and when he saw the Boots he commented: "*Boots are looking sharp*". It was therefore submitted by the FEI that the Boots therefore clearly belonged to the Respondent and that the video corresponded with the photographic evidence thereby confirming the Respondent's use of an Electric Shock Device.

- c) Witness Statements: five (5) testimonies were provided. It is noted that three (3) witnesses provided their testimonies to the ECIU which formed an integral part of the ECIU Report.

The FEI submitted that the evidence confirmed their contention that the Respondent had used an Electric Shock Device at the following:

- a) in International and National competitions, as well as training;
- b) repetitively and on numerous horses;
- c) for several years dating back to 2013/2014.

VI. PROCEDURAL BACKGROUND

³ ECIU Report prepared for the FEI (October 2020)

⁴ ECIU Report prepared for the FEI (October 2020)

(as at time when case file was submitted until oral proceedings were held)

18. As noted at paragraph 13, on 26 November 2020, the FEI submitted the Claim Brief in the disciplinary proceedings brought against the Respondent and requested the appointment of a Hearing Panel for this case.
19. On 27 November 2020, the Tribunal acknowledged receipt of the Claim Brief submitted by the FEI and informed the Parties that this matter has been duly forwarded to the attention of the FEI Tribunal's Chair.
20. On 30 November 2020, the Respondent submitted a letter to the FEI and requested a 30-day extension to this deadline, (until 15 January 2020). The Respondent requested more time to fully review and consider the materials of the case, in order to guarantee a fair hearing.
21. On 4 December 2020, the Respondent's Lawyer wrote to the Tribunal and explained that it had come to her attention that the ECIU and/or the FEI contacted a significant number of potential witnesses in their investigation. The Lawyer further stated that it was her understanding that a number of these witnesses provided exculpatory evidence and/ or provided statements attesting to the Respondent's commitment to the wellbeing of his horses and/or declined to participate in the investigation. She further stated that the FEI's Claim and crucially the ECIU Report made no reference to any of these inquiries or these exculpatory and/or positive statements about the Respondent. This could be viewed as a failure to report the critical details in this case and was of significant concern to the Respondent.

The Respondent therefore requested that the Tribunal intervened pursuant to Article 23.1(f) of the IRs and produce a full list of the people contacted, together with their responses. Moreover, the Respondent reminded the Tribunal that if it found that the ECIU Report was not independent and therefore compromised, it had the power to refuse to admit the evidence under Article 34.1 of the IRs.

22. On 8 December 2020, in accordance with Art. 19.1 of the IRs, the Tribunal informed the Parties of the composition of the three-member Hearing Panel appointed for this case, The Parties were granted a deadline until 11 December 2020 to submit any objections to the constitution of the Panel. Furthermore, with regard to the correspondence received from the Respondent dated 30 November 2020 wherein an extension was requested to file the Respondent's Reply to the Claim until 15 January 2021 as per Article 30.5 of the IRs, the

Tribunal agreed to this extension. In this regard, the Respondent was invited to submit his position containing a statement of defence, any submissions on jurisdiction, any evidence and substantiated motions for the admission of evidence upon which the Respondent intends to rely, as well as the Respondent's position with regard to the recommended sanction by 15 January 2021.

The Tribunal also confirmed receipt of correspondence from the Respondent dated 4 December 2020 regarding the ECIU/FEI and declined the request for further disclosure.

23. On 10 December 2020, the FEI confirmed having no objection to the constitution of the Panel.
24. On 14 December 2020, the Respondent confirmed having no objection to the constitution of the Panel, and also repeated his request for disclosure of all the people contacted by the FEI and/or ECIU, together with any responses provided, under article 23.1(f) of the IRs. He also requested the ECIU Report be excluded from the proceedings.
25. On the 16 December 2020, the Respondent made a final request for the Tribunal to intervene in this case pursuant to Article 23.1(f) of the IRs and ordered the disclosure of the people contacted by the FEI and/or ECIU in this matter, together with any responses provided.
26. On 24 December 2020, the Tribunal issued a reply to the Respondent addressing the various requests in letters dated 14 and 16 December 2020, wherein the Tribunal confirmed they had considered the points raised by the Respondent. The Tribunal declined to order further disclosure from the FEI and declined his request to exclude the ECIU Report.
27. On 15 January 2021, the Respondent's Lawyer wrote to the Tribunal stating that they had been contacted by Mr Michael Romm, who was representing the Respondent in separate legal proceedings pending in the courts of Florida and Minnesota wherein they stated that Mr Romm had instructed them on behalf of the Respondent to request a stay of the Tribunal proceedings.
28. On 15 January 2021, Mr Romm also wrote to the Tribunal and requested that FEI proceedings (and all related deadlines) be suspended, until such a time as

the pending litigation concerning the Respondent and one of the FEI's witnesses had been exhausted.

29. On 22 January 2021, the FEI objected to the stay requested by the Respondent stating that he had not provided any evidence to support his request for a stay. In addition, they argued that putting aside the gravity of the rule violations and necessity of a resolution without delay, the FEI wished to bring the Panel's attention to its requests for relief. Therein, the FEI requested the disqualification of all the results of the Respondent obtained in all of the specified events specified in their Claim and with the consequent forfeiture of all medals, points, prize money, etc. won. They submitted that imposing additional delays to such disqualifications may have detrimental consequences to other FEI riders due to the several attempts from the Respondent to delay these proceedings given that the deadline for the Respondent to file his Answer to the Claim was the 15 January 2021. Moreover, it stated that the Respondent had already failed to submit his Answer within the deadline and in accordance with Article 31.1 of the IRs, the Tribunal should continue with these disciplinary proceedings and issue a decision.
30. On 26 January 2021, the Tribunal wrote to the Parties and confirmed they had considered the Respondent's request and the reply from the FEI and noted that in accordance with Article 31.1 of the IRs the Respondent had failed to submit an Answer by the stated time limit. In the view of these factors the Tribunal did not grant a stay in the proceedings and requested that the Respondent submit an Answer to the Claim by 5 February 2021 at the latest after which the Tribunal would proceed with the case and issue a decision.
31. On 1 February 2021, the Lawyer for the Respondent, Morgan Sports Law, officially withdrew as the Lawyer for the Respondent and confirmed that Mr Romm would take over and that they had provided him with the files of the case to date.
32. By email dated 4 February 2021 received by the Tribunal on 5 February 2021, Mr Romm wrote to the Tribunal confirming he had received the case file from Morgan Sports Law, making further requests for information and asking for an additional four-week extension to examine all the evidence and prepare the Respondent's reply to the FEI's Claim Brief.
33. On 9 February 2021, the FEI wrote to the Tribunal noting that the Respondent had over seven months to prepare his defence and submitted that the

Respondent's latest request for an extension was consistent with the Respondent systematically delaying the proceedings. However, the FEI confirmed they would not be opposed to an additional 10-day extension, as a final deadline for the Respondent to file his Answer commencing on 5 February 2021 and lapsing on the 15 February 2021.

34. On 10 February 2021, the Tribunal wrote to the Parties imposing a deadline for the Respondent to submit his Answer by the 15 February 2021.
35. On 16 February 2021, the Respondent filed a cover letter dated 15 February 2021 attaching his Answer and some related requests. The Respondent explained that his filings were 10 minutes late as he had to update a software program to convert the documents to pdfs.
36. On 16 February 2021, the FEI wrote to the Tribunal and referred to the requests which accompanied the Respondent's Answer, including a request for a further extension of time. The FEI explained that it was strongly opposed to any additional extensions given the numerous extensions that had already been granted and the absence of any new information submitted by the Respondent to support the request.
37. On 23 February 2021, the Tribunal wrote to the Parties and confirmed that despite the late submission from the Respondent the Tribunal accepted the Respondent's Answer. The Tribunal also noted the Respondent's request for a hearing and considered the requests from the Respondent for further extensions. In this regard, the Tribunal granted the Respondent until 18h00 (CET) on 5 March 2021 to submit evidence and witness statements pursuant to 30.5 (c) and (d) of the IRs and that this deadline would not be extended. In addition, in a follow-up email dated 16 February 2021, they proposed a hearing date for 11 March 2021 at 14h00 (CET).
38. On 6 March 2021, the Respondent filed a supplement to his Answer containing a number of folder/files including videos and photographs.
39. On 8 March 2021, the FEI wrote to the Tribunal and noted that the Respondent had failed to submit any additional evidence within the agreed deadline. The Respondent submitted additional documentation on 6 March 2021 which was outside the deadline of 5 March 2021. The FEI argued that the Respondent's failure to follow procedural rules had been a recurrent theme in the proceedings and requested the Tribunal consider these documents as

inadmissible.

In this letter the FEI also referred to an alleged incident of misconduct by the Respondent. It was submitted to the Tribunal that one of the FEI's witnesses received a threatening telephone call from the Respondent in which he requested withdrawal of a witness statement. The FEI regarded such behaviour as utterly unacceptable and requested that the Tribunal instruct the Respondent to abstain from any contact whatsoever with any of the FEI's witnesses pending these proceedings. At this juncture, the FEI also reserved the right to open separate proceedings for the presented misconduct in this correspondence.

40. On 8 March 2021, the Respondent also wrote to the Tribunal and acknowledged the FEI's letter of that date and the allegations against the Respondent. He stated that there were no material changes to the evidence and explained that he had only exceeded the deadline because of technology related issues. He also addressed the allegation of misconduct raised by the FEI and explained at length that although he had seen the witness at a gas station, no threats or other improper behaviour had occurred.

41. On 17 March 2021, the Tribunal wrote to the Parties and acknowledged the Respondent's Answer and related files dated 6 March 2021 as well as the subsequent letters submitted by both Parties dated 8 March 2021 primarily addressing timing issues in relation to the filing of the documents. The Tribunal confirmed that albeit the submission from the Respondent was slightly late, the Tribunal would accept it.

The Tribunal further confirmed a hearing was scheduled for 14,15,16 April 2021 at 5.30 pm (CET) and reminded the Parties that pursuant to Article 25.2 (d) of the IRs only witnesses for whom witnesses statements had been submitted would be permitted to give evidence unless the Parties agreed otherwise or if ordered by the Hearing Panel.

42. On 17 March 2021, the Respondent acknowledged receipt of the Hearing Schedule and also filed a request to inspect evidence listed in the FEI's Claim Brief as Exhibits 15, 16 and 17. These videos showed the Boots and a battery-operated device that the FEI claimed belong to the Respondent, which Respondent strongly denied.

43. On 22 March 2021, the FEI replied to the Respondent's request for inspection

of Exhibits 15, 16 and 17 and stated its surprise at another late request made by the Respondent as these Exhibits had been presented to the Respondent in June 2020 when the investigation was notified to the Respondent. Accordingly, they argued that the Respondent had almost nine months to make such a request and any arguments against evidence submitted in the proceedings should have been made before the end of the Respondent's deadline to submit his Answer.

44. Furthermore, the FEI referred to Article 31.2 of the IRs which provides that: "...Unless the parties agree otherwise or the Hearing Panel Chair orders otherwise for good cause shown, the parties shall not be permitted to supplement their written arguments or evidence with further written submissions or evidence after submission of the Claim and accompanying documents (in the case of the Claimant) and the Answer and accompanying documents (in the case of the Respondent)." As such they submitted that it would be grossly unfair to the FEI and in breach of procedural rules of the Tribunal should the Tribunal allow inspections of the Exhibits at this stage of the proceedings.
45. On 23 March 2021, the Tribunal wrote to both Parties regarding the recent request to inspect Exhibits 15, 16 and 17 and the subsequent reply from the FEI. Having considered the arguments put forward by both Parties and the request for an inspection was refused on the basis that it had been submitted too late.
46. On 7 April 2021, the Tribunal sent out the formal hearing schedule to all Parties for the hearing to be held on the 14, 15, 16 April 2021. The Tribunal did not receive an acknowledgement of receipt from the Parties in relation to the approved hearing schedule nor any other material requests regarding the hearing itself.
47. On 13 April 2021 (the day before the hearing was due to commence) the Tribunal received an email from the Respondent enquiring if a Court Reporter would be present at the hearing, and if not, what were the Respondent's options to have a Court Reporter attend via the hearing link- Cisco WebEx.
48. On 14 April 2021, the Tribunal replied to the above query and referred to the Opening and Nomination Letter in relation to these proceedings dated 8 December 2020 wherein it clearly stated that the proceedings were confidential. Furthermore, they referred to Article 26 of the IRs in particular Article 26.1 and

reminded the Respondent that “all hearings before the Hearing Panel shall be conducted on a private and confidential basis, attended only by the Parties to the proceedings and their representatives and witnesses, as well as the representatives of any third party/ies permitted under the applicable rules to attend in order to participate and/or observe the proceedings”.

VII. PRELIMINARY MATTERS

49. At the outset of the hearing, the Tribunal considered the following preliminary matters:

50. Preliminary Matters:

1st Preliminary Matter:

50.1 The FEI requested that the names of their witnesses be omitted from the final written decision of the Tribunal as it had not been an easy decision for them to come forward as they were all afraid of retaliation.

The Respondent objected to this request citing his view that these witnesses did not want their identities revealed because they had violated FEI and USEF regulations themselves and failed to report concerns regarding horse abuse they claimed to have witnessed.

2nd Preliminary Matter:

50.2 Immediately prior to the hearing the Respondent sent an email citing Article 34.9 of the IRs which provides that “Any documentary or other evidence relied on by a party must be properly authenticated upon presentation to the Hearing Panel”. In this regard he argued that he should be entitled to examine the Boots and device shown in FEI Exhibits 15, 16 and 17 in order to be able to properly cross-examine the witnesses due to testify about this evidence.

50.3 The FEI disagreed with this position and maintained that no rights were denied in this regard. Furthermore, that the Respondent had all the evidence available to him for a long time and all his previous requests to exclude evidence were dismissed for reason of their late submission and as such the fault lies with the Respondent. Taking the latter points into

consideration the FEI requested the Tribunal dismissed the Respondent's request.

Panel's Decisions on the Preliminary Matters relating to:

- 1) Omitting the witness names from the final decision.
- 2) Inspection of the Evidence;

50.4 The Tribunal adjourned and considered the preliminary matters outlined at paragraphs 50.1-3, after which they informed the Parties of their decisions.

Firstly, the Tribunal accepted to have the witness names deleted from the final written decision of these proceedings on the basis that the substance of the decision would not be diminished if the names of the witnesses were omitted.

Secondly in relation to the Inspection of Exhibits 15/16/17 the Tribunal decided that in view of the Respondent's argument of the importance of this inspection to his case it would ask the FEI to arrange an inspection, if possible. Both Parties agreed that the Chairman of the Tribunal would attend this inspection to supervise the process.

50.5 On 15 April 2021, the FEI sent an email to the Tribunal regarding the inspection which stated that following their inquiries they had located the Boots but not the Electric Shock Device. The Boots could be made available for inspection, and they supplied the Chairman of the Tribunal with the contact details for arranging this inspection.

50.6 The Tribunal noted the above arrangements and by email dated 15 April 2021, they confirmed the scheduling of an inspection of this evidence under the following conditions:

- A. It would have to be at an independent place, not at the office of a colleague as requested by Mr Romm;
- B. It would have to be at 10am Florida time, for 15 minutes under the supervision of the Chairman of the Panel.
- C. The Chair would have to be present to receive the Boots from the person to be designated to deliver the Boots, witness the inspection,

return them back and to make sure that a proper video conference would take place for both parties to be present.

The Respondent did not reply to these arrangements on the same date. The FEI noted the arrangements and agreed to these terms in an email dated 16 April 2021.

50.7 On 16 April 2021, after the scheduled time of the inspection, the Respondent wrote to the Tribunal to comment on the inspection arrangements, stating that the notification was arranged too late which made it impossible for the Respondent to return to his office in time to make the hearing. He also submitted that the proposed inspection parameters wherein the Tribunal did not agree to use his or a law office of a colleague made it impossible for a professional location to be obtained at such short notice. In addition, he also considered it improper for "a Judge, or an Arbitrator, or a "Panel Member sitting as a Judge" to participate in arrangements relating to the inspection of property and his offer to be present at the inspection without the other members of the Tribunal and to return the property would create a bias.

50.8 Taking into account the ultimately unsuccessful arrangements made for an inspection of the Boots shown in Exhibit V002, the Tribunal noted the considerable efforts made to facilitate the Respondent's request for an inspection and regretted he had not been able to attend. Regarding the Respondent's assertion that the involvement of the Chair of the Tribunal to supervise the inspection was in some way improper the Tribunal did not find any basis in law, the IRs or the FEI's rules and regulations for this.

50.9 The Tribunal also formally communicated that the Respondent's request for alternative arrangements to be made regarding the inspection of evidence and presentation of the Respondent's case in chief are denied. In addition, that all the Petitions made by the Respondent to strike all testimony and evidence regarding the Boots and the Electric Shock Device are also denied. The Tribunal also confirmed that the scheduling of the witnesses throughout the hearing will remain as planned, as this schedule was sent out to all Parties with adequate notice of the hearing and timetable, and the Respondent never replied to this communication nor proposed any changes to this timetable as previously mentioned in paragraph 46.

Finally, the Panel rejected any possibility that the Tribunal members were biased by any testimonies and reminded the Parties that in accordance with the Tribunal Regulations they are entitled to ask factual and expert witness questions at any time during the hearing.

VIII. SUBMISSIONS BY THE PARTIES WITH THE RESPECTIVE POSITIONS

Short summary of the written and oral submissions made by the FEI and the Respondent concerning the merits of the case. While the Tribunal has taken into consideration all submissions, only the ones relevant for the Decision are outlined below.

A. THE FEI:

51. The opening submissions of the FEI firstly referred to FEI Code of Conduct for the Welfare of the Horse which “requires all those involved in international equestrian sport to adhere to the FEI Code of Conduct and to acknowledge and accept that at all times the welfare of the Horse must be paramount”. It furthered that welfare of the horse must never be subordinated to competitive or commercial influences and stressed the importance of the FEI Code of Conduct, welfare and safeguarding for the horse which are all enshrined in the FEI’S legal framework and regulations. It also emphasised that horse welfare is absolutely essential to the sport in addition to the advanced collaboration of athlete and horse.

The FEI continued that welfare must be at the forefront of the sport to secure a future for horse sports. In the present proceedings, the FEI noted that it has been accused that it is disinterested in establishing the truth, however it submitted the opposite is the case and that all the investigations conducted by the FEI and ECIU established that the Respondent engaged in abusive behaviour towards several horses through the repetitive use of an Electric Shock Device. They also noted that the proceedings were not about any personal or outstanding legal disputes between the Respondent or any witness despite the efforts being made on the Respondent to argue this point.

52. The FEI submitted that this case differed from any other horse abuse case it had dealt with, in respect of the nature and characteristics of the abuse, as this case does not refer to a single incident of abuse, it refers to preplanned, deliberate, intentional, methodical, and continued abuse of horses in breach of Article 142

of the FEI GRs. For the same reason they alleged that the Respondent's use of an Electric Shock Device was operated consciously and intentionally, as one cannot use an Electric Shock Device negligently or from a momentary decision. The FEI considered that this abuse was ongoing for over 7 to 8 years as the evidence submitted demonstrated that it was used in training and competition, it was the Respondent's modus operandi. It explained that the Respondent went to great lengths to conceal such devices from FEI officials over these years, by hiding the wires under his clothes via holes in his Boots, making it barely visible to any official. Finally, it referred to the color of the trigger button which matched the color of the gloves the Respondent often wore, which made the device extremely discreet from any FEI official and that is why the Respondent was so successful in concealing any evidence of such devices from FEI officials.

53. However, despite the Respondent's efforts to disguise his abusive behaviour the FEI submitted that it had been able provide the Tribunal with an extraordinary amount of evidence establishing his use of the Electric Shock Device including the sample of the 81 photographs (subject to metadata analysis performed by the ECIU and extensive supporting witness testimony).
54. Furthermore, the FEI noted that it was objectively concluded by the ECIU that 77 of the photographs can be classified at an evidential standard. These 77 photographs are originals and only edited for image enhancements to increase light, tone or sharpness and remain in their original format which shows that the images are authentic as confirmed in the ECIU Report. The FEI noted the Respondent had not argued that these images had been manipulated or raised issues in relation to the metadata analysis, on the contrary he only argued that the photographs show some other device. Therefore, the FEI's view was that the Respondent would need to establish what this device was, if not an Electric Shock Device as established by the FEI's evidence. Regarding the Respondent's argument that the device seen in the photos was a "clicker" (a small, handheld device that makes a "click" noise used in positive-reinforcement training) it queried why the Respondent would wait over 8 months to give this explanation. The FEI argued that if he were wrongfully accused of an extremely serious offence, surely the Respondent would have brought forward this explanation when he received notification from the FEI of its investigation into the Electric Shock Device and provided a clicker to the FEI as evidence to refute such claims. The FEI's witnesses would confirm that to their knowledge a clicker was never discussed or used by the Respondent.

55. The FEI then exhibited a photo (P30)⁵ at the opening of the proceedings to show a moment in an FEI competition when the Respondent was pressing the trigger button, which in its opinion clearly demonstrated the use of such an Electric Shock Device in addition to evidence of fear and pain as shown by the horse's facial expression and positioning of the horse's ears where subtle signs of distress and abuse were visible.
56. The FEI also explained that horses, as prey animals are silent sufferers that tend to hide their pain to not disclose their vulnerability to predators and that in their opinion this is a crucial consideration when assessing this case. Finally, the FEI stated that it is their strong contention that the Respondent had failed so far to produce any relevant evidence to rebut the FEI's conclusion that the Respondent established a modus operandi of repetitively, methodically, and continuously using an Electric Shock Device in and out of competition on most of the horses the Respondent rode.

B. THE RESPONDENT:

57. The Respondent firstly addressed the nature of this case and the allegations of horse abuse by five witnesses who will testify before the Panel. In this regard he noted Article 32.1 of IRs wherein it states that "the Claimant shall have the burden of proving that the Respondent committed the infringement(s) alleged in the Claim", thus he argued that it is not the obligation of the Respondent to set the record straight and respond to these allegations, despite the allegations from the FEI that the Respondent is changing his story or had no response. He continued that everything that has been presented to the Tribunal from the FEI to date is asking the Tribunal to look at a dearth of evidence in order to make assumptions. Whilst the FEI claimed the case is not about a personal dispute or troubled relationships between a key witness and the Respondent, he argued that four out of the five FEI witnesses who would testify in the hearing had a reason to be biased in their evidence and as such had no credibility by virtue of their employment connections with the main FEI witness.
58. The Respondent also stated that a key FEI witness apparently knew nothing about the use of an Electric Shock Device except what Witness C had seen in photographs and further recorded in a video (Exhibit 15 from the FEI casefile). This key witness testified in a video provided to the FEI about how this device was used and in what method, which the Respondent argued was secondary

⁵ ECIU Report prepared for the FEI (October 2020)

information from another witness. He furthered that none of the witnesses ever saw the Respondent actually wearing an Electric Shock Device and it also defied logic that FEI officials did not discover the use of such electric devices or electrical tape over a significant period of time, when the Respondent had taken part in over 1200 FEI competitions.

59. In relation to the described reaction of the horses e.g., the horse's ears pinned back, as provided in the photographs submitted to the Panel, the Respondent argued that these are natural reactions of horses or a reaction to the noise of the clicker. In addition, in relation to the video of the Electric Shock Device (Exhibit 15) he submitted that this device was owned by one of the FEI witnesses who was motivated by a breakdown in an employment relationship with the Respondent. In conclusion, he argued that if the Tribunal accepted the existence of an Electric Shock Device they must also more importantly be satisfied that this device was actually used by the Respondent and that it is the FEI's burden to prove this pursuant to Article 32.1 of the IRs.

VIII. Summary of Witnesses' and Parties' statements at Hearing dated 14,15,16 April 2021 to include respective examination/cross-examination by FEI and the Respondent. The Tribunal duly took into consideration all of the Witnesses' testimonies presented during the hearing on 14, 15 and 16 April 2021. However, for the purposes of this final Decision a summary of the most relevant aspects of each testimony is provided.

WITNESS A (former employee of the Respondent and an international level competitor for ten years).

FEI Questions:

60. Witness A was called by the Tribunal and the FEI opened with its questions and asked her to provide an account of her equestrian experience and current employment, to which the witness stated that she competed at national level and international level for the last 17 and 10 years, respectively. She confirmed that she was working with the Respondent from January 2019 until March 2020 and while working for the Respondent she provided services of riding, competing and training the horses. The witness also stated that throughout the duration of working for the Respondent there was never any mention of a training technique which involved the use of a "clicker", and in fact the use of a clicker by the Respondent was never seen by her. Witness A also noticed that

during her time working with the Respondent, she observed that the horses would react in a volatile and temperamental manner around him and would be very "sharp" off the leg which meant a tiny reaction would yield notable results. In addition, the witness noticed that at the first farm they were based at, the Respondent would go to a trailer to get changed which over time she realised was in order to kit out the Electric Shock Device underneath his clothing as he always came out wearing the same clothes as he had entered.

61. The FEI then referred to her witness statement wherein the Respondent was seen competing with Electric Spurs in CSI2* at the Split Rock Lexington on 26 May 2019. She confirmed that she saw the Respondent entering his horse's stall in the FEI stables and attaching the Electric Shock Device, to himself. In this regard she confirmed he attached the device in the FEI stabling prior to competing in the event and she had a clear view of this. She described the device as a box which had a number of black wires coming out of it (which are exposed at the end) and had a trigger button that was black but she could not specifically recall the color and furthermore that the wires would be placed inside the Respondent's clothes so no one could obviously see the wires running underneath his clothing. Witness A also competed on this day (26 May 2019) and whilst having a discussion with the Respondent after the round assessing their performance and what went wrong, the Respondent said he also had the same problems, but the Electric Shock Device made up the distance and hence the difference in the results. She said they were all instructed by Respondent to use the Electric Shock Device and by virtue of her employment she felt compelled to do so and these devices were provided by the Respondent for her use.

62. The FEI then showed Witness A, a photo exhibit of an Electric Shock Device and asked Witness A if this was the device that the Respondent provided her with and she confirmed that it was, and that she was instructed by him to use it in training and in competition. She told the Tribunal that she had refused to use it in competition. It was also confirmed that the Respondent was selectively open about using the Electric Shock Device and she observed the use of these devices on over a dozen horses during her time working with the Respondent and confirmed that he always used the Electric Shock Device in training before competing with them. Witness A clarified that she stopped working for the Respondent when she was offered a better position elsewhere and resigned. When asked why she did not report the use of an Electric Shock Device, she stated that she was worried about losing her job and it was a difficult decision

to come forward yet there was no pressure from anyone to provide this testimony.

Respondent Questions:

63. The Respondent then cross-examined Witness A by opening with questions regarding her salary and employment benefits etc. which were objected to by the FEI. The Respondent contended he should be allowed to ask these questions to demonstrate that a bias and motivation existed which discredited Witness A's testimony. The Tribunal ruled that such questions were irrelevant for the purposes of determining the use of an Electric Shock Device.

Witness A was then asked by the Respondent to recollect how the contact with the FEI came about in relation to these proceedings. Witness A referred to an external lawyer that contacted her, who carried out independent work for the FEI, the contact details of this lawyer were given to Witness A by another witness who is party to these proceedings when they decided to come forward and testify against the use of an Electric Shock Device. Witness A also referred to an FEI steward (based in North America) who requested a video of the Electric Shock Device from Witness A several months before the investigation was launched and asked her to provide a video of this equipment so the Steward would know what to look out for should they come across it when carrying out their official duties.

64. Witness A also confirmed that when she spoke with the FEI when providing evidence for this case, the FEI explained to her that it was their understanding that she had used the Electric Shock Device in training which Witness A confirmed, as such the FEI thanked her for her honesty and assisting them with the case. Witness A also confirmed that she did not infer from the conversations with the FEI that she would be subjected to any prosecution by the FEI for her own actions. As a result of this cross-examination, the Respondent requested a Motion to have Witness A stricken from case by virtue of their interaction with an FEI Legal Counsel and in his opinion- alleged prosecutorial misconduct by assuring a witness they would not be prosecuted despite admission of violations of FEI Regulations in relation to their own personal use of an Electric Shock Device.

65. Continuing on, the Respondent queried Witness A's testimony further and asked her why she would use an Electric Shock Device in training but not in competition and she explained that she only used the Electric Shock Device on

a handful of occasions but never in competition as it was a blatant breach of the rules when competing. The Respondent finished by asking Witness A about whether she had ever seen the Respondent use a clicker to which she confirmed she had never seen the Respondent use a clicker during her employment.

WITNESS B (former employee of the Respondent and international level rider).

FEI Questions:

66. Witness B was called to provide his evidence and the FEI opened its questioning by asking the witness to describe his equestrian experience and he confirmed he had been competing on an international level since 2015 and employed by the Respondent as a home rider from January 2019 until March 2020. He was also asked by the FEI whether he ever saw a clicker device used by the Respondent whilst training the horses and he confirmed he never did.

The FEI then referred to the statement of Witness B as detailed in the Claim Brief wherein it was stated while attending the Lexington KY spring show in 2019 with the Respondent and prior to the start of the competition the Respondent asked him to fetch him a red bag from the stables. He stated that he looked into the bag on picking it up and noticed a rectangular device with four wires inside and a black circular button on top. He emphasised that it did not look like a phone charger as it had electrical tape covering half of it and a button attached to one of the wires. He then picked the Respondent up in a golf cart with the red bag and drove him to the restroom and the Respondent brought the red bag into the restroom with him. After the Respondent came out, he got on his first horse before starting the competition and the Respondent asked him to help set up warm up jumps for him. At this point, he noticed that the horses looked unusually sharp off the leg by which he explained he meant it was unusually responsive to the leg aids.

67. The FEI then queried him about the construction of the Electric Shock Device and if he had ever seen how this device was made. He confirmed he saw the Respondent preparing an Electric Shock Device when collecting a check from the Respondent and noticed he had a soldering gun and phoneline wires akin to laptop chargers in front of him. Witness B also confirmed that he was instructed by the Respondent to wear the Electric Shock Device in early January 2019, and felt compelled to do so, however after using the Electric Shock Device, he never used them again due to the electric shock and fright he felt on his own

body which highlighted how frightened a horse must feel from the use of these devices. He was then shown a photo exhibit of the Electric Shock Device by the FEI who asked him if he recognised this device and he confirmed that this was indeed similar to the Electric Shock Device the Respondent had given to him and other riders. Witness B also explained that the employment ended with the Respondent as he resigned for a new opportunity with a different employer.

He then confirmed that since these proceedings commenced the Respondent had been in contact via telephone to pressure him to withdraw his statement. Furthermore, when asked why he did not report the use of an Electric Shock Device earlier, he stated he was afraid to, for fear of repercussions.

Respondent Questions:

68. Witness B was then cross-examined by the Respondent, who opened his examination by asking if the Electric Shock Device was known to him as “rockets” as alleged by the Respondent, however he said that this was not true, they were never referred to as that. Continuing on, the Respondent queried whether during the singular time that he used the Electric Shock Device, did he think that was ok to do so? He replied that he was not going to argue with his employer and did what he was asked, he also confirmed at this point that he was not coerced into reporting the Respondent to the FEI by any other witness.

69. In relation to Witness B’s interaction with the FEI’s Legal Department, he was queried about this and confirmed that he liaised with the FEI Legal Department when preparing his statement however this was an original statement not amended by the FEI. He explained that around two conversations took place with the Legal Department over the telephone and several emails were exchanged over the time period of August 2020 until the oral hearing commenced on 14 April 2021. He also explained he was honest with the FEI and had open disclosure in terms of personally using the Electric Shock Device once and stated that he had no concerns at this time that he would be prosecuted. When queried by the Respondent as to whether he had participated in making the Electric Shock Device, he denied this and the allegations that his friend helped make these devices. In relation to the term of being “sharp off the leg”, the Respondent asked him for an interpretation of this expression, and he replied that this is a term regularly used by horse people, meaning that your legs barely touch the horse, and it reacts and gallops out.

The Respondent further queried him as to whether this term can be used without any connotation to an Electric Shock Device, which was accepted by the witness, however when jumping a horse, he stated that you would usually want a horse to be relaxed and not fired up. In relation to the incident at the horseshow as described at paragraph 66 above, he was again questioned on this and asked to describe what was inside the red bag, he confirmed that a device with four wires was inside the bag with electrical tape covering half of it, and he knew it was an Electric Shock Device due to the wires sticking out and akin to the ones he used when he operated this device personally on a horse while working at the farm.

70. Once the Respondent was finished the cross-examination of Witness B, the Tribunal addressed him about the alleged pressure he recently experienced to withdraw his statement for this case. Witness B confirmed this occurred a few weeks prior to the hearing when he had gone to a gas station and encountered the Respondent. After departing from the gas station, he received a phone call from the Respondent who said that it would be a lot easier for him if he withdrew his statement and following which he would not share images of the witness, he was unsure as to what images the Respondent was referring to.

WITNESS C (Former business partner of the Respondent).

FEI Questions:

71. Witness C was called into the hearing and FEI opened questioning and asked her to summarise her equestrian experience. She described her level as limited and currently does not ride despite owning horses, amounting to approximately 60/70 horses via her professional show jumping company. She confirmed the first meeting with the Respondent took place when she was looking to buy upper-level horses in 2018. In April 2018, she moved all the horses she owned to the Respondent's stables for training and upkeep and the business partnership developed. When queried by the FEI she confirmed that it was the Respondent who made all the decisions as to how the horses she owned were trained and further that he had never mentioned clickers and she had never seen a clicker being used.

72. She clarified that the first time she learnt about the use of an Electric Shock Device on her horses by the Respondent, she requested for their use to be prohibited as she saw the use of these devices as cruel and not something she

wanted her horses subjected to as they seemed frightened. She also explained that a working student of hers, confirmed the use of these Electric Shock Device at Witness C's farm when taking a sales video and overheard the Respondent asking his father if the wires were visible in the sales video. Witness C said that when she confronted the Respondent about the use of an Electric Shock Device he explained that these were a humane way of training horses and the use of these devices helped horses with behavioural issues e.g., "stoppers" (horses that stop in front of a fence).

73. Witness C was also questioned as to whether she ever saw the Respondent physically putting on the Electric Shock Device and she confirmed as such and furthermore that by January/ February 2020, she stated it was a daily routine and the Respondent was very open about kitting out with the Electric Shock Device. She also informed the FEI, that in August 2019, she noticed electrical equipment in the Respondent's car, when queried the Respondent said that he did not use these anymore, but he made them for other people and sold them.

74. Witness C also stated that the video of the Electric Shock Device- V001 (Video 1) submitted in the Claim Brief, was recorded by her wherein she verbally explained how this Electric Shock Device worked (as one of the riders who was formerly employed by the Respondent had shown the witness how they operate) and that the Respondent had constructed the Electric Shock Device himself. She further stated that the Electric Shock Device in her possession was made for use in training at home and given to one of the staff riders. The FEI queried her about other observations which she stated, now made it obvious that an Electric Shock Device was being used, for example, she observed the Respondent needing to go to the bathroom numerous times before and after a class which she now suspected was in order for the Respondent to either put on or remove the device. In addition, she recalled the Respondent's behaviour after his numerous in-competition falls. She testified that after every fall the Respondent insisted that he was fine and refused to be examined by the medical staff or to take off his jacket, but instead the Respondent said he must be by himself to "call his mother" or to pull himself together after the fall.

75. The FEI also asked Witness C about the reason for her decision to submit the Electric Shock Device to the ECIU. In this regard, she explained she had time to reflect on all the circumstances that arose through her work dealings and in particular during the Covid-19 pandemic when things were quiet, she made the decision to come forward and fulfil a moral obligation to report the use of the Electric Shock Device to the ECIU and the FEI.

Respondent Questions:

76. The Respondent asked Witness C about the location of the Electric Shock Device that was exhibited in the V001 (Video 1) of the Claim Brief. She was not able to provide any details as to the location of the Electric Shock Device, but she confirmed that she still had the Boots. The Respondent also asked her about when the complaint was made to the FEI about the use of the Electric Shock Device, and she confirmed that she made a telephone call to the FEI in May 2020 and lodged a complaint.
77. Witness C was also queried as to what prompted her to create a video of the Electric Shock Device and she replied that it was made for the ECIU as their request for further investigation into this matter. She also explained that the decision to come forward and report this matter was a decision she took personally after much consideration and with no collaboration with any other witnesses, it was every witnesses' individual choice to come forward and report the matter to the FEI.

Continuing on, Witness C was questioned about the effect of the Electric Shock Device on the horses she owned and reported that it caused and has left a lot of anxiety and behavioural problems in the horses, as it is a form of coercive training in addition to cheating. Furthermore, when queried about her personal and business dealings with the Respondent, it was apparent that numerous issues were and are ongoing between her and the Respondent in terms of the breakdown of their personal and business relationship, the outstanding contracts, sales of horses etc. which are not relevant for the matters to be adjudicated at these Tribunal proceedings. The Tribunal also noted these matters are ongoing in courts elsewhere and are not pertinent to determine the case in relation to whether or not an Electric Shock Device was used by the Respondent.

It is also important to note that in relation to the personal relationship that existed between the Respondent and Witness C, the Tribunal noted from the cross-examination questions of her willingness to establish a personal relationship with him. The existence and nature of this personal relationship was questioned at the hearing, and she accepted that such a close relationship existed prior to its breakdown.

Witness D (groom, previous work colleague of the Respondent).

FEI Questions:

78. The FEI opened the questioning for Witness D and asked her to provide details on her equestrian experience. She explained that she has worked internationally as a freelance groom with involvement in eventing and show-jumping and that she met the Respondent through working together in June 2019.
79. She was then questioned about commencing work in the same facility as the Respondent and her observations while working with the Respondent. She stated that a number of horses that were usually very calm, showed very high levels of stress when the Respondent was riding them. The horses would 'rear up', 'shiver' and 'bolt' often. She did not understand why this was the case as the Respondent did not use a whip or excessively use his spurs on the horses and there were no marks from the rubbing of spurs. She was also asked by the FEI to verify if she ever saw the Respondent using a clicker or speaking about the use a clicker to which the answer was no.
80. The FEI also questioned her in relation to a statement made in relation to a horseshow in October 2019. She confirmed that she saw the Respondent holding a device which was very similar to the device from V001 (Video 1) and when she was wiping the neck of the horse prior to entering the competition ring, she could clearly see something between the Respondent's black gloves and the horse's rein that resembled a black stick like the one connected to the device in the aforementioned video. Moreover, at a later date she further described seeing the device in greater detail as the Respondent at this stage was very open in front of his colleagues when wearing the Electric Shock Device and the witness saw the trigger button in the hand again. She also noticed that the Respondent would wear sweaters in very warm weather which made it seem like he was hiding something. When queried about what she thought about using the Electric Shock Device, she considered these a very ineffective way to train horses by making them do something in fear rather than because they want to.
81. The FEI also queried her about various show photographs of the horses she took care of, and she explained that it was clear that after reviewing a number of photographs from different shows, that the Respondent was using this type of device with most of the horses he rode. She explained that she came forward to report these violations without any collaboration with any other witnesses

and after much consideration. She furthered that coming forward required courage given the equestrian community is small and there may be repercussions both positive and negative.

Respondent Questions:

82. The Respondent questioned Witness D about her observations in relation to the Electric Shock Device and how she knew what this device was from a video, when she never saw the entire device in question on the Respondent. She said that her observations were also based on reflections of the abnormal behaviour of the horses (e.g., bolting, bucking, spinning) in line with the electrical device allegations and the elements she saw of this device at the reference points detailed at paragraph 80 of this decision.

83. The Respondent also asked her if she ever had a conversation with another witness about giving testimony at these proceedings, and she confirmed that this occurred. She furthered that whilst it was discussed amongst the other witnesses and they consulted with an attorney (provided by another witness) to further understand the steps of the disciplinary procedure should they proceed with reporting the violations, they all moved forward on an individual basis in providing their confidential testimonies to the FEI.

84. At the end of the cross-examination, the Tribunal also questioned witness D as to whether it was usual to see riders carrying devices in their hands at competitions, she confirmed this was not usual for a competitor. In addition, the Tribunal questioned her as to whether she had heard that people/witnesses were being threatened if they testified in these proceedings and in this regard she stated that yes, they had received messages saying that they may probably never find another job in this industry by revealing hidden matters that some people engage in within the equestrian community.

WITNESS E (Acquaintance of the Respondent from early childhood onwards via the equine industry).

FEI Questions:

85. Witness E was the final witness to be called by the FEI. He described how he started riding at 9 years old and was a former professional rider still teaching riders of all levels and training horses in the equestrian industry. He confirmed an encounter with the Respondent as a young child at horse shows and then

again in 2011 as an adult when the Respondent started showing in the Midwest on a regular basis. He stated that in those years he was friendly with the Respondent and had occasional discussions on horse sales.

86. The FEI questioned him about an encounter with the witness in June 2013 or 2014 while they were attending a horse show in Mason City, Iowa. The witness explained that as they were stabled in the same barn their horses were together, and it was when he had gone into the tack stall that he could hear a large series of pops and snapping noises. On hearing these noises, he came out and walked behind the Respondent and his groom and noticed that they were working on something on a table. He noticed that there were some black wires attached to spurs with a rectangular battery pack and asked the Respondent what they were, and the Respondent replied: *"electric spurs and that they were too hot"*. He stated that the Respondent and the groom had been trying to fix them for a few days and had not been able to do so. He further testified that the Respondent described the button (that looked like the top of a riding crop) and showed him how that triggered the Electric Shock Device. He also recalled that the Respondent explained to him the way he put the device through his riding boots and mentioned that he always wore a jacket to hide the battery and the cord.

He concluded that this encounter should have been reported when it first happened and was given all these details of the Electric Shock Device in person. It was not until the story of this case broke in 2020 when he was horrified to realise that the Respondent was still using the Electric Shock Device to compete at the highest levels of the sport and perhaps when representing the United States. He explained that he had hoped that the Respondent had risen beyond these actions since their encounter in 2013 or 2014 as according to the witness the Respondent certainly had the talent and work ethic to do so.

The FEI exhibited photographic material⁶ in support of the allegations to Witness E: 1) a trigger button (p33); 2) an enhanced section of a trigger button (p40) and 3) a still image of the battery pack taken from (clip V001). Witness E confirmed that the images in these photos were very similar to the materials that he saw on the day he met the Respondent in Iowa back in 2013/2014.

Respondent Questions:

87. Witness E was queried as to how he knew the Respondent as the Respondent claimed he does not know him at all, despite the witness recounting numerous

⁶ ECIU Report prepared for the FEI (October 2020)

times they have met at various shows, and he claimed they have spoken on friendly terms. He confirmed all the encounters over the years with the Respondent as explained to the FEI at paragraphs 85 and 86 above.

88. The Respondent also questioned him on the alleged incident at Iowa 2013/2014, where in the middle of an aisle way in a stable there was apparently a table where the Respondent was busy working on an Electric Shock Device and was open to answering questions on what he was doing, he confirmed that this was the case despite the fact that it seemed very strange that such an incident would occur.

89. The Respondent also asked him if he had ever been contacted by any of the other witnesses and/or their attorneys and replied that he had not. He was also asked why he decided to come forward and contact the FEI about the use of the Electric Shock Device and he explained that on seeing the news articles in the media about this case, he felt that having missed the boat back then, he felt compelled to reach out to the FEI to assist in this matter if they should require it, given what he had seen in Iowa around 2013/2014. He stated that perhaps he should have come forward in 2013/2014 but he did not want any part in this matter at that point but felt that as a result of the news articles and the realisation of the injustice of the situation for the integrity of the sport and given the level of competition the Respondent competed at, it was his duty to come forward and explain what he had seen.

Mr Andrew Kocher, Examination:

90. Mr Kocher was questioned by his counsel and in his opening comments he described his extensive equestrian experience since he was a child and family connections who are largely involved in the equine industry. The Respondent started out as groom and taking horses to the sales, and he stated that he acquired a lot of experience in this role and horsemanship skills. He was then offered his first riding job which later materialised into riding at national and small level grand prix at around 23 years old. He then opened his own business teaching students, took riding lessons and started winning some grand prix level competitions and was also a horse dealer at this time. He confirmed that it was around 5 or 6 years ago when he started winning FEI competitions, eventually ascending to the top world rankings in his discipline.

91. Mr Kocher was then reminded of the various testimonies of the witnesses and that he rode with an Electric Shock Device, and they knew this as they saw a clicker type button in his hand and that he kitted out this equipment under his clothes. The Respondent denied any use of an Electric Shock Device when riding a horse and did not accept that the device in V001 (Video 1) belonged to him. He also maintained that he discussed the use of a clicker with only one of the witnesses and it was a common method of training, especially in America. The Respondent was then asked to explain the pictures which showed that he had something in his hand resembling a trigger device and the Respondent said that it was a clicker, and not a trigger button of an Electric Shock Device. He claimed that he began using clickers on certain occasions over the years which involved a method of target training wherein you make a noise, click a button and reward the horse.
92. In relation to the photos provided as evidence of the Respondent holding a trigger button in his hand, the Respondent showed the Tribunal how he would do so, by dressing in a competition jacket, gloves and placing a clicker in his hand at hearing in order to copy what was portrayed in the photos. He contested via this practical demonstration that he was using a clicker with a long cord attached to it to prevent it falling out of his hand as opposed to what he is being accused of wearing in all the photographs and videos submitted.
93. The Respondent was then questioned about the testimonies of the witnesses accusing him of using an Electric Shock Device and spoke about Witness C in particular and recounted financial and personal issues regarding this relationship. He alleged that he began to feel very uncomfortable as the relationship progressed due to the issues of both a personal and business nature which eventually led to the breakdown of the relationship. He also alleged that towards the end of the business relationship, when matters became untenable and could not be resolved on civil terms, they parted acrimoniously, a result of which there are several ongoing lawsuits pending in courts in the U.S.A.
94. In relation to some of the other witnesses in the proceedings, the Respondent maintained that his working relationship with Witness B broke down due to working difficulties between them which led the Respondent to terminate his employment. He also alleged that this witness was the person who had in fact used the Electric Shock Device. The Respondent at this point had nothing further to add and the Tribunal requested to proceed to the cross-examination of the Respondent.

Mr Andrew Kocher, Cross-examination:

95. The FEI opened its questioning by asking the Respondent to confirm what is the device as exhibited in his hand in the 81 photographs it submitted as evidence in these proceedings. The Respondent replied that this is the device he had showed today at hearing; which is a clicker and not a trigger button of an Electric Shock Device. He confirmed that he used this clicker on his own initiative, subject to the training techniques as agreed with his business partner. The FEI also asked the Respondent why he had not included the alleged several versions of clickers as evidence before now in order to clarify matters to which he stated he did not do so on the advice of his previous attorney. In addition, the FEI asked where all these clickers are now that he possessed throughout training and competition, and he replied that these are worth about five dollars and as such are disposable as the springs in them do not last long. The Respondent then described the training methods when using a clicker which he said are mainly used on the flat rather than in a jumping situation in order to deal with unruly horses, horses that run off and horses that do not want to go forward, it was a method of slow systematic training in his opinion and required a lot of hours dedicated to training.

96. The FEI then asked the Respondent to describe his preparation with a clicker when competing, and how he put it on. He described that he put it on under his shirt and through his glove to prevent the clicker from falling off when riding. The Respondent was asked to verify which members of his staff knew about the use of a clicker in training to which he confirmed he did most of his training by himself so this was not something many people would see or know about. In relation to the Respondent's allegation that it was actually one of the witnesses who was using the actual Electric Shock Device and not him, he stated that whilst he did not know for sure, he recalled witness B referred to these devices as "rockets" in a text message and when the Respondent queried him as to what this meant, and the witness said they were "electric spurs". The Respondent informed the witness he did not want an Electric Shock Device to be used on his horses or have these around his horses. He furthered that he did not report this abuse i.e., the use of the "rockets" to USEF or FEI at the time but rather terminated the employment of the witness as he was only concerned with the care of his horses and that was all that mattered at the time to the Respondent.

The Respondent also confirmed that he discovered that another witness – Witness A was also using an Electric Shock Device and he was informed about

this in person. He stated that he spoke to these witnesses at the time and told them that use of an Electric Shock Device was not appropriate and it was against the rules.

97. In relation to Witness E, the Respondent could not provide any insight as to why this witness would testify against him as he said that he barely knew him. He furthered that the only reason he can understand that such a witness came forward was because he was requested to or given something to testify against the Respondent by another witness.

98. After the FEI completed its questioning, the Tribunal addressed the Respondent in relation to two questions, firstly what was the length of the cord that was attached to the clicker and secondly what material of cord was connected to the clicker. The Respondent replied he was unsure about the length of the cord other than it was long enough to go inside his shirt and down his arm and in relation to the material of the cord this could be bailing twine, leather, nylon or any material that would work. The Tribunal also asked the Respondent why he did not use the regular clickers with the plastic wristbands and the Respondent said that these type of clickers move up and down your arm when you are riding, and he did not like the feeling of this.

IX. CLOSING STATEMENTS BY THE PARTIES

FEI at the Hearing, closing remarks:

99. In its closing statement the FEI submitted that during the three-day hearing the Tribunal had heard honest witness testimonies which confirmed that the Respondent had used an Electric Shock Device in and out of competition on most of the horses the Respondent competed with throughout several years. The FEI submitted that such use of the Electric Shock Device was habitual, and it was used on his sale horses, his employer's horses and horses of other owners. Furthermore, the FEI also stated that he instructed his employees to use an Electric Shock Device and selected which horses they needed to use these devices on. In addition, the FEI noted that all the witness testimonies provided, corroborated the same description of the Electric Shock Device which consisted of a black trigger button, a rectangular battery pack, black coated wires with exposed endings and another black wire leading to a black trigger button.

100. The FEI also noted that in all the photographs provided in the proceedings, the trigger button matches the aforementioned description and furthermore pursuant to the testimony of witness D and details at paragraph 80 above, the FEI also noted there is personal evidence provided by the witness who saw the trigger button up close and had a clear view.

101. In relation to Witness E and the testimony provided the FEI noted that a detailed description of the Electric Shock Device which matched entirely with the Electric Shock Device submitted by the FEI is confirmed. This witness also established that the trigger button seen seven/eight years ago looked like the one in the photographic evidence provided by the FEI, and in addition the description of how the device operated explained by the Respondent provided all those years ago matches irrefutably with all the other evidence and witness testimonies provided, to which this witness E has no connection with any other witness in these proceedings.

102. The FEI then requested that the Tribunal bear the following considerations in mind when adjudicating on this case:

- 1) In relation to the Electric Shock Device used on the horses, the FEI highlighted that we are dealing with a discreet and subtle tool which after its use leaves no visible or physical trace on the horse. We are not dealing with an abuse that would leave lacerations or open wounds; however, we are left with a traumatised horse as the electric charge would only pass through the body of the horse for only a few seconds upon triggering the button. It was also noted by one of the testimonies provided that some of the horses that were subjected to this abuse are traumatised and still bear consequences.
- 2) The FEI also stated that it has submitted irrefutable evidence on the Respondent's use of an Electric Shock Device as demonstrated in all the photographic evidence in line with the detailed recounts provided by all its witnesses at various occasions through working with or knowing the Respondent and as summarised throughout this decision. They also noted that the use of these devices over time by the Respondent when working with the witnesses became more open and transparent e.g., via preparing the devices under his clothes in front of the witnesses, asking them to fetch the bag which contained the devices, leaving electric equipment in the boot of his car, avoiding seeking medical attention if he fell off a horse for fear they would ask him to remove his shirt, changing his clothes in a trailer but still wearing the same clothes after changing especially before competition

and notably openly instructing his colleagues personally to use them on a certain horse and highlighting the benefits to be gained.

- 3) In mainstay of witnesses' testimonies was a general acknowledgement that on reflecting on all the evidence and work dealings they had with the Respondent this abuse was habitual and in particular on the horses of witness C and other owners' horses as well.
- 4) In addition, the testimonies of the witnesses, individually and/or when viewed together, confirm the Respondent's use of an Electric Shock Device in-competition at International and National level was evidenced in the large number of photographs which were provided from various equine photographers from the equestrian community.
- 5) The FEI also reminded the Tribunal that in 2002 the Respondent was sentenced to 6 months imprisonment and a probation period of 4 years after pleading guilty to a felony of the theft of domestic animals (2 ponies and a goat). The Respondent and an accomplice killed the goat by smothering the animal. The FEI brought this prior criminal felony and in particular the circumstances of the cruel death of the goat i.e., by suffocation, to the attention of the Tribunal as the FEI deemed that the Respondent's past behaviour, in particular towards animals, is relevant for these disciplinary proceedings.
- 6) The FEI noted that all the witnesses provided honest testimonies and made the very difficult decision to come forward and were not pressurised by anyone to do so. Whilst they may have discussed testifying amongst themselves, as they needed reassurance to feel they were not alone in the process, they did not build a case together against the Respondent. When they decided to come forward some of the witnesses had concerns about the negative impacts this would have on their employment opportunities in the equestrian industry and these concerns are validated with some of the witnesses experiencing intimidation, threats and unwanted messages.
- 7) In the FEI's opinion all witnesses gave convincing testimonies and all five are telling the truth versus one person who is not. The FEI noted that the Respondent testified that the device he used was a clicker and moreover it is shocking that he provided this explanation on the last day of his hearing which served to highlight the several inconsistencies by the Respondent and his evidence throughout the case. However taking all the factual

circumstances and evidence provided throughout these proceedings both in writing and orally, there is a clear pattern of i.e., a *modus operandi* of the Respondent's behaviour and use of an Electric Shock Device which has been ascertained from the submitted evidence i.e., a methodical, pre-planned, repetitive and continuous use of an Electric Shock Device both in and out of competition on most of the horses the Respondent competed with in pursuit of his personal interests through the use of horse abuse and by means of "mechanical doping". Such use of an Electric Shock Device distorted the level playing field and manipulated the competition with the aim of achieving benefit for himself.

- 8) Lastly, in the FEI's opinion the Respondent deceived FEI Officials during competitions by concealing the Electric Shock Device and engaged in unsportsmanlike behaviour towards other Athletes. In addition, the Respondent distributed at least one Electric Shock Device to a rider, incited other riders to use these devices and engaged in conduct that endangered horses and potentially other persons.
- 9) Taking all of the particulars into account, the FEI respectfully requested the Tribunal impose a minimum five (5) year suspension starting from the date of the Tribunal's final decision (the Provisional Suspension served by the Respondent shall be credited against the imposed Ineligibility Period), during which the Respondent may take no part in Competitions or Events in any capacity, including as a spectator, or in the organisation of, any Event under the jurisdiction of the FEI or any Event under the jurisdiction of an NF in accordance with the Statutes or in any FEI related activity.

Respondent at the Hearing, closing remarks:

103. The Respondent submitted to the Tribunal that all testimonies of the witnesses provided in this case are based on suppositions and assumptions therefore it is necessary that the Respondent clarified to the Tribunal what is the "actual" evidence in this case. In this regard the Respondent submitted to the Tribunal that every witness appeared to indicate that they did not know or never saw the Respondent using the Electric Shock Device underneath his clothing and the latter assumptions were based only on the videos and photographic evidence provided i.e., what somebody else is instructing them to see.

104. He furthered that the only independent evidence presented was in relation to one of the witness sending a message to the Respondent which referred to the

use of “the rockets”, and this alleged use was not against the Respondent but in fact the witness who had been using them. The Respondent also noted that most witnesses that testified had no intention to do so or had complaints until March 2020- the period when the breakdown occurred of certain business and/or personal relationships with Witness C. The Respondent considered this a turning point for the witnesses and that they were hired by a key witness to collude against the Respondent. He argued that these witnesses were given a support to testify against the Respondent and to assist this process, meetings with lawyers were arranged by Witness C to discuss this collusion and collate a body of evidence for the FEI and ECIU.

105. The Respondent also addressed the accusations of coercion in relation to the witnesses whereby the FEI claimed that the Respondent improperly coerced one of the witnesses into withdrawing a statement and then he noted that all the testimonies that were submitted from the same group of witnesses that are still working together and contained the exact same evidence i.e., that they were compelled to use or allow the use of an Electric Shock Device and in these instances they felt compelled to use these devices. They also stated that the use of these devices was in training and not in the competition, which made the Respondent query as to why these actions were not reported until 18 months later if the allegations were true. He noted that it was only reported as soon as they collaborated at meetings in their workplace about these findings.

106. In relation to the FEI’s allegations of bringing the FEI into disrepute, the Respondent repudiated such claims and stated that it was in fact an USEF (United States Equestrian Federation Official) who brought the FEI into dispute by virtue of their request for a video of an Electric Shock Device to be created and then by sending this video to the whole world on social media despite having no other evidence or knowing anything about the circumstances of the case. This video came from a witness who had experienced a breakdown in the personal and business relationship she had with Respondent. He furthered that this was a video with content that contained allegations of horse abuse that no one ever physically saw in a sporting career spanning over 1200 FEI competitions and yet it was assumed as a given when thousands of officials who regulated these events never saw an Electric Shock Device, electrical tape nor any blood on any spurs in connection with the Respondent. He stated this is because it was not an Electric Shock Device he was holding it was a clicker.

107. In addition, the Respondent submitted that if the Tribunal is going to believe all of details of this alleged abuse, violations that are so serious but yet not one of

these witness ever thought to lodge a complaint until another witness suggested they collaborated on their testimonies, the Tribunal must be comfortably satisfied that the Respondent carried something in his hand when he is riding of an electrical nature even though no one is certain as to what it is. The reason for this, according to the Respondent, is that the combined testimonies of the witnesses A,B and D who are under the same working umbrella who allegedly saw this yet never complained, did not complain because it did not happen.

108. He also noted that having observed all of the witnesses testimonies and that some of them seemed upset by the use of an Electric Shock Device on the horses they were caring for, yet were too afraid to come forward due to the connections and status of the Respondent in the equine industry, how can the Tribunal be sure, that if these fears existed then, that their testimonies are accurate given if they did not testify in this hearing they might also be afraid of losing their jobs and high level riding opportunities.

109. Finally, the Respondent submitted that animal abuse in this case is based on the abuse via the use of an Electric Shock Device and the only testimonies alleging these allegations emanated from prejudiced witnesses. Moreover, these biased testimonies, have an equally reasonable explanation that the device used was a clicker. He argued that the FEI has based its confirmations that this was an Electric Shock Device by reasoning that if you do not know what else it is, you are left to think it was an Electric Shock Device which does not meet the burden of proof for the Tribunal to be comfortably satisfied.

Moreover, if the Tribunal does not feel the burden of proof has been met and that they believe the device was a clicker they should rule in the Respondent's favour and charge him with possession of contraband in his hand. Finally, he argued that the Tribunal must consider that the actions of animal abuse alleged in these proceedings, which are so serious why would no one come forward until now, which by itself calls the credibility of all the testimonies provided into question, as such testimonies are clearly submitted with other motivations and should not be believed.

X. JURISDICTION

Ratione materiae

The Tribunal has jurisdiction *ratione materiae* over this matter pursuant to Article 38.1 of the FEI Statutes, Article 18.1 and 30 of the IRs and Article 163.1 of the GRs. The jurisdiction of the Tribunal remains undisputed.

Ratione personae

The Respondent is validly registered with the FEI, with reference FEI 10064248 bound by its Rules and Regulations.

Ratione temporis

The alleged offences committed by the Respondent were discovered in 2020, at a time when all the applicable regulations were in place, as specified in Section III of the present decision. Therefore, all those regulations apply to the present matter.

XI. LEGAL DISCUSSION.

110. The Tribunal has already issued the outcome of the case and particulars of the sanctions imposed on the Respondent. This part of the decision is to inform the parties of the reasons for the decision. The Tribunal was faced with directly opposing accounts, and therefore must assess the credibility of the witnesses and the Respondent while taking into account the supporting evidence to the extent set out below. The Tribunal will also address the following specific questions: Did the evidence (Electric Shock Device) exist and was it used by the Respondent and if so, is the Tribunal comfortably satisfied that the Respondent used the Electric Shock Device?

111. The Tribunal will first consider the matter of the application for inspection of an Electric Shock Device and the Boots. This request had been made by the Respondent earlier in the proceedings and declined by the Tribunal as described in paragraphs 42-45. The request was repeated immediately prior to the hearing and heard as a preliminary matter on the first day. The Tribunal decided to allow the inspection in the interest of fairness. By then however the Electric Shock Device depicted photographically was not available but identified by all witnesses (other than the Respondent) as in accord with what they had seen. Furthermore, the Tribunal noted that even if the offered inspection had taken place, such inspection of the Boots in the video would have added little to the question of whether the Respondent used an Electric Shock Device as there was sufficient evidence to that effect, not contradicted by any other witness other than the unsupported statement by the Respondent.

The inspection of the Boots could have assisted either party; according to whether they fitted the Respondent. As the offered inspection did not occur the Tribunal in fairness to the Respondent will not take their existence as proof of their use by the Respondent and disregards that evidence.

112. The first, Witness A, conveyed a good impression to the Tribunal, particularly of truthfulness. She admitted having used an Electric Shock Device herself. Importantly this witness was not challenged on her evidence that other riders were induced by the Respondent to use Electric Spurs; nor did the Respondent, call any evidence in denial of this.

113. The Tribunal considered the Respondent's suggestion that the FEI gave immunity to this or any other witness. The FEI never accepted this assertion and in the Tribunal's opinion even if this was the case, offering immunity is not improper depending on the circumstances, and is accepted in many jurisdictions including the USA.

114. Witness B also conveyed an impression of truthfulness. Witness B never saw the Respondent using a clicker however he was not challenged on this. Witness B was convincing in his evidence as set out in paragraphs 68-70 above. There was convincing testimony from Witness B about an alleged blackmail/threatening conversation with the Respondent before the hearing, but the Tribunal does not find it necessary to take this into account in reaching its decision.

115. Witness C deposed to a reasonably lengthy and sometimes close association with the Respondent. It appears this relationship has ended in the midst of intended if not actual litigation. Given these circumstances the Tribunal has weighed her evidence accordingly. The Tribunal noted she provided various proofs, including videos of an Electric Shock Device and the Boots. The Respondent suggested that Witness C provided for the testimonies of witness's A, B, and D to be reviewed by a legal adviser and this was in some way evidence of falsification or corruption; in the view of the Tribunal, it is at the least if not more so evidence of a desire to be correct and proper and not to overstep the mark. When questioned on this assistance, these Witnesses noted that their testimonies were reviewed but not altered and confirmed they liaised with a legal adviser to understand how the FEI disciplinary proceedings would progress once they submitted their testimonies.

116. Witness D was in the Tribunal's view an honest witness telling the truth as she understood it. She is clearly very good with horses and from her evidence in the Tribunal's view it was clear that the Electric Shock Device was in use, given the information she had.
117. The evidence provided by Witness E was objective, clear and explicit and it was not seriously challenged by the Respondent. The Respondent could offer no suggestion as to why it might be falsely given. The unchallenged fact that this witness was not known to any of the other witnesses ends the suggestion that the FEI case was founded on untrue collusion. The Tribunal accepts the witness's reason for coming forward only last year and noted that his account of the Electric Shock Device he saw and spoke to the Respondent about correlated very closely to the other witness's accounts.
118. It is also noted by the Tribunal that after assessing all the witnesses' testimonies provided by the FEI, it was surprising that the Respondent was not in a position to present one single witness to refute all the other witnesses' testimonies and provide support to the Respondent's declarations that no such Electric Shock Device was ever used by the Respondent. The foregoing is especially striking given all the extensions that were given to the Respondent, as described in paragraph 120 below.
119. Little needs to be added about the evidence given by the Respondent. Whilst the Tribunal has analysed all the evidence presented by the FEI, there was a limited amount of evidence, practically none, presented by the Respondent. The Tribunal does not believe, in the face of the other evidence presented by the FEI, his denial of the use of Electric Shock Devices. If his denial were truthful he should have been able to provide evidence from other riders involved in his stables. His account of the tragic end of his horse at Hickstead may well have been true; but is not to the point. He provided no evidence to corroborate his claim he used a clicker, which none of the witnesses had seen.
120. Finally, the Tribunal also noted, as detailed at paragraph 101 (5), that in 2002 the Respondent was sentenced to 6 months imprisonment and a probation period of 4 years after pleading guilty to a felony of the theft of domestic animals (2 ponies and a goat). The Respondent and an accomplice killed the goat by smothering the animal. The Tribunal considers that the particular circumstances of the cruel death of the goat i.e., by suffocation, is relevant to take into account when examining the Respondent's past behaviour in particular towards animals

and especially relevant for the nature of these disciplinary proceedings involving abuse of horses.

DID THE EVIDENCE (Electric Shock Device) EXIST AND WAS IT USED BY THE RESPONDENT?

121. To start with, the Tribunal notes the numerous deadline extensions given to the Respondent to enable him to fulfil his Right to Reply and submit his Answer brief and any additional documentation during the course of these entire proceedings in particular having regard to the missed deadlines of 5 February 2021, 15 February 2021 and 5 March 2021. Additionally, and as noted in paragraphs 50.6-9 of this Decision all requests were facilitated to arrange an examination of the Boots at short notice during the hearing; however, the Respondent ultimately rejected this offer and stated that the Tribunal had failed to offer an inspection in sufficient time and under terms which allowed for the proper scheduling (under Covid pandemic conditions). The Tribunal found no basis for the Respondent's complaints of impropriety or bias in respect of this inspection arranged at short notice to facilitate the Respondent's request.

122. The Tribunal also notes the Respondent's assertions that the video of the physical items i.e., the Boots and the Electric Shock Device did not enable the actual purported evidence to be examined physically, thus, it is impossible to authenticate the physical items. He further claimed that the witness in question already admitted altering the Boots therefore authentication had been destroyed as the chain of custody is broken and the purported evidence should be disregarded, and that the FEI should be denied the right to use the items in support of their claim. However, the Tribunal notes that the Respondent was presented with such Exhibits and related arguments as early as 29 June 2020 when the open investigation was notified to the Respondent. As such the Respondent had ample opportunity to arrange an inspection and never once during the course of these proceedings requested to do so.

Moreover, the Respondent had notice of all the evidence to be called against him since 28 October 2020 so he cannot complain of a lack of time to prepare his defence. Taking into consideration the videos, photographs and testimonies presented by the FEI, the Tribunal concludes that the Electric Shock Device existed and the arguments regarding the lack of authentication of the evidence or the broken chain of custody must be rejected. In any event, the existence of the Electric Shock Device was admitted by the Respondent in his reply and in his evidence where he repeated that the spurs existed even though they were used

by one of the witnesses. The issue is not its ownership, but whether the Respondent used the device.

123. Finally, having regard to the arguments raised by the Respondent that it defied logic that none of the witnesses ever saw the Respondent actually wearing an Electric Shock Device nor did the FEI officials discover the use an Electric Shock Device by the Respondent over a significant period of time, when the Respondent had taken part in over 1200 FEI competitions, the Tribunal deems this as unsurprising and a logical conclusion considering:

- (i) the great lengths the Respondent went to conceal such devices from FEI officials over the years (as noted at paragraph 52 of this decision), by hiding the wires under his clothes and via holes in his boots, making it barely visible to any FEI official and ensuring that the color of the trigger button matched the color of the gloves the Respondent often wore, making the device extremely discreet from any FEI official;
- (ii) the level of detailed work required in the investigation pursued by the ECIU and production of the ECIU Report regarding the analysis of the photographic evidence which confirmed the identification of a trigger button in 73 out of the 81 photographs provided.
- (iii) In any event there was direct evidence of the wearing and use of the Electric Shock Device by the Respondent from Witness A (Paragraphs 60 - 62), circumstantial evidence from Witness B (Paras 66 and 67) and Witness E (Paragraphs 86).

THE 'COMFORTABLE SATISFACTION' STANDARD OF PROOF

124. Therefore, the Tribunal must take into consideration all the evidence presented by both parties. The testimonial evidence submitted by the FEI and the Respondent, as analyzed in detail in paragraphs 110 to 119, together with the photographs and videos submitted by the FEI, prove to the comfortable satisfaction of the Tribunal that the Respondent used the Electric Shock Device. Indeed the individual direct evidence was convincing, and cumulatively was compelling.

125. The Tribunal was not provided with any convincing evidence that the device was a clicker. None of the witnesses saw a clicker used by the Respondent in training or competition and no physical or photographic evidence was presented to corroborate the Respondent's assertions of its use.

126. Having considered the Respondent's testimony the Tribunal reached the conclusion that if the device shown in numerous photos and videos was indeed a clicker, he could have used other means to secure it rather than the black cables seen in photos and reported by the witnesses. The only credible explanation for these long cables, as supported by the other evidence (videos, pictures, and testimonies), was to connect the trigger to the electric box and to the spurs. All the above, supported by other evidence such as the Respondent always wearing a jacket even in hot temperatures, rejecting being checked by a medical doctor after falls and of taking suspicious amounts of time getting dressed for a competition, all support the case brought by the FEI.

127. In view of all the evidence the Tribunal is comfortably satisfied, to the level of beyond reasonable doubt that the FEI has proved its case. Use of an Electric Shock Device is specifically an example of horse abuse under Article 142 of the FEI General Regulations

XII. SANCTIONS.

128. The Tribunal finds that the Respondent's actions based on the evidence provided throughout these proceedings demonstrate to the comfortable satisfaction of the Hearing Panel the prolonged use of the Electric Spurs by the Respondent and additionally, that the Respondent's use was deliberate, methodical, repetitive and on numerous horses, both in competition and training.

129. In this regard the FEI has established that the Respondent, has breached the following Articles 142 Abuse of Horses, 164.12(a), 164.12(b), 164.12(c), 164.12(g), 164.12(i), and 164.12(j) of the FEI General Regulations. In this case the breaches are exacerbated by the length of time over which the use continued, the number of horses involved and the encouragement of their use by other riders over whom the Respondent had influence. It is in fact an example not only of horse abuse but also of gross cheating over a lengthy period; to the great detriment of the reputation of the sport, the Respondent's owners and the other riders in his competitions, not to mention the criminality in some jurisdictions. Respondent's conduct during the hearing, including flat denials and consequently a total lack of remorse, only makes matters worse. In these circumstances the Tribunal assesses the offending as justifying more serious sanctions than the minimum requested by the FEI. When the FEI asked for minimum 5 years suspension it did not know that the Respondent would persist in his denials which the Tribunal has found to be untrue, nor did it expect the

total lack of remorse inherent in his case. In relation to the recommended period of suspension, the Tribunal refers to Article 164.14 of the of the FEI General Regulations and the table set out at this Article detailing the sanctions that will apply for certain offences listed in Article 164.12 in relation to the "Abuse of the Horse" offence and taking into account the top-end to max penalty range of "2-5 years" or "life". In this regard, the Tribunal are satisfied that 10 years is a proportionate penalty under these guidelines on foot on all the evidence in this case and that more serious sanctions than the minimum requested by the FEI are required.

XIII. Summary of Legal Authority:

GRs Article 142 (Abuse of Horses)

1. No person may abuse a Horse during an Event or at any other time. "Abuse" means an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse, including, but not limited to:
 - (i) To whip or beat a Horse excessively;
 - (ii) To subject a Horse to any kind of electric shock device;
 - (iii) To use spurs excessively or persistently;
 - (iv) To jab the Horse in the mouth with the bit or any other device;
 - (v) To compete using an exhausted, lame or injured Horse;
 - (vi) To "rap" a Horse.
 - (vii) To abnormally sensitise or desensitise any part of a Horse;
 - (viii) To leave a Horse without adequate food, drink or exercise;
 - (ix) To use any device or equipment which causes excessive pain to the Horse upon knocking down an obstacle.

Article 164.12 (Offences)

In addition to breaches of specific provisions of the FEI Rules and Regulations, the following is a list of other offences that the FEI may sanction:

- (a) Incorrect Behaviour;
- (b) Abuse of Horse;
- (c) Acts defined as criminal by the national law and/or Swiss law ("Criminal Acts");
- (d) Fraud of any kind;
- (e) Violence;

- (f) Failure to cooperate with an investigation undertaken by, or on behalf of, the FEI;
- (g) Conduct that brings the FEI and/or equestrian sport into disrepute, i.e. conduct that causes the public opinion of the FEI and/or equestrian sport to be diminished.
- (h) Breach of the FEI Code of Ethics;
- (i) Breach of the FEI Code of Conduct on the Welfare of the Horse;
- (j) Breach of the FEI Code on the Manipulation of Competitions;
- (k) Breach of the FEI Officials Code of Conduct;
- (l) Breach of the FEI Safeguarding Policy against Harassment and Abuse.

Article 164.7 (Suspension)

(d) As a general principle, a Suspension will start as of the date of notification of the Suspension. However, the body imposing or applying the Suspension may postpone the start date of the Suspension in order to ensure the effectiveness of the Suspension.”

Article 162.1 (Appeals, General Principles)

An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible (see Article 162.2 below): (a) With the FEI Tribunal against Decisions of the Ground Jury or any other person or body. (b) With the CAS against Decisions by the FEI Tribunal. The person or body lodging such Appeal shall inform the FEI Legal Department.

Article 162.7 (Process for Filing an Appeal to CAS)

Appeals to the CAS together with supporting documents must be dispatched to the CAS Secretariat pursuant to the Procedural Rules of the CAS Code of Sports-related Arbitration so as to reach the CAS within twenty-one (21) days of the date on which the notification of the FEI Tribunal Decision was sent to the National Federation of the Person Responsible.

Article 165.1 (Time of Implementation of Decisions)

Decisions are effective from the date of oral or written notification to the affected party or parties, so long as such notification is possible under the circumstances. Otherwise, Decisions are effective as of the date specified by the body or person authorised to make the Decision.

XIV. Terms of the Decision:

As a consequence of such breaches, the Tribunal imposes the following sanctions on the Respondent:

- (i) a ten-year suspension starting from the date of notification of this Decision. The provisional suspension served by the Respondent since 28 October 2020 shall be credited against this period of suspension which will therefore come to an end on 27 October 2030. Pursuant to Article 164.7 of the FEI General Regulations, as from notification of this Decision the Respondent is barred for the period of his suspension from participating in or attending, in any capacity, including as a spectator, any Competition or Event that is authorised or organised by the FEI or any National Federation;
- (ii) disqualification of the results the Respondent obtained in the eight Events listed below for which the Tribunal has been provided with photographic evidence establishing the Respondents use of the Electric Spurs. Consequently, the Respondent will forfeit all medals, points and prize money won pursuant to Article 164.6 (a) and (b):
 - CSI4* - Hickstead (GBR) (21/06/2018 - 24/06/2018)
 - CSI3* - Lexington, Horse Park KY (USA) (14/05/2019 - 18/05/2019)
 - CSI2* - Lexington, KY (USA) (22/05/2019 - 26/05/2019)
 - CSI5* - Calgary, Spruce Meadows AB (CAN) (05/06/2019 - 09/06/2019)
 - CSI5* - Calgary, Spruce Meadows AB (CAN) (27/06/2019 - 30/06/2019)
 - CSI3* - Traverse City, MI (USA) (07/08/2019 - 11/08/2019)
 - CSI4*-W - Toronto ON (CAN) (05/11/2019 - 09/11/2019)
 - CSI3*-W - Columbus - Johnstown, OH (USA) (02/10/2019 - 06/10/2019).
- (iii) a fine of ten thousand Swiss Francs **(CHF 10,000 CHF)**;
- (iv) the Respondent is ordered to pay an amount of seven thousand five hundred Swiss Francs **(7,500 CHF)** towards the cost of these proceedings.

(v) According to Articles 164.7 (d) and 165 of the FEI General Regulations, this Decision is effective from the date of its oral or written notification to the Respondent.

(vi) According to Articles 162.1 and 162.7 of the FEI General Regulations, this Decision may be appealed to the Court of Arbitration for Sport (CAS) by the persons and within the terms set forth in the applicable rules.

XV. DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. The NF of the Respondent: Yes
- c. Any other: No

FOR THE FEI TRIBUNAL (Three-member Panel)

A handwritten signature in blue ink, appearing to read "J. J. J.", is written over a faint, circular stamp. The signature is stylized and cursive.