



## INTERNAL REVIEW DECISION

(Internal Review Decision Notice in response to an Application for Internal Review)

PART 1: Details of Internal Review	
Internal Review Number:	Internal Review 0073-17
Applicant's Name:	K Belford
Original Decision:	Breach of Rule 190(1) of the Australian Harness Racing Rules
Original Decision Makers:	N Torpey, K Wolsey, K Daly
Date of Original Decision:	28 August 2017
Internal Review Decision:	Original decision on charge and penalty confirmed
Internal Review Decision-Maker:	Mr Kane Ashby, Internal Adjudicator, Queensland Racing Integrity Commission
Date of Internal Review Decision:	26 September 2017
PART 3: Summary of Internal Review Application	
<p>The Applicant, Mr Kenneth Belford, trainer of HE CAN TALK (NZ) which presented to race at Redcliffe on 2 February 2017, was charged under Australian Harness Racing Rule 190(1) and was subsequently found guilty of the charge at a stewards' inquiry conducted on 28 August 2017 when a post-race urine sample taken from HE CAN TALK (NZ) was found to contain prohibited substances, namely caffeine, theobromine and theophylline.</p> <p>Australian Harness Racing Rule 190(1) states:</p> <p><i>"A horse shall be presented for a race free of prohibited substances".</i></p> <p>Stewards conducted an inquiry on 28 August 2017 and, after considering the evidence tendered by the Applicant, the Applicant was found guilty of the charge.</p> <p>In considering penalty, the Stewards considered the Applicant's history and relevant precedents for this breach, together with the image these breaches present to the racing industry.</p> <p>Stewards subsequently imposed a fine of \$5,000.00.</p> <p>The Applicant sought a review of charge and penalty on the basis the stewards' decision failed to have regard to the evidence raised at the inquiry, the Applicant was a victim of circumstance and the penalty imposed was far too excessive.</p>	
PART 4: Reasons for Internal Review Decision	
<p>The Applicant, Mr Kenneth Belford, trainer of HE CAN TALK (NZ) was presented for racing at Redcliffe on 2 February 2017. A post-race blood sample collected from HE CAN TALK (NZ) was shown to contain caffeine, theobromine and theophylline.</p>	



HE CAN TALK (NZ) was placed first in the respective race.

On 2 March 2017, the Racing Science Centre (RSC) issued a 'Certificate of Analysis' for the aforementioned sample, stating the blood was shown to contain caffeine, theobromine and theophylline.<sup>1</sup> The reserve portion of the sample was subsequently referred to Racing Analytical Services Limited (RASL) via World Courier and analysed for the presence of caffeine, theobromine and theophylline.<sup>2</sup> RASL subsequently reported the sample was shown to contain caffeine, theobromine and theophylline.<sup>3</sup>

Caffeine is a purine alkaloid from the methylxanthine class of drugs. Caffeine's mechanism of action remains unclear. Caffeine is a potent central nervous system stimulant. Caffeine has a physiological effect on the normal function of the cardiovascular (cardiac stimulant), respiratory and genitourinary (diuretic) systems. Caffeine can cause increased mental alertness, superimpose exceptional muscular activity over fatigue and temporarily increase capacity for muscular work. Performance can be affected by caffeine through the improvement of endurance, faster reaction times and additional utilisation of muscular strength.

Theophylline is a purine alkaloid from the methylxanthine class of drugs. Theophylline's exact mechanism of action is still unclear but may involve the inhibition of an enzyme called phosphodiesterase. Theophylline has effects on the respiratory (bronchodilator), cardiovascular (pulmonary vasodilator and cardiac stimulant), central nervous system (stimulant) and genitourinary (diuretic) systems. Theobromine is a purine alkaloid from the methylxanthine class of drugs. Theobromine's mechanism of action is still unclear.

Theobromine has effects on the respiratory (airway smooth muscle relaxant), genitourinary (mild diuretic), cardiovascular (cardiac stimulant and vasodilator) systems.<sup>4</sup>

During the stewards' inquiry conducted on 28 August 2017, the Applicant in summary stated *"We have scratched our heads beyond belief and tried to go - get as much as we possibly could on this matter to put forward to you as to explain what could have happened".*<sup>5</sup> *"We went on to the Internet to try to find out about caffeine, and what actually caffeine - saying caffeine is an alkaloid. We found out it was in a fungal which grows on trees, stumps, logs, posts, etcetera. We also found it comes from a mushroom type of fungal. Now, a procedure of mine is that when my horses are racing that I put them out in the yard's race day to let them have a bit of a walk around and exercise and whatever the case may be - you know, unbeknown about this fungal - that it ever existed until we just found out. Whether or not he had access to it or not I don't know, but that's just another thing. I'm trying to think how he could have got anything. Whether he has gone to a tree and ate the bark off the tree or the - a fungal or whatever the case may be and whether that could have caused it or not I don't know."*<sup>6</sup> *"We did have a labourer working on the stables and fixing the doors and doing a bit of painting and such, and as labourers go he was always drinking coffee around about the place. Whether or not he's spilt any coffee and the horse has had access to it or not at any particular time."*<sup>7</sup>

<sup>1</sup> Exhibit 4

<sup>2</sup> Exhibit 7 to 12

<sup>3</sup> Exhibit 13

<sup>4</sup> Exhibit 5

<sup>5</sup> Transcript of stewards' inquiry dated 28 August 2017, page 3

<sup>6</sup> Transcript of stewards' inquiry dated 28 August 2017, page 5 and 6

<sup>7</sup> Transcript of stewards' inquiry dated 28 August 2017, page 7



The Applicant added *"I got to the races with the horses. I'm normally by myself at the races with the horses. So I get there. I unload them. I take them to the urinal. I put them in their stables and whatever, bring my gear in off truck, go to the office and sign in and whatever. So I'm not standing there all the time. A lot of people at the races drink coffee. Whether someone has come past and give him a pat and he's put his tongue in it or whatever, I don't know. That's just another option. I'm just trying to think of how else he could have got any caffeine to him."*<sup>8</sup>

The inquiry heard the mushrooms are spread across all yards that house the Applicants horses and HE CAN TALK (NZ) is the only horse to test positive to caffeine, theobromine and theophylline.<sup>9</sup>

The Applicant's submissions in summary state *"I believe the evidence provided at the inquiry was not taken into consideration at any time. I also believe the penalty imposed was far too excessive taking everything into consideration and if anything it should be a modest fine. We also had the race taken of us and feel we are victim of circumstances. We did extensive research in caffeine via the internet to help us try to understand where it came from. Caffeine is an alkaloid which can be found in fungi which grows (mushroom type plants) that grow onto trees, logs and posts. We provided a photo of it to the panel which we had growing in our yards at the time. This was one of the possibilities. We also submitted we had a labourer doing work on the stables at the time and he regularly drank coffee and the horse may have come in contact with somehow. We also came across on the internet caffeine is not a prohibited substance under the World Anti-Doping Law 2015. I believe in recent times there have been quite a lot of trainers returning positive tests to arsenic and have escaped any penalty because their horses were chewing on posts and eating their bedding. They have presented a horse with a prohibited substance and received no penalty."*<sup>10</sup>

The reviewer finds on the evidence, and in the absence of any analytical tests carried out on the mushrooms/fungal (to determine the presence of caffeine) or any direct evidence the horse ingested such fungal or came into contact with a person (labourer or member of public as evidenced by the Applicant) drinking coffee, is not satisfied this would be the sole reason for the analyst's findings. The reviewer finds any prizemoney awarded under the Rules is subject to any sample or specimen collected from a horse, being free of prohibited substances. The reviewer accepts caffeine, theobromine and theophylline is a prohibited substance as evidenced at part (2) of Dr Caldwell's veterinary certificate.<sup>11</sup>

The reviewer acknowledges each case is treated on its merits and circumstances and notes the strict liability placed on trainers to present their horse to race free of prohibited substances. The arsenic inquiries referred to in the Applicant's submissions, whereby no penalty was imposed on relevant trainers, was based on analytical results of wood shavings/bedding and fence posts and that of a study conducted by the Melbourne University faculty of Veterinary Agricultural Sciences, which examined the ingestion of wood shavings containing arsenic and the elevated levels achieved.

The Applicant was found guilty of a charge under Australian Harness Racing Rule 190(1) which states: *"A horse shall be presented for a race free of prohibited substances"* Subsection (2) states *"if a horse is presented for a race otherwise than in accordance with sub rule (1) the trainer of the horse is guilty of an offence."*

<sup>8</sup> Transcript of stewards' inquiry dated 28 August 2017, page 8

<sup>9</sup> Transcript of stewards' inquiry dated 28 August 2017, page 10 and 11

<sup>10</sup> Internal Review Application dated 11 September 2017

<sup>11</sup> Exhibit 5



Sub-section (4) states “An offence under sub rule (2) or sub rule (3) is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse.”

The stewards relied on the Certificate of Analysis issued by the RSC on 2 March 2017 and RASL on 28 March 2017 respectively that reported the sample was shown to contain caffeine, theobromine and theophylline.<sup>12</sup> The reviewer finds the aforementioned ‘certificates’ prima facie evidence on the initial certificate and conclusive evidence on the secondary certificate of the presence of a prohibited substance being detected in the sample. Therefore, the reviewer accepts the Applicant presented HE CAN TALK (NZ) to Redcliffe on 2 February 2017 with a prohibited substance in its system.

In weighing up the matter on penalty, consideration was provided to the Applicant’s submissions, disciplinary history, guilty plea, penalty precedents and the effects such prohibited substance matters have on the racing industry. The Applicant’s disciplinary history notes a previous offence under this rule in July 2015 which incurred a six-month disqualification. The precedents for an offence under this substance previously received monetary fines and a period of disqualification, however in recent years fines of \$5000.00 have been imposed. Taking into account the aforementioned factors, the reviewer finds the original penalty is consistent with the most recent penalties for the substances subject of this review and, in the circumstances, is not satisfied a further reduction in penalty is proven and therefore confirms the original decision on charge and penalty.

## PART 5: Review Rights following Internal Review Decision

In accordance with section 246 of the *Racing Integrity Act 2016*, as the applicant for an internal review of the original decision, you are able to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the internal review decision.

An external review is commenced by lodging the appropriate forms with QCAT. In accordance with section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*, an application for an external review of an internal review decision is to be made within 28 days from the day this internal review decision notice is provided to the applicant.

For further information regarding the processes for an external review of the decision, please contact QCAT:

### Queensland Civil and Administrative Tribunal

Registry Location: Level 9, 259 Queen Street, BRISBANE QLD 4001  
Postal Address: GPO Box 1639, BRISBANE QLD 4001  
Phone: 1300 753 228  
Email: [enquiries@qcat.qld.gov.au](mailto:enquiries@qcat.qld.gov.au)

<sup>12</sup> Exhibits 4 and 13