4 June 2020

**DECISION**

**RACING VICTORIA**

**and**

**MR MARK SUES**

 **Date of hearing:** 27 May 2020

**Panel:** Judge John Bowman (Chairperson) and Dr Andrew Gould.

**Appearances:** Mr Daniel Bolkunowicz appeared on behalf of the Stewards.

Mr Mark Sues represented himself.

**Charge:** Australian Rule (AR) 240 - Prohibited substance in sample taken from horse at race meeting

(2) Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.

**Particulars of charges: Charge 1**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. You are, and were at all relevant times, the trainer of *Skytain.*
3. On 2 November 2019, *Skytain* was brought to the Traralgon

Racecourse and ran in the Laser Clinics Australia Maiden Plate over 1430 metres (the race).

1. A prohibited substance, being Heptaminol, was detected in a pre-race urine sample taken from *Skytain* at the Traralgon Racecourse prior to the running of the race.
2. Heptaminol is a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 (Prohibited List B) of the Australian Rules of Racing.

**Charge 2**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. You are, and were at all relevant times, the trainer of *Infernal.*
3. On 6 December 2019, *Infernal* was brought to the Moonee Valley racecourse and ran in the Opus Group Handicap over 1200 metres (the race).
4. A prohibited substance, being Heptaminol, was detected in a pre-race urine sample taken from *Infernal* at the Moonee Valley Racecourse prior to the running of the race.
5. Heptaminol is a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 (Prohibited List B) of the Australian Rules of Racing.

**Plea:** Guilty

**DECISION**

Mr Mark Sues, you have pleaded ‘guilty’ to two breaches of AR 159. The charges to which you are pleading are of presentation. The prohibited substance involved is Heptaminol. The offences occurred at Traralgon on 2 November 2019, the positive swab being returned after testing of Skytain, and at Moonee Valley on 6 December 2019, the horse being Infernal.

We accept that the information concerning the positive return of the swab of 2 November 2019 had not been passed on to you by the time Infernal ran on 6 December 2019. Had that information been relayed to you, you are adamant that you would have scratched Infernal, as it had been the subject of the same regime and treatment as Skytain. We accept that.

We also accept that the Heptaminol was contained in a product ‘Dynajec’, and that you administered this to horses two days before they raced. This is what your treatment register indicates and what happened with both Skytain and Infernal.

You admit that you were careless in not checking the contents of Dynajec. The labelling of the container clearly lists Heptaminol as an ingredient. We are also of the opinion that your timetable of the injection two days before racing is not adopting a cautious approach. This is to be distinguished from the case of Melody Cunningham, who was fined $1,000, and who administered to her horse three days before racing.

We accept what is in your statement, that you work on horses that have behavioural issues and that you look after some retired horses. You have purchased a couple in order to save them from being sent to a knackery. We accept that all these horses are in excellent condition. You are to be commended for this. We also accept that you have something in the order of eight horses in work and you and your partner own most of those. Any fine will impact upon you quite considerably.

However, the principles of general deterrence must be borne in mind. Trainers must carefully check the contents of substances which they are administering and adopt a cautious timetable for any administration.

In the circumstances, we are of the view that the following penalties should be imposed. In relation to the first charge involving Skytain on 2 November 2019, you are fined $1,500. On the second charge involving Infernal on 6 December 2019, you are also fined $1,500, but with $1,000 suspended for a period of 12 months unless you breach the relevant rule or rules relating to prohibited substances. In other words, you have an immediate fine of $2,000 and a further $1,000 will be hanging over you for a period of 12 months.

Skytain and Infernal are disqualified from their respective races and the finishing orders are amended accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal