



Thoroughbred Official Ruling

Ruling Number 1094146

Licence No.: TRN104006

Date: October 22, 2020

**IN THE MATTER OF THE *HORSE RACING LICENCE ACT, 2015*,
S.O. 2015, c.38, Sched. 9;
AND IN THE MATTER OF Gary C Chudobiak**

Background to the Positive Test Process

The *Criminal Code* of Canada (the “Code”) allows for pari-mutuel wagering on horse racing at provincially licensed racetracks, subject to the Code and the *Pari-Mutuel Betting Supervision Regulations (CPMA Regs.)*. Part V of the *CPMA Regs.* outlines the federally mandated Equine Drug Control Program establishing the Canadian Pari-Mutuel Agency (CPMA) as the entity responsible for taking official samples and declaring positive tests where warranted.

Consistent with this statutory authority, the CPMA’s independence and expertise, and horse racing’s interest in stable testing protocols, the Rules of Racing adopt CPMA positive test declarations as prima facie evidence of positive tests.

“Snell Flicka” trained by Gary Chudobiak (CHUDOBIAK)

On June 25, 2020 Bureau Veritas Canada issued a certificate of positive analysis, from a urine sample with Test Tag # 71 20154 334, for the Class II drug capsaicin. The sample was obtained from the Thoroughbred horse “Snell Flicka” (tattoo # T10426), trained by CHUDOBIAK which finished second (2nd) in the seventh (7th) race at Fort Erie Race Track on June 2, 2020.

WHEREAS on September 19, 2019 the Canadian Pari-Mutuel Agency (CPMA) released a statement advising *inter alia*:

“...*capsaicin* is a prohibited substance in Canada due to its painkilling properties. Veterinary products containing *capsaicin* are not approved for use in Canada. Products containing *capsaicin* should not be administered to a racehorse.

Capsaicin is an extract from chili peppers that can be found in topical creams available over-the-counter in pharmacies.

Capsaicin can be detected in official samples, and may result in a positive test.

The CPMA strongly recommends that you consult your veterinarian on any decision to administer supplements or medications to a horse.”

AND WHEREAS on July 20, 2020 the AGCO released a statement which advised *inter alia*:

“The Alcohol and Gaming Commission of Ontario (AGCO) is aware that a number of horses in Ontario, and other jurisdictions in Canada, have received a positive test for *capsaicin* over the past several weeks.

The AGCO’s Equine Drug Unit is actively investigating these positive tests. As always, our priority is to conduct a fair and independent investigation to ensure the ongoing safety and integrity of horse racing in Ontario, as well as the health and welfare of equine athletes.”

AND WHEREAS on July 24, 2020 the AGCO released an *Industry Notice* which advised *inter alia*:

“The AGCO’s Equine Drug preliminary investigation has revealed a potential source: a product known as ZEV (Lot#190104 Exp:01-2022), an oral product used for the treatment of respiratory conditions - has tested positive for capsaicin and related compounds. It should be noted that capsaicin is not included in the list of active ingredients for ZEV.

Trainers and owners are advised to always use caution with all products administered to a horse. Not all ingredients which could result in positive tests may be listed on a product, and ZEV may not be the only source of a positive test.”

AND WHEREAS on October 6, 2020 the CPMA released a statement advising *inter alia*:

“Since June 2020, the Canadian Pari-Mutuel Agency (CPMA) has issued *Certificates of Positive Analysis* for capsaicin in all Canadian jurisdictions that raced.

When a cluster of positive cases is reported, the CPMA begins an investigation, in collaboration with the provincial regulatory bodies (PRB), to determine the source of the positive cases.

Investigations by PRB have revealed multiple possible sources for the positive tests, including trainers feeding cayenne pepper and capsaicin-contaminated supplements. However, the use of anti-chewing and cribbing products poses a low risk of causing a positive test for capsaicin.

PRB investigations have also revealed the undeclared presence of capsaicin in various regulated and unregulated supplements. Therefore, the CPMA has adjusted its testing criteria for capsaicin to reduce the likelihood that these products will cause a positive test result.”;

TAKE NOTICE that CHUDOBIAK is found to have violated 15.06.01 (a), (b) and 15.06.03 (c) of the Rules of Thoroughbred Racing.

TAKE NOTICE that pursuant to 15.04.02.2, 15.05.01, 16.13 (c), (d) and 24.01 of the Rules of Thoroughbred Racing and Policy Directive No. 1 – 2018, and having consideration for:

- The recent cluster of positive tests for capsaicin in Ontario and throughout Canada beginning in June, 2020;

- The identification of multiple possible sources for the positive tests including commonly used products such as ZEV and anti-chewing and cribbing products; and
- Confirmation from the CPMA that it has adjusted its testing criteria to reduce the likelihood of these same multiple sources causing positive tests in the future;

CHUDOBIAK is hereby given no suspension or monetary penalty.

TAKE NOTICE that in the absence of CPMA's retroactive application of the adjusted testing criteria and given the presence of the CPMA's positive test declaration, in accordance with 15.04.03 of the Rules of Thoroughbred Racing and Policy Directive No. 1 – 2018, "Snell Flicka" is hereby declared unplaced for all purposes with the exception of Pari-Mutuel Wagering and all purse money and jockey/trainer fees earned by "Snell Flicka" shall be returned and redistributed. The revised order of finish for race 7 at Fort Erie Race Track on June 20, 2020 is as follows:

- 1st - #7 About a Girl
- 2nd - #3 Fleck
- 3rd - #5 Anniversary Rose
- 4th - #1 Light of Congrats
- 5th - #4 Capoeira
- 6th - #2 Pasture Curfew
- Unplaced - #6 Snell Flicka

BY ORDER OF



David Phillips
Deputy Registrar

By Order of the Racing Officials
