

**BEFORE THE DISCIPLINARY COMMISSION
OF THE GYMNASTICS ETHICS FOUNDATION**

IN THE MATTER OF

Pastorelli Sport S.R.L.

Regarding Pastorelli's breaches of the FIG Apparatus Norms

A. Introduction

1. By letter dated 24 June 2019 (the "**Charge Letter**") the FIG opened a disciplinary procedure against Pastorelli Sport S.R.L. ("**Pastorelli**"), an Italian company that manufactures and sells apparatus and clothing for rhythmic gymnastics ("**RG**") and referred the matter to the Disciplinary Commission of the Gymnastics Ethics Foundation ("**GEF DC**").
2. In the Charge Letter the FIG alleged that Pastorelli had committed multiple and repeated violations of the FIG Apparatus Norms, Appendix 5, Code of Auto Discipline namely: (i) selling "FIG Certified RG Apparatus" without a valid certificate on at least 2 occasions, (ii) testing an apparatus and selling and/or deliberately offering a different apparatus or construction or modified apparatus than the tested prototype; (iii) making wrong statements to the FIG; (iv) selling, renting, sponsoring, offering, delivering, installing etc not certified apparatus for use at an FIG event and events where FIG certified equipment is required on at least two occasions; and (v) misleading advertising and unfair competition through improper use of the "FIG Approved" logo.
3. Pastorelli served its statement of defence in response to the Charge Letter on 22 August 2019.
4. The hearing took place at the FIG's offices in Lausanne on Monday 2 September 2019. Mr Guiseppe Pastorelli attended the hearing on behalf of Pastorelli together with Avv. Cristiano Locci, a lawyer representing Pastorelli and Dott.ssa Cristiana Angelini, who acted as interpreter. André Gueisbuhler, former Secretary General of the FIG, attended the

hearing on behalf of the FIG. During the hearing the GEF DC heard oral submissions on behalf of the FIG from Mr Gueisbuhler and from Mr Pastorelli and Avv. Locci on behalf of Pastorelli. The present decision of the GEF DC is based on the material and information that had been made available to it including the Charge Letter, Pastorelli's statement of defence and the submissions made, and information provided by, both parties during the hearing.

B. Summary of Facts

This section of the decision does not contain an exhaustive list of the facts or the parties' submissions, its aim being to provide a summary of the facts and submissions that were made. In considering and deciding this case, the GEF DC has accounted for and carefully considered all of the submissions made and evidence adduced during this procedure, including allegations and arguments not mentioned in this section or in the discussion of the issues below.

5. In February 2016 the FIG approved changes to the Apparatus Norms for all RG handling apparatus effective from 1 January 2017. The changes required that all RG handling apparatus be marked with the FIG approved logo and that all senior hoops must weigh a minimum of 300g without wrapping. Although the changes came into effect on 1 January 2017, the FIG agreed that RG apparatus manufacturers would be allowed a transition period of 12 months to 1 January 2018 in which to adapt their products and renew their apparatus certificates.
6. Pastorelli have held RG apparatus certificates for many years including certificates for hoop. In October 2016 Pastorelli renewed 9 of its RG apparatus certificates. In March 2018 Pastorelli renewed a further 6 certificates and on 18 June 2018 it obtained 15 new certificates. On each occasion the certificates were renewed following a written declaration from Pastorelli stating: "*We confirm that our apparatus has been adapted to the Apparatus Norms valid today.*" Since 18 June 2018, Pastorelli has held 4 certificates for senior hoop – three certificates for a hoop of 89cm in diameter and with weights of 302g, 304g and 305g respectively and one certificate for a hoop of 80-81cm in diameter and a weight of 302g. These certificates are all for hoops to be used for senior gymnasts who are required to have a hoop with a minimum weight of 300g unwrapped. The minimum weight requirement for junior gymnasts is 260g unwrapped.
7. The FIG claimed that Pastorelli had not adapted its RG apparatus to the new Apparatus

Norms when each of these declarations was made and that accordingly each of these declarations was incorrect at the time they were. Pastorelli denied this and stated both in writing and verbally during the hearing that all of its apparatus had been adapted to the new FIG Apparatus Norms as from 1 January 2018.

8. In April 2019 a FIG Rhythmic Gymnastics World Cup event took place in Pesaro, Italy (the “**Pesaro Event**”). Mr Daniel Fesser, FIG Apparatus Commissioner from the FIG Testing Institute in Freiburg attended the Pesaro Event for the express purpose of checking the apparatus used by the participating gymnasts, both individual and group. Mr Fesser found that a number of Pastorelli hoops did not comply with the FIG Apparatus Norms, with the main issue being that the hoops were too light and did not weigh the required minimum 300g without wrapping.
9. Following receipt of Mr Fesser’s report into his findings, the FIG wrote to those federations whose gymnasts’ hoops had failed testing at the Pesaro Event and requested information regarding the purchase of the hoops. Answers were received from 4 federations – Japan, Belarus, Australia and China. The Japanese federation explained that the hoops were purchased from Pastorelli either at the 2018 World Championships in Sofia or at the Pesaro Event and provided receipts to support this explanation. The Belarus federation explained that they had purchased their hoops from Pastorelli in February 2019 at the Italian Championships Seria A but were unable to provide a receipt. The Australian federation explained that they had purchased their hoops from a Pastorelli supplier in Australia in 2018 and the Chinese federation explained that their gymnast’s hoop had been given to her as a gift whilst she was training in Russia in February-March 2019.
10. On 8 April 2019 the FIG wrote to Pastorelli and asked them to explain why they were selling apparatus that was not in accordance with the FIG Apparatus Norms. Pastorelli responded on the same day stating that the hoops in question were probably “*old Hoop, produced before the entry of new rules FIG*”. In its 8 April email Pastorelli also said: “*according our last conversation in Sofia, and according your consult, we have differentiate and wried SR om senior hoop (at least 300 gr without adhesive) and request new addition certificate for JR hoop (min 260 gr) to be discussed in June 2019 to the attention of Rg commission.*” Pastorelli sent a further email to the FIG on 10 April 2019 in which it said: “*we confirm that from 1 January 2018 we have just produced hoop min 300 gr for Senior and presented to FIG (but just in december 2018) new request of certificate for junior hoop of at least 260 gr (to be discussed in June 2019).*” Pastorelli also said in

that email that during the Pesaro Event most of the teams had visited its stand and admitted that they hoops were purchased from distributors and not from Pastorelli a “*long time ago*”.

11. At the hearing and in its statement of defence, Pastorelli’s position was that (i) there was no clear evidence as to when the failed hoops were actually acquired, and (ii) they cannot be held responsible for the actions of third party suppliers, such as the Australian supplier who supplied hoops to the Australian group and that do not have a distribution contract with Pastorelli. Moreover, sometimes individuals purchase hoops to sell them on to other buyers, not through any stores.
12. In April 2019, the Estonian Gymnastics Federation asked the FIG whether the Pastorelli Rodeo 85cm hoops which they had purchased and which were stamped “FIG-Approved” were in fact FIG Approved. Pastorelli do not hold a certificate for an 85cm hoop. Pastorelli’s position on this issue is that there was no evidence that the Estonian federation had purchased hoops from Pastorelli directly as no invoice was provided and that it was unclear from the photograph provided by the Estonian federation whether the hoop was actually 85cm in diameter.
13. In May 2019 the European Championships for Rhythmic Gymnastics took place in Baku, Azerbaijan (the “**European Championships**”). A number of the junior teams competing at the European Championships learned upon arriving at the Championships that their Pastorelli hoops and in at least one instance, Pastorelli ribbons, which bore an “FIG Approved” logo were not in fact FIG Approved and therefore could not be used during the Championships. The Federations concerned include Switzerland, who had purchased hoops and ribbons through a distributor (Carla Sport), Israel, who had purchased their hoops directly from Pastorelli in November 2018 and Greece who had purchased hoops through a third party. Pastorelli acknowledged during that hearing that it had advertised and sold hoops to a number of federations as “FIG Approved” which were not in fact FIG approved as the hoops in question weighed less than 300g and Pastorelli do not hold a certificate for a hoop weighing less than 300g. During the hearing Mr Pastorelli claimed that the hoops with a weight of less than 300g had been marked FIG Approved as he had mistakenly believed that the 4 certificates he had for senior hoops could also be used for junior hoops which have a minimum weight requirement of 260g. According to Mr Pastorelli he did not understand that he required new certificates for hoops weighing less than 300g and sold as junior hoops.

14. Some of the Federations, for example Israel, who experienced problems with Pastorelli hoops in Baku, had purchased their hoops directly from Pastorelli. Although the Swiss Federation, had purchased its hoops through a distributor, the hoops (and ribbons which were also non-compliant) were supplied to it directly by Pastorelli.
15. The FIG also complained that Pastorelli was offering and selling Pastorelli apparatus through its retailer, Carla Sport, in Switzerland as FIG Approved which was not FIG Approved. Pastorelli acknowledged that there were a number of errors in the Carla Sport catalogue but explained that it had not approved the catalogue before it was published and submitted that in any event it could not be held responsible for the actions of third party suppliers over whom it had not control and who, it claimed, may be selling old equipment that had been manufactured prior to 2018. Pastorelli also explained that it has no formal contractual arrangements with any distributor or third party, including Carla Sport, with the exception of a single company in Russia. However Pastorelli also acknowledged that prior to May 2019 it had not contacted any of the distributors who advertise and sell its products to update them about the new FIG Apparatus Norms. Pastorelli also acknowledged during the hearing that it had failed to update its own website for more than one year after the new Apparatus Norms came into effect.
16. The FIG also complained that Pastorelli was using the logo “FIG Approved” at the bottom of each page of the website in breach of the FIG Rules. In fact the logo “FIG Official Partner” appears at the bottom of each page of Pastorelli’s website. The FIG Apparatus Norms permit Pastorelli to use this logo.

C. Merits

17. Pastorelli acknowledged during the hearing that it had breached the Apparatus Norms. Specifically it acknowledged that it had sold hoops to a number of federations which were not FIG Approved and for which it did not have any valid certificate. Pastorelli claimed in its’ written defence and also at the hearing that this because Mr Pastorelli had mistakenly believed that the certificate Pastorelli had received for the senior hoop could also be applied to the junior hoop. According to Mr Pastorelli he did not understand that he required a new certificate for the junior hoop.
18. Pastorelli also acknowledged during the hearing that some of the hoops tested at the Pesaro Event did not comply with the FIG Apparatus Norms. It further acknowledged and accepted that (i) it had failed to update its website on a timely basis, (ii) even as at the date of the hearing

the website contained errors, (iii) it had failed to keep third party sellers and distributors of Pastorelli products up to date with the changes to the FIG Apparatus Norms; and (iv) it has no control over apparatus once it is sold to a third party distributor or buyer and that it has no general sales conditions for third party distributors or buyers warning them that the FIG Apparatus Norms might apply and that the FIG Apparatus Norms may change from time to time.

19. Mr Pastorelli's claim that he had mistakenly believed that the certificates for the senior hoops could also be used for the junior hoops is undermined by his emails to the FIG dated 8 and 10 April 2019 in which he states that he intends to apply for a certificate for junior hoop. Further, Pastorelli has been an Official FIG Partner, it has held RG Apparatus Certificates for many years and holds 4 Certificates for hoop alone each with a different weight and/or diameter. In these circumstances the suggestion that Pastorelli was not aware that it required a new certificate for a hoop weighing less than 300g lacks credibility. However, in light of Pastorelli's acknowledgement that it has breached the Apparatus Norms the GEF DC do not need to consider this aspect any further.
20. There can be no doubt that the Pastorelli's conduct in offering, selling and labelling hoops as FIG Approved in circumstances where it held no valid certificates for the hoops in question was, at best, careless and that it caused damage and distress to the Federations and gymnasts who were affected. Not only did replacement apparatus have to be purchased, in at least one case at an exorbitant price, but the need for last-minute replacement of apparatus would have placed those gymnasts who were competing at the European Championships under additional and unnecessary pressure.
21. The Charge Letter alleges that Pastorelli repeatedly violated the FIG Apparatus Norms. As regards the alleged violations, the GEF DC finds as follows:
 - a. *Selling "FIG Certified RG apparatus" without a valid certificate (2 offences):* Pastorelli violated the Apparatus Norms when it sold RG apparatus as FIG Approved without a valid certificate. Pastorelli has committed two offences. The first offence occurred when Pastorelli sold non-FIG Approved equipment to the Japanese team either at the 2018 World Championships in Sofia or at the Pesaro Event. The Japanese team have produced receipts for both purchases which prove that the hoops were purchased from Pastorelli after the new Apparatus Norms came into effect. The second offence occurred when Pastorelli sold or offered to sell 150 hoops marked as "FIG Approved"

to the Israeli Federation in November 2018 which were not in fact FIG Approved as they did not meet the requirements of the certificates that Pastorelli hold for hoop.

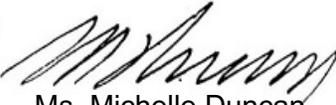
- b. *Testing an apparatus and selling and/or deliberately offering a different apparatus or construction or modified apparatus than the tested prototype:* The FIG did not produce any evidence to contradict Pastorelli's assertion that all of its apparatus had been adapted to the new FIG Apparatus Norms as from 1 January 2018 and accordingly the charge is rejected.
- c. *Wrong statements to the FIG:* Pastorelli's October 2016 declaration in which it stated that its apparatus had been adapted to the new Apparatus Norms was not incorrect because as at 24 October 2016 when the declaration was signed, the new Apparatus Norms had not become effective. Pastorelli's March and June 2018 declarations were also not incorrect because as at the date those declarations were signed the items to which the certificates related had been adapted to comply with the new Apparatus Norms. The FIG did not produce any evidence to contradict Pastorelli's assertion that all of its apparatus had been adapted to the new FIG Apparatus Norms as from 1 January 2018.
- d. *Selling, renting, sponsoring, offering, delivering, installing etc not certified apparatus (not certified at all, expired certificate or different apparatus from the tested one) for use at a FIG event and events where FIG certified equipment is requested (2 offences):* This charge is accepted. Pastorelli acknowledged in their statement of defence that hoops bearing the logo "FIG Approved Junior" were being purchased for use by junior gymnasts at the European Championships. Although hoops were sold to a number of federations, the GEF DC considers this to be a single offence.
- e. *Misleading advertising and unfair competition through improper use of the "FIG Approved" logo:* This allegation was not proven. The logo which appears at the bottom of the page on Pastorelli's website says "FIG Official Partner" and not FIG-Approved. The Apparatus Norms, Appendix 1 permit Pastorelli to describe itself as a FIG Official Partner.

For all the above reasons, the FIG Disciplinary Commission decides as follows:

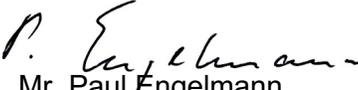
- 1. Pastorelli is warned and fined (i) CHF 2000 for selling FIG Certified Apparatus to the Japanese federation either at the 2019 World Cup in Pesaro or at the 2018 World Championships in Sofia without a valid certificate, and (ii) CHF 5000 for selling FIG Certified Apparatus to the Israeli federation in November 2018 without a valid certificate. The fine is to be paid to the FIG Foundation.**
- 2. Pastorelli is warned and fined CHF 3000 for selling non-certified apparatus for use at an FIG event and/or events where FIG certified equipment is requested. The fine is to be paid to the FIG Foundation.**
- 3. Pastorelli must replace at its own cost all apparatus sold to clients, either directly or indirectly, who in good faith purchased “FIG Approved” Apparatus from Pastorelli that does not comply with the FIG Apparatus Norms.**
- 4. Pastorelli is warned for its delay in updating third party distributors of Pastorelli RG handling apparatus of the changes to the FIG Apparatus Norms which took effect in January 2018 and its failure to require that third party distributors immediately stop advertising or selling apparatus manufactured prior to 1 January 2018 and/or advertising such apparatus as FIG Approved.**
- 5. Pastorelli is warned for its failure to promptly update its website in January 2018 when the new FIG Apparatus Norms came into effect. Pastorelli is required to immediately update its website and to ensure that only RG Handling Apparatus for which a certificate has been issued are advertised as FIG Approved. The GEF DC also recommends that Pastorelli should amend its website, brochures, catalogues and the like to include a warning that certain of its apparatus are subject to the FIG Apparatus Norms which may change from time to time.**
- 3. Pastorelli is ordered to pay the FIG’s and the GEF DC’s costs of these proceedings.**
- 4. This decision is to be published in the FIG bulletin and on the FIG website.**

Lausanne, 26 September 2019

Gymnastics Ethics Foundation FIG Disciplinary Commission



Ms. Michelle Duncan
President



Mr. Paul Engelmann
Member



Mr Matthias Scherer
Member

Notice of Appeal

(Article 30, 2019 FIG Code of Discipline)

Appeal proceedings before the Gymnastics Ethics Foundation (“GEF”) Appeal Tribunal

With the exception of decisions and sanctions rendered in connection with the FIG Anti-Doping Rules and the WADA Code including its international standards, which may be appealed directly to the CAS, and unless provided otherwise in specific provisions, only the decisions rendered by the Disciplinary Commission may be appealed to the Appeal Tribunal.

Only the Parties directly involved in the proceedings shall be eligible to lodge an appeal to the Appeal Tribunal.

Upon request of a majority of the Executive Committee or of the FIG President, the FIG shall in all cases be eligible to lodge an appeal. The appeal shall be lodged by the FIG Secretary General. Likewise the majority of the Council of the Gymnastics Ethics Foundation or its President shall be eligible to lodge an appeal in all cases. Appeals of the Gymnastics Ethics Foundation shall be lodged by its Director.

In order to be admissible, the appeal shall be lodged in writing and contain:

- the factual argument
- the reasons for the appeal
- the submission of any and all means of proof relied upon by the Appellant or an offer to submit any and all means of proof (such as the request for the hearing of witnesses or the request for an independent expert)
- the request of a hearing if wished so by the Appellant
- the conclusions of the Appellant

If the Appellant wishes to call witnesses or experts, a hearing shall be held.

Once his/her statement of the case is submitted, the Appellant shall not be authorised to produce new means of proof unless he/she justifies that he/she has not been able to do so for reasons beyond his/her control or his/her behest. The Appeal Tribunal may automatically conduct the necessary investigations.

The appeal shall be signed by the Appellant and sent in writing to the Director of the Gymnastics Ethics Foundation to the attention of the Appeal Tribunal within 21 days from the notification of the decision rendered by the Disciplinary Commission.

Should the appeal be submitted by email it shall be admissible provided that it contains an electronic signature officially certified and dated via a secure server.

Should the appeal be sent by mail, it shall be delivered to a Swiss post office at the latest by midnight of the last day of the time limit or be delivered at the Office of the Gymnastics Ethics Foundation, at the attention of the Appeal Tribunal during its usual opening hours not later than the last day of the time limit.

The Appellant is responsible for showing proof, within a time limit to be determined by the President of the Appeal Tribunal, that his appeal has been lodged in due time, otherwise, the appeal shall be considered inadmissible.

In order for the appeal to be admissible, the Appellant shall transfer in advance the expenses of CHF 5,000.- onto the account of the Gymnastics Ethics Foundation at the same time the appeal is lodged or at the latest by the end of the appeal deadline. This amount shall be refunded to the Appellant if his appeal is granted. It shall be kept by the Gymnastics Ethics Foundation if the appeal is considered inadmissible or is fully or partly rejected. The Gymnastics Ethics Foundation is exempt from the obligation to pay the expenses in advance for its appeal.