

THE AMERICA'S CUP ARBITRATION PANEL

ACAP 02/

APPLICATION FILED BY TEAM DENNIS CONNER ON BEHALF OF THE NEW YORK YACHT CLUB ON ARTICLE 11.5 OF THE PROTOCOL GOVERNING THE XXXI AMERICA'S CUP

Auckland, 26TH September 2002.

1. INTRODUCTION.

This submission is being made by Team Dennis Conner, (TDC) on behalf of New York Yacht Club (NYYC) pursuant to Article 11.5 of the Protocol and decision 02/05 of the America's Cup Arbitration Panel.

2. THE FACTS.

The following are the relevant facts:

- On June 17th 2002, TDC engaged Mr. Noel Drennan as a sailing coach.
- Today, September 26th 2002, TDC has learned that Mr. Drennan was declared by Illbruck Challenge for the America's Cup (Illbruck Challenge), on May 25th 2001, both as a crew and designer while Mr. Drennan was training for the Volvo Ocean Race in Charleston, NC.
- Today, September 26th 2002, TDC communicates to the America's Cup Arbitration Panel by the present application the above mentioned facts along with the team's statements and conclusions.

TDC presents this situation immediately to the ACAP and indeed the same day TDC became aware of the relevant facts for the ACAP consideration.

3. TEAM DENNIS CONNER STATEMENTS.

- Prior to the engagement of Mr. Drennan by TDC, TDC specifically questioned Mr. Drennan if he had participated in the design process of Illbruck Challenge or if he had been declared as a designer by Illbruck. Mr. Drennan responded by stating that that was not the case in both instances.
- Prior to the engagement of Mr. Drennan by TDC, TDC also questioned Mr. Glen Bourke, former Challenger Representative of Illbruck, if himself or Mr. Drennan had participated in the design process of Illbruck Challenge or if he had been declared as a designer by Illbruck. Mr. Bourke responded by stating neither he nor Mr. Drennan participated in the design process of Illbruck Challenge nor were they declared as designers.

- Mr. Drennan has never participated in any manner in the design process of the hull, appendages, rig and sails of either USA-66 or USA-77 and has worked for TDC for 3 months and 9 days as a Sailing Coach.

4. AFFIDAVITS IN SUPPORT OF THE ABOVE STATEMENTS.

The following are affidavits in support:

- Mr. Drennan's affidavit stating that he had no knowledge upon his engagement by TDC of the fact that he had been declared as a designer by Illbruck and that he has done no design work either for Illbruck Challenge or for TDC. Furthermore Mr. Drennan states that he has no technical knowledge which would make him capable to design any ACC hull, appendages, rig or sails and that he is known to be both a sailor and a sailmaker and has worked for the past 3 months and 9 days as a sailing coach.
- Mr. Bourke's affidavit stating that he, as former Challenger Representative of Illbruck, had no knowledge of the fact that Mr. Drennan had been declared as a designer by Illbruck and that Mr. Drennan was not part of the Illbruck Challenge design team.
- Mr. JB Braun's affidavit stating that he, as chief sail designer of TDC, has personally designed most of TDC sails well before the engagement of Mr. Drennan and that Mr. Drennan has never participated in any manner on the design of TDC's sails since his engagement.
- TDC is ready to provide to the ACAP, subject to privacy laws and under confidentiality of the non-relevant clauses, the agreement signed amongst Team Dennis Conner Corp. and Mr. Drennan as a sailing coach.

5. THE APPLICABLE RULES.

Article 11.5 of the Protocol states as follows:

“11.3 The Second 1990 Resolutions are altered so that:

(a) Each Challenger and Candidate for the Defence of the Cup shall submit to RNZYS the names and the details of the designers of the hull, appendages, rig, and sails of its yacht who satisfy the conditions of nationality for more than one country and who elect and declare their nationality as that of the country in which the particular Challenger or Candidate for the Defence is located:

(i) by 30 August 2001 where a person has been engaged as such a designer on or before that date; and

(ii) not more than 10 days after the date of engagement where a person has been engaged as such a designer after 30 August 2001.”

When this article uses the words ***“who elect and declare their nationality”*** it is clearly referring to the ***“designers of the hull, appendages, rig and sails”*** therefore it is of principal importance to signify that it is the individual designer, not the Challenger, who has to elect and declare his or her nationality and precisely the individual, the sole person, who can make that election and declaration.

Those two elements (election and declaration of nationality by the designer) are the prerequisites of the Challenger submission of the names of the dual nationality designers.

In our case Mr. Drennan not only never elected nor declared his German over his Irish nationality but also was never informed of the fact that Illbruck Challenge had done that declaration in his absence.

It is our opinion that the Protocol does not authorise the Challengers or Candidate for the Defence to elect and declare on behalf of the designers their nationality and that the Protocol only allows for the Challenger or Candidate for the Defence to submit those prior declarations.

Article 11.5 of the Protocol states as follows:

“11.5 A designer, as more particularly defined in “The 1996 Resolutions”, may only design or be engaged, or associated in any other capacity, for one Challenger or one Candidate for the Defence (but not both), from the date of the Final Race in 2000 until the conclusion of the Match.”

To this respect the 1996 Resolutions define the term “designer” as follows:

“A designer in relation to a yacht, its hull, rig, appendages and sails, is any person who applies or who has applied substantial intellectual creativity and/or judgement to the determination of the shape and/or structure of that yacht, its hull, rig appendages or sails.”

On the interpretation of this article of the Protocol and the ACAP has very recently affirmed in Decision 02/5 that:

“In substance, the Protocol aims at making sure that the yachts hull, deck, appendages, rig and sails are designed by persons who are nationals of the relevant country throughout the entire Match.”

Considering all the above, It is TDC claim that that:

1. Mr. Drennan elected and declared his nationality as a crewmember but not as a designer.
2. The submission of Illbruck Challenge was not consistent with a prior election and declaration by Mr. Drennan.

3. The letter and spirit of the Deed of Gift and the aim of the Protocol has been fully respected at all times by TDC despite the engagement of Mr. Drennan as sailing coach.
4. Mr. Drennan has been misled by Illbruck Challenge on the status of his nationality declaration as a designer and as a result he could face a substantial loss both for his family and for himself which TDC finds both undesirable and unnecessary.

SUBMISSIONS IN CONCLUSION FOR CONSIDERATION BY THE ACAP.

In view of all the above, Team Dennis Conner on behalf of the New York Yacht Club respectfully submits to the America's Cup Arbitration Panel to answer the following:

- Is the letter and spirit of the Deed of Gift plus the aim and intent of article 11.5 of the Protocol always been fully respected by TDC / NYYC despite the engagement of Mr. Drennan as a sailing coach?
- Do USA-66 and USA-77 with its appendages, rigs and sails comply with the nationality requirements and intent of the Deed of Gift and the Protocol despite the engagement of Mr. Drennan as a sailing coach?
- Is TDC able to continue its engagement with Mr. Drennan as a sailing coach because Mr. Drennan never elected nor declared his nationality as a designer nor did any design work either for Illbruck Challenge or for TDC?

INTERIM SUBMISSION.

- Does TDC need to suspend its engagement with Mr. Drennan in the interim of the final Decision from the ACAP?

On behalf of Team Dennis Conner / New York Yacht Club



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Affidavit of Noel Drennan

I, Noel Drennan, swear:

I am a sailing coach for Team Dennis Conner in its 2003 campaign to challenge for the America's Cup since June 17th 2002.

I have read the TDC application on Article 11.5 of the Protocol involving myself.

I have personal knowledge of some of the facts relating to the TDC application.

Statements

I had no knowledge of the fact that Illbruck Challenge had declared me as a designer.

Furthermore I never elected nor declared my nationality as a designer for the XXXI America's Cup and Illbruck's submission was unbeknown to myself until this very day.

I was not a member of Illbruck Challenge design team, I never participated in any design work for Illbruck Challenge and never attended any team design meetings.

Before my engagement with TDC around March 2002, after consultation of the America's Cup Protocol and upon my specific request, I was assured by the Illbruck CEO Mr Bourke on a team meeting specifically dealing with the withdrawal of Illbruck and the compensations paid to the former team members that I had not been declared as a designer.

Furthermore, Illbruck Challenge had an special compensation for the designers on their withdrawal from further competition upon the understanding that those individuals could not participate in any other America's Cup campaigns. I was not consulted nor received this special compensation for the members of the design team.

Upon TDC's request prior to my engagement I declared to TDC that I had done no design work for Illbruck Challenge and that I had not been declared as a designer for Illbruck Challenge.

I have no technical knowledge which would enable me to design any ACC hull, appendages, rig. In addition, I lack the technical capabilities required to design ACC sails.

I am a sailor and a sailmaker and have only worked for TDC in the capacity of sailing coach both for the America's Cup Campaign and for Dennis Conner training to defend the Echells world title next month here in New Zealand.

SWORN at Auckland this 26th day September of 2002 (signed on the original).

Affidavit of Glen Bourke

I, Glen Bourke, swear:

I have been Challenger Representative of Illbruck Challenge and I am now working as a coach and sailing team manager for Team Dennis Conner in its 2003 campaign to challenge for the America's Cup.

I have read the TDC application on Article 11.5 of the Protocol and Mr. Noel Drennan.

I have personal knowledge of some of the facts relating to the TDC application.

Statements

I had no knowledge of the fact that Illbruck Challenge had declared Mr. Noel Drennan as a designer.

It was my full understanding that Mr. Drennan was declared as a sailor but not as a designer for Illbruck Challenge.

Upon TDC's request prior to my engagement I declared to TDC that neither myself nor Mr. Drennan had done no design work for Illbruck Challenge and that neither of us had been declared as a designer for Illbruck Challenge.

I know that Mr. Drennan did not form part of Illbruck design team, nor did any design work for Illbruck Challenge.

Illbruck did not even start the sail design program and has not built a single sail for its America's Cup campaign.

SWORN at London this 26th day September of 2002 (signed on the original).

Affidavit of JB Braun

I, JB Braun, swear:

I am a principal sail designer for Team Dennis Conner in its 2003 campaign to challenge for the America's Cup.

I have read the TDC application on Article 11.5 of the Protocol and Mr. Noel Drennan.

I have personal knowledge of some of the facts relating to the TDC application.

Statements

I have personally designed most of TDC sails well before June 17th 2003, date of engagement of Mr. Drennan.

Since Mr. Drennan's engagement with TDC, Mr. Drennan has never participate in any manner whatsoever in the design process of TDC sails which I have personally designed in its totality.

SWORN at Auckland this 26th day September of 2002 (signed on the original).

ADDRESS LIST FOR SERVICE OF DOCUMENTS

Initial Challenger of Record

Yacht Club Punta Ala/Prada America's Cup Challenge

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CORM

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Challengers

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Seattle Yacht Club/One World Challenge

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