



AMERICA'S CUP 32

AMERICA'S CUP JURY JURY NOTICE JN029 Jury Decision ACJ013



3rd October 2005
3 pages

United Internet Team Germany Application – 2 Questions

Applicant: United Internet Team Germany on behalf of Deutscher Challenger Yacht Club ('UITG')

IN THE MATTER of the Protocol governing the 32nd America's Cup

AND

IN THE MATTER of an Application filed by UITG concerning Article 13 of the Protocol.

The Application

[1] A question was received from UITG on 13th September 2005 which the Jury accepted as an Application.

[2] The Application asked:

'UITG intends to purchase used sails from other syndicates. These sails will be used by UITG as exercise/practice/training sails only to save the new sails for sailing the Act's. Since a matter like that is not covered explicitly in §13 of the Protocol we ask you either for a clarification or the permission to go forward with our plans.' ('Question 1').

[3] A further question was filed by UITG on 15th September 2005 which the Jury accepted as a further Application.

[4] The further Application asked:

'UITG intends to employ a former employee of a mast maker for its own mast projects. His main task would be the supervision of the production of new masts and maintenance, modification, and repairs of existing masts.

His role during his former occupation included the composite assembly of AC masts including joining the shells as well as fabricating and fitting the internal and external components and drafting drawings for carbon fitting details and other components.

Since a matter like that is not covered explicitly in §13 of the Protocol we ask you either for a clarification or the permission to go forward with our plans.' ('Question 2').

[5] The Jury decided to deal with the Applicant's two questions by this single Case.

Jury Notice JN028

- [6] On the 18th of September 2005 the Jury issued Jury Notice JN028.
- [7] Jury Notice JN028 gave notice of the Application. UITG was directed to provide by 23rd September 2005 more detailed information concerning the work done by the 'former employee' referred to in Question 2.
- [8] The Jury set a timetable of 25th September for any responses to Question 1.
- [9] The Jury set a timetable in regard to Question 2 of within 5 days of the receipt by parties of the more detailed information referred to in paragraph (7) above.

UITG Provision of Additional Information

- [10] On the 22nd September 2005 a more detailed description of the work carried out by the person UITG intended to employ in terms of Question 2 was received from UITG. It was distributed to all Parties on the Service Address List.
- [11] As a consequence of the timetable provided for in Jury Notice JN028, Parties had until 27th September 2005 to respond with regard to Question 2. No responses were received.

Question 1 Decision

- [12] Article 13.6 of the Protocol provides that:

 ' ... Competitors ... shall not share or exchange ACC design or performance information or equipment except hardware (not being Hulls, deck, cockpits, mast tubes, appendages or sails) ...'
- [13] Article 13.8(a) of the Protocol provides that:

 '... a Competitor may acquire an old ACC Yacht or any of its components, that was constructed prior to the last race of the 31st America's Cup match (2 March 2003) ...'
- [14] There is no prohibition on the acquisition of sails constructed prior to the last race of the 31st America's Cup match (2 March 2003).
- [15] To acquire from another ACC syndicate sails constructed after the last race of the 31st America's Cup match would breach Article 13.6 of the Protocol, as sails constitute equipment within the meaning of Article 13.6.
- [16] UITG would breach Article 13.6 of the Protocol if they purchased used sails from other ACC syndicates constructed after the last race of the 31st America's Cup match.

Question 2

- [17] UITG have advised that they will make a request today to file additional information or new evidence concerning Question 2. The Jury will consider this request as soon as it is received and will provide further directions by way of a Jury Notice.

Question 1 Ruling Summary

[18] The acquisition of sails constructed after the last race of the 31st America's Cup match would breach Article 13.6 of the Protocol. As a result, in answer to Question 1, UITG would be in breach of Article 13.6 of the Protocol if they purchased from other ACC syndicates used sails constructed after the last race of the 31st America's Cup match (2 March 2003).

Costs

[19] The Award of Costs will be addressed when Question 2 is answered.

A handwritten signature in black ink that reads "Bryan Willis". The signature is written in a cursive style with a large, looping initial "B".

Bryan Willis
Chairman

America's Cup Jury:
Gabrielle Kaufmann-Kohler, Graham McKenzie, Henry Menin, David Tillett, Bryan Willis.