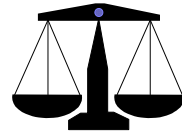




# AMERICA'S CUP 32

## AMERICA'S CUP JURY JURY NOTICE JN039



25<sup>th</sup> June 2006  
Mascalzone Latino - Capitalia Team  
APPLICATION ACJ015 - DECISION

4 pages

To: Challengers and Defender, ACM, Chief Measurer (“Parties”)

**Applicant: Mascalzone Latino-Capitalia Team on behalf of Reale Yacht Club Canottieri Savoia (“Mascalzone Latino-Capitalia”)**

**An Application in respect of the Protocol governing the 32<sup>nd</sup> America’s Cup**

**AND**

**An Application filed by Mascalzone Latino-Capitalia pursuant to Article 10.13 of the Protocol concerning the branding of yachts**

### **The Application**

[1] On the 2<sup>nd</sup> June 2006 an Application was filed by Mascalzone Latino-Capitalia requesting approval for branding of the yachts named Mascalzone Latino-Capitalia pursuant to Article 10.13 of the Protocol.

### **Directions and Timetable**

[2] On the 4<sup>th</sup> June, the Jury issued Jury Notice JN038, which provided directions and a timetable in respect of the Application. Jury Notice JN038 provided:

*[1] Mascalzone Latino on 2nd June 2006 filed on the Americas Cup Jury Electronic case facility (ECAF) a submission requesting approval for branding of the yachts named Mascalzone Latino. It has been allocated the case number ACJ015.*

*[2] The submission was made pursuant to Article 10.13 of the Protocol. The submission also included 3 exhibits showing the proposed branding, the layout with the measurements of the branding on the hull, deck and mainsail and the ACPI approved Team Mark.*

#### *Directions and Timetable*

*[3] Parties wishing to respond to the submission, must do so via ECAF by the 9th June 2006.*

*[4] Submissions in response are requested to include views on whether or not a colour itself constitutes advertising on the main<sup>1</sup> sail with reference to the definition of*

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<sup>1</sup> Errata: ‘main’ was spelt ‘mail’ in error in the original document.

*Advertising contained in Article 1.1 of the Protocol and in the context of Articles 10.8 to 10.10 of the Protocol.*

*[5] Mascalzone Latino may respond to any submissions by the other Parties by the 14<sup>th</sup> June 2006.*

*[6] The Jury has set a reasonably tight time table as Mascalzone Latino wishes to use the proposed branding in the next Act 12 Regatta commencing 22nd June. If any Parties consider they do not have sufficient time to file a submission, they may file a request to the Jury requesting additional time with supporting reasons for such request.*

*No Further responses*

*[7] Unless new or unexpected matters arise, it is not intended that there will be any further opportunities to respond to this Application other than as provided for within the above timetable.*

### **Submission by Mascalzone Latino-Capitalia**

[3] Mascalzone Latino-Capitalia submitted that ‘the colour itself cannot be considered advertising, based on Article 1.1(d) and by analogy with what is provided in Articles 10.8(b) and 10.9(b) in connection with the hull and deck which read ‘colours or combination of colours, and such colour schemes shall not constitute advertising’.

### **Submission by Areva Challenge**

[4] On the 9<sup>th</sup> June, Areva Challenge as representative of le Cercle de la Voile de Paris (“Areva”) filed a submission in support of the Application.

[5] Areva submitted that the use of background colour does not of itself constitute “Advertising” as defined in Article 1.1(d) of the Protocol.

[6] Areva further submitted that the language of Articles 10.8(b) and 10.9(b) of the Protocol is intended to permit the free use on hulls, decks and cockpits of colours in patterns, or of multiple colours. That language should not be considered as implying that in the absence of such a provision in Article 10.10(a) colour used as a background on a mainsail would be Advertising.

[7] Photographic examples were included in the Areva submission of a number of America’s Cup yachts that use large areas of single colour as a background around Advertising on their mainsails.

### **No other Parties Submissions**

[8] No other Parties filed a submission in response to Jury Notice JN038.

### **Mascalzone Latino-Capitalia's Submission in Response**

[9] On the 14<sup>th</sup> June Mascalzone Latino-Capitalia filed a submission in reply supporting the Areva submission.

[10] Mascalzone Latino-Capitalia submitted that in respect of costs of the Application, the Jury should take into account the possible benefit of the Application for Competitors as a whole and award minimal or no costs.

[11] Mascalzone Latino-Capitalia subsequently informed the Jury Chairman that a decision was no longer urgent, and accepted an offer from the Jury Chairman that in order to minimise cost, the Jury could delay consideration of the Application until they were on site in Valencia for Act 12.

## **Decision**

[12] Articles 10.8(b) and 10.9(b) of the Protocol provide that with regard to the hull, deck and cockpit respectively, they “ ... may be of any colour or combination of colours, and such colour schemes ... shall not constitute advertising”. Notwithstanding that such words are not included in Article 10.10(a) in respect of mainsails, the Jury considers that clause 10.10(a) should not be construed as prohibiting background colour on mainsails.

[13] Article 10.10(a) restricts the area on a mainsail on which Advertising is permitted.

[14] The Jury determines that in respect of the artwork depicted in the Application, the moon in the square is a logo and “Capitalia” is the name of an organisation, and both constitute Advertising.

[15] When a rectangle is placed around each of the logo and the name, the total area does not exceed forty two (42) square metres, and both the logo and the name are positioned within the seven (7) metre line requirements of Article 10.10(a).

[16] The Jury recognises that colour can be an important element of a logo or name, but colour on its own does not constitute Advertising.

[17] On the evidence and having regard also to publicly available information, the Jury notes that the ‘red’ colour background proposed is not used at all times by Capitalia in their advertising. The Jury determines that with regard to this particular Application, the usage of the background colour proposed does not constitute Advertising.

[18] In reaching its decision, the Jury is mindful of the need for Competitors to advertise to satisfy the needs of sponsors to enable them to participate in the Event and “ ... to realise the sporting and commercial potential of the America’s Cup ...” (Article 2 of the Protocol).

[19] Pursuant to Article 10.13 of the Protocol the Jury approves the branding as submitted in Mascalzone Latino-Capitalia’s Application dated the 2<sup>nd</sup> June 2006.

## **Costs**

[20] In terms of the Jury Guidelines for the Award of Costs published on the 27<sup>th</sup> August 2005, the Jury considers that this decision is of universal application and of benefit to a significant number of Competitors and to the Event.

[21] The Application by Mascalzone Latino-Capitalia concerns a commercial aspect particular to them as a Competitor with regard to one of the major sponsors’ advertising opportunities on their yacht, and therefore Mascalzone Latino-Capitalia should meet some

of the costs. The Jury awards costs of €1,200. Payment is to be made by Mascalzone Latino-Capitalia within thirty (30) days of the date of this decision to the Event Authority.

### **Summary of the Decision**

[22] In respect of this Application, the background colour does not constitute Advertising.

[23] Mascalzone Latino-Capitalia's Application for branding is approved pursuant to Article 10.13 of the Protocol.

[24] Costs are awarded of €1,200 to be paid to the Event Authority by Mascalzone Latino-Capitalia within thirty (30) days of the date of this decision.

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

America's Cup Jury:

Graham McKenzie, Henry Menin, David Tillett, Bryan Willis (Chairman)