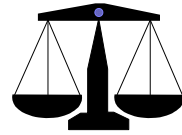




# AMERICA'S CUP 32

## AMERICA'S CUP JURY JURY NOTICE JN075

BMW ORACLE Racing  
Shrouding of Yachts



### Jury Decision Case ACJ029

3<sup>rd</sup> May 2007

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

**Applicant: Oracle Racing, Inc (operating as BMW ORACLE Racing) (“BMW ORACLE Racing”)**

**An Application in respect of an Interpretation of Article 16.1 of the Protocol governing the 32<sup>nd</sup> America’s Cup**

**AND**

**An Application filed by BMW ORACLE Racing**

### **The Application**

[1] On 30<sup>th</sup> April 2007 an Application was filed by BMW ORACLE Racing requesting an urgent interpretation of what constitutes ‘shrouding’ for the purposes of Article 16.1 of the Protocol. As an example of what might be considered ‘shrouding’, the Application included a photograph of two Alinghi ACC Yachts at the Alinghi base.

[2] The questions asked by BMW ORACLE Racing were:

*“Would the Jury please advise whether the attached photograph illustrating a canvas panel at the front of a cradle constitutes shrouding? Would it make a difference if the canvas extended to a side, or part of a side, of the cradle?”*

*For the purposes of Article 16.1(c), please advise whether placing an ACC Yacht inside a building allows shrouding or whether it simply means that the building itself does not constitute shrouding? Is a boat that has its stern in a building, but not its bow, within the scope of Article 16.1(c)?”*

### **Directions and Timetable**

[3] On 30<sup>th</sup> April the Jury issued Jury Notice JN072 which provided directions and a timetable as follows:

### ***“The Application***

*[1] BMW ORACLE Racing on 30<sup>th</sup> April 2007 filed an Application requesting an urgent interpretation of what constitutes “shrouding” for the purposes of Article 16.1 of the Protocol. One photograph was filed in support of the Application.*

### ***Directions and Timetable***

*[2] Any Party wishing to respond to this Application shall submit their Response by 18h00 on Tuesday 1<sup>st</sup> May 2007.*

*[5] Should BMW ORACLE Racing wish to reply to any Responses, it shall submit its Reply by 18h00 on Wednesday 2<sup>nd</sup> May 2007.”*

### **Alinghi Submission**

[4] On 1<sup>st</sup> May 2007 Team Alinghi SA known as Alinghi (“Alinghi”) filed a submission in Response to the Application.

[5] Alinghi submitted that Article 16.1 of the Protocol does not contain an obligation on Competitors to present the underbodies of their yachts for unobstructed viewing. They submitted that the canvas panel at the front of their yacht cradle was a sponsor panel and did not conceal or veil the yachts in a secret manner.

[6] Alinghi submitted that any Competitor may observe or take pictures of an Alinghi yacht when it is being launched or recovered, including from the public area at the Alinghi base.

[7] Alinghi also submitted that at different times for practical reasons, parts of the underbody of a yacht in a Competitor’s base will be obscured and Competitors must be able to refine and modify their yachts and shelter them when carrying out such works as provided for in Article 16.1(c) of the Protocol.

### **BMW ORACLE Racing Reply to Alinghi Response**

[8] On 2<sup>nd</sup> May 2007 BMW ORACLE Racing advised the Jury Chairman by telephone that they did not intend to reply to the Alinghi Response.

### **Decision**

[9] Articles 16.1(b) and (c) of the Protocol provide:

#### ***“16.1 Shrouding of Underbodies:***

- (b) The underbodies of any ACC Yacht may be shrouded from 1 January 2006 until the unveiling ceremony to be held immediately prior to the Fleet Race Regatta in 2007. Thereafter, all ACC Yachts, whether or not declared pursuant to Article 13.2, shall not be shrouded until after the conclusion of the Regattas.*

- (c) *Use of protective wrapping during the shipment of any ACC Yacht, or placing an ACC Yacht in a building or shelter with a solid floor for storage or to carry out maintenance or modifications, shall not constitute shrouding.*

[10] The unveiling ceremony referred to in Article 16.1(b) of the Protocol occurred on the 1<sup>st</sup> April 2007, after which date ACC yachts are not permitted to be shrouded.

[11] The Protocol does not contain a definition of “shrouding”. Article 1.3 of the Protocol provides that the meaning of any word used in the Protocol, unless defined in Article 1.1 of the Protocol, shall be determined by reference to the Oxford English Dictionary, Second Edition (1989) - CD-ROM Version 3 (Oxford University Press 2002) or any later published version. The Oxford English Dictionary Second Edition CD-ROM Version 3.1 Oxford University Press 2004 contains the following definitions which the Jury considers are the most appropriate for this case in the context used in the Protocol:

***Shroud:*** *To hide from view, as by a veil, darkness, cloud; to cover so as to conceal; to screen, veil.*

***Shrouded:*** *Concealed, veiled; sheltered; enveloped in a shroud.”*

[12] The Jury considers that shrouding can occur in terms of Article 16.1(c) of the Protocol, notwithstanding that from time to time all of a yacht’s underbody may be able to be observed when the yacht is being launched or recovered.

[13] The Jury recognises that yacht cradles used by all Competitors will obscure parts of a yacht’s underbody. A conventional or standard yacht cradle does not on its own constitute shrouding. The temporary or short term obscuring of a yacht’s underbody by a parked vehicle, another moored vessel or when work is being carried out on a yacht’s underbody, does not constitute shrouding.

[14] The answers to the questions contained in the Application are:

Question 1

*Would the Jury please advise whether the attached photograph illustrating a canvas panel at the front of a cradle constitutes shrouding?*

Answer 1

A canvas panel that conceals or veils the underbody of an ACC Yacht as illustrated in the photograph constitutes shrouding.

Question 2

*Would it make a difference if the canvas extended to a side, or part of a side, of the cradle?*

Answer 2

No, it would not make any difference.

### Question 3

*For the purposes of Article 16.1(c), please advise whether placing an ACC Yacht inside a building allows shrouding or whether it simply means that the building itself does not constitute shrouding?*

### Answer 3

Placing an ACC Yacht inside a building does not permit shrouding. The placing of an ACC Yacht inside a building may have the effect of shrouding the yacht, but if it is inside a building for the purposes provided for in Article 16.1(c) of the Protocol, it does not 'constitute shrouding'.

### Question 4

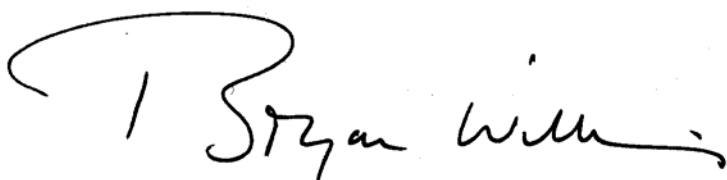
*Is a boat that has its stern in a building, but not its bow, within the scope of Article 16.1(c)?*

### Answer 4

Whether all or part of the boat is placed in a building, the answer to question 3 applies.

### **Costs**

[15] The Application was not frivolous, nor mischievous in terms of Article 21.11 of the Protocol, and asked appropriate questions. Having regard to the Jury Guidelines for the Award of Costs, answering these questions provides an interpretation of the Protocol which is of benefit to all Competitors. No award of costs is made.

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, Henry Peter, David Tillett, Bryan Willis (Chairman)