



AMERICA'S CUP 32

AMERICA'S CUP JURY JURY NOTICE JN080

BMW ORACLE Racing
'Spectator boat' constituting a 'support vessel'



Jury Decision Case ACJ031

8th May 2007

To: Challengers and Defender, ACM, Chief Measurer, Regatta Director ("Parties")

Applicant: The Golden Gate Yacht Club represented by Oracle Racing, Inc (operating as BMW ORACLE Racing) ("BMW ORACLE Racing")

An Application in respect of Clause 13.13 of the Protocol

AND

An Application filed by BMW ORACLE Racing concerning the definition of support vessel

The Application

[1] On 1st May 2007 an Application was filed by BMW ORACLE Racing requesting an interpretation of Article 13.13 of the Protocol.

The Applicant's Request

[2] The request for interpretation asked by the Applicant was as follows:

"Please advise whether a spectator vessel that is also being used to collect meteorological data will constitute a support vessel under Article 13.13 of the Protocol. The primary purpose of the vessel would be as a spectator vessel, and the subsidiary purpose would be to collect meteorological data for use by the Competitor in its pre-race preparation."

[3] On 2nd May 2007 the Jury issued Jury Notice JN074, which provided directions and a timetable. Jury Notice JN074 provided as follows:

"The Application

[1] BMW ORACLE Racing filed an Application on the 1st May 2007 requesting an interpretation in respect of whether a spectator vessel that is also being used to collect meteorological data will constitute a support vessel under Article 13.13 of the Protocol.

Directions and Timetable

[2] Any Party wishing to respond to this Application shall submit their Response by Friday 4th May at 12h00.

[3] After any Responses have been received, BMW ORACLE Racing shall be entitled to submit a Reply to such Responses by Saturday 5th May 2007 at 12h00.

[4] Other than as provided for in this timetable, unless the Jury directs otherwise no Party will have any other opportunity to Respond or Reply to this Application.”

Submissions in Response

[4] Submissions in Response were received from Team Alinghi S.A. known as Alinghi (“Alinghi”) and the Regatta Director.

Alinghi

[5] Alinghi submitted that any vessel providing information in any form including weather data to assist the sailing operations of a Competitor must be counted as one of the six support vessels under Article 13.13 of the Protocol.

Regatta Director

[6] The Regatta Director submitted that whilst there was a distinction made between a spectator vessel provided for use by the supporters or sponsors of a Competitor and a support vessel of a Competitor, if a spectator vessel engages in any activity in support of the sailing operations or racing of the Competitor, it may then become a support vessel.

[7] The Regatta Director further submitted that if a spectator vessel engages in collecting meteorological data and shares that data with a Competitor, the vessel would then become one of the vessels supporting sailing operations.

BMW ORACLE Racing Reply to Responses

[8] On 5th May BMW ORACLE Racing advised the Jury Chairman by telephone that they did not wish to reply to the various Responses.

Decision

[9] Article 13.13 of the Protocol provides:

“Restrictions on number of support vessels: Except in an emergency, a Competitor shall not use simultaneously more than six vessels supporting sailing operations at the Venue or a designated site of any Pre-regatta, including chase boats, tenders, weather boats and utility boats, but not including ACC Yachts or other yachts used for team training, or vessels used for team recreation, or other vessels for sponsor or spectator purposes...”

[10] Article 21.4 of the Protocol empowers the Jury to resolve all matters of interpretation of the Protocol, Terms of Challenge and applicable Notice of Race.

[11] The Jury is satisfied that the questions asked in the Application are interpretative and may be answered by the Jury (Article 21.4 of the Protocol).

[12] Alinghi and the Regatta Director both submitted that if a spectator vessel collects meteorological data for the sailing operations of a Competitor, such vessel is a support vessel under Article 13.13 of the Protocol. Neither BMW ORACLE Racing in its Application, nor any other Competitor, filed a submission opposing this view.

[13] The Protocol does not contain a definition of “support”. 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:

Support: the action of supporting

Supporting: the action, or an act, ... assistance, ... backing

[14] The test in Article 13.13 of the Protocol as to what constitutes a support vessel is whether it is providing support to a Competitor’s sailing operations at the Venue.

[15] Although there is a ‘primary purpose’ test for weather boats (Notice of Race Clause 16.5(a)), as considered in Jury case ACJ026, there is no ‘primary purpose’ test for support vessels in Article 13.13 of the Protocol.

[16] Article 13.13 of the Protocol restricts each Competitor to six vessels that simultaneously support sailing operations. However, that Article also excludes from that restriction “... other vessels for sponsor or spectator purposes.”

[17] The Jury determines that when a vessel ceases to have as its single purpose that of being a sponsor or spectator vessel and takes on an additional or alternative purpose in support of sailing operations, such as gathering meteorological data, that vessel is no longer included in the exclusion from the restriction of the six vessels provided in Article 13.13 of the Protocol. Therefore a spectator vessel such as the one described by BMW ORACLE Racing in its Application would constitute a ‘support vessel’.

Costs

[18] Pursuant to Article 21.3 of the Protocol and the Jury Guidelines for the Award of Costs, the Jury considers that the decision is of universal application. No costs are awarded.

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

Bryan Willis

America’s Cup Jury:

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