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**LEGAL CONSULTANT**

K. Papachristopoulos

Germany/Greece

**UIM Appeal Board Decision**

Concerning the Appeal of

Mr. Craig Wilson and Mr. James Sheppard -  
the appellants -  
against

the Race Jury Decision dated 11. May 2008 taken at San Benedetto del Tronto . Italy

The UIM Appeal Board,

Kimon Papchrisoptoulos, Chairman  
Erwin Lang, Member  
Peter Fencel, Member

decided on 13<sup>th</sup> August 2008 on the basis of a telephone conference and the documents received:

***The appeal is upheld.  
The jury decision/ disqualification is herewith cancelled.  
The drivers, Mr. Craig Wilson and Mr. James Sheppard are reinstated into their results.  
The protest fee and the appeal fee shall be reimbursed to the appellants.***

**Grounds**

On Saturday 10<sup>th</sup> and Sunday 11<sup>th</sup> of May 2005 the appellants participated with boat number 99 %ountain Worldwide+in round 1 and round 2 of the Italian Grand Prix of the Sea in San Benedetto del Tronto of the the U.I.M. Powerboat P1 Championship 2008.

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Prior to the race and on the request of the Powerboat P1 management the appellants had sent one of their three engines to Cosworth Engineering in the United Kingdom for the purpose of dynamometer testing. The other two engines were shipped from the supplier directly to the team which is based in the USA. The team mounted these two engines into the boat no. 99.

Subsequent and after it had been tested at Cosworth Engineering the third engine was shipped to the team. The team then decided to mount this engine at the race site in San Benedetto del Tronto.

Due to unforeseen circumstances boat no. 99 was delivered later than expected to the race site. The boat was scheduled to be delivered at Southampton on 3<sup>rd</sup> of May. Instead it arrived on 8<sup>th</sup> of May in Zeebrugge from where it was directly shipped to the race site where it arrived only on Saturday 10<sup>th</sup> of May at 7.45 hours.

After the team became aware that the boat would be delivered with delay to the site they found that there was not enough time to mount the engine prior to the races. They agreed with the Powerboat P1 management that they could race with the two untested engines and that at least one of these engines would be tested after the race. On the request of Powerboat P1 the team signed a declaration in regard of this agreement with further obligations.

Boat 99 did not participate in the Power Pole on Friday and the official testing on 14.15 hours on Saturday.

The appellants boat then participated in Round 1 on Saturday and in Round 2 on Sunday without having mounted the engine that had been tested before.

Drivers briefings had been held before the Power Pole on Friday and prior to the races on Saturday and on Sunday and all competitors have been informed that three boats including boat no. 99 would race with untested engines but that they would be tested later say the appellants.

The results of the Round 2 were posted on Sunday 17.50 hours. On the same day at 18.12 hours a protest form was handed over to the race secretary. In this protest form it was stated under part A section 2 that the protestor would be the QSG Racing Team+, Boat no. 88 %iton Outer Limits+. The protest form was signed by Mr. Giancarlo Cangiano, driver of Boat no. 88 and by Mr. Paul Fiore, the Team Manager. As reason for the protest it was stated in part B section 7 of the form that boat 99 raced with two untested engines although the engine that had been tested before and boat no. 99 were delivered in due time to the pits so that Team Fountain Worldwide was able to mount the tested engine prior to the 2<sup>nd</sup> race on Sunday.

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The Appellants thereby infringed rule T 4 ( d ) say the protestors. I would be mandatory that (at least) one engine used in the race must be dyno - tested and failing to do so would lead to disqualification.

The Protestors say that they could not protest prior to the drivers briefing as boat and engine had not arrived at the pits at the time of the drivers briefing.

Following the protest the Race Jury disqualified the appellants from round 2.

An appeal board meeting was scheduled for the 14<sup>th</sup> of July. On the request of the appellants the meeting was canceled due to inconvenience of date and venue. The appeal board communicated its preliminary views on the case to the parties and to the jury and gave the possibility for a statement on these views. The appellants agreed to forego an appeal board meeting and to handle the further appeal procedure via telephone, fax or e-mail (Rule 405.10 paragraph 4).

The appeal had to be upheld.

The protest of the %DSG Racing Team+was invalid according to rule S15 (c) of the P1 rules as it was lodged after the relevant race. It was received on 11.05.2008 at 18h 12. The results were posted the same day on 17h 50. According to rule S 15 (c) of the P1 rules a protest against the eligibility of a boat, its engines and equipment must be made prior to the drivers briefing.

The appeal board can leave open, whether prior to the (last) drivers briefing before round 2 the protestors were aware of the fact that the appellants would race two untested engines and whether there was a drivers briefing after the arrival of boat no. 99 at the site. The wording of the rule is very clear and it does not include exceptions for cases where the protestor is informed about irregularities only after the briefing or after the race. According to the spirit of the rule it is in general much more intended to prevent competitors from technical protests against a successful boat after the race is finished. The spirit is laid down in rule s 15 ( c ) 2<sup>nd</sup> sentence that reads as follows: %Starting in a race shall be considered as accepting the eligibility of other boats and drivers.+This sentence would make no sense if protests would be allowed in cases where the protestors become aware of technical irregularities only after the race.

It can be left open as well if there was a drivers briefing on Saturday prior to round 2. A protest against the eligibility of a boat after the finish of a race is too late in any case. After the race has finished it shall be the sole responsibility of the technical scrutinizers and other race officials to protect the competitors interests against technical irregularities.

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In the case of boat no. 99 the technical scrutineering resulted in a regular power output of the engines.

It can furthermore be left open if the protest was invalid due to an infringement of rule 403.01 according to which only a driver is entitled to lodge a protest. In the section 2 of the protest form %OSG Racing Team+is named as protestor, which would not meet the requirements of the aforementioned rule. But the protest form was signed by Mr. Giancarlo Cangiano who is a driver of boat 88. Therefore the protest might be considered being lodged by a driver and being in accordance with the aforementioned rule.

The appeal board wishes to recommend for the future that instead of the team name the protesting drivers should be named clearly in section 2 of the protest form in order to avoid the risk of invalidity due to an infringement of rule 403.01.

Finally the appeal board wishes to clarify its opinion that racing with two engines which have not been dynamometer tested does not justify the disqualification of the relevant boat. In contradiction to opinions that have been stated throughout the protest and appeal procedure the rule does not determine that every engine (i.e. two engines per boat) must be tested before it may be raced. Rule T.4 ( d ) determines that only one engine must be tested before the season. Of course it determines as well that this engine %hall+be fitted to the boat and it %hall+not be the spare engine.

But even by abiding by this rule this would mean only for a initial period that the/ one engine of the boat has been tested before in any case. When it comes to point when the engine that had been tested must be dismantled due to technical failure and be replaced by the spare engine the/ all engines in the boat have not been tested. For this case rule T.4 ( f ) 7<sup>th</sup> and 8<sup>th</sup> sentence apply that read as follows:

%n the event that two engines hare replaced, one of the replacement engines must be subjected to an independent dynamometer test at a testing facility determined by the P1 TCC at the expense of the team. In cases of non conformity, the P1 TCC shall provide the information to the race director ant the entry may be required to make alterations or it may be disqualified from the round.+

First sentence no. 7 clearly determines that only one (and not all) of two engines must be tested. Sentence no. 8 gives to alternative consequences for cases where the measured power of the new engine exceeds the Declared Power Output (DPO).

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The first alternative would be to require alterations. This alternative applies for cases when an new engine is tested before the relevant race and found overpowered.

The second alternative would be to disqualify the boat from the round. This alternative can logically only apply for cases when the boat has already raced with 2 untested engines and the test was conducted subsequently. For such a case the rule foresees disqualification in the case of non conformity which means vice versa that in case of conformity . as in the case of boat 99- the entry will not be disqualified.

The appeal board knows that the time limit of rule 405.05 is exceeded due to unforeseen circumstances. This cannot alter the appeal boards decision as the chief purpose of the appeal procedure is to find a fair and lawful decision.

**Signatures of the appeal board members.**

**Chairman K. Papachristopoulos** \_\_\_\_\_

**Members**

**Erwin Lang** \_\_\_\_\_

**Peter FencI** \_\_\_\_\_