

**INTERNATIONAL COURT OF APPEAL (I.C.A.)**

**of the**

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE**

**Appeal brought by the  
Fédération Française du Sport Automobile (FFSA)  
on behalf of its competitor Hexis Racing AMR,  
against the Decision of the German National Court of Appeal  
of 3 September 2009,  
concerning the event run at Oschersleben on 21 June 2009,  
counting towards the 2009 FIA GT3 Championship**

**Case 21/2009**

**Hearing of Wednesday 14 October 2009 in Paris**

The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), comprised of Mr Pierre TOURIGNY (Canada), who was elected President, Mr Jan STOVICEK (Czech Republic), Mr Reginald REDMOND (Ireland), and Mr Jay ALEXANDER (United States), met in Paris on Wednesday 14 October 2009 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by the Fédération Française du Sport Automobile (FFSA) on behalf of its competitor Hexis Racing AMR (“the Appellant”) against the Decision of the German National Court of Appeal of 3 September 2009, which confirmed Decision N°17 of the Panel of Stewards excluding car N° 3 of Hexis Racing AMR from Race 2 of the event run at Oschersleben and counting for the 2009 FIA GT3 Championship, on account of non-conformity with the car’s homologation form, the Court has heard the statements and examined the arguments of the FFSA and of the FIA (“the Defendant”).

Attending the above hearing were:

on behalf of the FFSA and Hexis Racing AMR:

Mr Simon Taylor (Solicitor representing the Appellant)  
Mr Philippe Dumas (Hexis Racing AMR, Co-owner and  
Team Manager)  
Mr David King (Technical Director, Aston Martin Lagonda  
Ltd)

for the DMSB:

Mr Christian Schacht (DMSB Secretary General)

for the FIA:

Mr Sébastien Bernard (Head of Legal Department FIA)  
Mr Jacques Berger (Head of Technical Department FIA)

The parties presented written submissions and, at the hearing of 14 October 2009, set out oral arguments and replied to the questions put to them by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation; no objection to any element of the simultaneous translation was raised by anyone.

## **REMINDER OF THE FACTS**

1. During post-competition engine checks following the second race run on 21 June 2009 at Oschersleben (the “Event”), counting towards the 2009 FIA GT3 Championship, the FIA Technical Delegate J. Crook found that the engine of vehicle N° 3 of competitor Hexis Racing AMR differed from its homologation form. His technical report dated 10 July 2009 lists five points of non-conformity with the said form (relating to the cylinder, the camshaft, and the crankshaft).
2. On the basis of the above-mentioned report, the Stewards, after having heard the competitor’s representatives, decided on 13 August 2009 to exclude car N°3 from the results of the mentioned Race 2 for breach of Article 257A-2.5 of Appendix J to the International Sporting Code.
3. Article 257A-2.5 of Appendix J to the International Sporting Code (Technical Regulations for Cup Grand Touring Cars - Group GT3) stipulates the following:

### **ARTICLE 2.5 COMPLIANCE WITH THE REGULATIONS**

The car entered by a competitor must conform strictly to the Technical Form as well as to any additional notification from the Bureau of the FIA Grand Touring Commission

It is the duty of each competitor to satisfy the Scrutineers and the Stewards of the Meeting that his car complies with these regulations in their entirety at all times during an event.

A car, the construction of which is deemed to be dangerous, may be excluded by the Stewards of the meeting.

4. The Appellant brought an appeal against the aforementioned Decision of the Stewards before the National Court of Appeal of the Deutscher Motor Sport Bund e.V. (DMSB), which rejected the appeal in its judgment dated 3 September 2009 (the “Contested Decision”) on the grounds that the homologation form constitutes the decisive factor against which to assess the technical conformity of a vehicle.

## **PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES**

5. The Appellant lodged an appeal with the Secretariat of the ICA on 9 September 2009.
6. In its Grounds of Appeal, the Appellant contended that the Court should:
  - allow its appeal against the penalty of exclusion imposed on the Appellant;
  - reinstate car N° 3 in the final results of the Event;
  - impose instead a reprimand on the Appellant.
7. The FIA, in its submission dated 12 October 2009, requested that the Court:
  - declare the appeal founded;

- appreciate the minimal level of responsibility of the Appellant and revise the Contested Decision as being too severe;
  - quash the sanction of exclusion;
  - impose instead a sanction of exclusion, suspended for a period of six to twelve months;
8. Having considered the FIA’s submission, the Appellant, at the hearing, stated that, despite its written pleas, it would also be satisfied with a suspended sanction of exclusion, as proposed by the FIA.

## **ADMISSIBILITY**

9. The Court acknowledges that this appeal was filed in a timely manner and that it is in conformity with the Rules of Procedure the FIA International Court of Appeal.
10. The Court finds that it has jurisdiction in the matter.
11. Therefore, the Court declares the appeal admissible.

## **ON THE SUBSTANCE**

### *a) Arguments of the parties*

12. The Appellant claims that the penalty of exclusion imposed by the Stewards and confirmed by the National Court of Appeal is disproportionate.
13. While the Appellant recognizes that Article 257A-2.5 was breached, it submits that the infringement was not committed by the Appellant itself, but was in fact committed by Aston Martin Lagonda Limited (“AML”), the company which produces the road car on which the Appellant’s racing car (supplied to it by Aston Martin Racing (“AMR”)) is based. AML carried out the homologation of the race car in November 2006 with a view to making it eligible for participation in the FIA GT3 Championship. An investigation by AML subsequent to the FIA Technical Delegate’s inspection revealed that a number of clerical errors had been made by AML when entering data upon the homologation form. The Appellant states that AML accepts full and sole responsibility for the homologation of the car and the errors made. This statement is supported by a witness statement by Mr David King. The Appellant argues that its only function was to prepare and maintain the car as supplied to it. It therefore claims that it has legal responsibility but no culpability for the infringement.

14. The Appellant moreover adds that it had no knowledge of any breach until the inspection of the FIA Technical Delegates in July 2009.
15. The Appellant emphasises that there is no allegation that Hexis has modified the car or parts of it in any unauthorised way or that it has fitted any ineligible parts to the car. It claims that it is accepted that all the parts in question were standard production parts which were not modified.
16. Furthermore, the Appellant claims that the infringement does not constitute a serious breach of the regulations. It was intended by AML that the homologation form should contain the technical data of standard production engine parts. These standard parts were fitted in the engine of the car presented to the FIA for examination in the homologation process. The very same standard parts were fitted in the engine of the car in which Hexis competed. Furthermore, it has been subsequently accepted by the Stewards and the National Court of Appeal, that of the five points mentioned in the Technical Report, in fact only points 2, 3, and 5 were points of non-conformity.
17. The Appellant argues that the infringement did not afford the competitor any advantage.
18. The Appellant further submits that the penalty of exclusion is not a mandatory penalty under the regulations, and requests the Court to exercise its discretion in the view of the exceptional circumstances of this case. It claims that the penalty of exclusion should be reserved for cases where competitors have deliberately cheated or breached the regulations to gain a competitive advantage.
19. In addition, the Appellant submits that it should receive credit for the open and transparent way in which it has acted, by giving complete and truthful information to the FIA Technical Delegates, the Stewards and the National Court of Appeal. Moreover, AMR and AML have acted promptly, after the errors were discovered, to lodge a request with the FIA to correct all clerical errors in the homologation form.
20. The FIA argues that, even though it is ultimately the responsibility of the competitor to ensure that his car corresponds to the homologation form, errors in transcribing technical figures onto a form alone should not suffice to justify exclusion of the competitor, where the latter did not modify the parts (unlike in other cases where modifications to the standard series part have been identified).
21. The FIA submits that its own investigation in the matter did not reveal any facts that indicate that the Appellant made any attempt or even had any desire to cheat. While the Appellant is bound by the principles stipulated at Article 257A-2.5, the FIA submits that this principle must be limited by common sense and cannot require the impossible, as it would be unjustified to require a competitor

to conform to an homologation form on which the data do not match any product available from the manufacturer's catalogue. Moreover, it would have been impossible for any engine to be assembled or run with parts matching the description in the homologation form, which clearly shows that this case concerns a manifest mistake.

22. The FIA claims that in the light of the Appellant's inability to intervene in the process that led to the infringement, the sanction imposed by the Stewards appears excessive and disproportionate. The FIA suggests that a suspended sanction would be more appropriate considering the circumstances.
23. The DMSB has submitted a comment to the Court underlining certain points in its decision. It notes that, while exclusion is not a mandatory penalty, this penalty was deemed appropriate by its Court of Appeal to correct the competitive distortion entailed by the mistakes made by the Appellant and to ensure the equality of opportunity for all competitors. It further submits that it would not be compatible with good order in motor sports if technical deviations would be left unpunished due to special circumstances. Moreover, the DMSB notes that the alleged absence of an effect on the performance of the vehicle has not been verified by any extensive checks or tests.
24. At the hearing, the representative of the DMSB, Mr. Christian Schacht (Secretary General), added that its National Court, when taking its decision, did not have access to all the information that is available in this case today (the FIA having carried out an additional investigation to establish the facts).

*b) Conclusions of the Court*

25. The Court finds that the GT3 Technical Regulations (Article 257A-2.5 of Appendix J to the International Sporting Code) very clearly state that "it is the duty of each competitor to satisfy the Scrutineers and the Stewards of the Meeting that his car complies with these regulations in their entirety at all times during an event". This duty is reinforced by Article 123 of the International Sporting Code, which stipulates that the entrant is responsible for all acts or omissions on the part of its driver, mechanics or passengers. The Court therefore considers that the Appellant is responsible for the lack of conformity of its car and the breach of Article 257A-2.5. In this regard, the Court notes that the Appellant has stated during the hearing that it also accepts responsibility for its failure to check the car against the homologation form.
26. The Court acknowledges that in the present case, the errors do not appear to have been made directly by the Appellant. However, it is the competitor's responsibility to produce a car that is in conformity. If it is let down by its supplier, it is free to explore whatever contractual, civil, or other remedies it may have, but it is not the place of this Court to comment upon the private contractual relations existing between teams and their suppliers.

27. In light of the above, in most cases, a competitor who seeks to participate in an event with a car that is not in conformity must bear all of the sporting consequences that may arise from that non-conformity, including possible exclusion, regardless of the reasons giving rise to the non-conformity.
28. The Court therefore can give little weight to the majority of the purported mitigating factors advanced by the Appellant in this case (including, the suggestion that its engine supplier may have been responsible; that no performance advantage was gained; or that there was no desire to cheat).
29. Nevertheless, the Court does recognize that there are exceptional circumstances in this case, including: (i) the fact that it would have been impossible for the Appellant (or anyone) to compete with the engine parts described in the homologation form; (ii) that it was accepted by all the parties that a manifest and ministerial error was made by AML when entering the data on the homologation form; and (iii) that, although the parts in question did not comply with the homologation form as required by the Regulations, they were standard production parts that were in fact the same parts that were installed on the car when it was homologated without any modifications thereto.
30. The Court has also taken note of the indication by the DMSB that its National Court of Appeal, when examining this case at first instance, did not benefit from the detailed information that was obtained by the FIA during its subsequent factual investigation and that has become available to this Court.
31. In light of the mitigating circumstances mentioned above and the agreement of all parties on the facts and their interpretation, the Court considers the sanction of exclusion to be disproportionate and decides to substitute this sanction with a financial penalty in the amount of 10,000 euros.

**ON THESE GROUNDS,**

**THE FIA INTERNATIONAL COURT OF APPEAL:**

- 1. Declares the appeal admissible;**
- 2. Quashes the Decision of the German National Court of Appeal of 3 September 2009;**
- 3. Annuls the exclusion imposed by Decision N°17 of the Panel of Stewards of 13 August 2009 taken at Oschersleben and counting for the 2009 FIA GT3 Championship, and substitutes it with a financial penalty in the amount of 10,000 euros upon the Appellant;**
- 4. Leaves it to the Sporting Authority to draw the consequences of the present decision;**

**5. Leaves it to the Appellant to pay the costs.**

Paris, 14 October 2009

**The President**