

INTERNATIONAL COURT OF APPEAL (I.C.A)
of the
FEDERATION INTERNATIONALE DE L'AUTOMOBILE

CASE:

**Appeal by the Deutscher Motor Sport Bund (DMSB)
on behalf of its licence-holder and competitor Aqua Nova Racing Team
Kadach (driver Wolf Henzler), against the decision of the Italian National
Court of Appeal of 21 October 2003
2003 Porsche Michelin Supercup Event run at Monza (Italy)
on 12 to 14 September 2003**

Hearing of Wednesday 3 December 2003 at 9.30 a.m. in Paris

The FIA INTERNATIONAL COURT OF APPEAL, composed of Mr Xavier CONESA (Spain), elected President, Mr Philippe ROBERTI de WINGHE (Belgium), Mr Graham STOKER (Great Britain) and Mr Reginald REDMOND (Ireland);

Meeting in Paris on Wednesday, 3 December 2003 at 9.30 a.m., at the headquarters of the FIA – 8, place de la Concorde – 75008 Paris;

Ruling on the appeal brought by the Deutscher Motor Sport Bund (DMSB) on behalf of its licence-holder and competitor Aqua Nova Racing Team Kadach (driver Wolf Henzler), against the decision of the Italian National Court of Appeal of 21 October 2003 to exclude him from the 2003 Porsche Michelin Supercup event run at Monza (Italy) on 12 to 14 September 2003;

Having heard:

For the appellant, in the absence of the DMSB, the competitor Aqua Nova Racing Team Kadach, represented by Mr Gottlieb Karbach, Team Manager, and the driver Wolf Henzler, assisted by Mr Thomas Fleischer, Advocate at the Bar of Wiesbaden;

For the respondent, the competitor Infineon Farnbacher, represented by Mr Farnbacher, Team Manager, and the driver Frank Stippler, assisted by Mr Matthias Feltz, Advocate at the Bar of Frankfurt;

For the CSAI, Mr Ricardo Ceci, Advocate at the Bar of Rome;

For the FIA, Mr Sébastien Bernard, Head of Legal Affairs;

After having heard **the knowledgeable parties**, Mr Matthias Mahler, appointed Scrutineer, and Mr Thomas Felbermair, representative of Porsche AG;

Having acknowledged that the procedure was in order, the rights of each of the parties having been duly examined, both in the proceedings which preceded the hearing and during the hearing itself, the arguments of the parties, and the knowledgeable parties having been heard, and having provided all the detailed explanations requested from them during the hearing and having received answer, with the help of a simultaneous translation system which was recognised as satisfactory by the parties;

WHEREAS the appellant maintained that the decision of the National Court of Appeal of 21 October 2003, ruling on the exclusion of car N° 3 driven by Wolf Henzler for non-conformity of the flywheel, was unjustified because the Regulations of the Porsche Michelin Supercup organised by Porsche did not enable a non-conformity to be decided concerning the weight, as these regulations do not refer to the weight of the part in question;

WHEREAS the respondent, Infineon Farnbacher, maintained that on the contrary, the litigious flywheel weighed 82.5 g less than the original part and that for that reason, the decision of the National Court of Appeal was perfectly justified;

WHEREAS the FIA declared for its part that it left the interpretation of the regulation stated above to the International Court of Appeal;

WHEREAS under these circumstances it was necessary to make a ruling;

WHEREAS it was incontestable that concerning the weight, the part in question did not conform to the original part because, in its decision of 14 September 2003, the Panel of the Stewards of the Meeting had commissioned an expertise by two Scrutineers designed by the Panel, Messrs Matthias Mahler and Gerard Meyer, and that these two, after visiting the Porsche factory on 15 September 2003, had drafted a report which stated, concerning the flywheel: “the weight of the flywheel is approximately 82 g less than the original part. For reference, we have controlled the weight of five original flywheels. The weight of those original parts varies by approximately 10.5 g.”;

WHEREAS in the light of this report the Stewards took their decision on 17 September 2003, stating that after taking stock of the report, it was clear that car N° 3 of the competitor Aqua Nova Racing Team Kadach, driver Wolf Henzler, was not in conformity with regard to the weight of the flywheel (82 g less than the weight of the original part), and that, by telephone, the competitor had confirmed the irregularity discovered;

WHEREAS as a result, the Panel of the Stewards of the Meeting had inflicted a fine of 2,000 Euros on competitor N° 3;

WHEREAS the competitor Infineon Farnbacher had lodged an appeal against this decision, and the National Court of Appeal, in its decision dated Rome 21 October 2003, had quashed the decision of the Panel of Stewards of the Meeting by excluding from the event the competitor Aqua Nova Racing Team Kadach, car N° 3 (driver Wolf Henzler) for non-conformity regarding weight that could only result from a modification to the part;

WHEREAS at the present hearing the competitor Aqua Nova Racing Team Kadach maintained that a new element had come into play as a result of private investigations carried out, in the absence of certain involved parties, at the Porsche factory after the official expertise which revealed that a variation in the weight of the flywheel had been found not just on five of the original parts but on 64 of them, demonstrating that the weights of the flywheels varied; these weights could, from the heaviest to the lightest, vary between 3817 g to 3775 g, while the weight of the flywheel in question was only 3693 g, thus showing it to be lightened;

WHEREAS under these circumstances it is necessary to show on the one hand that the International Court of Appeal is bound by the only regulation of the event approved by the FIA (Article 24-b of the International Sporting Code) and not by the 3 per cent tolerance set out in the Porsche's internal manual which was referred to by the appellant outside the framework of the expertise, and on the other hand, that the information supplied late on the day of the hearing could not be taken into consideration, as a single argument could not bind the Court when an official expertise had been ordered by a judicial authority comprised, in this case, of the first judges, the competitor having recognised the irregularity in their presence;

WHEREAS it was also necessary to note that, according to the first paragraph of Article 1 of the Technical Regulations of the event, all modifications or changes not explicitly authorised by the regulation are prohibited, and that the use of a flywheel which weighed much less than those checked in the factory during the official expertise could not be tolerated, for reasons of non-conformity with the original part;

ON THESE GROUNDS;

DECLARES the appeal admissible;

CONFIRMS the decision of the National Court of Appeal dated Rome 21 October 2003;

CONFIRMS consequently the exclusion of car N° 3, competitor Aqua Nova Racing Team Kadach, driver Wolf Henzler;

LEAVES the Sporting Power the responsibility of drawing the consequences arising from the present decision,

LEAVES the payment of costs to the charge of the appellant in conformity with Article 190 of the International Sporting Code.

Paris, 3 December 2003

The PRESIDENT