



29<sup>th</sup> December 2012

**JURY CASE AC19**  
**JURY NOTICE JN060**  
**DECISION on PENALTY and COSTS**

APPLICATION from Luna Rossa Challenge 2013 (LR), representing Circolo della Vela Sicilia.

1. On 19<sup>th</sup> November 2012, the Jury received an Application from LR protesting “the Defender, Oracle Racing, GGYC” (OTUSA) for a reconnaissance incident on 8<sup>th</sup> November in the waters off Auckland, New Zealand, claiming a breach of Protocol Article 37.2(g).

**DIRECTIONS No. 1 (JN053)**

2. On 21<sup>st</sup> November 2012 the Jury issued Directions No.1 inviting the Parties to submit a Response to the LR Application by 5<sup>th</sup> December 2012, and inviting LR to submit a Reply to any Responses, by 12<sup>th</sup> December 2012.

**DECISION**

3. After considering the Responses and Reply, the Jury published its Decision on 18<sup>th</sup> December 2012 in Jury Notice JN059:

The Jury is satisfied that OTUSA breached Protocol Article 37.2(g).

**DIRECTIONS No.2 (JN059)**

4. Jury Notice JN059 ordered that the photographs be delivered to LR and the Jury by 22<sup>nd</sup> December 2012, and invited Parties to make submissions on Costs and Penalty by 24<sup>th</sup> December.

**PHOTOGRAPHS**

5. On 22<sup>nd</sup> December OTUSA complied with the Directions of the Jury and provided 10 photographs to LR and the Jury.

**SUBMISSIONS ON PENALTY**

6. LR submitted that gathering design information was critical to OTUSA as they were unable to sail their own AC72. LR concluded that the breach by OTUSA was quite deliberate and that their interpretation of the Protocol was absolutely artificial.

LR submitted that a financial penalty would be meaningless and an appropriate penalty would be the reduction of 15 sailing days in the Sailing Period 1<sup>st</sup> February to 1<sup>st</sup> May 2013, together with a reduction of two daggerboards of the maximum allowed limit under Protocol article 29.7 and a reduction of one wing spar of the maximum allowed limit under Protocol article 29.6.

7. Emirates Team New Zealand (ETNZ) submitted that the breach was deliberate and based on a distorted interpretation of OTUSA's own Protocol. The breach gave OTUSA a significant advantage resulting from the improved quality of images obtainable from within the 200m limit. ETNZ suggested that a penalty on the individual rather than the team was inappropriate as the actions were clearly sanctioned by the team. ETNZ submitted that to be just and equitable a penalty has to be meaningful, and that the Jury should select from "A loss of a point or points in the Match; A reduction either in the number of permitted Wing Spar sections under Article 29.6 of the Protocol or in the number of permitted Daggerboards under Article 29.7; A reduction in the number of the permitted sailing days available to OTUSA between 1 February and 1 May 2013 under Article 29.2(e) of the Protocol; An order that no OTUSA team members or agents acting on behalf of OTUSA undertake any reconnaissance activities in Auckland or San Francisco between the date of the order and the 30<sup>th</sup> April 2013 or such other date specified by the Jury."
8. OTUSA submitted that they never set out to deliberately break Protocol Article 37.2(g), and that "a penalty above and beyond the award of costs would not be appropriate inasmuch as there was a legitimate and honest difference of opinion as to the interpretation of the Protocol, the observations/photos obtained when within 200m are no different than can and have been obtained from outside 200m, at the time the AC72 observed was not testing, training or competing, and there were no safety or harassment issues involved in the incident."

#### DISCUSSION ON PENALTY

9. OTUSA has apologised to LR and indicated that as a result of the Jury Decision any team members involved with reconnaissance finding themselves in a similar situation to this incident will:
  - (a) safely manoeuvre their vessel to more than 200m from the AC72 in question;
  - (b) not photograph or record the yacht if they may be within 200m of the AC72 yacht; and
  - (c) apart from what basic seamanship demands, not to observe the AC72 yacht from within 200m."
10. However, the Jury finds the interpretation that OTUSA relied on to remain within the 200m limit and to continue to observe and photograph LR was both flawed and unreasonable. If in doubt, OTUSA could have sought an interpretation of the Article from the Jury.
11. The Reconnaissance Article is an important provision in the Protocol, and contains express prohibitions with the intention of preventing the gaining of information by Competitors about other Competitors. In this case, information in the form of a

number of photographs was obtained in breach of that Article, The benefit (if any) of such information is not possible to determine but neither can it be undone.

12. Therefore it is appropriate that a meaningful penalty be imposed.

#### DECISION ON PENALTY

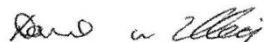
13. During the Second AC72 Sailing Period (1<sup>st</sup> February 2013 to 1<sup>st</sup> May 2013) as provided for in Article 29.2(e), OTUSA may not sail their AC72 yachts on the final five consecutive days of this Sailing Period, that is 26<sup>th</sup> April to 30<sup>th</sup> April 2013 inclusive.

#### DISCUSSION ON AWARD OF COSTS

14. LR and ETNZ submitted that all costs should be awarded against OTUSA; OTUSA accepted that it alone should bear the full costs of the case.

#### COSTS AWARD

15. In accordance with the Jury Guidelines for the Award of Costs and Expenses published on 13<sup>th</sup> August 2011, the Jury considers it is just and equitable that costs of €11,500 are awarded. This amount is to be paid by OTUSA by 14<sup>th</sup> January 2013 to: ACRM Operations Ltd Account Number: 4005 1570768517 Swift/BIC: MIDLGB22; IBAN: GB78MIDL4005157076851.



DAVID TILLETT

JURY: David Tillett (Chairman), John Doerr, Josje Hofland, Graham McKenzie, Bryan Willis.