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WHAT ARE THE ISSUES?**

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Wygod, Canani and Sweet Catomine

What are the Issues?

1. The background. The three year old filly Sweet Catomine trained by Julio Canani and owned by Martin Wygod was the even money favorite for the Santa Anita Derby run on Saturday April 9. She finished fifth. Sweet Catomine had won the Breeders Cup Juvenile Fillies race in 2004 and was the near unanimous winner of the Eclipse Award for two year old fillies. She had been considered one of the favorites for the Kentucky Derby.

After the race, owner Wygod told the press that he had considered scratching Sweet Catomine. He said, "In my heart I felt not to run. It was a 50% 50% decision but (Friday) we made up our mind to run." The filly had bled after her last workout on April 3, had a minor foot problem midweek and was ovulating on Wednesday.

Wygod said that his horse had been sent from Santa Anita to a clinic near Santa Barbara for treatment and then was returned to Canani's barn at Santa Anita. The filly had a minor foot problem midweek and was also ovulating midweek. She was given drugs to prevent bleeding. When the horse was sent to the clinic, its identity was not disclosed to the guards at the tracks.

The California Horse Racing Board has brought charges against Wygod generally premised on his actions detrimental to horse racing – the so-called garbage can rule of racing.

2. The first thing to note is that Marty Wygod has been a big deal in California horse racing and politics.

The Los Angeles Times of October 13, 2002 noted that Wygod had given Governor Grey Davis \$279,000 since 1999. After that date, the California Secretary of State's office shows two additional donations to Davis. There was a \$25,000 donation to Davis' gubernatorial campaign on November 1, 2002 and a \$100,000 donation to Davis' fund to stop his recall on September 12, 2003. Thus, it looks like Mary Wygod gave \$404,000 to Grey Davis' campaigns.

Wygod has long been close to former California Horse Racing Board chairman Roger Licht. Licht is regularly described as a business associate of Wygod's and Wygod's general attorney. The Daily Racing Form of April 6, 2005 called Licht a confidante of the Wygods. Licht served as a director of corporations controlled by Wygod, such as Syntec and Medco Containment. Licht served on the California Horse Racing Board until the fall of 2004. He was replaced as chairman early in 2004 after the election of Governor Schwarzenegger.

Wygod besides owning Sweet Catomine has owned such good horses as Exotic Wood, Bertrando, Twice the Vice, Tranquility Lake, Silent Sighs, Delmonico Cat, Yankee Gentleman,

and Benchmark. The Thoroughbred Owners and Breeders Association named Marty Wygod, and his spouse Pam, the Breeders of the Year in 1995, the year their horses earned \$2.2 million and won a record 25 races He is the chairman of Web MD, and he has an estimated wealth of \$250 million which makes him the 13th wealthiest San Diegan according to the San Diego Business Journal of November 8, 2004.

3. Here are the quotes attributable to Wygod, Canani, and jockey Corey Nakatani in the weeks leading up to the Santa Anita Derby.

Wygod 4/15 North Country Times "I was 50-50 to scratch her," Wygod said of Sweet Catomine. 'If someone had asked me, I would have told them she had problems. ... I was quite explicit on NBC about her condition. ... She bled after her last workout. ... She came into heat (ovulating) on Wednesday. ... She went to a hyperbaric chamber in Santa Barbara. ... Maybe it was all the drugs she was on. ... I should have listened to my intuition.'"

"But even Wygod said in a national teleconference on Tuesday that Sweet Catomine was 'fantastic.'"

Wygod 4/13 NY Times "In routine questioning by reporters before the Santa Anita Derby, Wygod said that Sweet Catomine was fit for her first race against male horses."

Wygod – 4/10 San Diego Union-Tribune " 'No one asked me,' Wygod said. 'If you listen to my NBC interview, I said she's not quite right. She's not as good as she was in her earlier races. She's got a few problems. But nobody asked me what those problems were, so I figured I'd leave it just that way. I was very clear, if you listen to the interview carefully, that she had a few problems . . .'" also "Sports Illustrated's Tim Layden said yesterday that Wygod had shared some of the details of the filly's condition with him on Friday -- but only after an assurance that Layden's story would not be published until after the race was run."

"You can go through the tape, I was pretty explicit. If someone would ask me what are the problems, I would have told them."

Wygod 4/8 Boston Globe " 'I'm nervous about the Santa Anita Derby,' said Wygod. 'I'm apprehensive. I'm much more nervous about this race than the others. The closer you get to the race, the more the excitement keeps mounting.'"

Wygod 4/7 AP " 'I'm not fazed by what other people say,' Wygod said. 'She doesn't carry the weight of last year. But she looks fantastic.'"

Wygod 4/6 DRF " 'Let's see what happens on Saturday and then talk on Sunday,' he said." " 'I'm nervous and apprehensive,' Wygod said. " 'I'm much more nervous about this race than the others. The excitement keeps mounting. It's part excitement, part nervousness.'"

Canani 4/11 Blood-Horse "Trainer Julio Canani had said throughout the week that his filly 'was

doing super,' including on race day morning.”

Canani 4/9 Kansas City Star "She looks good, she feels good, she's happy.”

Canani 4/9 Pittsburgh Post-Gazette “I said this is the best 3-year-old filly. Now,"

Canani 4/9 Minneapolis Star Journal “Trainer Julio Canani said Sweet Catomine is working well.”

Canani 4/8 Boston Globe “‘She's as good as she can get,’ said Canani.”

Canani 4/8 Fort Worth “‘I've never trained this filly hard,’ he said. ‘I let her do whatever she wants to do in the morning. I've never asked her for nothing.’”

Canani 4/8 NY Times “‘She's doing great,’ Canani said. ‘She is what she is.’”

Canani 4/8 USA Today “Trainer Julio Canani declared her ready for the boys after a 5-furlong workout Sunday in 59.2 seconds. ‘She's doing great. I expect her to run well Saturday.’”

Canani 4/7 AP “‘She looks good, she feels good, she's happy,’ trainer Julio Canani said.”

Canani 4/6 DRF “According to Canani, Sweet Catomine dislodged that shoe on Tuesday night. Canani said Sweet Catomine was scheduled to be shod on all four hooves on Wednesday afternoon. He said he did not want to reset her left rear shoe for training on Wednesday, then pull it off and put a new plate on Wednesday afternoon.”

Canani 4/4 DRF “‘Everything is cool at the OK Corral,’ trainer Julio Canani said Monday morning. ‘She did just what I wanted, smiling and easy. I'm getting nervous now.

”‘Don't worry,’ he said. ‘She's okay. She'll gallop the rest of the week.’”

Canani 4/1 LA Daily News “‘She's doing great,’ said trainer Julio Canani, who said he has never run a filly against colts before. ‘She's got no problems. Any horse can get beat, but she's doing great.’”

Nakatani 4/8 NY Times "She's carrying her weight well, she's working great and she's doing things she supposed to do."

Nakatani 4/7 LA Times . "I'll ride her with a lot of confidence. I think she was about 80% going into her prep races. Now I think she's between 90 and 100%.”

Actually in these quotes, Canani was far more upbeat than Wygod about Sweet Catomine. The facts of the foot injury were, however, disclosed in the Daily Racing Form article of April 6. Nakatani was also very high on the horse’s prospects.

4. Possible Specific Rule Violations–

If you forget the “best interest of racing”/ “conduct detrimental to racing” rule language which typically is the last resort of racing regulators, you end up at specific violations:

Violation of bleeding rule – Some states have rules about disclosure of bleeding incidents.

Others have rules mandating a rest after subsequent bleeding episodes.. Should the Sweet Catomine bleeding incident have been disclosed? Could the horse have legally run? California’s rule 1845 on bleeding lists, however, does not seem to mandate disclosure or require a wait before a horse can be run after a bleeding incident.

Medication – Was medication given in violation of the California medical rules? Was the medication properly disclosed by the veterinarian? Wygod had mentioned that medication had been given to prevent bleeding. Was this administration lawful, and was it properly disclosed under Rule 1842 dealing with the reporting of treatments administered to horse?

Examining Vet – Did the examining vet do his or her job properly in allowing Sweet Catomine to race?

Stewards – If the stewards were apprised about anything that might have compromised Sweet Catomine’s condition, should they have taken action to remove Sweet Catomine from the betting pools? If the stewards were aware of Wygod’s NBC interview raising questions about Sweet Catomine’s physical condition, shouldn’t that have prompted additional inquiries? In the 1947 match race between Armed and Assault, there was no wagering due to questions about the physical condition of Assault. Couldn’t that example have been followed?

Maintaining Records of Horses on Its Grounds The racetrack by not checking on the identity of Sweet Catomine when she left and returned to the track was arguably in violation of this Rule 1597. The racetrack has not been charged with a violation of this rule. Instead Wygod and the driver of the van carrying Sweet Catomine have been charged with violating this rule. Maybe Santa Anita should ask for the services of Getnick and Getnick from NYRA.

Betting – If knowing about Sweet Catomine’s condition, any of Sweet Catomine’s principals bet against the horse, this is a serious problem and a definite violation of California Rule 1970 prohibiting owners and trainers from betting on competing horses.

5. Detrimental to the Best Interest of Racing – On a very personal subjective note here, whenever racing commissions resort to this rule (except when a licensee has cursed out the stewards) you generally know this going to be a questionable case. While the rule is probably not unconstitutionally vague, nearly any action taken at a racetrack can conceivably be detrimental to the best interest of racing. I have been the hearing officer in cases where the New York

equivalent of this rule was utilized to prosecute cursing at someone on the backstretch. I've seen it used as the basis for a reprimand for spreading false rumors. Anytime you resort to this rule, you are on a very slippery slope. Horses in far worse physical shape than Sweet Catomine are racing every day in this country. There are assuredly tracks where nearly every horse that goes to post is in worse physical shape than Sweet Catomine. Trainers regularly talk up their horses' prospects. What is a lie, what is wishful thinking, and what is a legitimate hyping of a horse? If an owner guarantees a horse's victory and that horse loses, is that a rules violation?

Here are the detrimental to racing issues. By saying good things about their horse's condition that they knew to be untrue, the principals of Sweet Catomine were being deceitful to bettors. But this is the most slippery of slippery slopes. Wayne Lukas in 1987 continued to maintain that his Hall of Fame horse Lady' Secret was in fine condition until the day that she bolted in a race at Saratoga at odds of 3-10. Two days before this allowance race, Jeff Lukas, when questioned about the horse's condition, said, "That's bull. The only people who have retired her are the so-called experts in the press." After the race, he said, "We had no indication she'd do something like this,"

Except for major races, a horse's physical deficiencies are almost never revealed to the public. Horses bleed in workouts just as Sweet Catomine did, but these bleeding incidents are not disclosed to the general public. Nobody even asks questions about whether a filly or mare is having her period. How do you distinguish Sweet Catomine from these other incidents?

Even in major races, there have often been major failures to disclose conditions. After the 1979 Belmont, trainer Buddy Delp claimed his horse Spectacular Bid had lost because he had stepped on a safety pin on the morning of the day of the race. Nobody told the bettors beforehand. Horses, such as Majestic Prince, Carry Back, Canonero II, and Northern Dancer – which were striving for the Triple Crown at the Belmont Stakes – were not in good physical condition at the time of the Belmont, but their ailments were infrequently disclosed.

Bobbie Frankel trained Empire Maker who was the favorite to win the 2003 Kentucky Derby. Four days before the Derby, it was revealed that Empire Maker had a bruised heel. This injury was suffered at the Wood Memorial on April 12 and not disclosed for over 17 days. Frankel had held a 45 minute press conference that day but did not mention the injured heel. Only after the Frankel press conference was a written statement issued about the bruised heel. Even after this disclosure, Frankel downplayed the injury saying it was no big deal. Empire Maker finished second to Funny Cide in the Derby. Were Frankel's actions any better or worse than Wygod's?

Additionally, Santa Anita management could be in violation of the best interest of racing standard if it unduly pressured Wygod to race Sweet Catomine. Wygod, at one point, mentioned that he was reluctant to scratch the horse because it was the focus of much of the pre-race publicity. If Santa Anita management pressured Wygod into racing an ill horse, that could conceivably not be in the best interest of racing.

Yet, management regularly puts pressure on trainers to run horses. The size of pari-mutuel pools depends in part on the size of the fields in races. Management doesn't like it when horses scratch because a race comes off the turf or because the track has become sloppy. Are efforts by management to insure full fields by putting pressure on trainers to run their horses detrimental to the best interest of racing because forcing these horses to run under adversarial conditions might make them more vulnerable to injury?

What if management would put in place a rule saying - that in the absence of a physical injury – a field cannot be reduced below six betting interests? If an owner or a trainer tries to scratch a horse a but is stuck in the race due to this rule, what happens when that horse is injured in the race? Has management which enacted the rule, and the stewards who have enforced this rule, acted detrimentally to the best interest of racing?

6. Bottom Line -Whatever the results of the Wygod case, horse racing needs to stop dealing with these “trainer, owner, jockey comment” cases on an ad hoc basis. There has to be a clear code of conduct as to what trainers and owners are allowed to say about their horses. In the absence of a clear code, racing commissions can seriously look like a bunch of clowns – and that is surely detrimental to the best interests of horse racing.