

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

**of the**

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE**

**Appeal lodged by the Cyprus Automobile Association (CAA)  
on behalf of its competitor and driver Nicos Thomas (CY)  
against a decision declaring Nick Georgiou (RL) the winner of  
the 2008 Middle East "Pirelli Star Driver (PSD)" Award**

**and**

**Referral by the President of the Fédération Internationale de l'Automobile  
(FIA) concerning the above-mentioned case**

**Hearing of Friday 27 February 2009 in Paris**

The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), comprised of Mr Pierre Tourigny (Canada), who was elected President, Mr Michael Grech (Malta), and Mr Harry Duijm (Netherlands), met in Paris on Friday 27 February 2009 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

The Court, ruling on the appeal lodged by the Cyprus Automobile Association (CAA) on behalf of its competitor and driver Nicos Thomas (Cyprus) against a decision communicated by the FIA on 16 December 2008 which declared Nick Georgiou (Lebanon) the winner of the 2008 Middle East Pirelli Star Driver (PSD) award, and ruling on the referral by the President of the Fédération Internationale de l'Automobile (FIA) concerning the same case, heard presentations and considered arguments presented by the CAA, the Automobile and Touring Club of Lebanon (ATCL), and by the FIA.

Attending the above hearing were:

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| for the CAA:  | Mr Antonis Michaelides (President)<br>Mr Nicos Thomas (Driver)<br>Mr George Triantafyllides (Legal Representative)<br>Ms. Christina Kotsapa (Legal Representative) |
| for the ATCL: | Mr Jacques Salha (Vice President)<br>Mr Nadim Abboud (Legal Representative)  |
| for the FIA:  | Mr Sébastien Bernard (Head of Legal Department)  |

The parties presented oral arguments at the hearing, which took place in accordance with the applicable rules, with the aid of simultaneous translation. No objection to any element of the simultaneous translation was raised by anyone. During the discussions, the adversarial principle was respected.

## REMINDER OF THE FACTS

1. This case concerns the Pirelli Star Driver (PSD) award, which is a worldwide program organised by the FIA in partnership with Pirelli that seeks to identify and promote five young rally drivers from different regions represented within the FIA (namely, Europe and South America; Middle East; Asia-Pacific; and Africa).
2. For 2008, each region was given the task of selecting one driver to take part in the PSD program (except for Europe, which was represented by two drivers).
3. The Middle East region, rather than basing its selection on a specific event, decided to select its candidate on the basis of results obtained in an existing championship, namely the 2008 FIA Middle East Rally Championship (MERC), which comprised the following events:
  - the Qatar International Rally (24-26 January);
  - the Cyprus Rally (16-18 May);
  - the Syrian International Rally (5-7 June);
  - the Rally of Lebanon (27-29 June);
  - the Jordan Rally Middle East (16-18 October);
  - the Troodos Rally (7-9 November);
  - the Dubai International Rally (4-6 December).

In order to be eligible for the PSD award, candidates had to take part in at least three of the above events, and respect other conditions imposed by the regional PSD Coordinator (for the Middle East, the PSD Coordinator was Mr Derek Ledger).

4. The drivers competing for the Middle East PSD award were Mr Nicos Thomas (Cyprus), Mr Nick Georgiou (Lebanon), and Mr Mishari Al Thafiri (Kuwait).
5. As the final event approached and as it seemed possible that a tie would arise, Mr Ledger issued a statement on 26 November 2008 stipulating that, in the event of a tie after the Dubai International Rally, the winner of the second leg of the last event (the Dubai Rally) would become the winner of the PSD award. After the Dubai Rally, there was a tie. The winner of the second leg was Mr Thomas, implying that, based on Mr Ledger's statement, he would be the winner of the Middle East PSD award.
6. On 12 December 2008, however, a PSD Working Group met and issued a decision, which was communicated to the CAA by Mr Gerald Richard of the FIA by e-mail on 16 December 2008 and which stated the following:
  1. The regulations that accompanied the entry form will be considered as the definitive ones. These state that only the best three results will be considered.

2. In the event of a tie in the scores after the final rally then Article 40 of the 2008 Middle East Rally Championship regulations would be applied.
3. The tie breaker regulation issued on the 26<sup>th</sup> of [December] during the Dubai Rally is not valid [as] it is not permitted to change any regulations during the season without unanimous approval.
7. The best three results of the participating drivers produced a tie between Mr Thomas and Mr Georgiou, who had both obtained a total of 17 points. The Working Group thus applied Article 40 of the 2008 MERC regulations, which stipulates that:

At the end of the Championship, in the event of a dead heat in any of the categories, the winner will be the one who scored the highest number of points in the longest rally (total special stage distance) in the Championship. If this does not resolve the situation, the second longest rally will be taken into consideration, and so on until a winner emerges.
8. As Mr Georgiou scored more points than Mr Thomas in the longest rally of the championship (the Rally of Lebanon), Mr Georgiou was declared the winner of the 2008 Middle East PSD award.

## **PROCEDURE AND FORMS OF ORDER SOUGHT BY THE PARTIES**

9. The CAA claims that the Court should
  - overturn the decision communicated by the FIA on 16 December 2008 following a meeting of the PSD Working Group on 12 December 2008, declaring Nick Georgiou the winner of the 2008 Middle East Pirelli Star Driver competition (the “Contested Decision”); and
  - declare Nicos Thomas the winner of the 2008 Middle East PSD competition.
10. The ATCL claims that the Court should
  - dismiss the present appeal; and
  - confirm the Contested Decision.
11. The FIA, in this matter, has not taken a position, but submitted to the Court a certain amount of general information so as to enable the Court to have a more precise view of the problem submitted to it.

## **ADMISSIBILITY AND JURISDICTION**

12. The CAA lodged the present appeal with the Court on 22 December 2008.
13. In addition, the FIA President referred the same matter to the Court on 28 January 2009, pursuant to the competence conferred upon him by the FIA Statutes (Article 23, paragraph 1) and the ICA Rules of Procedure (Article 1) to refer cases to the ICA. The President in his referral requested the Court to determine whether the decision on the award of the Middle East PSD title was in conformity with the applicable regulations dated 20 May 2008.
14. The FIA President submitted on 25 February 2009 a clarification of his referral, indicating that the Court to make its own determination as to which regulations in fact applied, if not the regulations issued on 20 May 2008.

### *b) Findings of the Court*

15. The Court finds that it is competent to consider the present case, at least on the grounds that the Court is competent to judge any matter of a sporting nature submitted to it by the President of the FIA, pursuant to Article 1 of the ICA Rules of Procedure.

## **ON THE SUBSTANCE**

16. It appears that there was considerable confusion over which procedure was to be applied for selecting the winner of the 2008 PSD award.
17. The initial announcement of the Middle East PSD contest, which was attached to an e-mail sent by Mr Ledger to all Middle Eastern Clubs on 29 April 2008, states that all MERC events contested during the qualifying year would count towards the PSD award.
18. The same e-mail of 29 April also includes an attachment containing the PSD registration form, which specifies that “entry is subjected to the conditions of entry attached” and that “applicants for the Pirelli Star Driver awards must refer to the Conditions of Entry”, as well as an attachment entitled the “Middle East Rally Championship Pirelli Star Driver Award Conditions”. The latter document stipulates, in contradiction with the announcement mentioned above, that only the three best scores of each driver would be taken into account. In addition, the Pirelli Star Driver Award Conditions specify that: “[th]e MERC executive reserves the right to review drivers seeking funding and to evaluate the winners of the award in terms of their qualifications and the points earned during the year together with other relevant information. Their decision will be final.”

19. None of the documents mentioned above make any reference as to what procedure should be followed in the event of a tie.
20. In an effort to clear up the uncertainty, Mr Tony Georgiou (the father of the competitor Nick Georgiou) requested some clarifications from Mr Ledger, who explained in an e-mail dated 18 November 2008 that (i) all points on all rallies in the Middle East would count; and (ii) no decision had been taken so far as to what would happen in the event of a tie.
21. On 26 November 2008, Mr Ledger issued a new statement (erroneously dated 26 December) that:

Due to the similarity in the number of points scored by the two leading drivers (*Nicos Thomas CY and Nick [Georgiou] RL*) in the PSD after **the best three scores so far in 2008** - 17 points each, and the possibility of a further tie after the final round in Dubai, it has been decided that, **in the event of a tie, the best performance in Leg 2 of the Dubai International rally will count as the deciding factor for the PSD 2008.** [emphasis added]

22. Mr Ledger's statement was declared invalid by the PSD Working Group following its meeting of 12 December 2008 on the basis that "it is not permitted to change any regulations during the season without unanimous approval". The Working Group, as mentioned earlier, decided that (i) the applicable rules were the regulations that accompanied the entry form; (ii) not all rallies but only the best three results would be considered; and that (iii) in the event of a tie, Article 40 of the 2008 Middle East Rally Championship regulations would apply.
23. In his referral letter to the Court dated 28 January 2009, the FIA President submitted another document dated 20 May 2008 issued by the FIA, which states that all rallies contested will count. It is not clear to the Court when this document was sent to the parties.

*a) Arguments of the parties*

24. The CAA argues that, rather than applying Article 40 of the 2008 MERC regulations, the FIA should have applied the procedure announced by the PSD Coordinator, Mr Ledger, on 26 November 2008, namely, in the event of a tie, to take into account the best performance of the second leg of the Dubai International Rally as the deciding factor to determine the winner of the PSD award.
25. The CAA firstly claims that the regulations governing the PSD award are the "Pirelli Star Driver Award Conditions", as circulated by Mr Ledger to the ASNs on 29 April, as they were the only regulations attached to the entry form and they were the regulations that the competitors agreed to abide by when entering the competition. The CAA points out that the initial announcement stating that all points would count was merely a "media announcement", as stated by Mr Ledger himself in his e-mail of 16 April. Furthermore, the "Pirelli Star Driver Award Conditions" are described by the cover e-mail of 29 April as the

“regulations”. These Award Conditions did not contain any reference to the MERC regulations nor to Article 40 thereof, and do not suggest that the latter were applicable for determining the outcome of the PSD contest. The CAA therefore argues that there was no basis for the PSD Working Group to apply Article 40 of the 2008 MERC regulations.

26. Secondly, the CAA notes that the Award Conditions mentioned above did not make any reference as to what would happen in the event of a tie. For this reason, when Mr Ledger issued on November 26 a procedure to be followed in the event of a tie (namely, that the best performance in the second leg of the Dubai Rally would count as the deciding factor), he was not modifying an existing regulation. Therefore the PSD Working Group could not invalidate his announcement on the basis that “it is not permitted to change any regulation during the season without unanimous approval”.
27. Finally, the CAA submits that all three participants competed in the Dubai International Rally thinking that the winner of the second leg of the event would be the winner of the PSD award, as publicly announced by Mr Ledger at a press conference shortly before the event in question. Given that the competitors based their racing tactics on this knowledge, it would not be fair to change the basis of selection subsequently. It was submitted that Mr Thomas in particular concentrated his efforts on the second leg of the event, as he believed this would be the decisive leg. The CAA adds that there was no way for the drivers to know or even suspect that the announcement by Mr Ledger was not valid and they could not be reasonably expected to question the validity of an announcement made by the FIA representative who was the official PSD coordinator for the Middle East.
28. The ATCL argues, to the contrary, that the MERC regulations, as well as the FIA International Sporting Code (ISC), were in fact applicable to the PSD award given that this contest was clearly run under FIA authority and integrated in the FIA Middle East Regional Championship. Moreover, by registering for the Middle East Regional Championship and by signing the FIA MERC Registration Form, the drivers competing in the PSD contest expressly agreed to be bound by the ISC, the applicable Technical Regulations (Appendix J) and the 2008 MERC regulations. Finally, the fact alone that contestants compete under an FIA-approved license issued by an FIA-approved ASN means that they are bound by the ISC.
29. The ATCL further holds that, in any event, the ISC always prevails in the event of differences between various regulations. It stipulates that any condition imposed that is contrary to the ISC shall be null and void (ISC, Article 56), and that no amendments shall be made to the Supplementary Regulations after the beginning of the period for receiving entries, unless unanimous agreement is given by all competitors already entered (ISC, Article 66).

30. The ATCL notes that considerable confusion was created by the issuing of two different and contradictory versions of the PSD regulations and submits that it agrees to be bound by any of the two document versions which the Court will find to be governing the PSD award. It further notes that, if the initial announcement is accepted as being the applicable regulation, or the document submitted by the FIA President and dated 20 May 2008, then it should be considered that the points gained in all contested rallies counted and that Mr Georgiou is the winner of the PSD award with 28 points (against Mr Thomas who scored 26 points). If, however, the document entitled “Pirelli Star Driver Award Conditions” is found by the Court to be the applicable regulation, then it should be considered that there is a tie and Article 40 of the MERC regulations should apply. In support of this view, the ATCL draws attention to the fact that Article 40 of the MERC regulation expressly states that it applied to “any of the categories”, thus also to the PSD contenders.
31. With respect to the statement issued by Mr Ledger on 26 November 2008, the ATCL submits that such a statement was contrary to the spirit of fairness and equity required by Article 2 of the ISC, as it would not be fair to decide the outcome of an entire Championship over merely the second leg of the last rally. In addition, Mr Ledger’s statement violated Article 66 and Article 199, paragraphs c) and d) of the ISC which stipulate that no amendments may be made to any regulations without the unanimous agreement of all competitors. The ATCL moreover argues that if the CAA is prepared to submit itself to the regulation issued by the PSD Coordinator, it should surely be ready to submit itself to the unanimous decision of the PSD Working Group in which the same Coordinator took part.
32. The ATCL also questions the validity of the Witness Statement of Mr Thomas, given that it is neither signed nor notarized, and contests Mr Thomas’ statement that he decided in terms of tactics not to contest vigorously the first leg of the Dubai International Rally in order to preserve his car for the decisive second leg. To support its challenge, the ATCL adduces GPS data obtained from Mr Wolfgang Schindele, who was in charge of tracking all the cars in the 2008 FIA MERC, which allegedly demonstrates that Mr Thomas lost the first leg of the rally not because he was “preserving his car” but because he went astray for one kilometre during Special Stage No. 1 and stopped his car for an unknown reason for 38 seconds during Special Stage No. 2.
33. The FIA, in its intervention, points out that the regulations of the PSD, despite the many changes they have undergone in the course of the process, make no mention of what to do in the event of a tie and do not specify at any stage that Article 40 of the MERC regulation should be applied. Therefore, there is nothing to justify the application of Article 40 to the selection of the winner for the Middle East PSD.



34. The FIA contends that it was precisely to fill this regulatory vacuum that Mr Ledger issued his statement of 26 November 2008, and supports the view of the CAA that this act did not constitute a change to the regulation, but rather the resolution of a question to which the regulations provided no answer.
35. The FIA further holds that the respect of sporting equity implies that only those rules of which the competitors were duly aware at the time of their sporting performance should apply.
36. The CAA, in response to the ATCL's concern about the unsigned Witness Statement by Mr Thomas, submitted, with the consent of all parties, a duly signed version of the same statement.

*b) Findings of the Court*

37. The Court notes that during the hearing all parties agreed that the Pirelli Star Driver contest was a stand-alone competition that was separate from the Middle East Rally Championship. Therefore, the rules of the FIA Middle East Rally Championship did not apply to the PSD award as such, even though the three drivers and their teams had to abide by the 2008 MERC regulations in order to compete. The Court finds that the applicable rules for selecting the winner were the "Pirelli Star Driver Award Conditions", and that consequently the winner of the Middle East PSD award was to be selected on the basis of the drivers' best three results, as recognized by the PSD Working Group itself.
38. In light of the above, the Court considers that the PSD Working Group, whatever its status might have been, erroneously applied Article 40 of the 2008 MERC regulations and declares the Contested Decision invalid.
39. The Court further finds that Mr Ledger had the authority to issue the statement of 26 November 2008, given that he was the PSD Coordinator to whom the FIA had delegated authority for the PSD award in the Middle East. As regards the applicability of Articles 66 and 199 of the ISC, the Court observes that a distinction must be drawn between the rules that determined which driver would receive the benefit of the PSD award (effectively a promotional decision in the context of the FIA's partnership with Pirelli) and the sporting rules that applied to the conduct of the rally (i.e. the MERC Regulations). In these particular circumstances, the statement of Mr Ledger constituted a necessary resolution to an issue not expressly addressed in the PSD Award Conditions and did not involve any change to the 2008 MERC regulations.
40. The Court concludes that, considering the peculiar nature of the PSD contest which allowed for only one driver to be selected for the Middle East region; and given that the PSD Award Conditions did not provide for the case of a tie; and given that the MERC regulations were not applicable to the selection of the Middle East PSD driver, the rule to be applied in the present case was the

decision issued by Mr Ledger on 26 November 2008 and announced at the press conference shortly before the Dubai International Rally.

41. Consequently, as the tie between Mr Thomas and Mr Georgiou subsisted after the Dubai International Rally, the Court finds that the decisive factor for the selection of the Middle East driver was their result in the second leg of the Dubai International Rally.
42. Mr Georgiou not having finished the second leg of the said rally, Mr Thomas was the winner of the second leg of that rally and, thus, of the Middle East PSD award.

### **ON THE COSTS**

43. The Court finds that the parties were not responsible in any way for the situation that warranted the referral of the present case. The Court therefore decides not to impose any costs and orders the appeal fee to be returned to the appellant.

**On those grounds,**

### **THE FIA INTERNATIONAL COURT OF APPEAL**

**Hereby:**

- 1. Declares the appeal admissible;**
- 2. Reverses the Contested Decision and declares Mr Nicos Thomas the winner of the 2008 Middle East Pirelli Star Driver award;**
- 3. Orders the return of the appeal fee paid by the appellant to the International Court of Appeal, pursuant to Article 24 of the ICA Rules of Procedure.**

Paris, 27 February 2009

**The President**