

Decision of the Japan Anti-Doping Disciplinary Panel (Written Reason)

Case 2016-007

Name of Athlete: X  
Sport: Football

Pursuant to the decision of the Hearing Panel convened for this case, the Japan Anti-Doping Disciplinary Panel has made the following decision with respect to this case.

January 6, 2017  
Japan Anti-Doping Disciplinary Panel  
Vice Chair: Kazuki Shishido

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Hearing Panel Decision (Written Reason)

The Hearing Panel for this case, which is composed of the following members appointed by the Chair of the Japan Anti-Doping Disciplinary Panel pursuant to Article 8.3.2 of the Japan Anti-Doping Code (hereinafter, the “Code”), has made the following decision concerning this case on December 20, 2016 pursuant to the results of the hearing held on November 2, 2016 and December 15, 2016 (hereinafter, collectively, the “Hearing”). The reasons for such decision are as described in “Reasons” below.

January 6, 2017  
Kazuki Shishido \_\_\_\_\_  
Katsumi Tsukagoshi \_\_\_\_\_  
Masahiro Murayama \_\_\_\_\_

Decision:

- A violation of Article 2.1 of the Code is found to have occurred.
- In accordance with Articles 9 and 10.8 of the Code, all of the individual results of the Athlete obtained from September 25, 2016 (the date of sample collection) through October 21, 2016 (the commencement date of the provisional suspension period) (including the competition results at THE 2016 MEIJI YASUDA J1 LEAGUE 2ND STAGE 13th SECTION shall be disqualified, and all medals, points and prizes obtained during such period shall be forfeited.
- In accordance with Articles 10.2.2 and 10.5.1.1 of the Code, the Athlete is subject to a reprimand with no period of ineligibility.

Reasons:

- The substance “methylhexaneamine” that was detected from the Athlete in In-Competition testing conducted on September 25, 2016 is designated as a prohibited substance under “S6. Stimulants” in The 2016 Prohibited List International Standard (hereinafter, the “Prohibited List”), and it constitutes a “Prohibited Substance” as prescribed in Article 2.1 of the Code. In response to this, the Athlete requested an analysis of the B Sample, but according to the Test Report submitted by LSI Medience Corporation as of October 29, 2016, the test results are recognized to have confirmed the abovementioned initial detection result. Neither did the Athlete ultimately contest the test results or the process and procedure that led to those results at the Hearing (including the provisional hearing).
- Accordingly, the Athlete can be found to have violated Article 2.1 of the Code (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample) in this case, and it is appropriate to consider that, in accordance with Articles 9 and 10.8 of the Code, all of the individual results of the Athlete obtained from the date of sample collection through the commencement date of the provisional suspension period (including the competition results at THE 2016 MEIJI YASUDA J1 LEAGUE 2ND STAGE 13th SECTION; hereinafter, the “Competition”) shall be disqualified, and all medals, points and prizes obtained during such period (if any) shall be forfeited.
- Furthermore, the substance above that was detected in this case, while on the one hand constituting a “Prohibited Substance,” also is a “Specified Substance” under the Prohibited List. Based on the testimony of the Japan Anti-Doping Agency (hereinafter, “JADA”), the Athlete himself and opinion statement I dated November 1, 2016, the written statement dated December 8, 2016 and the brief dated December 15, 2016 submitted by the Athlete’s agent, the testimony of Dr. Tsukasa Kanda, the team physician of the football team to which the Athlete belongs (Sanfrece Hiroshima F.C.; hereinafter, “FC”), opinion statement II dated November 1, 2016 and supplement to opinion statement II dated November 2, 2016 in the name of such physician, the written statement dated December 15, 2016 in the name of Hidekazu Orita, the representative director and president of Sanfrece Hiroshima FC Co., Ltd., the Test report dated December 7, 2016 prepared by LSI Medience Corporation and other submitted respective evidence, the documents submitted by JADA (the Doping Control Form, etc.) as well as the entire purport of the Hearing, the following facts can be found.
  - (1) The methylhexaneamine that was detected in this case can be reasonably presumed to have been contained in the supplement taken daily by the Athlete for the purposes of taking vitamin (LIFESTYLE Executive Choice Natural Vitamin Daily Pack (six types, one drop each); hereinafter, the “Supplement”).
  - (2) The Athlete raises such claims as that, while he had been taking the Supplement approximately once every day during the period from around January 2015 till

September 23, 2016, two days prior to the Competition, the Supplement was one of the products recommended by the FC as “being confirmed not to contain any prohibited substance set forth by World Anti-Doping Agency”, and that there were no descriptions upon the label inscriptions of the Supplement giving rise to suspicion that it contained a prohibited substance, and that it never occurred to him that the Supplement might contain a prohibited substance.

However, as also expressly set forth in the Comment to Article 10.4 of the Code, “Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination”, and athletes cannot be said to have entirely lacked fault or negligence in the case of “a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement”. Similarly for the Athlete in this case, in the case that the label indication of the supplement taken by the Athlete in this case lacked any description giving rise to suspicion of the existence of a prohibited substance, or even in the case that the supplement taken by the Athlete normally did not contain any prohibited substance and a prohibited substance was only contained in the product (or manufacturing lot) ingested in this case, since the Athlete in this case can be recognized to have been generally warned of the possibility of supplement contamination, it cannot be said that the Athlete in this case entirely lacked fault or negligence.

- (3) On the other hand, as stated above, the Supplement was one of the products recommended by the FC as “being confirmed not to contain any prohibited substance set forth by World Anti-Doping Agency”, and the package of such supplement also clearly indicated that “this product does not use any ingredients in violation of doping provisions.” In addition, it was determined that, upon the recommendation of a supplement by FC, the team trainer would make a prior enquiry of the ingredients of such supplement towards the manufacturer and importer, and upon gaining a clear reply that it did not contain any prohibited substance, obtain the approval of the team physician, and the same procedures were also performed for the Supplement. In addition, if the period of the predecessor product of the Supplement were included, there were no occurrences of anti-doping rule violations whatsoever due to, and regardless of, the fact that multiple athletes belonging to such team purchased and used such product for a long time during the period from around 1994 onwards when FC started recommending such product (with respect to the Supplement, from November 2010 onwards) till when the results of the sample in this case became evident.

In consideration of these circumstances, it can be said that there were reasonable grounds for the Athlete to have mistakenly believed that the Supplement did not contain any prohibited substance. It is also noted that the Athlete in this case

described “vitamin” in the Doping Control Form which he submitted to the doping control officer at the time of the doping test, and expressly reported that he took the Supplement.

- (4) In addition, there exist the circumstances that FC, which recommended the Supplement to the athletes belonging to the team including the Athlete in this case, also took measures such as making enquiries to the manufacturer and confirming with the team physician prior to recommending the Supplement as stated above, and furthermore, requested the athletes belonging to the team to take the supplements recommended by FC in the case that they took a supplement, and FC also performed bulk purchases proceeding of the Supplement on behalf of the athletes. Since these series of acts by FC are recognized to have been contemplated and implemented for the purposes of protecting the athletes belonging to the team including the Athlete in this case from anti-doping rule violations, we remain hesitant, even based upon the purport of the Code which states strict liability, to turn around and say that the obtainment of the supplement was subject to the self-responsibility of the athletes belonging to the team notwithstanding the proactive involvement of FC (including the team physician).
- (5) Taking into consideration the above circumstances, although the Athlete, as stated above, cannot be recognized to have lacked fault or negligence, the Athlete can be recognized to have lacked significant fault or negligence.
  - Taking into consideration the above circumstances and the fact that this was a first violation, it is appropriate, upon comprehensively taking into account the abovementioned degree of fault of the Athlete, to impose upon the Athlete a sanction of a reprimand without a period of ineligibility with the understanding that this is an exceptional case.
  - In this case, the Athlete has been under a provisional suspension pursuant to Article 7.9.2 of the Code from the date of notice of October 21, 2016 by the responsible person at JADA until the time of the present decision (a provisional hearing was held on November 2, 2016 concerning the relevant provisional suspension). However, since it has been decided that no period of ineligibility will be imposed upon the Athlete in this case, such provisional suspension shall automatically lose effect on December 20, 2016, the date of this decision.

Based on the foregoing, we have made our decision as stated above.

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