

ISSUED DECISION

In the Matter of:

UK ANTI-DOPING LIMITED

- and -

TOMASZ BIELINSKI

Relating to:

Disciplinary Proceedings under the Anti-Doping Rules of the British Wrestling Association

This is an Issued Decision as between UK Anti-Doping Limited and Mr Tomasz Bielinski relating to an Anti-Doping Rule Violation arising from the British Wrestling Association Anti-Doping Rules.

Background and Facts

1. The British Wrestling Association (the “BWA”) is the governing body for the sport of wrestling in the United Kingdom. UK Anti-Doping (“UK Anti-Doping”) is the National Anti-Doping Organisation for the United Kingdom. It is responsible for managing the results of drug tests conducted under the BWA Anti-Doping Rules (the “Anti-Doping Rules” or “ADR”).
2. Mr Tomasz Bielinski (the “Athlete”) is an amateur sportsman. He is a Polish citizen and has competed in mixed martial arts from a young age in Poland. More recently, he has competed in the sport of wrestling, and was at all relevant times a member of the BWA and subject to the ADR.
3. On 3 February 2013, the Athlete competed at the BWA English Senior Championships (the “Event”). He competed in the 74 kilogram Greco-Roman Competition. Following competition, he provided an In-Competition sample for doping control purposes, pursuant to the Anti-Doping Rules (the “Sample”).
4. The Sample was submitted for analysis to the Drug Control Centre, King’s College London, a World Anti-Doping Agency (“WADA”) accredited laboratory (the “Laboratory”). On 18 February 2013, the Laboratory reported to UK Anti-Doping that an Adverse Analytical Finding in respect of methylhexanamine (“MHA”) had been made in respect of the Sample. MHA is a Prohibited Substance In-Competition, and is included in S6.b of WADA’s 2013 List of Prohibited Substances (the “Prohibited List”).
5. UK Anti-Doping identified no apparent departures from either the International Standard for Testing or the International Standard for Laboratories in respect of the collection and analysis of the Sample. Further, the Athlete did not possess, nor has he ever possessed, a therapeutic use exemption in respect of MHA.

6. On 25 February 2013, the Athlete was issued with a Notice of Charge by UK Anti-Doping charging the Athlete with the commission of an Anti-Doping Rule Violation pursuant to ADR Article 2.1 (Presence of a Prohibited Substance in an Athlete's Sample). The Notice of Charge explained the facts relied on in support of the allegation, the details of the charge, the consequences of an admission or proof of an Anti-Doping Rule Violation, and the procedure for analysis of the B Sample.
7. The Notice of Charge also imposed a Provisional Suspension upon the Athlete, which took effect from that date.
8. On 1 March 2013, the Athlete admitted the Charge in writing and on 19 March 2013 waived his right to have the B Sample tested.
9. ADR Article 7.5.4 provides:

"In the event that the Participant admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by [UK Anti-Doping] (or is deemed to have done so in accordance with the last sentence of Article 7.5.1), neither B Sample analysis nor a hearing is required. Instead, [UK Anti-Doping] shall promptly issue a decision confirming the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences, shall send notice of the decision to the Participant and to each Interested Party, and shall publish the decision in accordance with Article 14."

10. UK Anti-Doping has conducted an investigation of this matter, and, pursuant to that investigation, specified the Consequences in respect of the Anti-Doping Rule Violation to be a period of Ineligibility of fifteen (15) months. The Athlete has acceded to the specified Consequences.
11. This decision is therefore issued pursuant to ADR Article 7.5.4.

Consequences

12. ADR Article 10.2 provides:

10.2 Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or Possession of Prohibited Substances and/or Prohibited Methods

For an Anti-Doping Rule Violation under Article 2.1 (presence of a Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of a Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of a Prohibited Substance and/or a Prohibited Method) that is the Participant's first violation, a period of Ineligibility of two years shall be imposed, unless the conditions for eliminating or reducing the period of Ineligibility (as specified in Article 10.4 and/or Article 10.5) or for increasing the period of Ineligibility (as specified in Article 10.6) are met.

13. Where an athlete is found to have committed an Anti-Doping Rule Violation under ADR Article 2.1, and such offence is the athlete's first Anti-Doping Rule Violation, a period of Ineligibility of two (2) years must be imposed pursuant to ADR Article 10.2 ("the Standard Sanction"). The Athlete's Anti-Doping Rule Violation is (to the best of UK Anti-Doping's knowledge) his first doping offence.
14. The Standard Sanction may be replaced by an alternative sanction if the circumstances of the matter are such that one of the saving provisions referred to in ADR Article 10 apply, being *inter alia* ADR Article 10.4. UK Anti-Doping has reviewed whether or not the Standard Sanction can be reduced by way of ADR Article 10.4.

Article 10.4

15. ADR Article 10.4 provides:

10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specified Circumstances

10.4.1 Where the Participant can establish how a Specified Substance entered his/her body or came into his/her Possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or to mask the Use of a performance-enhancing substance, and it is the Participant's first violation, the period of Ineligibility established in Article 10.2 shall be replaced with, at a minimum, a reprimand and no period of Ineligibility, and at a maximum a period of Ineligibility of two (2) years.

10.4.2 To qualify for any elimination or reduction under this Article 10.4, the Participant must produce corroborating evidence in addition to his/her word that establishes, to the comfortable satisfaction of the hearing panel, the absence of an intent to enhance the Athlete's sport performance or mask the Use of a performance-enhancing substance. The Participant's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.

16. MHA is a "Specified Substance" in the Prohibited List.

17. Following receipt of the Charge, the Athlete explained how MHA entered his system, and the circumstances in which that ingestion came about. On 10 May 2013, the Athlete participated in an interview with UK Anti-Doping at which this explanation and account were discussed in detail. The interview was recorded and transcribed, and the Athlete cautioned as to the consequences of providing false or misleading evidence to UK Anti-Doping. The Athlete's evidence and account is summarised as follows:

- a) The Athlete is a warehouse administrator. His job involves working nights. He starts work at 10pm and often finishes at 8 or 9am. Prior to the Event, he had been promoted to this administrative role, having previously worked as a factory operator. In order to operate effectively in his new job the Athlete was required to concentrate carefully.
- b) The Athlete had an interest in wrestling, and decided to enter into and train for the Event. The Event is an "open" event (meaning that no pre-qualification for entry is required). A condition of entry to the Event was that the Athlete became a member of the BWA. The Athlete joined the BWA approximately one month prior to competing in the Event by making an online application (which was accepted).
- c) The Athlete undertakes personal training sessions at a local gym a number of times a week, ranging from a variety of martial arts to general weight training. The Athlete explained that to assist that training he used a supplement called Jack3d (the "Supplement"). He provided evidence that showed that he had purchased the Supplement from a Polish company. He said that the Supplement was recommended to him, although he had (erroneously) formed the impression that the Supplement was similar to creatine, rather than being a pre-workout energy supplement.
- d) After purchasing the Supplement, the Athlete began using it in two month cycles, albeit that it was somewhat unclear as to what benefit he saw in this mode of use. He used it in accordance with the instructions, either before or after training but also (on occasion) mid-way through his shifts at work to help him concentrate. The Athlete said he last used the Supplement at approximately 3pm the day before the Event, because he had to do some manual labour in the garden and was feeling tired. The Athlete did not use the Supplement on the day of the Event.

- e) The Athlete did not disclose the use of the Supplement on his Doping Control Form at the time he provided the Sample. He explained that this was because he had suffered a bad injury to his shoulder during the Event. His girlfriend completed the Doping Control Form on his behalf, under his instruction, as he was in pain and required medical treatment.
18. The packaging of the Supplement includes in the product ingredient labelling the words “1,3-Dimethylamylamine (Geranium [Stem])”. This is a synonym of MHA. The concentration of MHA found in his Sample was approximately 12,000 ng/mL. UK Anti-Doping has sought the opinion of a suitably qualified expert who has confirmed that, given the scientific literature available, the Athlete’s explanation in terms of the timing of his ingestion is plausible. The opinion is that the concentration of MHA in the Athlete’s Sample is consistent with the use pattern described by the Athlete.
19. UK Anti-Doping does not dispute that this is a matter in respect of which ADR Article 10.4 can be applied. In particular:
- a) UK Anti-Doping is satisfied that the Athlete has established, on the balance of probabilities, that MHA entered his system by way of the use of the Supplement;
 - b) UK Anti-Doping does not contend that the use of MHA and/or the Supplement was undertaken with the aim of masking the use of another Prohibited Substance;
 - c) UK Anti-Doping is comfortably satisfied that the Supplement was used by the Athlete as part of the Athlete’s regular usage cycle of the Supplement in connection with his training (and on occasion in connection with his work routine). It was not used in connection with performance at the Event (nor was it used to ensure that the Athlete fell within a particular weight category at the Event).
 - d) UK Anti-Doping is comfortably satisfied that the Athlete’s explanation, and therefore the absence of intent to enhance his performance, is corroborated by the evidence provided by the expert engaged by UK Anti-Doping.
20. ADR Article 10.4.2 states that the Athlete’s “*degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.*” In this regard, UK Anti-Doping notes that ADR Article 1.3.1 requires that every athlete must:

“acquaint him/herself, and to ensure that each Person (including medical personnel) from whom he/she takes advice is acquainted, with all of the requirements of these Rules, including (without limitation) being aware of what constitutes an Anti-Doping Rule Violation and of what substances and methods are on the Prohibited List;”

And also that every athlete must:

*“comply with these Rules in all respects, including:
i. taking full responsibility for what he/she ingests and uses;”*

21. The BWA website includes the following text in its “Policies” section, which is hosted on its “About British Wrestling” page -

In the area of Anti-Doping

British Wrestling adopts in full the policies replicated to the right of the UK Anti-Doping Organisation (UKAD). Individuals in any doubt, should consult the UKAD site and information on their site takes precedence. For a list of "Frequently Asked Questions" on the British Wrestling website about anti-doping, please follow this link

Click this link to be taken to the official website of UK Anti-Doping.

22. In turn, this navigates through (via a small number of intuitive clicks) to the following text on the UK Anti-Doping website –

Safety first

You would always check your sporting equipment to make sure it is safe to use. The same applies to competing clean. Checking it is safe to take any medication, such as a cold remedy from the chemist or antibiotics from a doctor, is a core skill that athletes need to learn how to do.

There is a long list of banned substances which athletes cannot take. This is known as the Prohibited List. It contains a range of substances you may have heard of including steroids, stimulants and even methods such as blood doping.

Some medicines contain these banned substances so athletes need to get into the habit of checking any medications BEFORE they take them.

The questions you should always ask yourself are: are these safe to take? And, who can help me decide?

There are no short cuts

There are no short cuts to sporting success. It takes hard work, dedication and personal drive to become the best you can be.

You may be tempted to take nutritional supplements such as vitamin tablets or energy drinks. You may have even seen other athletes take them. Be careful as there's no guarantee that they are free from prohibited substances.

The best thing you can do is focus on healthy eating habits to optimise your ability to train hard and compete at your best. Be cautious about taking any additional supplements. Don't get caught out!

You should always ask before taking anything in addition to your normal healthy diet.

On and off the field

As a talented athlete you will no doubt already be making decisions about your lifestyle and how you choose to spend your time. It's likely that you will be committing more to your sport and training more as a result. Being a successful athlete means committing to an athletic lifestyle and looking after your body.

Anti-doping doesn't just apply to substances that may enhance performance. There are also recreational drugs, such as cannabis, on the Prohibited List too. As a dedicated and talented athlete, remember that being the best you can be applies both on and off the field.

Make the right decisions to protect yourself as an athlete. As an athlete - whether you're choosing which competition to take part in or whether you are out with your school friends - your decisions can affect your chances of making it to the top.

Remember 'strict liability' – no one else is responsible for your actions but you.

23. The UK Anti-Doping website contains a large amount of information about an athlete's anti-doping responsibilities, including supplement use. UK Anti-Doping takes the view that the minimum standard of behaviour to be expected from the Athlete was to make sure that he understood the rules of the sport within which he was competing. Had he taken steps to do so, he would have become acquainted with this content and been in a position to make an informed choice when it came to the use of the Supplement. Participating in organised sport is not just a matter of showing up on the day: athletes must know the rules. He failed in this regard.

24. The Athlete was under a clear and inalienable duty to compete without there being any Prohibited Substances in his system. Both the World Anti-Doping Code and a number of CAS cases are very clear in terms of an athlete's responsibilities vis-à-vis competing with Prohibited Substances in his or her system - every athlete has a duty to keep his or her system clean of any such substances.
25. In this regard, CAS has noted that the Code *"imposes on the athlete a duty of utmost caution to avoid that a prohibited substance enters his or her body. ... The Panel underlines that this standard is rigorous, and must be rigorous, especially in the interest of all other competitors in a fair competition. ... It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping violation has been identified."* (FIFA & WADA, CAS 2005/C/976 & 986, opinion dated 21 April 2006 § 73 and 74). This was echoed in CAS's remarks in the *Kendrick* case, when it said that an athlete's fault must be *"measured against the fundamental duty which he or she owes under the ... WADC to do everything in his or her power to avoid ingesting any Prohibited Substance"* (*Robert Kendrick vs ITF*, CAS 2011/A/2518, § 10.14).
26. These requirements are of fundamental importance. If an athlete is planning on consuming a product (such as a supplement) that is going to change their body's chemistry – for example, by making him or her feel "boosted" in some way, then that athlete should be cautious. That caution should stem from the realisation that many substances are banned because they can enhance sports performance precisely by changing the body's chemistry. If an athlete is planning on using a product to improve sport performance in some way, then there is an obvious risk that it might contain a problematic substance. That caution must be acted on.
27. Once the Athlete became a member of the BWA and became subject to the ADR, he was under an obligation to understand these responsibilities and duties. It is clear that the Athlete departed from this expected standard, and that departure resulted in the Adverse Analytical Finding. UK Anti-Doping does not accept that it is a sufficient excuse to rely on ignorance of either the Anti-Doping Rules or the risks that supplements pose. He should have been aware of the caution that should be adopted when using supplements.
28. The Athlete has provided an explanation as to why he fell short in respect of this standard, and asked that the following factors be taken as mitigation in his favour:
 - a) He has never had any formal anti-doping education. He says that when completing the online registration for the BWA, he believes there may have been some reference to anti-doping, but says he was never sent any information or educational material on anti-doping once registered with the BWA. He was wholly inexperienced when it came to anti-doping matters generally. He did not know that supplements could cause a doping risk and indeed was naive when it came to their use generally.
 - b) He did not use the Supplement in connection with the Event, but rather in connection with his work and general training.
29. UK Anti-Doping accepts that these factors are relevant and that the Athlete was not using the Supplement with a view to improving his performance at the Event. He made a mistake in that he did not consider whether or not the Supplement was relevant to his anti-doping responsibilities. However, he cannot be credited for being ignorant of either the risks associated with supplement use or his anti-doping responsibilities. The use of supplements and the risks (in both general health and anti-doping terms associated with such use) have received a great deal of publicity in the last year or more. The use of supplements in connection with sports preparation and training is now widely known to be a doping risk.
30. The Athlete is clearly not as culpable as an athlete who was aware of the risks of supplement use, but acted carelessly. However, he is culpable as far as his failure to become acquainted with the rules of the BWA and his responsibilities as a participant in that sport are concerned, particularly in a sport where there is an appreciable risk of causing an opponent harm (indeed

the Athlete was injured during the Event). In his favour, he has cooperated with UK Anti-Doping throughout and has enabled this matter to be resolved without the incurring of unnecessary time and costs.

31. Given the circumstances, UK Anti-Doping has specified that the Consequences to be applied in this matter are that of a period of Ineligibility of fifteen months. UK Anti-Doping has applied ADR Article 10.9.2 and specifies that the period of Ineligibility will run from the date of Sample Collection. The Athlete has accepted those Consequences.

32. Further, ADR Article 9.1 states:

An Anti-Doping Rule Violation committed in connection with or arising out of an In-Competition test automatically leads to the Disqualification of any individual results obtained by the Athlete in the Competition in question, with all resulting consequences, including forfeiture of any medals, titles, points and prizes.

33. The Athlete's results at the Event are therefore disqualified. He has not competed in any competition since the Event.

Summary

34. UK Anti-Doping has issued this Decision, pursuant to ADR Article 7.5.4, which records that:

- a) An Anti-Doping Rule Violation pursuant to ADR Article 2.1 has been committed;
- b) A period of Ineligibility of fifteen months shall be the Consequences imposed pursuant to ADR Article 10.4;
- c) That period of Ineligibility is deemed to have commenced on 3 February 2013 and will expire on 2 May 2014;
- d) The Athlete's status during this period of Ineligibility shall be as set out in ADR Article 10.10;
- e) The Athlete's results at the Event are Disqualified, along with all resulting consequences, including forfeiture of any medals, titles, points and prizes; and
- f) Pursuant to ADR Article 10.10.4, during the period of Ineligibility the Athlete shall remain subject to the Anti-Doping Rules.

The disposition of these proceedings on the terms set out above will be publicly announced via UK Anti-Doping's website.

This decision may be appealed by the Athlete, the BWA, the International Federation of Associated Wrestling Styles or the World Anti-Doping Agency.

Dated this 19th day of June, 2013.