

ISSUED DECISION

In the Matter of:

UK ANTI-DOPING LIMITED

- and -

BRIAN MAGEE

Relating to:

Disciplinary Proceedings under the Anti-Doping Rules of the British Boxing Board of Control

This is an Issued Decision as between UK Anti-Doping Limited and Mr Brian Magee relating to an Anti-Doping Rule Violation arising from the British Boxing Board of Control Anti-Doping Rules.

Background and Facts

1. The British Boxing Board of Control (the "BBBOC") is the governing body for the sport of professional boxing 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 BBBOC Anti-Doping Rules (the "Anti-Doping Rules" or "ADR").
2. Mr Brian Magee (the "Athlete") has been a professional boxer since 1999. He has competed in forty-two (42) professional bouts, and is a former British, International Boxing Organisation, European Boxing Union and World Boxing Association champion in the Super Middleweight category. Prior to 1999, the Athlete competed at the 1996 Atlanta Olympic Games, the 1997 European Championships and 1998 Commonwealth Games. He has been the subject of doping control on at least twenty (20) occasions. At all relevant times the Athlete was a member of the BBBOC and subject to the ADR.
3. On 9 December 2012, the Athlete competed for the World Boxing Association Super Middleweight Championship against Mikkel Kessler in Denmark (the "Event"). Following the 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 Norwegian Doping Control Laboratory, a World Anti-Doping Agency ("WADA") accredited laboratory (the "Laboratory"). On 18 January 2013, the Laboratory reported that an Adverse Analytical Finding in respect of oxilofrine (methysynephrine) and beta-methylphenethylamine (the "Prohibited Substances") had been made in respect of the Sample. Oxilofrine is a Prohibited Substance In-Competition, and is included in S6.b of WADA's 2012 and 2013 List of Prohibited Substances (the "Prohibited List"). Beta-methylphenethylamine is a substance with a similar chemical structure or similar biological effect as the other specified stimulants listed in S6.b of the Prohibited List.

5. On 2 February 2013 UK Anti-Doping was provided with a copy of the Adverse Analytical Finding, and with a copy of the relevant documentation pack on 18 February 2013. Upon review, 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. It was established that the Athlete did not possess, nor has he ever possessed, a therapeutic use exemption in respect of the Prohibited Substances.
6. On 20 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 Athlete did not request analysis of his B Sample.
8. 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."
9. UK Anti-Doping has conducted an investigation into 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 six (6) months. The Athlete has acceded to the specified Consequences.
10. This decision is therefore issued pursuant to ADR Article 7.5.4.

Consequences

11. 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.
12. 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. 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

13. 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.

14. Oxilofrine (methysynephrine) and beta-methylphenethylamine are "Specified Substances" in the Prohibited List.
15. Following notification of the Adverse Analytical Finding, the Athlete's manager provided UK Anti-Doping with a list of supplements the Athlete had used from 20 November 2012 up to the Event, and sought advice from UK Anti-Doping's Head of Science and Medicine as to the most likely source of the Adverse Analytical Finding. By a process of examination and elimination, the Athlete identified that one possible cause was one of the supplements he had been using, being Dorian Yates Nox Pump (the "Supplement"). The Athlete subsequently instructed HFL Sport Science ("HFL") to examine the Supplement.
16. On 23 May 2013 UK Anti-Doping was provided with a copy of a report confirming the presence of both oxilofrine and beta-methylphenethylamine in the Supplement. The list of ingredients for the Supplement does not include either of the Prohibited Substances nor any known or recognised synonym.
17. On 8 March 2013, the Athlete provided evidence as to the circumstances surrounding his use of the Supplement. The Athlete's evidence and account is summarised as follows:
 - a) The Athlete is a professional boxer. In the build up to a bout, he goes through a period of intensive training to ensure he is in peak condition for the bout. In September 2012, negotiations for the Event were finalised, and the Athlete commenced his training. To help alleviate fatigue, the Athlete began using various supplements as part of that training.
 - b) In October 2012, the Athlete suffered from a heavy cold and was forced to take a short break from his training regime. This resulted in increased fatigue. To counteract this, the Athlete began drinking coffee and Red Bull; however, the consumption of both caused the Athlete stomach discomfort. Whilst at a gym in Belfast, the Athlete purchased the Supplement to replace the coffee and Red Bull. He used the Supplement in the course of his training as he prepared for the bout in December 2012. He did not seek any advice regarding the use of the Supplement.
 - c) The Athlete did not disclose the use of the Supplement on his Doping Control Form ("DCF") when he provided the Sample. He explained that he did not disclose the use of a number of the products he was using around the time of the Event, including the Supplement, on his DCF because he was tired and simply wrote down those that he could recall at the time. (His

DCF lists the following substances: “vitamins, protein/creatine, sleep tablet and beetroot juice”.) The Athlete explained that he did not enter the ring until after midnight, and so did not complete the paperwork until approximately 01.00am.

- d) The Athlete’s manager has confirmed the Athlete’s account recited at paragraphs (a) to (c) above.
18. 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 the Prohibited Substances entered his system by use of the Supplement. UK Anti-Doping relies on the evidence of the Athlete in this regard and the HFL report;
- b) UK Anti-Doping does not contend that the use of Prohibited Substances and/or the Supplement were 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 in connection with his training. It was not used in connection with performance at the Event, but rather his training and fight preparation (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 his manager (and the fact that the Supplement was contaminated). It is also corroborated by the fact that both Prohibited Substances were found in the Athlete’s Sample at very low levels, consistent with the levels that would be expected in relation to the consumption of a contaminated product.
19. 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;”*

20. The UK Anti-Doping website contains a large amount of information about an athlete’s anti-doping responsibilities, including supplement use. In particular, it states as follows –

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.

21. UK Anti-Doping takes the view that the minimum standard of behaviour to be expected from any athlete is to make sure that he or she understands the rules of the sport within which he or she is competing. By doing so, such an athlete will become acquainted either with this content or the themes that it espouses, and is thereby in a position to make an informed choice as regards using supplements. Further, such an athlete will be aware that he or she has a clear and inalienable duty to compete without there being any Prohibited Substances in his or her system.
22. In this regard, 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. 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).

23. 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.
24. This was an obvious risk. UK Anti-Doping has obtained a sample of the Supplement, and notes that it contains labelling wording that is typical of such products, including –
- “for advanced athletes seeking to maximise their psychological, cardiovascular & muscular performance during training”*
- “unstoppable energy; explosive power; anabolic drive; maximum muscle strength; boost metabolism”*
25. The Athlete is an experienced fighter who has been involved in the sport at both an amateur and professional level for some time. Although the Athlete professed to be unaware of the risks associated with the use of supplements, UK Anti-Doping does not accept this. UK Anti-Doping believes that it is unlikely that he will not have become aware of similar cases to his involving professional boxers and supplements. Supplement use has resulted in a number of boxers committing anti-doping rule violations (and being banned as a result). 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.
26. The failure to both understand these responsibilities and duties, and act on them, constitutes significant fault. Ordinarily, this would mean that the Athlete could expect a significant sanction in respect of his anti-doping rule violation. The fact that the Supplement was contaminated with the Prohibited Substances, however, is obviously relevant. If the Athlete had acted according to his responsibilities and still used the Supplement (which would have been understandable given that reasonable checks would have not resulted in a conclusion that the Supplement posed a doping risk) the same outcome would have occurred. He is not as culpable as an athlete who acted as he did, but whose supplement had a prohibited substance listed on the ingredients list that could easily have been identified. However, had he performed these checks properly, it may well have been the case that given the inherent risks associated with supplement use, and the claims made on the Supplement packaging regarding its performance benefits, he would have made a different decision as to his pre-fight preparations.
27. The National Anti-Doping Panel has noted in a previous case that *“any athlete who takes a supplement without first taking advice from a qualified medical practitioner with expertise in doping control places herself at real risk of committing a rule violation.”* (UK Anti-Doping vs An Athlete, 29 October, 2010). UK Anti-Doping agrees. It also agrees with the National Anti-Doping Panel's view (expressed in the same matter) that in a case involving the use of a supplement, *“only in the most exceptional cases could such an athlete expect to escape a substantial sanction if a Prohibited Substance is then detected.”*
28. The Athlete has acted in a careless and negligent manner that has resulted in him committing an anti-doping rule violation. What saves him – to a degree – is that if he had acted with the requisite level of care and attention he might still have found himself in the position he is now. This does not, however, mean that he should be sanctioned in the same manner as someone who did act with the requisite level of care. He did not and the sanction must reflect that. (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 on the part of UK Anti-Doping, the BBBOC and the National Anti-Doping Panel.)

29. In the circumstances, UK Anti-Doping has specified that the Consequences to be applied in this matter are that of a period of Ineligibility of six months. The Athlete has not competed in any competition since the Event, and (by way of a written communication sent to UK Anti-Doping dated 30 January 2013) voluntarily suspended himself from Competition. UK Anti-Doping has therefore applied ADR Article 10.9.4 and specified that the period of Ineligibility will run from the date of voluntary suspension. In accordance with ADR Article 9.1, the Athlete's results at the Event are disqualified. The Athlete has accepted these Consequences.

Summary

30. 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 six months shall be the Consequences imposed pursuant to ADR Article 10.4;
- c) That period of Ineligibility is deemed to have commenced on 30 January 2013 and will expire on 29 July 2013;
- 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 BBBOC or the World Anti-Doping Agency.

Dated this 28th day of June, 2013.