



Fédération Internationale
de Natation

FINA Doping Panel 03/13

FINA Doping Panel

comprised of

Robert Fox (SUI)	Chairman
Farid Ben Belkacem (ALG)	Member
Peter Kerr (AUS)	Member

In the proceedings against

the water polo player **Lei ZHANG**
affiliated to the China Swimming Association (CSA),

represented by:

- Mr. Zhao Qi, representative of the China Swimming Association;
- Ms. Wang Min, Team Leader, China Women's Water Polo Team;
- Ms. SUN Zheng: Secretary of the China Swimming Association and interpreter.

Nature of the case

During the Water Polo World League held in Auckland, New Zealand, May 2013, the athlete was found positive on Sibutramine, in preliminary competition. Investigation learned the substance came into her body through the use of slimming products. The athlete pleaded for a mild sanction and regretted her act as she thought that those products were safe and could not contain banned substances.

I THE PARTIES

1.1 The FEDERATION INTERNATIONALE de NATATION (FINA) is the International Federation governing disciplines related to swimming. FINA has established and is carrying out, *inter alia*, a doping control program, both for in-competition as well as out-of-competition testing.

PRESIDENT

DR. JULIO MAGLIONE
Uruguay

HONORARY SECRETARY

PAOLO BARELLI
Italy

HONORARY TREASURER

PIPAT PANIANGVAIT
Thailand

VICE PRESIDENTS

HUSAIN AL MUSALLAM
Kuwait

TAMAS GYARFAS
Hungary

DENNIS MILLER
Fiji

DALE NEUBURGER
United States of America

SAM RAMSAMY
South Africa

MEMBERS

LINO CANDIDO LOURENCO
Angola

FERNANDO CARPENA
Spain

ERROL CLARKE
Barbados

DIMITRIS DIATHESOPOULOS
Greece

DR. MOHAMED DIOP
Senegal

MATTHEW DUNN
Australia

BEN EKUMBO
Kenya

ANDREY KRYUKOV
Kazakhstan

EUGENIO MARTINEZ
Cuba

JESUS MENA CAMPOS
Mexico

DR. MARGO MOUNTJOY
Canada

COARACY NUNES FILHO
Brazil

VLADIMIR SALNIKOV
Russia

KAZUO SANO
Japan

ERIK VAN HEIJNINGEN
Netherlands

QIUPING ZHANG
China

HONORARY LIFE PRESIDENT

MUSTAPHA LARFAOUI
Algeria

EXECUTIVE DIRECTOR

CORNEL MARCULESCU

1.2. CHINA SWIMMING ASSOCIATION (CSA) is a member of FINA. CSA is required to recognize and comply with FINA's anti-doping rules, which are set out in the FINA Doping Code ("FINA DC"). The FINA DC is directly applicable to and must be followed by *Competitors, Competitor Support Personnel*, coaches, physicians, team leaders, and club and representatives under the jurisdiction of CSA.

1.3 Ms. Lei ZHANG is a professional water polo player in the China national team. She has participated in different international competitions around the world. She has been in the FINA Registered Testing Pool since Q4 2011.

II PROCEEDINGS

2.1 By letter dated 4 July 2013, the FINA Executive Director advised CSA and Ms. ZHANG that the A sample of an in competition doping control test conducted on 11 May 2013 (after the preliminary Water Polo match) had tested positive for the prohibited substance SIBUTRAMINE (Class. S.6.b specified stimulants).

2.2 By letter dated 4 July 2013, the FINA Executive Director advised Ms ZHANG that she could arrange for a B sample analysis.

2.3 Ms. ZHANG waived her right of the B sample analysis.

2.4 By letter dated 11 July 2013, the FINA Executive Director suggested the athlete and CSA come to Barcelona where the hearing could be held before the commencement of competitions.

2.5 By letter dated 12 July 2013, the CSA advised FINA that Ms ZHANG would not participate in the FINA World Championships in Barcelona.

2.6 By letter dated 15 July 2013 the FINA Executive Director informed CSA that the case would be forwarded to the FINA Doping Panel, in accordance with Rule DC 21.5.

2.7 By letter dated 15 July 2013 FINA sent to the Doping Panel Chairman the documents of this case.

2.8 By letter dated 20 July 2013 the FINA Doping Panel Chairman advised CSA and Ms ZHANG that the hearing would take place on Monday, 22 July 2013 at 14:30 hours in the Hotel Eurostars Grand Marina, Barcelona.

2.9 The Report dated 3 June 2013 of the National Measurement Institute (NATA), Australian Government stated:

“The presence of Bisdesmethyisibutramine and Desmethyisibutramine (a metabolite of Sibutramine) were confirmed in the sample using liquid chromatography – mass spectrometry (method NIOC/10).”

2.10 On 3 July 2013 the FINA Doping Control Review Board (DCRB) declared:

“The results constitute preliminary evidence of an Adverse Analytical Finding”.

2.11 The FINA Doping Panel hearing was held on 22 July 2013 in Barcelona.

2.12 Ms. .ZHANG was present at the hearing, she was represented by:

- Ms. Wang Min, Team Leader, China Women's Water Polo Team;
- Mr. Zhao Qi, representative of the China Swimming Association;
- Ms. Sun Zheng, Secretary of the China Swimming Association and interpreter.

III JURISDICTION AND APPLICABLE RULES

3.1 The jurisdiction of the FINA Doping Panel arises out of the following provisions of the FINA Rules: C 21.5, C 21.6 and FINA DC 8.1.

3.2 The applicable Rules in this case are the FINA Doping Control Rules in effect since January 1, 2009 (amended on the occasion of the FINA General Congress on 24 July 2009).

IV LEGAL DISCUSSION

THE FACTS

4.1 Ms. ZHANG did not dispute the report of the National Measurement Institute (NATA), dated 3 June 2013, which concluded the presence of the prohibited substance Bisdsmethylsibutramine, and Desmethylsibutramine in her urine sample.

4.2 Sibutramine is a prohibited substance under Class. S.6.b Specified Stimulants of the 2013 Prohibited List International Standard adopted by the World Anti-Doping Agency (WADA) and is prohibited in competition only.

Ms. ZHANG'S POSITION

4.3 Ms. ZHANG declared:

"I was officially informed, on July 5 2013 by China Swimming Association that a report by FINA showing the presence of the banned substance Sibutramine from my urine sample test which was conducted during the 2013 FINA Women's Water Polo World League Preliminary Round this May, in Auckland. I was deeply shocked, confused and sad. (...)

In mid April 2013 before the visit New Zealand for the event, in order to reduce weight and relieve chronic constipation I was bothered, I checked through the internet to reach the related products on how to quickly and efficiently solve these problems.

Introduced by the online seller, I was recommended to purchase KUKOSAI slimming products for its efficacy of relieving constipation.

While communicating with the seller, I clearly explained that I was sportswoman and also required the seller to clarify whether the products would cause any violation to the doping control. Answer by the seller was positive that the pure natural elements of the product would ensure the safety for my using.

Thus, I took the word from the seller, with the lack of vigilance and sensitivity that an athlete should always have, and reserved the KUKOSAI ROSE TEA (by set) and accepted the slimming products

provided by the seller as their promotional items. The products were received by me on April 26th due to the short of stock by the seller. And the following products were used by me upon their receiving: Green Algae Composite Tablets (per tablet per day), Active Amino Acid (per tablet per day), Green Algae Fat-soluble (per tablet per day)

I started to take the Rose Tea from April 28th at around every 7 pm for 5 consecutive days. However, started from May 2nd, the right day I took the promotional slimming products, nausea, insomnia and palpitation came to annoy me. I inquired the seller whether the phenomenon was normal and was replied as so - called "adaptive phase" which made me turned off my mind toward it. In the following days, I took one tablet half hour after every breakfast and another tablet every evening before sleep, until the day of the travel to New Zealand.

I didn't take the tablet on May 6th during the flying, however, 1 tablet in the morning and 1 in the evening from May 8th to 10th were taken.

I suppose this to be reason that my urine sample was tested to be Positive. As a result, here I would like to entrust China Swimming Association with the test to the slimming products taken by me.

As an outstanding senior Water Polo player with the eligibility of the participation in the Olympic Games, I lost my defense in self-management and self-protection as a professional athlete which results the Positive case by unauthorized purchasing taking slimming products.

The supervisors, team managers and coaches frequently and kindly remind us attempting to take medication and nutrition because they are not only detrimental to the health, but may also be an unconscious way of getting involved in products with banned substance. I honestly ask you to trust me that it was my fault but not my intention to be linked to

the banned substance. I am profoundly sorry for this incident and will be away from the similar in the future”

Ms. WANG MIN POSITION

4.4 Ms. WANG, Team Leader, China Women’s Water Polo declared:

“FINA official letter dated July 4th with the announcement of the Positive urine test report to China Women’s Water Polo player Zhang Lei, of which was conducted during the 2013 FINA Women’s Water Polo World League Preliminary Round this May, in Auckland, shocked and saddened me. I immediately listed this issue as the top priority on my working schedule, officially informed the player, meanwhile, organized personnel of the investigation and progress had been made toward it at this stage. According to Zhang Lei, her unauthorized purchase of slimming products referred to be the reason possible for this result. (...)

Working as China Women’s Water Polo Team Leader, I have always stood firm on the anti-doping position. Continuous education, supervision and inspection in this regard are mandatory in my daily management. (...) I will try everything out to cooperate with the China Swimming Association in the investigation, and meanwhile, to add more concrete efforts to the doping control management toward sport team, in order to prevent the similar incidence from happening in the future”.

CHINA SWIMMING ASSOCIATION POSITION

4.5 Mr. ZHAO Qi declared:

“CHINA SWIMMING ASSOCIATION always pays a great attention to the anti-doping. CHINA SWIMMING ASSOCIATION would like to reiterate its unwavering stance towards ant- doping.

More concrete efforts to Doping Control will be taken in order to resolutely prevent the similar incidence from happening in the future”.

4.6 Ms. ZHANG contended that pursuant to the Specified Substance provision set forth in FINA DC 10.4 she should be sanctioned with a reprimand or other mild sanction.

V. THE LAW

5.1 FINA DC 2.1.1 reads:

“It is each Competitor’s personal duty to ensure that no Prohibited Substance enters his or her body. Competitors are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Competitor’s part be demonstrated in order to establish an anti-doping violation under DC 2.1.”

DC 2.1.2

“Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Competitor’s A Sample where the Competitor waives analysis of the B Sample and the B Sample is not analyzed; or, where the Competitor’s B Sample is analyzed and the analysis of the Competitor’s B Sample confirms the presence of the Prohibited Substance or it Metabolites or Markers found in the Competitor’s A Sample.”

DC 10.2

“The period of ineligibility imposed for a violation of DC 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), DC 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or DC 2.6 (Possession of Prohibited Substances and Prohibited Methods) shall be as follows, unless the conditions for eliminating or reducing the period of ineligibility, as provided in DC 10.4 and 10.5, or the conditions for increasing the period of ineligibility, as provided in DC 10.6, are met: First violation: Two (2) years’ ineligibility.”

DC 10.4

“When a competitor or other Person can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Competitor’s sport performance or mask the Use of a performance-enhancing substance, the period of ineligibility found in DC 10.2 shall be replaced by the following:

First violation: At a minimum, a reprimand and no period of ineligibility from future Competitions, and at a maximum, two years’ of Ineligibility.

To justify any elimination or reduction, the Competitor or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of intent to enhance sport performance or mask the Use of a performance enhancing substance. The Competitor’s or other Person’s degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility.”

VI POSSIBLE APPLICATION OF THE FINA DC RULE 10.4 (SPECIFIED SUBSTANCE)

6.1 SIBUTRAMINE is a “Specified Substance” pursuant to FINA DC 4.2.1. Consequently, pursuant to FINA DC 10.4 if certain factors are met the otherwise applicable period of ineligibility can be reduced to at a minimum a reprimand and a maximum of two years ineligibility.

6.2 The FINA Doping Control Rules are founded on the fundamental premise contained in FINA DC 2.1.1 that:

“It is each Competitor’s personal duty to ensure that no Prohibited Substance enters his or her body. Competitors are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples.”

6.3 The FINA Doping Control Rules DC 10.4 states:

“When a competitor or other Person can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Competitor’s sport performance or mask the Use of a performance-enhancing substance, the period of ineligibility found in DC 10.2 shall be replaced by the following:

First violation: At a minimum, a reprimand and no period of ineligibility from future Competitions, and at a maximum, two years’ of Ineligibility.

To justify any elimination or reduction, the Competitor or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of intent to enhance sport performance or mask the Use of a performance enhancing substance. The Competitor’s or other Person’s degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility.”

6.4 Ms. ZHANG Lei acknowledged the facts and informed the Doping Panel that it was not intentional.

She trusted only the seller and was not surrounded by all the safeguards to avoid this situation.

She merely listened to the seller who, knowing that she was a professional athlete, reassured her that those products were natural products, without any doping effects.

Even after the first consequences/effects of the use of those products, namely nausea, vomiting and choking, she still listened to the salesman who told her that the consequences/effects were perfectly normal.

She did not inform the team coach or any other person in charge and did not consult a physician to inquire about the nature of those products.

6.5 The China Swimming Association had those products analyzed by the Laboratory of CHINADA which gave the following results:

- KUKOSAI GREEN ALGAE combination: negative test;
- KUKOSAI GREEN ALGAE compound tablets: positive test
- presence of SIBUTRAMINE;
- BLUE Tablets: positive test – presence of SIBUTRAMINE;
- KUKOSAI ROSE HERBAL TEA: negative test;
- GREEN Tablets: negative test;
- YELLOW Tablets: negative test.

These results confirm the results of the laboratory analysis by NATA and prove that the SIBUTRAMINE was used by the athlete.

This is not disputed.

6.6 Ms. ZHANG Lei also produced corroborating evidence which established to the Panel's comfortable satisfaction that she did not intend to enhance sport performance or mask the use of a performance enhancing substance. Such corroborating evidence included:

- a. The detailed explanation under which circumstances she spontaneously had used the slimming products.
- b. The fact that Ms. ZHANG Lei tested always negative in the following doping control in or out of competition.

VII SANCTIONS

7.1 In considering whether Ms. ZHANG Lei should receive any period of ineligibility, and, if so, what period of ineligibility is appropriate the Panel considered Ms. Zhang's degree of fault as instructed by FINA DC 10.4.

7.2 As explained above, Ms. Zhang's degree of fault was, when considering the degree of care required from elite athletes who represent their country in international competition, while not overwhelming, certainly manifest (i.e., clearly apparent and visible).

7.3 It is also below the standard of care for an elite athlete to use medications or natural products from another person, even if he or she is close and trustworthy family, because confusion with other medications or mistakes can never be excluded and this is particularly the case where the athlete was admittedly not questioning the label of the products used by her. Remarkably Ms. ZHANG Lei had not

mentioned the use the KUKOSAI, during the doping control, whereas, according to the Doping Control Form, she had mentioned "DOMPERIDONE".

7.4 Ms. ZHANG Lei responded promptly to her positive test, quickly ascertaining the cause of the positive test and convincing the Doping Panel she would take steps to avoid any future recurrence.

7.5 The Doping Panel has taken into consideration the message of the China Swimming Association and Team Leader, China Women's Water Polo, who is formally engaged in the fight against doping.

7.6 The Doping Panel has taken into account the sincere regrets of Ms. ZHANG Lei, her good faith and honesty in acknowledging the facts alleged against her. The Panel cannot escape the fact that Ms ZHANG was careless in seeking to take the KUKOSAI without taking the minimal precautions of obtaining more information from her medical entourage or that of the team. It however appears that her basic desire to lose weight, a pursuit shared by a number of young women her age, clouded her better judgment and induced her to take a product which not only contravened Doping Regulations, but more specifically, put her health at risk.

7.7 Under these circumstances, the Panel believes a period of six (6) months ineligibility is appropriate under the FINA Doping Control Rules.

7.8 Pursuant to FINA DC 10.9 Ms. ZHANG Lei period of ineligibility shall run from 22 July 2013, the day of the hearing.

VIII. CONCLUSION

8.1 Ms. ZHANG Lei receives a six (6) month period of ineligibility commencing on 22 July 2013.

8.2 All costs of this case shall be borne by CSA in accordance with FINA DC 12.2.

8.3 Any appeal against this decision may be referred to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland not later than twenty one (21) days after receipt of this judgement (FINA Rule C 12.9.3).

Robert Fox
Chairman

Farid Ben Belkacem
Member

Peter Kerr
Member

Signed on behalf of all three Panel Members

A handwritten signature in black ink, appearing to be 'R. Fox', written over a horizontal line.

Robert Fox, Chairman