

SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)

ANTI DOPING DISCIPLINARY HEARING

ATHLETE: DANTE MULLER

ATHLETE'S REPRESENTATIVE (FATHER): ANDRE MULLER

SPORTS FEDERATION: ATHLETICS SOUTH AFRICA

SPORTS FEDERATION REPRESENTATIVE: ANTA MARX

DATE: 21 AUGUST 2012

PLACE OF HEARING: COURTYARD HOTEL, ROSEBANK,
JOHANNESBURG

DISCIPLINARY PANEL ("PANEL"): RAPHAEL GRANT BRINK (CHAIRMAN & LEGAL
REPRESENTATIVE)

JON PATRICIOS (MEDICAL REPRESENTATIVE)

NORMA NONKONYANA (SPORTS ADMINISTRATOR
REPRESENTATIVE)

PROSECUTOR: MR CULLIS

ANTI-DOPING RULE VIOLATION: ANTI-DOPING RULE VIOLATION IN TERMS OF
ARTICLE 2.1 OF THE SAIDS ANTI-DOPING RULES

LEGAL FRAMEWORK

SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended). SAIDS has formally accepted the World Anti-Doping Code adopted and implemented by the World Anti-Doping Agency in 2003. In so doing, SAIDS introduced anti-doping rules and regulations to govern all sports under the jurisdiction of South Africa Sports Confederation and Olympic Committee, as well as any national sports federation.

The SAIDS Anti-Doping ("the Rules") were adopted and implemented in 2009. These proceedings are therefore governed by the Rules. This SAIDS Anti-Doping Disciplinary Panel has been appointed in accordance with Article 8 of The Rules.

HEARING

The hearing took place on the evening of 21 AUGUST 2012 at 17H30 at the Courtyard Hotel, Rosebank, Johannesburg.

The Chairperson opened the hearing and explained the procedure to be followed.

BACKGROUND AND CHARGES

The athlete was tested for prohibited substances in an in-competition test on 8 February 2012. The analysis conducted by the South African Doping Control Laboratory at the University of the Free State indicates the following substance identified in the sample: **Methylhexaneamine**.

The Athlete was notified on 6 March 2012 that: **"This adverse analytical finding constitutes a breach of Article 2.1 'The Presence of a Prohibited Substance or its Metabolites or Markers in the Athletes Sample' of the South African Institute for Drug-Free Sport's (SAIDS) Anti-Doping Rules' "**.

CONCESSIONS MADE BY THE ATHLETE:

The athlete conceded the following during the hearing as well as under oath before the Panel:

1. That she had received the communications regarding the notification of the adverse finding and the charges were put to her timeously and in order.
2. That she did not request her "B" sample to be tested and that it was common cause that the substance reported was present in her system and was a prohibited substance which was found during an in-competition test and that she duly waived any right in respect to further sample testing.
3. That she was happy to proceed with the hearing with assistance of her father Andre Muller where necessary.
4. The charges were put to the Athlete who pleaded guilty and her father explained that she had ingested a supplement by the brand name of "Berserker" which she obtained from a friend of her father whose son plays Rugby.
5. She had advised her father that she felt weak after three days of flu and he had then asked his friend for advice with regards to a supplement to boost her immune system.
6. They further explained that they regretted the incident and only later, after she was charged did they discover from research that "Geranium Oil" which was listed as one of the ingredients in the supplement was in fact Methylhexanamine a prohibited substance.
7. The Athlete confirmed that she had not participated in any sports since receiving her suspension letter and that she had also not gone to Potchefstroom University for the Athletic trials even though having not done so would in all probability lose her a scholarship.

VIOLATION

8. Article 2.1 of the SAIDS Rules reads as follows:

2.1 Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*.

2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes 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 Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1."

9. From the concessions made by the athlete as described above, it is clear that the Athlete violated the SAIDS Rules as the Rules are applied in terms of strict liability and accordingly no intent, fault, negligence, or knowing Use need be proved.

ISSUES FOR CONSIDERATION

10. Article 10.4 of the SAIDS Rules reads as follows:

"Where an *Athlete* 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 Substances was not intended to enhance the Athlete's sport performance or mask the use of a performance-enhancing substance, the period of *Ineligibility* found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of *Ineligibility* from future *Events*, and at a maximum, two (2) years *Ineligibility*.

To justify any elimination or reduction, the *Athlete* or other *Person* must produce corroborating evidence in addition to his or her word which established to the comfortable satisfaction of the hearing Committee the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The *Athlete* or other *Person's* degree of fault shall be the criteria considered in assessing any reduction of the period *Ineligibility*."

This Article is applicable to the case at hand as Dr. Patrício confirmed that the contents of "Berserker" listed as an ingredient the substance "Geranium Oil" known to be an alias for Methyhexanimine. The Athlete handed over a sample of the supplement to the Panel as evidence (a photograph of which is attached at the end of this decision). In addition the Panel was comfortably satisfied that there was no intent to enhance performance or mask usage and that the explanation was an honest one.

11. Article 10.5.1 of the SAIDS Rules reads as follows:

" No Fault or Negligence

If an *Athlete* establishes in an individual case that he or she bears *No Fault or Negligence*, the otherwise applicable period of *Ineligibility* shall be eliminated. When a Prohibited Substance or its *Markers* or its *Metabolites* is detected in an *Athlete's* Sample in violation of Code Article 2.1 (Presence of *Prohibited Substance*), the *Athlete* shall also establish how the *Prohibited Substance* entered their system in order to have the period of *Ineligibility* eliminated.

In the event that this Article is applied and the period of *Ineligibility* otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation only for the limited purpose of determining the period of *Ineligibility* for multiple violations under Article 10.7. "

This Article has no application as there are no grounds upon which a No Fault or Negligence defence could be based and that accordingly this Article was not relevant to a possible reduction in the ineligibility period.

12. Article 10.5.2 of the SAIDS Rules reads as follows:

" No Significant Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Section may be no less than 8 years. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Code Article 2.1 (Presence of Prohibited Substance), the Athlete shall also establish how the Prohibited Substance entered their system in order to have the period of Ineligibility reduced. "

This Article has no application as there are no grounds upon which a No Significant Fault or Negligence defence could be based and that accordingly this Article was not relevant to a possible reduction in the ineligibility period.

13. Article 10.5.3 of the SAIDS Rules reads as follows:

" Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations. The SAIDS Anti-Doping Disciplinary Committee or SAIDS Anti-Doping Appeal Board may, prior to a final appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the period of Ineligibility imposed in an individual case where the Athlete or other Person has provided Substantial Assistance to an Anti-Doping Organization, criminal authority or professional disciplinary body which results in the Anti-Doping Organization discovering or establishing an

anti-doping rule violation by another *Person* or which results in a criminal or disciplinary body discovering or establishing a criminal offence or the breach of professional rules by another *Person*. After a final appellate decision under Article 13 or the expiration of time to appeal, the *SAIDS Anti-Doping Disciplinary Committee* or *SAIDS Anti-Doping Appeal Board* may only suspend a part of the applicable period of *Ineligibility* with the approval of *WADA* and the applicable International Federation. The extent to which the otherwise applicable period of *Ineligibility* may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the *Athlete* or other *Person* and the significance of the *Substantial Assistance* provided by the *Athlete* or other *Person* to the effort to eliminate doping sport. No more than three-quarters of the otherwise applicable period of *ineligibility* may be suspended. If the otherwise applicable period of *Ineligibility* is a lifetime, the non-suspended period under the section must be no less than 8 years. If the *SAIDS Anti-Doping Disciplinary Committee* or *SAIDS Anti-Doping Appeal Panel* suspends any part of the period of *Ineligibility* under this Article, it shall promptly provide a written justification for its decision to each *Anti-Doping Organization* having a right to appeal the decision. If the *SAIDS Anti-Doping Disciplinary Committee* or *SAIDS Anti-Doping Appeal Panel* subsequently reinstates any part of the suspended period of *Ineligibility* because the *Athlete* or other *Person* has failed to provide the *Substantial Assistance* which was anticipated, the *Athlete* or other *Person* may appeal the reinstatement pursuant to Article 13.2. "

This Article has no application to the present facts. Accordingly this Article was not relevant to a possible reduction in the ineligibility period.

DECISION

14. The Panel found that the Athlete was an honest witness and disclosed all relevant factors.
15. In that a violation had occurred Articles 10.1.1 and 10.2 of the SAIDS Rules have application and provide as follows:

Disqualification of Results In an Event During which an Anti-Doping Rule Violation Occurs

" An Anti-Doping rule violation occurring during or in connection with an *Event*, may upon the decision of the ruling body of the *Event*, lead to *Disqualification* of all the *Athlete's* individual results obtained in that *Event* with all *Consequences*, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.2. "

Imposition of Ineligibility for Prohibited Substances and Prohibited Methods

" The period of *Ineligibility* imposed for a violation of Code Article 2.1 (Presence of *Prohibited Substance* or its *Metabolites* or *Markers*), Code Article 2.2 (Use or Attempt Use of *Prohibited Substance* or *Prohibited Method*) and Code Article 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 Articles 10.4 and 10.5, or the conditions for increasing the period of *Ineligibility*, as provided in Article 10.6, are met: First violation: Two (2) year's - *Ineligibility*. "

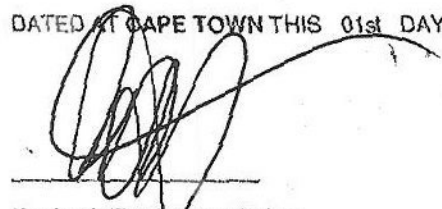
16. The base period of ineligibility for a first violation is two years.
17. The Panel taking into account the lack of intent to enhance performance which was corroborated by her father's evidence that she was sick and sought merely an immune booster, found the circumstances justified the application of Article 10.4 as quoted above.
18. Furthermore the Panel noted that at the time of her suspension she was a minor and dependant upon the advice of others.
19. The Panel found further that due to various circumstances not all of which were the direct fault of the Athlete, the suspension of the Athlete had exceeded five and a half months during which time the Athlete had respected the suspension notice.

20. The Panel accordingly imposes a sanction of time served as of 6 March 2012 and ending on the 21 August 2012. The Athlete indicated that she understood that were she to again be found guilty of a violation the consequences could be significant and she agreed to always consult a sports medicine doctor prior to taking any supplement in future.
21. Forfeiture in terms of Article 10.1.1 above is not applicable.

Date of Hearing 21 August 2012 - Dante Muller (Athletics)

We the panel members confirm that the decision above properly reflects the decision of the tribunal.

DATED AT CAPE TOWN THIS 01st DAY OF SEPTEMBER 2012.



Raphael "Ray" Grant Brink

(Chairperson and Legal Representative)



Jon Patricios

(Medical Representative)



Norma Nonkonyana

(Sports Administrator Representative)

