

INTERNATIONAL RUGBY BOARD

IN THE MATTER OF THE 2007 UNDER 21 WORLD CHAMPIONSHIP ANTI DOPING PROGRAMME AND THE REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED DOPING OFFENCE BY **MARTIN BUSTOS MOYANO (ARGENTINA)** CONTRARY TO REGULATION 21

BEFORE A BOARD JUDICIAL COMMITTEE APPOINTED PURSUANT TO REGULATION 21.20 and 21.21 CONSISTING OF:

Judicial Committee:

Gregor Nicholson (Scotland)
Ismail Jakoet (South Africa)
Graeme Mew (Canada – Chair)

Appearances and Attendances:

For the Board:

Susan Ahern (Counsel)
Tim Ricketts (Anti-Doping Manager)

For Union Argentina de Rugby

German Luis Ferrer

The Player

Martin Bustos Moyano
Ricardo Bordcoch (Counsel for the Player)

In Attendance

Juan Martin Bustos Moyano (Player's father)
Maria Susana Kaden (Player's mother)
Azucena Burnedez (Translator)

Heard: 17 August 2006 (by way of telephone conference)

DECISION OF THE JUDICIAL COMMITTEE

1. The Under 21 Rugby World Cup took place in France in June 2006. Martin Bustos Moyano (the "Player") participated in that tournament as a member of the National Team of Argentina.

2. On 7 June 2006 the Player complied with a request to undergo Out of Competition Doping Control in accordance with the tournament anti-doping programme and Regulation 21 of the Regulations Relating to the Game (the “Regulations”) of the International Rugby Board (the “Board”).
3. The Player completed a Doping Control Form in which he declared his recent use of proteins and vitamins, valium, creatine and diclofenac.
4. In accordance with the usual practice, the urine specimen provided by the Player was divided into “A” and “B” samples. The A sample was subsequently analysed by the Laboratoire National de Depistage du Dopage in Chàtenay-Malabry, France, a laboratory accredited by the World Anti-Doping Agency (“WADA”), on 11 June 2006. The resulting analysis concluded that the sample contained the presence of 3 hydroxystanozolol, which is a metabolite of stanozolol. Stanozolol is a Prohibited Substance under both Regulation 21 and the World Anti-Doping Code.
5. At the Player’s request, the B sample was then analysed by the Laboratory at Chàtenay-Malabry. The further analysis was completed on 14 June 2006 and resulted in the same finding as that produced by the A sample.
6. Following receipt of the analysis of the A sample and after a preliminary review had been conducted in accordance with IRB Regulation 21.20.1, which confirmed that an anti-doping rule violation may have been committed, the Player was provisionally suspended on 12 June 2006.
7. Following receipt of the analysis of the B sample, the Player was informed of his right to a hearing before a Board Judicial Committee (“BJC”).
8. On 23 June 2006 the Player requested that a BJC be appointed to hear his case.
9. The hearing was convened by way of telephone conference on 17 August 2006. During the course of that hearing, and as will be more fully discussed below, the Player alleged in his defence that certain supplements that he had used may have been contaminated by a Prohibited Substance. This led to a number of developments which have prolonged the hearing and adjudication process. Specifically:

- a) Following the hearing, but before the announcement of any decision by the Board Judicial Committee (“BJC”), the Player’s counsel contacted the Board’s representatives concerning the possible testing of empty canisters which were said to have contained the supplements used by the Player. This led to a request to the BJC to provide directions with respect to the possible testing of the canisters (Board Minute No. 1 dated 30 August 2006);
- b) Counsel for the Player then requested an extension of time so that financial assistance from the Union Argentina de Rugby (the “Union”) could be obtained to undertake the requested laboratory analysis at a WADA accredited laboratory. The request for testing was also extended to cover a sealed container of the substance, bearing the same batch number and purchased from the same outlet, where the original substance was purchased. This led to a further direction from the BJC providing directions for the proposed additional testing (Minute No. 2 dated 18 September 2006);
- c) Thereafter, further procedural issues arose in connection with the testing process. In particular, the International Rugby Board (the “Board”) reserved its rights to make representations in connection with various evidential concerns which it had in relation to the additional testing procedures. Further clarification was provided by the BJC in its Minute No. 3 (21 November 2006).

10. The further testing was undertaken by the Zentrum Für präventive Dopingforschung Deutsche Sportochschule, Köln, Germany. The laboratory’s certificate of analysis is dated 14 February 2007. The BJC then provided further directions with respect to the delivery of additional written submissions arising from the analysis and gave the parties the option of requesting an additional telephone conference hearing, if so desired (Minute No. 4 dated 6 March 2007).

11. After receipt of further written submissions from the Board and the Player, the most recent of which are dated 5 April 2007, members of the BJC reconvened by way of telephone conference on 13 April 2007, in the absence of the parties, to deliberate.

12. In addition to the oral evidence and submissions provided at the hearing, the record before the BJC consisted of a number of documents and written submissions which are listed in Appendix A to this decision.

The Player

13. The Player was 20 years old at the time he was tested. He is a member of the Cordoba Athletic Club. He is a student at the School of Law of Cordoba University. He has played representative rugby for Argentina in 7s and at the Under 21 level, playing in overseas tournaments and matches in Germany, Singapore, South Africa and the Emirates.

14. The Player had not been subjected to doping control testing before. He had been told by his Union that there were anti-doping regulations but had no substantive knowledge of what the regulations provide for. It was confirmed that he did sign a "Player Consent and Agreement" form in which he acknowledged that "I have had an opportunity to read and understand the Anti Doping Regulations and Procedures Manual".

15. The Union acknowledged that it had hitherto done very little work on doping

Anti-Doping Rule Violation Established

16. The Board alleges that the Player committed an anti-doping rule violation contrary to Regulation 21.2.1 which provides that the presence of a Prohibited Substance or its Metabolites or Markers in a Players bodily sample, constitutes an anti-doping rule violation.

17. Under Regulation 21.3.1, the Board has the burden of establishing an anti-doping rule violation to the comfortable satisfaction of the BJC.

18. The Player does not contest the analytical findings of the Chàtenay-Malabry laboratory. Accordingly, we conclude that the Board has established an anti-doping rule violation, namely, the presence of stanozolol, a Prohibited Substance, in the Player's bodily Sample.

Sanction

19. The sanction for the presence of a Prohibited Substance, such as stanozolol, is two years Ineligibility for a first offence (Regulation 21.22.1). This is subject to the Player establishing the basis for eliminating or reducing this sanction based on "Exceptional

Circumstances” as provided for in Regulation 21.22.4.

20. Two categories of exceptional circumstances are identified. In the first, if a Player can establish that he “bears No Fault or Negligence for the violation” and can establish how the Prohibited Substance entered his system, the period of Ineligibility can be eliminated. “No Fault or Negligence” means:

The Player’s establishing that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had used or been administered the Prohibited Substance.

21. The second category is where the Player “bears No Significant Fault or Negligence” in which case the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable. The definition of the term provides:

The Player’s establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to an anti-doping rule violation.

22. A footnote to the corresponding provision of the *World Anti Doping Code* makes it clear that only in truly exceptional cases and not in the vast majority of cases will these provisions operate to eliminate or reduce a sanction. An example of where the elimination of a sanction might be justified would be where a Player was sabotaged by a competitor. The administration of a Prohibited Substance by an athlete’s personal physician without disclosure to the athlete, in circumstances where the athlete had told the doctor that he could not be given any Prohibited Substance could, depending on the unique facts and circumstances of a particular case, result in a reduced sanction.¹

¹ The commentary to Article 10.5 of the World Anti Doping Code provides:

To illustrate the operation of Article 10.5, an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a prohibited substance by the Athlete’s personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any prohibited substance); and (c) sabotage of the Athlete’s food or drink by a spouse, coach or other person within the Athlete’s circle of associates (Athletes are responsible for what they

23. The burden is on the Player to establish the existence of “exceptional circumstances” under Regulation 21.22.4 on a balance of probability.

24. The Player asserts that he was not negligent. In short, he says that he took nutritional supplements following consultation with a registered nutritionist. He asserts that a supplement which he used was contaminated with a Prohibited Substance which led to the positive finding for stanozolol.

(a) Source of Prohibited Substance

25. It is common ground between the Board and the Player that in order to engage consideration of a reduced sanction based on exceptional circumstances, the Player must establish on a balance of probabilities “how the Prohibited Substance entered his system”.

26. Prior to, and at the time of the hearing on 17 August 2006, the Player’s position was that he was not in a position to accept or deny the intake of the Prohibited Substance since he did not know its origin or the means by which it entered his system.

27. Subsequently, after further testing of the empty canister containing the supplement which the Player says he was taking shortly before his failed anti-doping test, the Player asserts that his use of the supplement was the means by which the Prohibited Substance entered his system.

28. The Board’s submission throughout has been that the Player has failed to meet the burden of proving how the Prohibited Substance entered his system and that the additional evidence obtained after the 17 August hearing is inconclusive.

29. The Player acknowledged his use of nutritional supplements and vitamins as part of his fitness regime. He discussed this with his parents. They were concerned that he should use “safe and secure” products. Their concern was not driven by consideration

ingest and for the conduct of those persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.)

of anti-doping regulations but, rather, general health considerations. As a result, the Player consulted Sonia Polidori, a licensed nutritionist.

30. A statement from Sonia Polidori was received in evidence. In it, she says:

Due to the high demand caused by the intense physical activity and the consequences this brought about, it was suggested, to reach the nutritional requirements, that he should complement [*sic*] with protein supplements of high biological value: "TOTAL PROTEIN" (milk proteins: caseinato and lactoalbumina), diet supplement with vitamins and minerals: "FORMULA 4000", amino acids: GLUTAMINA, Sport Diet laboratories (for further information www.sportdiet.com.ar) and creatine given by the UAR..."

31. As a member of the Argentina Under 21 Rugby World Cup squad, the Player also came under the supervision of the team physician, Dr. Matias Zuccheri. Dr. Zuccheri provided the following information to the BJC concerning substances given to the Player during the tournament:

- "Diclofenac (from May 31st to June 8th) Denver Farma Laboratory, Diclofenac 50mg, Sodium Glicolate Anylum, Spray Lactose, Microcrystalline Cellulose, Magnesium Stearato, Talc, "Acido Metacrilico/Copolimero", Polientilenglicol 6000, Titanium Dioxide, Simatecona Emulsion to 30 %, Trietilcitrato, Polisobrato 80 (Direct chronical traumatism in right shoulder, knee distention).
- Metaflex Plus (from May 31st to June 8th) Montpellier Laboratory, Diclofenac 50mg, Piridinol 4mg (Direct chronical traumatism in right shoulder, knee distention).
- Diazepam Vannier 5 (June 6th 2006) Vannier Laboratory, Diazepam 2mg, Monohidrate Lactosa 105.5mg, Corn Amylum 44.5mg, Povidona k30 11.5mg, Sodium Glicolate Amylum 5mg, Magnesium Stratus 1.5mg.
- Marathon (from May 5th to June 8th) IVAX Laboratory, CoenzimaQ10, Korean Ginseg 40mg, Siberian Ginseg 40mg, Pro-vitamen A 12500 UI, Vitamin C 60mg, Tiamina 800ug, Riboflavina 1mg, Vitamin B6 1mg, Vitamin B12 1.5ug, Niacina 10mg, Pantotenic Acid 5mg, Folic Acid 200ug, Boitina 20ug, Ferrum 10mg, Zinc 7.5mg, Potasium 7.5mg, Copper 1mg, Selenium 40ug, Molobdeno 7.5ug, Chromium 7.5ug (Vitaminic Supplement)
- Creatine (from June 6th th June 9th) Gaspari Nutrition Monohidrate (Vitaminic Supplement)".

32. After the hearing on 17 August, arrangements were made through the Union to have the empty canisters of the supplements used by the Player tested at the Laboratorio de Control de Doping of the Secretariat of Sports in Buenos Aires (the "CENARD" laboratory). The CENARD facility is not a WADA accredited laboratory.

33. This testing detected the presence of stanozolol in one of the supplement canisters used by the Player. The supplement concerned was called "Glutamina". It was this product that became the subject of further testing by a WADA accredited laboratory. In regard to that further testing, as noted above, the BJC gave directions that:

- a) an empty canister (or canisters) of the supplement which the Player claims to have used should be analysed for the purpose of determining the qualities of any residue contained in the canister(s); and
- b) a sealed container of the same substance (said to have been used by the Player), bearing the same batch number and purchased from the same outlet where the original substance was to be purchased and tested.

34. The Player thereafter purchased one originally sealed container (same batch and same shop)² of Glutamina and provided it to the Union for onward transmission to a WADA accredited laboratory.

35. It was ultimately agreed that the testing would be done by the WADA accredited laboratory in Cologne.

36. On 24 October 2006, Dr. Hans Geyer of the Cologne WADA laboratory wrote to the IRB in the following terms:

"In case we detect a doping substance in the athlete's nutritional supplement, we recommend to let analyse a new original packed nutritional supplement to exclude a manipulation from the athlete himself. The new nutritional supplement should have the same charge number and expiry date. Therefore we recommend to buy as soon as possible the same nutritional supplement from the same source and send it to our laboratory (originally packed)."

37. Dr. Geyer's email essentially coincided with what the BJC in its directions had anticipated should be sent to the laboratory. Dr. Geyer, in addition, indicated that the sealed container should bear the same expiry date.

38. On 29 January 2007, Dr. Geyer stated in an email sent by him to the Board:

"we have received the two bottles Glutamina on 22nd January 2007. Both products have the same expiry date. There is no charge number. The first visual inspection of the original packed bottle did not give a suspicion for a manipulation. We have already started the analyses. We will inform you as soon as possible about the results."

² See Submission of Player, 4 October 2006

39. The report of the Cologne laboratory is dated 14 February 2007. It contains the following information:

On request of the International Rugby Board. Dublin, Ireland. we have analysed the following nutritional supplements (date of receipt: 22.01.07) for anabolic-androgenic steroids.

Lab. Code	Product name	Lot	Exp date	Remarks
40 010/07	Glutamina, Sport Diet		0707	Originally packed white plastic bottle with yellow screw cap and varicoloured label containing white powder
40 014/07	Glutamina, Sport Diet		0707	Opened white plastic bottle with yellow screw cap (fixed white, small adhesive label on to of screw cap, handwritten "2 GLUTA") and varicoloured label containing white powder

GC/MS analyses of the product

Aliquots of 1 g of the samples 40 010/07 and 40 014/07 were analysed by gas-chromatography/mass-spectrometry and liquid chromatography/ mass spectrometry for Stanozolol and Methyltestosterone.

Results

In 40 014/07 Stanozolol and Methyltestosterone were detected.

In 40 010/07 no anabolic-androgenic steroid could be detected above a concentration of 0,01 µg/g.

40. Based on the results of the testing undertaken by the CENARD and Cologne laboratories, the Player contends that the Glutamina supplement he used was contaminated and was the cause of the Prohibited Substance, stanozolol, entering his system.

41. The Board's position is that the evidence relied upon by the Player as proof of how the Prohibited Substance entered his system is inconclusive. In particular the Board submits:

- a) Little if any weight should be attached to the results from the CENARD laboratory as it is not a WADA accredited facility. Furthermore, an IRB request (of 15th November which was agreed to by the Player) that detailed laboratory reports of the three supplements analysed by CENARD be provided has not, in fact, been provided;
- b) The Player did not identify the vitamins he was taking (by name) on his Doping Control Form but rather referred generically to “proteines and vitamins”;
- c) If it is accepted by the BJC that the supplements recommended to the Player by Dr Sonia Polidori (being Total Protein / Formula 4000 and Glutamina -Sport Diet) were the supplements the Player actually took prior to his Doping Control, the Player has presented no evidence that the three supplements submitted to the CENARD laboratory were the exact three supplements he took prior to the Doping Control;
- d) No chain of custody evidence (including but not limited to identification of batch numbers and continuity of possession) in relation to the three supplements submitted to the CENARD laboratory has been presented (other than pictures of the alleged infringing supplements) from the time of the original purchase of the supplements to the time of their analysis by CENARD;
- e) The “Glutamina” product purchased as a comparative batch sample is alleged to have been purchased from the same location as the original “Glutamina” product. No evidence to this effect has been provided;
- f) In a submission made by the Player on 4 October 2006 it was stated that “...results of CENARD analysis, which demonstrate that the possible source of contamination is only the product commercially known as “Glutamina”...” (emphasis added) and, by inference, not the probable source of the Prohibited Substance entering the Player’s system;
- g) There were either no batch samples on the original and second purchased “Glutamina” products or they were not disclosed. The fact that the two have the same expiry date in no way goes to establish that the products were

- i) from the same batch,
- ii) made from the exact same components and in the same quantities,
- iii) made on the same assembly line (or equivalent manufacturing platform), or in
- iv) made in the same location.

Consequently, the Player cannot be said to have established (clearly or otherwise) that the comparison between the two “Glutamina” products was a comparison of like with like. Further even if it were established / accepted that it was a like for like comparison, the fact that the second unopened “Glutamina” was found not to contain 3 Hydrozystanozolol (Stanozolol) has the effect of raising questions about how the Stanozolol came to be present in the opened “Glutamina”;

- h) With respect to the sealed canister of “Glutamina” which was sent to the Cologne laboratory for analysis:
 - i) no evidence that it was purchased from the same source or having the same batch number was provided,
 - ii) no chain of custody evidence has been provided.

42. The Player in response notes that the team doctor filled in the section on the Player’s Doping Control form listing his medications. While some imperfections in the chain of custody and, in particular the absence of series production numbers on the plastic bottles sent to Cologne, are acknowledged, the Player submits that the efforts made to enable the Cologne laboratory to (using the language of the IRB submission) compare “like with like” have been reasonable and that the burden of proof has been established.

43. By a majority of two to one (Dr. Jakoet dissenting), the BJC accepts that, on a balance of probabilities, contaminated Glutamina was the source of the Prohibited Substance, stanozolol, found in the Player’s system.

44. The majority of the BJC is of the view that, in the circumstances, the Player has done enough to establish Glutamina as the most likely source. The Player's standard of proof is a balance of probability. It is not "comfortable satisfaction" or proof "beyond reasonable doubt". The Board's concerns are valid, and were taken into account by us. However, the Board's submissions appear to us to be asking us to hold the Player, who is trying to establish an entitlement to have Exceptional Circumstances considered in order to obtain an elimination or reduction of his sanction, to a similar standard to that required for the Board to establish a doping offence in the first place. If we were to accept the Board's submissions, it would be difficult if not impossible for a Player to ever assemble evidence which would meet that standard.

45. In coming to this conclusion, we see a great difference between a case where the athlete speculates about the possible cause of the positive test, and a case where one viable theory, supported by evidence, is the most probable cause, on a balance of probabilities. We therefore are in broad agreement with the statement contained in the Board's submissions:

2.4 The purpose of IRB Regulation 21.22.4 / WADA Article 10.5 is to confine the circumstances in which the minimum mandatory sanctions may be reduced to truly exceptional circumstances in which the Player can show (the burden of proof being upon him) how the Prohibited Substance did in fact enter his body. This threshold requirement of establishing the route of and factual circumstances surrounding ingestion of the Prohibited Substance ensures that the raising of hypotheses by a Player, *"mere protestations of innocence, disavowal of motive or opportunity, however persuasively asserted will not serve to engage these provisions if there remains any doubt as to how the Prohibited Substance entered his body."*³ The Panel in the Hood case went on to elaborate that *"This provision is necessary to ensure that the fundamental principle that the player is personally responsible for ensuring that no prohibited substance enters his body is not undermined by an application of the mitigation provisions in the normal run of cases"*.

By way of caveat, however, we do not agree with the suggestion that the "Exceptional Circumstances" provisions will not be engaged if there remains any doubt as to how the Prohibited Substance entered the athlete's body. That would be a standard of proof beyond a balance of probability.

³ *ITF v Roy Mariano Hood* (8 February 2006)

46. To the extent that we were asked to judge the credibility of the Player and his theory of how the positive test came about, we gave the Player some benefit of the doubt given that the hearing was conducted over the telephone rather than in person or using a medium which would have enabled us to better assess matters of credibility.

47. In dissenting from the conclusion of the majority on the issue of whether the Player has established how the Prohibited Substance entered his system, Dr. Jakoet wishes to record his view that the other possible causes of the positive test, including deliberate doping, cumulatively outweigh contaminated Glutamina as the source of the stanozolol found in the Player's system. Dr. Jakoet also feels that the laboratory test results from Cologne are not conclusive given the small portions of samples tested and the opportunities for manipulation.

48. The majority view of the BJC, that the player has done enough to establish Glutamina as the most likely source of the banned substance, took account of the fact that the residue tested was from an opened container and open to possible manipulation. Had the other sealed container of Glutamina produced a consistent result this would have added considerable weight to the integrity of the analysis of the open container. However, given the minute amounts which need to be present to register an Adverse Finding, and the fact that any contamination is very unlikely to be spread evenly across the batch, it would not be impossible for the analysis of different containers of the same product to produce different results. The fact that the analysis of the player's open and sealed supplements were not consistent was therefore not deemed sufficient reason in itself to reject the player's assertion that the Glutamina supplement was the source of the banned substance.

49. Furthermore, the original lab report on the A sample recorded a finding for stanozolol and traces of methyltestosterone. Thereafter, however, all the correspondence and reports focus on the adverse finding for stanozolol with no further mention of the traces of methyltestosterone. The CENARD lab analysis on the supplement residue was undertaken specifically to detect the presence of stanozolol. The Board's request to the Cologne lab (22/11/06) was to analyse the supplement for the presence of **any** prohibited substance. The lab was also advised that an adverse finding for stanozolol arose from the athlete's sample, but no mention was made to the Cologne laboratory of

methyltestosterone. The Cologne lab's report on the analysis of the supplement residue referred to both stanozolol and methyltestosterone. This is consistent with the original analysis report on the player's A sample and supports the player's assertion that Glutamina was the most likely source of the banned substance .

(b) Reduction of Sanction

50. As already noted, the commentary in Article 10.5 of the WADA Code makes it clear that a sanction could not be completely eliminated on the basis of No Fault or Negligence in the case of a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement.

51. We have therefore considered whether the Player "bears No Significant Fault or Negligence" for the positive test, in which case his period of Ineligibility may be reduced by up to one-half of the two year minimum period of Ineligibility otherwise applicable.

52. The Player submits a number of factors justifying a reduced sanction, including the following:

- a) The Player vehemently denies intentional doping;
- b) The efforts of the Player and his parents to avoid use of any harmful substances by taking and following professional advice on nutrition and supplementation;
- c) The supplements were purchased from a reputable source;
- d) Notwithstanding this, the possibility that the risk of encountering contaminated supplements could be higher in a country like Argentina than it might be elsewhere;
- e) The Player's exemplary record as a player and a student;

- f) The amateur status of the Game in Argentina and the lack of anti-doping education and information.

53. The Board's position is that the circumstances do not warrant any reduction of the two year minimum penalty. In particular the Board submitted that:

- a) The principle of strict liability enshrined in IRB Regulation 21 / WADA Code together with the personal responsibility obligation each player has to ensure that no Prohibited Substance enters his system must be of paramount consideration. Protestations of innocence with regard to what the Player was consuming run counter to these underlying principles;
- b) Rugby is a seamless Game with the same rules applying to both the amateur and professional players. Regulation 21 is no different and all those who play the Game can be tested any time, anywhere and if caught, subject to the same process and sanctions;
- c) The Player was taking a cocktail of vitamins and proteins at the time of his Sample collection;
- d) The Player sourced the vitamins locally. In his submission of 10 August the Player himself notes (para.3) that *"These products are bound to have a lower level of quality control than the American or European ones"*;
- e) It is well known that supplements, not being a medication, are not regulated and extreme care must be taken in their consumption. WADA⁴ and the Board have documented this⁵;
- f) The Player was constantly warned by his parents about the dangers of taking Prohibited Substances so whatever the level of education he may have received

⁴ See the Athlete's Guide – Edition 3 at page 11- http://www.wada-ama.org/rtecontent/document/WADA_Athlete-Guide_ENG.pdf

⁵ <http://www.irb.com/NR/rdonlyres/E4B67BA8-730F-41CF-AF22-6BBFD7050031/0/IRBantidopingAthleteGuide2006EN.pdf> and as quoted by the Player in para 20 (ibid) "Supplement companies are not required to list all the ingredients on the labels of supplements which means you could be taking a cocktail of prohibited substances" – Tim Ricketts www.irb.com

from his Union he was on notice of the inherent dangers – “...*Despite the virtual absence of the national and provincial union on the doping issue they permanently warned him about the intake of unknown substances*”.⁶

- g) No certificate that the supplements provided to the Player were free from Prohibited Substances (their Metabolites or Markers) from Sport Diet⁷, the manufacturer of “Glutamina” (the alleged source of the Prohibited Substance) and “Formula 4000” was ever produced or claimed to have been sought by the Player. Reliance appears to have been made by the Player on verbal assertions to his father and the company statement on their website “*Don’t fear, dietary complements are drugs free, healthy food and protect your health*” (para.4); and
- h) while some of the vitamins / proteins consumed by the Player were prescribed by a professional (Dr.Sonia Polidori) nowhere in the doctors statement does she refer to the fact that such vitamins / proteins were ‘free from Prohibited Substances’ and/or that she was asked at any time to ensure that the Player did not consume any vitamin / protein / supplement which might or had the risk of containing a Prohibited Substance.

54. We would add that the Player acknowledged having viewed the IRB website many times. Through that medium he would have had access to the *Athlete Guide*, edition 4⁸, published by the Board in partnership with WADA, which, in addition to the contents referenced by the Board (above) contains the following information about supplement use:

⁶ Para.13 Player Submissions 10 August 2006

⁷ www.sportdiet.com.ar

⁸ The Athlete Guide is available on the IRB website – www.irb.com – in English, French and Spanish. The corresponding Spanish text provides:

Se recomienda extrema precaución en cuanto al uso de suplementos. La AMA opina que una buena dieta es sumamente importante para los deportistas. Asimismo, se preocupa por el consumo de suplementos nutritivos por parte de los deportistas porque es posible que en muchos países no se sigan normas estrictas en cuanto a la fabricación y el etiquetado de los suplementos, lo que podría dar lugar a que un suplemento contuviera una sustancia no declarada que esté prohibida según las normas antidopaje. Se ha atribuido un número considerable de controles positivos al mal uso de suplementos, y tomar un suplemento nutritivo mal etiquetado no se considera una defensa adecuada en una audiencia por dopaje.

“Extreme caution is recommended regarding supplement use. It is WADA's position that a good diet is of utmost importance to athletes. The use of dietary supplements by athletes is a concern because in many countries the manufacturing and labeling of supplements may not follow strict rules, which may lead to a supplement containing an undeclared substance that is prohibited under anti-doping regulations. A significant number of positive tests have been attributed to the misuse of supplements, and taking a poorly labeled dietary supplement is not an adequate defense in a doping hearing.”

55. In our view the Player's anti-doping rule violation occurred through No Significant Fault or Negligence on the Player's part. While, for the some of the very reasons he cites in mitigation, he should have been more vigilant in his use of supplements, particularly those sourced or originating locally in Argentina, he deserves some credit for having taken professional advice on nutrition and supplementation. We accept that even if avoidance of anti-doping rule violations was not a particular consideration in the Player's supplement use, he wanted to be satisfied that the products he used were “safe and secure”.

56. Because the warnings of supplement use are widespread and readily accessible, we do not regard this as a case where it would be appropriate to reduce the sanction by the maximum amount – one year – permitted. We are persuaded, though, having due regard to the circumstances, including the Player's expression of regret, his age and his good record in rugby, that it would be appropriate to reduce the sanction from two years to eighteen months.

Decision

57. On 7 June 2006 the Player committed an anti-doping rule violation, namely, the presence in a bodily Sample provided by the Player of 3 hydroxystanozolol, which is a metabolite of stanozolol. Stanozolol is a Prohibited Substance under both Regulation 21 and the World Anti-Doping Code.

58. The sanction imposed for this anti-doping rule violation is a period of Ineligibility of eighteen months, commencing 12 June 2006 (the date upon which the Player's provisional suspension under Regulation 21.19 commenced) and concluding (but inclusive of) 12 December 2007.

Costs

59. If either of the Parties wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.9, written submissions should be provided to the BJC via Mr. Ricketts by 17:00 Dublin time on 8 June 2007, with any responding written submissions to be provided by no later than 17:00 Dublin time on 18 June 2007.

Review

60. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.24.1) and an appeal to the Court of Arbitration for Sport (Regulation 21.27). In this regard attention is also directed to Regulation 21.24.2 which sets out the process for referral to a Post Hearing Review Body, including the time limit within which the process must be initiated.

31 May 2007

A handwritten signature in black ink, appearing to read 'Graeme Mew' with a stylized flourish at the end.

Graeme Mew, Chairman (for and on behalf of the Board Judicial Committee)
Dr. Ismail Jakoet
Gregor Nicholson

APPENDIX A

Documentary Evidence and Submissions Received

DATE	DOCUMENT
Undated	Dossier Administratif
Undated	Player Consent & Agreement Form – IRB Under 21 World Championship
Undated	Extracts from Chapter 8, Argentine law No. 24.819 (original in Spanish with English translation)
Undated	Series of 13 photographs of supplement containers and labels
Undated	Medical report regarding Under 21 World Championship from Dr. Matias Matias Zuccheri, team doctor, Argentina team
15 November 2006	Written submission of counsel for the Board (Susan Ahern) on procedural matters
7 June 2006	Doping Control Form
11 June 2006	Rapport d'Analyse No. 32/06-1, Laboratoire National de Depistage du Dopage ("A Sample")
11 June 2006	Facsimile from International Rugby Board (Tim Ricketts) to Dr. Barry O'Driscoll Re: Preliminary Review – Adverse Analytical Finding
11 June 2006	E-mail from Dr. Barry O'Driscoll to IRB (Tim Ricketts) Re: Preliminary Review
12 June 2006	Minutes of Meeting Re: Adverse Analytical Finding
12 June 2006	Letter from IRB (Tim Ricketts) to the Player care of the Union Re: Adverse Analytical Finding
12 June 2006	Fax letter from IRB (Simon Gelowitz – Tournament Director, Under 21 World Championship) to Team Manager, Argentina Under 21 (Marcelo Ambroggio) re: immediate suspension of the Player
12 June 2006	Letter from Player to IRB (Tim Ricketts) requesting analysis of B Sample
14 June 2006	Rapport de Contre-Analyse, Laboratoire National de Depistage du Dopage ("B Sample")
15 June 2006	Letter from IRB (Tim Ricketts) to the Player care of the Union re: B Sample result
23 June 2006	Letter from Player to the Board (Tim Ricketts) requesting a hearing before a Board Judicial Committee
26 June 2006	Letter from the IRB (Tim Ricketts) to the Player regarding procedures before Board Judicial Committee

29 June 2006	E-mail from the Player to the Union concerning arrangements for hearing
24 July 2006	Nutritional report from Sonia Polidori, Registered Nutritionist (original in Spanish with English translation)
28 July 2006	Sworn declaration of Juan Martin Bustos Moyano (original in Spanish with English translation)
28 July 2006	Declaration of Alberto Rizzuto, President, Cordova Athletic Club (original in Spanish with English translation)
3 August 2006	E-mail from the Player to the IRB (Tim Ricketts) concerning arrangements for hearing
4 August 2006 (and preceding)	E-mail from BJC to IRB (Tim Ricketts) regarding matters raised in the Player's e-mail of 3 August 2006
7 August 2006	Player's written submissions
7 August 2006	Letter from the Union Cordobesa de Rugby (original in Spanish with English translation)
7 August 2006	Declaration of Matias Zuccheri, Team Doctor, Argentina Under 21 World Championship squad (original in Spanish with English translation)
26 September 2006	Report of results of analysis, anti-doping laboratory, Secretariate of Sports, Buenos Aires (original in Spanish with English translation attached)
9 October 2006	Email traffic regarding testing of nutritional supplements by South American WADA accredited laboratories
24 October 2006	E-mail from WADA laboratory at German Sport University Cologne to IRB (Tim Ricketts)
2 November 2006	Letter from counsel for the Player to Board Judicial Committee
2 November 2006	Letter from counsel for the Board to the Board Judicial Committee
17 November 2006	Written submission of Player on procedural issues
22 November 2006	Letter from IRB (Tim Ricketts) to German Sport University Institute of Biochemistry (Dr. Hans Geyer)
23 January 2007 (and preceding)	E-mail traffic regarding delivery of canisters to Cologne laboratory
14 February 2007	Analysis Report S 2007 000150 from Zentrum Für präventive Dopingforschung Deutsche Sportochschule
22 March 2007	Further written submissions from Player
23 March 2007	Further written submissions from Board Judicial Committee