

**SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)**

**ANTI DOPING DISCIPLINARY HEARING**

<b>ATHLETE:</b>	<b>DARRON WINSTON OMATICUS</b>
<b>SPORTS FEDERATION:</b>	<b>SOUTH AFRICAN NATURAL BODYBUILDING ASSOCIATION</b>
<b>DATE:</b>	<b>8 NOVEMBER 2011</b>
<b>PLACE OF HEARING:</b>	<b>1 MONA CRESCENT, NEWLANDS, CAPE TOWN</b>
<b>DISCIPLINARY PANEL ("PANEL"):</b>	<b>RAPHAEL BRINK (CHAIRMAN &amp; LEGAL REPRESENTATIVE)</b>  <b>GEORGE VAN DUGTEREN (MEDICAL REPRESENTATIVE)</b>  <b>JOWA ABRAHAMS (SPORTS ADMINISTRATOR)</b>
<b>PROSECUTOR:</b>	<b>NIC KOCK</b>
<b>SAIDS REPRESENTATIVES:</b>	<b>FAHMY GALANT</b>
<b>ANTI-DOPING RULE VIOLATION:</b>	<b>ANTI-DOPING RULE VIOLATION IN TERMS OF ARTICLE 2.1 OF THE SAIDS ANTI-DOPING RULES</b>

## LEGISLATIVE & LEGAL BACKGROUND / FRAMEWORK

1. The South African institute for Drug- Free Sport, “SAIDS” is a corporate body established under section 2 of the South African Institute for Drug-Free Sport, Act 14 of 1997, as amended, “the Act”.
2. The main objective which SAIDS has is to promote and support the elimination of doping practices in sport which are contrary to the principles of fair play and medical ethics in the interests of the health and well being of sportspersons.
3. On 25 November 2005 SAIDS, formally accepted the World Anti-Doping Code, “the Code”, which the World Anti-Doping Agency, “WADA”, had adopted on 5 March 2003.
4. By doing this SAIDS, as the National Anti-Doping Organisation for South Africa, introduced anti-doping rules and principles governing participation in sport under the jurisdiction of SASOC, the South African Sports Confederation and Olympic Committee, or any national sports federation.
5. The Anti-Doping Rules 2009, as published by SAIDS (**“the Rules”**), which are applicable to the present proceedings, incorporate the mandatory provisions of the Code as well as the remaining provisions adapted by SAIDS in conformance with the Code.
6. The South African Natural Bodybuilding Association and all sportspeople falling under its jurisdiction are governed by the Rules.

## PANEL CONSTITUTION

7. This SAIDS Anti-Doping Disciplinary Committee hearing panel, consisting of Raphael “Ray” Grant Brink – Chairperson and Legal Representative, George Van Dugteren – Medical practitioner and Yusuf Abrahams – Sports Administrator, (**“the Panel”**) was appointed by SAIDS in accordance with the provisions of Article 8 of the **Rules**, to adjudicate whether the athlete Darron Winston Omaticus (**“Omaticus”**) had violated the **Rules** and if so what the consequences should be.

## CHARGE RELATING TO ANTI-DOPING VIOLATION

8. The charge against **Omaticus** is contained in a letter which was addressed and sent to him on 24 October 2011. (A copy of the letter is attached as Annexure A.)

The relevant portion of the letter relating to the finding and the charge reads as follows:

“On the 06 August 2011 you provided a urine sample (A2632244) during an in-competition test after your event, at the South African Natural Bodybuilding Championships. Upon analysis, the South African Doping Control Laboratory at the University of the Free State reported the presence of a prohibited substance in your sample.

The substance identified was the Stimulant, Methylhexaneamine. Methylhexaneamine is categorized under the class S6.. “Stimulants”, in specific **(b): Specified Stimulants** on the World Anti-Doping Code 2011 Prohibited List International Standard. “

9. **Article 2.1 of the 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.

## PROCEEDINGS

10. The prosecutor for SAIDS in this matter was Mr. Nic Kock **”Kock”** with Mr. Fahmy Galant present as SAIDS representative and Ms. Dolores Dick recording the minutes. Also present was **Desiree Omaticus**, the mother of the athlete who was present in her capacity as a witness as well as Mr. Hoosain Bester, the SA Natural Bodybuilding President and Mr. William Meyer the SA Natural Bodybuilding Vice-President.

11. The hearing was arranged between the parties for the evening of 8 November 2011 and began shortly after 19H00 with the Chairperson explaining the relationship between the World Anti-Doping Agency and its Code and the obligations of South Africa as signatory to an International Instrument whereby SAIDS as well as the role of SAIDS within the legal framework and concluding with how the present hearing was constituted within this framework
12. The Chairperson then introduced all those present at the hearing and explained the roles of each person and then confirmed that all parties appreciated the nature of the process whereafter he called on the prosecutor to begin his questioning.
13. **Ms. Dick** and the Chairperson recorded the proceedings.
14. **Kock** read the charge and thereafter read and explained the provisions of Article 2.1 regarding SAIDS right to prosecute under Article 8.4 of the Rules. On being questioned by **Kock**, **Omaticus** conceded that he:
  - had received the information pack which contained copies of the following: the Doping Control Form which recorded his in-competition test performed on the 6th August 2011, marked Exhibit “A”; the Chain of Custody Form marked Exhibit “B”; the A-Sample Analysis Report marked Exhibit “C” and had no issues in dispute relating thereto;
  - had received correspondence on the 26 August 2011 advising of the adverse analytical finding and correspondence on the charges on the 24 October 2011 and had no issues in dispute relating thereto.
15. Kock then quoted into the record the provisions of Sub-Rule 2.1.1 and 2.1.2 of the SAIDS Anti-doping Rules 2009 as follows:

“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 rule violation under Article 2.1.

### 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 Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample."

16. **Kock** confirmed with **Galant** from SAIDS that **Omaticus** had not responded to the correspondence inviting him to have the B sample tested if required and **Omaticus** did not object to this assertion.
17. **Omaticus** stated in reply to pertinent questions by **Kock** that he
  - was 20 years of age
  - had been competing in bodybuilding shows since 2010
  - that he also plays Soccer for Santos in Mitchells Plain
  - that he has been participating in competitive sport since the age of 11.
16. In response to questions relating to anti-doping education, his medical condition and medication he might have been taking **Omaticus** advised that:
  - there was no anti-doping education at Santos
  - that no one from the Sports administrations he belongs to has spoken to him about anti-doping matters
  - that he used a "Med Lemon" to treat a flu as disclosed on the Doping Control Form
  - that he used Pure Whey Protein as disclosed on the Doping Control Form
  - that the physio had prescribed "Brufen" as an anti-inflammatory treatment for an ankle injury a week before the soccer as disclosed on the Doping Control Form
  - that he had also taken a Chinese Green Tea in sachets branded as "Everlotus"
  - that he had taken absolutely no other medication.

17. **Desiree Omaticus** (the mother of Darren Omaticus) confirmed that she did give her son advice but that her studies in respect of Nutritional Food Supplements was gained 20 years prior and she had not updated her knowledge in the field. She also confirmed that she did not allow any other substances in her house both because of her strong beliefs in this regard.
18. **Van Dugteren** advised that his medical opinion was, that it could not be completely ruled out that the substance could be found in these products and in particular the Whey Protein.
19. **Kock** then asked **Omaticus** if he was employed to which he confirmed that he earned money as a semi-professional soccer player and was not employed in any other manner.
20. **Omaticus** also conceded that he did play competitive soccer after receiving notice on 26 August 2011 of suspension as he understood the suspension to only be applicable to Body Building.
21. The Chairperson clarified the position in respect of the Anti-Doping Code advising that in terms of the Code, the athlete is ultimately responsible for what enters his/her body and that the supplement cannot be blamed. He then confirmed that all parties were happy with the procedure and content of the hearing and that no party had any further comments, whereafter the tribunal panel withdrew to consider their decision at 20H05.
22. The hearing resumed at 20H28 with the Chairperson asking **Omaticus** if he had any objection to further questions being asked as the Panel required clarification on an outstanding matter which the questions previously had not clarified.
23. **Omaticus** confirmed he had no objection and **Van Dugteren** proceeded to ask whether he had used or been given any performance-enhancing substance in his semi-professional Soccer career. **Omaticus** confirmed he had not.
24. After consultation with all parties it was decided by the Panel to send samples of the Whey Protein and the Green tea to the laboratory for testing prior to the Panel making a

decision. Omaticus agreed that as he could not assist the Panel by bringing in actual samples of the products used (as all of his products had been consumed) he would accept the results of similar products being purchased and tested.

25. The Chairperson confirmed that as the athlete had not suspended all competitive sport after receiving notice to do so that the period of ineligibility would run from date of hearing and the period thereof would be decided once the test results became available.
26. **Galant** advised that SAIDS would notify Santos, the PSL and SA Football and the hearing was adjourned at 20H36.
27. The results of the additional laboratory analyses were made available on the 2 December 2011 and concluded that no Methylhexaneamine was found in any of the samples tested. No further submissions were made by **Omaticus**.

#### **PANEL DECISION & REASONS**

28. The **Panel** accepted that **Omaticus'** violation of Article 2.1 of the **Rules** had been proven by the SAIDS prosecution in that there was no dispute in respect of the Adverse Analytical Finding.
29. The **Panel** having accepted that **Omaticus'** violation of Article 2.1 of the **Rules** had been proven by the SAIDS prosecution, it was required only to consider and decide upon:
  - 30.1 the appropriate sanction in accordance with Articles 10.1 and 10.2 of the **Rules**;
  - 30.2 whether there was any basis for possible elimination or reduction of any period of ineligibility which might be imposed upon **Omaticus**, as provided in Articles 10.4 and 10.5 of the **Rules**, providing the totality of the evidence before the Panel supported this.
31. At the adjournment of the hearing it was agreed that the Panel would consider the results of the substances tested and thereafter deliver its decision in writing to all parties without formally reconvening.

**32. The panel finds as follows:**

- 32.1 The athlete declared on his Doping Control Form that in the week before he was tested he had used the sports supplement "*Pure Whey Protein*", as well as the non-steroidal anti-inflammatory drug, *Brufen*, (provided by his physiotherapist to treat an injury) and *Med-Lemon* (to treat flu symptoms). He had also used an over-the-counter herbal preparation (green tea).
- 32.2 The athlete is adamant that he consumed no other pharmacological substances or products and the Panel finds that the athlete was a consistent and credible witness.
- 32.3 There is no mention of Methylhexaneamine (or any of its synonyms) on the label of the *Pure Whey Protein* product.
- 32.4 It is known that the South African manufacturer of the *Pure Whey Protein* also produces a supplement containing 1,3 dimethylhexanamine ("Octadrine") which is a stimulant very similar to Methylhexaneamine, and which carries the following Warning: **"This product is on the WADA banned list and will lead to a positive test result in sport"** (see *copy of advert below*).
- 32.5 It is not clear whether this manufacturer is an actual manufacturer, or a distributor of compounds/products purchased in bulk elsewhere that are re-packaged or blended before being sold in South Africa.
- 32.6 The pharmaceutical industry is a formally regulated environment and quality of products and industry practices is accordingly of a consistently high standard. The same cannot be said of the supplement industry as it is unregulated. As both the *Brufen* and the *Med-Lemon* are pharmaceutical-quality products it is reasonable to conclude the possibility

that the "Pure Whey Protein" supplement was the probable source of the Methylhexanamine.

32.7 SAIDS Anti-Doping Rule 10.4 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 Substance 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 of Ineligibility."*

Furthermore the *Comment* to article 10.4 of the SAIDS Anti-Doping Rules reads:

*"While the absence of intent to enhance sport performance must be established to the comfortable satisfaction of the hearing panel, the Athlete may establish how the Specified Substance entered the body by a balance of probability."*

32.8 The panel is comfortably satisfied that there was no intent on the part of the athlete to use the Specified Substance, Methylhexanamine, to enhance his performance, and that he established how it entered his body by a balance of probability.

33. The **Panel** thus imposes **a period of ineligibility of 6 (six months)** upon **Omaticus**, for a first violation of Rule 2.1, as required under Rule 10.2.

In so doing the **Panel** further confirms

- 33.1 this period would be deemed to have commenced on and run **from the date of hearing 8 November 2011 to 7 May 2012**, both days inclusive.
- 33.2 the disqualification of the result and forfeiture of all awards made in connection with the competition event, as provided under Rule 10.1
- 33.3 that **Omaticus**
- 33.3.1 is not entitled to participate in any capacity under any SASCOC affiliated sporting code, other than authorised anti-doping education or rehabilitation programs, in compliance with Rule 10.10
- 33.3.2 may be required as a condition of regaining eligibility to make himself available for out- of- competition testing in compliance with Rule 10.11



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