

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

**ANTI DOPING DISCIPLINARY HEARING**

**ATHLETE:** MR JACO RHEEDER

**SPORTS FEDERATION:** CYCLING SOUTH AFRICA

**DATE:** THURSDAY 2 AUGUST 2012

**PLACE OF HEARING:** SAIDS OFFICES, CLAREMONT, CAPE TOWN, SOUTH AFRICA

**DISCIPLINARY PANEL ("PANEL"):** MR ANDREW BREETZKE (CHAIRMAN)  
DR GEORGE VAN DUGTEREN (MEDICAL REPRESENTATIVE)  
PROF ELMARIE TERBLANCHE (SPORT ADMINISTRATOR)

**CYCLING SOUTH AFRICA:** WILLIAM NEWMAN

**PROSECUTOR:** ADV NIC KOCK/ RAHIDIEN CULLIS

**SCRIBE:** MS RAYANAH REZANT

**OBSERVERS:** PROF DEBBIE HAMMAN

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

## **APPLICABLE LAW**

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 (“WADC”) 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 African Sports Confederation and Olympic Committee, as well as any national sports federation.

The SAIDS Anti-Doping Rules (“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, to adjudicate whether the Athlete has violated the said Rules, and if so the consequences of such a violation.

## **PROCEDURAL MATTERS**

The Athlete was in attendance, and represented himself during the proceedings.

The rights of the Athlete were explained to him, and he acknowledged that he understood his rights, understood the process and was ready to proceed. The process to be followed was explained in detail to the Athlete.

## **SUMMARY OF EVIDENCE AND ARGUMENT**

The Prosecutor presented a bundle of documents as documentary and corroborative evidence to the oral evidence presented.

The charge against the Athlete was set out in written correspondence addressed to the Athlete on the 3 May 2012. The charge against the Athlete read as follows:

*You have been charged with an anti-doping violation in terms of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport (SAIDS).*

*On 4 March 2012, you provided a urine sample (A2634169) during an in-competition test. Upon analysis the South African Doping Control Laboratory at the University of Free State reported the presence of a prohibited substance in your urine sample. The substance identified was Methamphetamine (d-). Methamphetamine is categorised under Class S6 "Stimulants" in specific (a) Non-Specified Stimulants, on the World Anti-Doping Code 2012 Prohibited List International Standard.*

The Athlete advised that he understood the charge. The Athlete had not requested that his B-Sample be tested. The Athlete admitted that he was Guilty of the charge as set out, and acknowledged that he understood the implications of such an admission. In opening, the Athlete stated that the source of the substance was medication that he had received from a medical practitioner.

Evidence presented before the hearing was that the Athlete is a businessman (fruit exporting), and his Company is a sponsor of a cycling team. He has competed in a number of races, his greatest success being winning the Transbaviaans event. Although he has been a competitive cyclist, he has stopped competitive racing given the pressures of his family life (3 children) and his career. Furthermore, at the time of the race in question (Argus Mountain Bike Race) he was mourning the recent death of his father, and was ill on the morning of the race. Despite these factors, he had decided to participate in the race, given that he had entered – however, he did not cycle with a view to competing, but merely to finish. He had come 15<sup>th</sup> in the race.

The Athlete had not cycled competitively for the past three months. He was involved in training in Wellington, specifically younger riders, but was not involved in management.

The Athlete gave evidence that he did not have comprehensive knowledge of doping matters, and has merely "heard" what is said amongst the riders. The test of 4 March 2012 was his first test. Although he was not aware of the nature of the substance for which he returned an adverse analytical finding, he had later researched the substance. He was aware that it was used to make "Tik". He had not used recreational drugs.

The Athlete had considered that the substance could have been contained in medications that he had been taking during the course of the week in question. He had received a

Celestone injection and had taken decongestions as well. On occasion he took Buscopan and had a vitamin B injection on a regular basis.

The Athlete was convinced that the Methamphetamine must have been present in medication that he had received from a doctor whilst in Brazil. He used this medication (yellow pills) for his hayfever and they worked very well. He no longer had any of the pills as they were finished, and he had disposed of the container when travelling back to South Africa. He furthermore had no knowledge as to the name of the pills, and could not recall the name of the doctor in Brazil.

Dr Van Dugteren provided insight on the issue of Methamphetamine as a prescribed drug and confirmed that the drug may be prescribed occasionally in certain circumstances.

SAIDS argued that the Athlete had failed to prove the source of the substance and as such the maximum sanction should be applied. The Athlete in closing acknowledged his guilt, but was concerned about his (and his company's) reputation given the positive test. He furthermore wished to continue to coach as he had already decided that he would no longer be cycling competitively in the near future.

## **FINDING ON THE CHARGE**

The presence of the substances identified as *Methamphetamine (d-)* was proven. The Panel has therefore determined that the Athlete is Guilty of the offence as set out, and is in violation of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport.

## **DISCUSSION ON EVIDENCE AND ARGUMENT AS TO SANCTION**

Article 2.1.1 of the Rules reads as follows:

*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.*

This Article is the foundation of the strict liability principle that is applicable to anti-doping violations. There is a clear and definitive standard of compliance that all athletes are required to adhere to and it is on this basis that they are held accountable. Ignorance of the anti-doping provisions and/or prohibited list cannot be accepted as an excuse. The responsibility that rests on the athlete is therefore clear, and the liability that rests on the Athlete *in casu* has been established.

The Athlete has been found guilty of a doping offence in respect of the substance identified as *Methamphetamine (d-)*, being a Class S6 "Stimulants" in specific (a) *Non-Specified Stimulants*, on the World Anti-Doping Code 2012 Prohibited List International Standard. As such, it is for the Panel to determine whether there are grounds for a reduction in the period of ineligibility in terms of Article 10.5 of the Rules. Article 10.5 reads as follows:

**10.5 Elimination or Reduction of Period of *Ineligibility* Based on Exceptional Circumstances.**

**10.5.1 *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 his/her 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.

**10.5.2 *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 his/her system in order to have the period of *Ineligibility* reduced.

Article 10.5 sets 2 conditions for the reduction of the ineligibility period to be applied on an athlete following a finding of guilty for the anti-doping violation as set out above:

1. The athlete must establish how the Prohibited Substance entered his system;
2. The athlete must establish that he bears No Fault or Negligence, or No Significant Fault or Negligence.

The key question *in casu*, is whether the Athlete has fulfilled the first condition. For the Athlete to be able to establish that he bears No Fault or Negligence, or No Significant Fault or Negligence, he must first establish how the prohibited substance entered his system.

The Athlete has submitted in evidence that the only probable explanation as to how the prohibited substance entered his system by way of a hayfever medication that he had received from a doctor whilst travelling in Brazil. The onus is on the Athlete to prove, to the satisfaction of the Panel, how the prohibited substance entered his system. It was not possible to verify this, as the Athlete no longer had the medication, nor did he have any details of the medication or the prescribing doctor.

In the matter of **CAS 2011/A/2384 UCI v. Alberto Contador**, the panel confirmed the legal position that the onus was on the athlete to prove how the prohibited substance entered his system. This matter concerned the prohibited substance Clenbuterol. The Athlete argued that the prohibited substance had entered his system by way of a meat product. He

also put forward alternative possibilities. CAS could nevertheless not conclude what exactly the cause of the presence of the forbidden substance in Contador's body was, and as such he failed to fulfill the condition as set out.

The strict application of this first condition is well established in anti-doping case law. In the matter of ***Karatantcheva v ITF, CAS 2006/A/1032***, the court stated; *"Obviously this precondition to establishing no fault or no significant fault must be applied quite strictly, since if the manner in which a substance entered an athlete's system is unknown or unclear it is logically difficult to determine whether the athlete has taken precautions in attempting to prevent any such occurrence"*.

In the matter of ***ITF v Beck, (February 2006)*** the athlete alleged that his drink must have been spiked by a colleague who was jealous of his girlfriend. In dealing with the first condition the tribunal stated that the purpose of the condition is *"to confine the circumstances in which the automatic sanctions may be reduced to truly exceptional circumstances in which the player can show, the burden of proof lying upon him, how the substance did indeed enter his body. That burden of proof must be discharged on the balance of probability. The provision thus ensures that mere protestations of innocence, and disavowal of motive or opportunity, by a player, however persuasively asserted, will not serve to engage these provisions if there remains any doubt as to how the prohibited substance entered his body. This provision is necessary to ensure that the fundamental principle that the player is responsible for ensuring that no prohibited substance enters his body is not undermined by an application of the mitigating provisions in the normal run of cases .... The explanations put forward are no more than theoretical possibilities. Regrettably this is not a case where exceptional circumstances are proved but a conventional case in which the player asserts his moral innocence but is unable to prove how the prohibited substance entered his body"*

In ***WADA v Stanic and Swiss Olympic Association, CAS 2006/A/1130***, the court stated as follows: *"Obviously this precondition is important and necessary otherwise an athlete's degree of diligence or absence of fault would be examined in relation to circumstances that are speculative and that could be partly or entirely made up."*

Reviewing the above legal position relative to the evidence of the Athlete, it is a plausible argument that the prohibited substance entered his system by way of the prescribed medication. It does however, not meet the burden of proof required. The Athlete has not been able to prove to the satisfaction of the Panel how the prohibited substance entered his body. In making this finding, there are a number of important issues to consider:

- The Athlete has presented argument that the source of the substance is medication prescribed/or given by a doctor in Brazil. He is not able to provide the Panel with the name of the medication, and is merely able to describe the medication as “yellow pills”. Furthermore, he is not able to provide the Panel with the name of the doctor.
- The Athlete is not young, and should be aware of the risks of doping given his many years in cycling. His defence is one of moral innocence relative to the positive test.

In light of the above, the Athlete has failed to fulfil the onus of proving the source of the prohibited substance as set out in the provisions of Article 10.5 (Elimination or Reduction of Period of *Ineligibility* Based on Exceptional Circumstances). As such the issue of degree of fault or negligence is irrelevant and there is therefore no justification for a reduction in sanction.


The sanction on the finding of Guilty is as follows:

1. The Athlete is ineligible to participate in any organised sport, club or higher level or as envisaged in Article 10.10 of the Rules, for a period of two years, which ineligibility includes the coaching of sport;
2. The period of two years will be effective as of 10 April 2012 (being the date of notification of the adverse finding and implementation of provisional suspension), to terminate on the 9 April 2014; ;



3. The above anti-doping violation occurred during the Cape Argus Mountain Bike Race held on 4 March 2012. The rule violation is therefore related to an in-competition test. In terms of Article 9 of the Rules an anti-doping violation in individual sports in connection with an in-competition test automatically leads to disqualification of the result obtained in that competition, including forfeiture of medals, points and prizes. In accordance with this Article, the Athlete therefore forfeits his performance in the said Argus Mountain Bike Race

This done and signed at Cape Town, August 2012



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Andrew Breetzke (Chair)

For and on behalf of the Tribunal Panel

Dr George van Dugteren, Professor Elmarie Terblanche