

SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)

ANTI DOPING DISCIPLINARY HEARING

ATHLETE: EARL-GIVIAN SNYMAN

ATHLETE'S REPRESENTATIVE & MANAGER: MJ VAN RENSBURG

SPORTS FEDERATION: SOUTH AFRICAN RUGBY UNION

DATE: 3 JULY 2012

PLACE OF HEARING: CITY LODGE, BLOEMFONTEIN

DISCIPLINARY PANEL ("PANEL"):

RAPHAEL GRANT BRINK (CHAIRMAN & LEGAL REPRESENTATIVE)

NICOLAS THERON (MEDICAL REPRESENTATIVE)

GREG FREDERICKS (SPORTS ADMINISTRATOR REPRESENTATIVE)

PROSECUTOR: NIC KOCK

RECORDING OF MINUTES: LOUISE FOURIE

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 3 JULY 2012 at the City Lodge Hotel, Bloemfontein.

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 27 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 12 April 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 in an (Afrikaans) written statement handed to the Panel during the hearing as well as under oath before the panel:

1. That he had received the communications regarding the notification of the adverse finding and the charges were put to him timeously and in order.
2. That he did not request his "B" sample to be tested and that it was common cause that the substance reported was present in his system and was a prohibited substance which was found during an in-competition test and that he duly waived any right in respect to further sample testing.
3. That he was happy to proceed with the hearing with assistance of his legal representative Mr. MJ Van Rensburg where necessary.
4. The charges were put to the Athlete who pleaded guilty and in his statement explains that he had ingested a supplement ("aanvulling") which he obtained at a local sports shop "Mr Price" by the name of "Jack 3D" prior to the competition and that he was wholly unaware ("heeltmal nie bewus") of the WADA prohibited list of substances and the strict rules relating thereto.
5. He further explained that he regretted the incident and that it had brought him to a crossroads in his career where he would be much more careful of what he ingested in future. He did however confirm that the substance was ingested as a pre-workout supplement and not for the purposes of enhancing performance.
6. The prosecutor also put various questions to the Athlete which elicited that he was 23 years old and has been playing Rugby for 10 years including at provincial level. Also that his dream is to play Super 15 Rugby and at National Level.

7. Furthermore, the Athlete lives on the campus of the University of the Free State where he studies with the assistance of a bursary and his parents and plays Rugby for the University.

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. Theron confirmed that "Jack 3D" has been known to commonly contain the substance reported. 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 or 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 accepted the evidence of the athlete that the substance was not ingested for the purposes of enhancing performance and that this was corroborated by it being common knowledge that "Jack-3D" was commonly understood to be a pre-workout supplement. This was further corroborated by the case of another Athlete, a certain Mr. Pieterse, the captain of the Tshwane University of Technology in which the same substance was used in the "Varsity Cup". Accordingly the circumstances justified the application of Article 10.4 as quoted above.
18. However, the Panel found further that an Athlete playing for the period and at the level of the Athlete could be expected to know more of his responsibilities with regard to anti-doping matters. Also, that he lived on a University campus and had daily access to technology which had he taken the effort to use he would have discovered the dangers of "Jack 3D" with little effort.


19. Also that the Athlete as an ambitious sportsperson could reasonably be expected to have been more aware of what had happened to athletes who were in his circle of friends and team players close to him especially in the game of Rugby which had high profile anti-doping cases which the Athlete should have been aware of.

20. The Panel accordingly imposes a 6 month ineligibility period, taking into account time served as of 12 April 2012 and therefore being completed on 11 October 2012. The Athlete indicated that he understood that were he to again be found guilty of a violation the consequences could be significant and he agreed to always consult a doctor prior to taking any supplement in future.


21. Forfeiture in terms of Article 10.1.1 above is not applicable.

Date of Hearing 3 July 2012 – Earl-Givjan Snyman

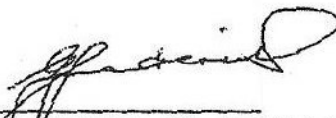
We the panel members confirm that the decision above properly reflects the decision of the tribunal.



Raphael Grant Brink (Chairman & Legal Representative)



Nicolas Theron (Medical Representative)



Greg Fredericks (Sports Administrative Representative)