

**DECISION OF THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT
ANTI-DOPING DISCIPLINARY COMMITTEE**

In the disciplinary hearing of

JAN-HENDRIK TRUTER

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 SASCOC, 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 Rugby Union, "**SARU**", as the national federation governing the sport of rugby in South Africa, has adopted and implemented **SAIDS** anti-doping policies and rules which conform to the Code and the Rules.

PANEL CONSTITUTION

7. This **SAIDS** Anti-Doping Disciplinary Committee hearing panel, consisting of John Bush - Chairperson and Legal Representative, Sello Motaung - Medical Practitioner and Leon Fleiser - Sports Administrator, ("the **Panel**") was appointed by **SAIDS** in accordance with the provisions of Article 8 of the **Rules**, to adjudicate whether the athlete Jan-Hendrik Truter ("**Truter**") had committed an anti-doping rule violation of **Rules** and if so what the consequences should be.

CHARGE RELATING TO ANTI-DOPING VIOLATION

8. The charge against **Truter** is contained in a letter which was addressed and couriered to him on 17 November 2011. (A copy of the letter is - Exhibit A.)

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

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

On the 12 July 2011 you provided a urine sample (A2532135) 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 sample.

The substances identified were Epimetendiol and 17 α -methyl-5 β -androstane-3 α ,17 β diol which are metabolites of the Anabolic Agent, Methandienone. Methandienone falls under the **Class S1, "Anabolic Agents"** 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**".

11. The hearing began at 17h44 on 8 December 2011 with the introduction of those present at the hearing. **Truter** was represented by his father, Dr Jan Truter, a Minister (Dominee), who advised that although they both understood and could converse in English they would prefer that they spoke Afrikaans as this was their home language. The **Panel** accepted this request.

12. Ms Surprise Mbatha took minutes of the proceedings, which were also recorded. SARU did not have any representative at the hearing.

13. The Chairman outlined the procedure relating to the hearing.

14. **Kock** read the charge as contained in the letter to **Truter** dated 17 of November and asked whether there was anything in the letter which was disputed. On being told by **Truter's** father, as **Truter's** representative, that nothing in the letter was disputed, **Kock** gained acceptance of this letter as Exhibit A. The remaining documents relating to the charge were then identified and accepted without any objection as the following exhibits

Exhibit B Notification of adverse analytical finding letter SAIDS to Truter dated 8 August 2011

Exhibit C University of the Orange Free State: Report on A-Sample Analysis 2532135 dated 22 July 2011

Exhibit D Doping Control Form 44153 dated 12 July 2011

Exhibit E Chain of Custody Form dated 14 July 2011

Exhibit F Correspondence between SAIDS and Dr Jan Truter being the e-mails exchanged dated 6 & 17 October - F1 & F2 and 17 November –F3

ANTI-DOPING RULE VIOLATION – PROSECUTION’S SUBMISSIONS

15. **Kock** thereafter proceeded to outline the case, as it had developed against **Truter**, as follows

- the charge arose from it having been established that the urine sample, (“A” sample), which **Truter** provided on the 12 July 2011, contained an anabolic steroid which was a prohibited substance
- the presence of the prohibited substance, which **Truter** had furthermore admitted, had been proven
- the strict liability provisions of Article 2.1 of the **Rules** make it the athlete’s duty and responsibility to ensure that no prohibited substance enters his body
- **Truter** had waived his right to have his “B” sample analysed
- it had thus been established that **Truter** had committed and was guilty of the anti-doping rule violation - as defined under Article 2.1 of the Rules - which he had been charged with.

MITIGATION OF SANCTION

16. **Truter** was then invited by **Kock** for the purposes of determination of the appropriate sanction to provide an explanation (for his conduct) and any other information which he had not yet thought of as mitigating evidence.

(Although not spelt out to **Truter**, (who had been provided with the **Rules**), this was to enable **Truter** to seek to establish whether there was any basis for the elimination or reduction of any period of ineligibility, based on the exceptional circumstances, as provided for under Article 10.5 of the **Rules**)

17. **Kock** mentioned that **Truter**, who had no legal representative within an adversarial system, as opposed to an inquisitorial one, needed to give consideration to

- (whether the substance was taken for) performance enhancement
- how the substance entered his body
- negligence (whether he bore no fault or negligence, or no significant fault or negligence)

before sanction could be determined.

18. **Dr Truter** provided the following information, which although not exhaustive is considered relevant concerning **Truter’s** circumstances relating to the determination of sanction

- the whole process had been very bad for the family
- they stayed in a rural town (platteland se dorpe)
- as a Church Minister his family ought to be seen as an example to the community
- **Truter** was in his school’s first rugby team which made the quarter finals in the 2011 Beeld competition
- in 2007 whilst he was in standard 6 his mother contracted an aggressive type 3 breast cancer – this had been a tough five year battle
- he was in the under 15 rugby team which came out tops in Limpopo
- in July 2008 he injured his anterior ligaments on some steps, was advised by Dr Daan du Plessis not to play rugby for a year due to growth plates (having to settle)
- in 2009 he did not play rugby, missed out playing in the Beeld trophy involving the old Transvaal “big” rugby schools
- was successfully operated upon by Dr Eugene Pelsner, who used piece of his hamstring to repair the damaged ligaments without touching the growth plates
- in 2010 he came back into the first team as hooker, went to Limpopo trials

- although a hard player he made the second round and no further due to his body size
 - he put on weight taking shakes but lost this when he exercised
 - **Truter** decided that in 2011 - his matric year – he would make Limpopo schools team (Craven Week)
 - he trained 4/5 hours – including gym sessions - before the season began
 - continued to lose weight
 - whilst with a friend at the school hostel in March 2011 his friend suggested that he try “this”
 - at first he didn’t know what “this” but then asked his friend what it was as it was “nice”
 - his friend (17 years old) told him it was Dianabol
 - he continued to take this without my being aware; not knowing what the consequences could be – without guidance and discussion, with the coaches simply believing and accepting (without inquiry..so it seemed)) that the boys know about prohibited substances.
19. In response to a question from Leon Fleischer concerning whether the coaches gave any guidance to **Truter** as to what substances to avoid, **Dr Truter** responded by saying that when questioned as whether they should buy this USN product or that shake or not, the coaches really did not know what advice to give.
- He suggested that the two cases in the Limpopo team pointed to this lack of guidance
20. **Dr Truter** then went on to describe the lead up to and the discovery of **Truter’s** anti-doping violation in pointing out that young people, such as **Truter**, his son
- needed to develop circumspection
 - did foolish things without realising the consequences
21. He advised that **Truter** had realised the difficulty he was in when he reported to him that he was in trouble some 2 ½ before the tournament when filling out the forms. **Truter** informed him that he had to state whether or not he had ever taken prohibited substances. Realising that **Truter** had been doing so he told **Truter** to immediately stop, with **Truter** hoping that he would not be tested, but willing to take responsibility for his actions and accept his guilt if he was.
22. It was thus that **Truter**, who turned 18 just before Craven Week, was prepared to admit his guilt and advance evidence in mitigation of the possible sanction.
23. **Dr Truter** went on to state that they sat at the hearing in all humility as **Truter**
- realised he had made a mistake
 - was unlikely to play rugby again
 - had committed a breach and did so knowingly
 - accepted whatever sanction was appropriate
 - also wanted to do something for SA Rugby (in the process)
 - would now have to study, essential for his future, without the prospect of a rugby contract, The WP Academy had expressed an interest in him and this would fall away.
24. In response to a question from Dr Sello Motaung about what **Truter** himself thought about this **Truter** stated that although it would have been very nice to play rugby at university, he had made a mistake and was prepared to take the punishment.
25. To Leon Fleischer’s further question about how big rugby was **Dr Truter’s** reply was that

- the school is the biggest rugby school in Limpopo the equivalent of Affies and Waterkloof

and he then went on to state that

- there were a whole lot of pills being taken
- if one tested out of season one would be shocked as this was happening from the under 14 level
- at the Craven Week it seemed that even the SA Schools players who had used steroids knew when to stop
- there was need for guidance and counselling
- after **Truter's** matter and all the pain that went with it the coaches wanted nothing to do with it
- even the gym coach who watched the boys ("outjies") did not want to know
- **Truter** got his supply of Dianabol from his roommate who bought these in Johannesburg.

26. **Kock** then advised that the Schools Act did not allow SAIDS into schools for testing – even with the permission of school principals - and until this Act was amended this iniquitous position would persist.

27. In his direct personal testimony **Truter** advised, in response to various questions put to him, that he

- put on 12 kilograms in 3-4 months whilst taking the steroids
- would be studying at Varsity College, Pretoria doing Marketing Management
- was 1.8m and weighed 88kgs
- played only rugby but did gym very day
- was aware of the dangers of the common drugs such a dagga from school
- had read about what had happened to Chilliboy Ralepele in the newspapers
- had taken the steroids knowing he felt good after taking them and that they would enhance his performance

28. **Kock** then provided general advice to **Truter** concerning

- learning to do things correctly
- following the right diet
- not believing that everything one saw on labels was true
- being careful with supplements taken up to 25% could be contaminated
- the dangers of steroids
- being able to even "google" the internet for the list of the prohibited substance
- the vulnerability of people to commit further violations

PROSECUTION – PROPOSED SANCTION

29. In his closure regarding sanction **Kock** considered all the evidence led.

30. **Kock** went on to make it clear that article 10.5 of the **Rules** relating to a possible reduction of a period of ineligibility was difficult due to **Truter** having tested positive and would not be applicable. This was because although **Truter** had openly and honestly testified to how the prohibited substances had entered his system he had clearly not established why it would have been permissible for him to deviate from the standard behaviour (ie *no fault, no significant fault or negligence*) and.

Kock ended by calling for the **Panel** to consider imposing a period of ineligibility of 24 (twenty four months) as an appropriate sanction for the anti-doping rule violation.

He asked further that the **Panel** take into account the period of provisional suspension from 8 August 2011 as being time already served.

PANEL DECISION & REASONS

31. After a short adjournment for deliberation by the **Panel** members the hearing was re-convened for the **Panel** decision to be delivered by the Chairperson.
32. The **Panel** having accepted that **Truter's** violation of Article 2.1 of the **Rules** had not only been proven by the **SAIDS** prosecution, but also admitted by **Truter**, needed only to consider and decide upon
 - 32.1 the appropriate sanction in accordance with Articles 10.1 and 10.2 of the **Rules**;
 - 32.2 whether once this was determined there was any basis for any possible elimination or reduction of any period of ineligibility which might be imposed upon **Truter**, under either of Articles 10.5.1, 10.5.1.2 or 10.5.1.3 of the **Rules**, providing the totality of the evidence before the Panel supported there being no fault or negligence, no significant fault or negligence by **Truter**, or the provision of substantial assistance by **Truter** in discovering or establishing an anti-doping rule violation.
33. The Chairperson delivered the **Panel's** decision supporting the sanction requested by **Kock** as prosecutor on behalf of **SAIDS**, following the **Panel's** due consideration of whether such 2 (two) years period of ineligibility could be eliminated or reduced..
34. The **Panel** found that there were no grounds for any such elimination or reduction.
35. The **Panel's** reasons are based upon the fact that although **Truter** had lead evidence to the comfortable satisfaction of the members of the **Panel** establishing how the prohibited substance entered his system, **Truter** had not lead any evidence of no fault or negligence under Article 10.5.1, or no significant fault or negligence as provided under Article 10.5.2.
35. The **Panel** thus confirms its decision to impose the sanction of ***a period of ineligibility of 2 (two) years*** on **Truter** for a first violation of Article 2.1, as required under Article 10.2.

In so doing the **Panel** further confirms

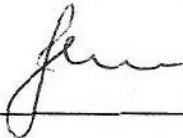
- 35.1 this period would be deemed to have commenced on and run from the **8 August 2011**, the date of notification of the adverse analytical finding, to **7 August 2013**, both days inclusive, with the time covering the provisional suspension from the 8 August 2011 to 22 February 2012, being included as time already having been served;
- 35.2 that **Truter**

35.2 that Truter

35.3.1 is not entitled to participate in any capacity under any other SASCOC affiliated sporting code, other than authorised anti-doping education or rehabilitation programs, in compliance with Article 10.10;


35.3.2 will be required as a condition of regaining eligibility to make himself available for out-of-competition testing in compliance with Article 10.11.

35.4 that SAIDS was asked to remind SARU of its role and responsibility towards the continuously educating and informing its affiliates, clubs and players concerning anti-doping, particularly regarding the use of supplements




John Bush

Chairman



Sello Motaung

Member



Leon Fleiser

Member

18 February 2012

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