

SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)

ANTI DOPING DISCIPLINARY HEARING

ATHLETE: CORNEL WELGEMOED

SPORTS FEDERATION: SOUTH AFRICAN POWERLIFTING BENCH PRESS
CHAMPIONSHIPS

DATE: 12 JUNE 2012

PLACE OF HEARING: 1 MONA CRESCENT, NEWLANDS, CAPE TOWN

DISCIPLINARY PANEL ("PANEL"): JEROME VINCENT THOMAS (CHAIRMAN & LEGAL
REPRESENTATIVE)
DR. NASIR JAFFER (MEDICAL REPRESENTATIVE)
YUSUF ABRAHAMS (SPORTS ADMINISTRATOR)

PROSECUTOR: NIC KOCK

SAIDS REPRESENTATIVES: FAHMY GALANT

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

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 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 Jerome Vincent Thomas – Chairperson and Legal Representative, Nasir Jaffer – 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 Cornel Welgemoed (“**Welgemoed**”) adverse to analytical finding constitutes a breach of Article 2.1.

CHARGE RELATING TO ANTI-DOPING VIOLATION

8. The charge against **Welgemoed** is contained in a letter which was addressed and couriered to the athlete at 1 Singlewood Lane, Sardene, Boksburg, 1459, on 10 April 2012. (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:

“Please be informed that the analytical report received from South African Doping Control Laboratory confirmed the presence of the Stimulant, Methylhexaneamine in your urine sample (sample number A2633977) provided during an in-competition test on 25 February 2012 at 16h24 at the South African Powerlifting Bench Press Championships”.

The substance identified was the Stimulant, Methylhexaneamine which 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") with Mr. Fahmy Galant, providing support for the prosecution.
11. The hearing began at 18h45 on 12 June 2012 via teleconference, with the introduction of those present at the hearing. The athlete was sworn in and confirmed that he understood and had no objection to testifying under oath. The athlete **Welgemoed** was assisted by Mr. Helgard Coertze ("**Coertze**").
12. The procedures relating to the hearing were explained to **Welgemoed** who advised that he was satisfied with the result of the sample of his urine (Sample A2633977).
13. He was asked whether he understood the charges against him and confirmed that he did and referred the Panel to his letter of 10 April 2012 "Response to adverse sample finding A2633977" wherein **Welgemoed** accepted the finding. Furthermore, **Welgemoed** accepted that he was guilty of the said offence.

However, due to the technical problems which made the hearing of the athlete's testimony valuable, the chair asked **Kock** to nevertheless proceed and outline the charges against the athlete.

14. **Kock** read the charge and thereafter read and explained the provisions of Article 2.1 regarding SAIDS regarding the Said's right to prosecute under Article 8.4 of the Rules.
15. On being questioned by **Kock**, **Welgemoed** stated:
 - He was a Financial Director with an MBA and a law degree,
 - He had no previous Anti Doping education and hadn't been tested before,
 - That he purchased the product from a shop next to his gym and understood that the product was similar to "coffee" and provided an energy boost,
 - There was no indication on the labeling of the product "**Muscle Marinade**" which gave cause for concern or alarm.
16. **Welgemoed**, upon notification on 10 April 2012, he conducted a google "**Muscle Marinade**" search and ascertained the true composition of the product used by him.
17. He acknowledged receipt of all correspondence containing the details of the charge and hearing, as well as the adverse finding and had no objection thereto and stated:
 - He confirmed that he did not want the B Sample to be analyzed,
 - This was his third competition,
 - He agreed to forward the hearing as a formal drafted Affidavit outlining his acceptance of the finding and his acknowledgement of guilt.
18. In closure **Kock** asked that the athlete be suspended for three months and that the period be calculated as from date of suspensions, 10 April 2012.

PANEL DECISION & REASONS

19. After a short adjournment for deliberation by the **Panel** members the hearing was reconvened for the **Panel** decision to be delivered by the Chairperson.

20. The **Panel** having accepted that **Welgemoed's** violation of Article 2.1 of the **Rules** had not only been proven by the SAIDS prosecution, but also admitted by **Welgemoed**, needed only to consider and decide upon,

20.1 the appropriate sanction in accordance with Articles 10.1 and 10.2 of the **Rules**.

21. **The Panel finds as follows:**

21.1 There is no mention of Methylhexanamine (or any of its synonyms) on the label of the "**Muscle Marinade**" product.

21.2 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."

21.3 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.

21.4 The Panel thus imposes a **period of ineligibility of 3 (three months)** upon **Welgemoed**, for a first violation of Rule 2.1, as required under Rule 10.2.

In so doing the Panel further confirms:

21.5 The Panel in its discretion in terms of Rule 10.9 makes provision for a period of ineligibility to commence running from the date of the athlete having been formally advised of the adverse analytical findings being in this case 10 April 2012. The Panel applies this provision and accordingly the period is deemed to have commenced on 10 April 2012 and will run to 10 July 2012.

21.6 The Panel considers the combination of the application of its discretion being:

21.6.1 The reduction of the period from a possible two year suspension to a three month suspension and:

21.6.2 The running of the suspension period from the date of notification and not the date of hearing

As a generous application of its discretion and accordingly rejects submissions made by the athlete of possible further reductions arising from other Articles in the Said Rules.

21.7 the disqualification of the result and forfeiture of all awards made in connection with the competition event, as provided under Rule 10.1

21.8 that **Welgemoed**

21.8.1 is not entitled to participate in any capacity under any SASCOC affiliated sporting code, other than authorized anti-doping education or rehabilitation programs, in compliance with Rule 10.10

21.8.2 may be required as a condition of regaining eligibility to make himself available for out- of- competition testing in compliance with Rule 10.11.