CAS 2012/A/3029 WADA v. Anthony West & Fédération Internationale de Motocyclisme

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Prof. Jan Paulsson, Professor in Manama, Bahrain
Arbitrators:	Prof. Richard H. McLaren, attorney-at-law in London, Ontario, Canada
	Mr. Efraim Barak, attorney-at-law in Tel-Aviv, Israel
Ad hoc Clerk:	Mr. Brent J. Nowicki, CAS Legal Counsel in Lausanne, Switzerland

in the arbitration between

World Anti-Doping Agency (WADA), Montreal, Canada

Represented by Messrs Olivier Niggli and Yvan Henzer of Carrard & Associés in Lausanne, Switzerland

Appellant

And

Mr. Anthony West, Melbourne, Victoria, Australia

Represented by Mr. Juan de Dios Crespo Pérez of Ruiz-Huerta & Crespo S.L. in Valencia, Spain

First Respondent

Fédération Internationale de Motocyclisme (FIM), Mies, Switzerland

Represented by Mr. Richard Perret, Legal Counsel of the FIM in Mies, Switzerland

Second Respondent

I. PARTIES

1. The World Anti-Doping Agency ("WADA" or the "Appellant") is a Swiss private law foundation with its seat in Lausanne, Switzerland, and its headquarters in Montréal, Canada.

2. Mr. Anthony West ("Athlete" or the "Second Respondent") is a professional motorcycle rider for QMMF Racing, competing in the riding class Moto2.

3. The Fédération Internationale de Motocyclisme ("FIM" or the "Second Respondent") is the world governing body of motorcycling sports. It is responsible for the management and enforcement of the FIM Anti-Doping Code ("FIM ADR"), which adopts in relevant part, *mutatis mutandis*, the World Anti-Doping Code (the "WADC").

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations that emerge from the Parties' written submissions, pleadings, and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings, and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the parties in the present proceedings, the Panel refers explicitly only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 20 May 2012, the Athlete underwent an anti-doping control test carried out during Le Mans Race of the 2012 FIM Road Racing World Championship Prix, class Moto 2. The analysis of the sample showed the presence of *methylhexaneamine* in the Athlete's bodily specimen.

6. *Methylhexaneamine* is a Prohibited Substance classified under S6 Stimulants (Specified Stimulants) on the WADA 2012 Prohibited List and the FIM ADR. The substance is prohibited in-competition only.

7. On 13 June 2012, the Athlete was notified of the adverse-analytical finding in his A-Sample, and waived his right to test his B-Sample after considering the source of the positive test after consulting Mr. Evelyne Magnin, the Anti-Doping Coordinator of the FIM.

B. The Underlying Proceedings Before the FIM IDC

8. On 2 October 2012, a hearing was held before the FIM International Disciplinary Court ("FIM IDC"), which the Athlete attended by telephone conference. The Athlete's submissions were as follows:

   a. He has never taken any types of drugs, and is against the use of drugs (recreational or performance enhancing);

   b. He frequently ingests various energy drinks, such as Red Bull and Monster, to "wake up," but was concerned about the high levels of sugar in these products. His sister recommended that he try a product called "Mesomorph," a low-sugar energy drink she said was used in the Australian Army where she had served. So in December 2011, the Athlete visited a nutritional shop in Australia with her and purchased the Mesomorph product;

   c. Mesomorph is sold in a powder form, and when mixed with water becomes an energy drink;

   d. While at the Le Mans race, the Athlete decided to try the Mesomorph, which he had brought with him from Australia, in lieu of an alternative energy drink. He mixed a "little powder" (about one-quarter of the suggested dosage) with water on the morning of 20 May 2012;

   e. He did not know that Mesomorph contained any prohibited substances, and he did not think that a product purchased over the counter at a nutritional store could contain a prohibited substance; and

   f. In any event no performance advantage could be gained by consuming such a product in the sport of motorcycle racing.

9. On 29 October 2012, the FIM IDC rendered its decision (the "Appealed Decision"), which provides, *inter alia*, as follows:

   In the present case, the [Athlete] has established how the prohibited substance entered his body and I am convinced that the [Athlete] has not consumed the same with the intention of enhancing his sport performance. I agree with the [Athlete's] submission that he had not consumed 'MESOMORPH' in order to enhance his sport performance. Also, even though he had bought 'MESOMORPH' during Christmas 2011 itself, he used it during a race weekend only on 20.05.2012, which supports his submission that he did not buy/consume it with any intention of enhancing his sport performance. From his exchange of correspondence with Mrs. Evelyne Magnin as well as his submission during the hearing, I am of the opinion that the [Athlete] had absolutely no intention of enhancing his sport performance and he had consumed

'MESOMORPH' without knowing that the same contained prohibited substances. Therefore, I think this is a fit case for reduction of the period of ineligibility.

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On the basis of the foregoing facts and legal aspects, the [FIM IDC] renders the following decision:

a) Mr. Anthony West, the Rider, is found guilty of an Anti-Doping Violation under Article 2.1 of the Anti-doping Code, i.e. Presence of a prohibited substance ("methylhexaneamine (dimethylpentylamine)");

b) Mr. Anthony West stands automatically disqualified from the Le Mans rounds of the 2012 FIM Road Racing Championship in the Moto2 Class, which was held on 20.05.2012; and

c) *A sanction of one month's period of ineligibility to contest in any meeting authorized or organized by FIM or any FMN or in competitions authorized or organized by any professional league or any international or national level meeting organization, from the date of communication of this order.*

10. On 27 November 2012, the Appealed Decision was communicated to WADA.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

11. On 18 December 2012, WADA filed its Statement of Appeal/Appeal Brief against the Appealed Decision with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47, R48, and R51 of the Code of Sports-related Arbitration and Mediation Rules (the "Code"). Furthermore, the Appellant nominated Mr. Quentin Byrne-Sutton as its party-appointed arbitrator in accordance with Article R48 of the Code.

12. On 16 January 2013, the First Respondent nominated Mr. Efraim Barak as its party-appointed arbitrator. Five days later, on 21 January 2013, the Second Respondent confirmed its agreement to nominate Mr. Barak as the Respondents' jointly-nominated arbitrator in accordance with Article R53 of the Code.

13. On 31 January 2013, the parties were informed that while Mr. Byrne-Sutton accepted his appointment, he wished to note that he has "*been appointed on a number of occasions in the past by WADA and in two pending cases*."

14. On 4 February 2013, the First Respondent objected to Mr. Byrne-Sutton's appointment. Following such objection, on 7 February 2013, Mr. Byrne-Sutton

declined his nomination. That same day, the Appellant nominated Dr. Massimo Coccia to replace Mr. Byrne-Sutton. However, Dr. Coccia declined his appointment.

15. On 13 February 2013, the Appellant nominated Prof. Richard McLaren, and such appointment was confirmed by the CAS Court Office.

16. On 18 February 2013, the First Respondent timely filed his Answer with the CAS Court Office in accordance with Article R55 of the Code.

17. On 22 February 2013, the Second Respondent timely filed its Answer with the CAS Court Office in accordance with Article R55 of the Code.

18. On 21 March 2013, the Parties were informed that pursuant to Article R54 of the Code, the President of the CAS Appeals Arbitration Division appointed Prof. Jan Paulsson as President of the Panel.

19. On 28 May 2013, the CAS Court Office advised the parties that upon the request of the Parties, and at the direction of the Panel, they were called to appear at a hearing on 21 August 2013.

20. On 29 July 2013, the CAS Court Office sent the parties the Order of Procedure, which was duly signed by the parties.

21. A hearing took place in Lausanne on 21 August 2013. The Appellant was represented by its counsel, Mr. Yvan Henzer. The First Respondent attended the hearing, and was assisted by his counsel, Mr. Juan de Dios Crespo Pérez and Mr. Agustín Amorós Martínez. The First Respondent called Mr. Luis Rodriguez Solano Fernandez-Coppelas a witness. The Second Respondent also attended the hearing, and was represented by its counsel, Mr. Richard Perret, and his assistant counsel, Ms. Ruth Griffiths.

22. The parties did not raise any procedural objections and expressly confirmed at the end of the hearing that their right to be heard and to be treated equally had been respected, as they had been given ample opportunity to present their case and submit their arguments and answers.

IV. SUBMISSIONS OF THE PARTIES

23. This section of the award does not contain an exhaustive list of the parties' contentions. Its aim is to provide a summary of the substance of the parties' main arguments. In considering and deciding upon the parties' claims in this award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

A. The Appellant

24. In its Appeal Brief, the Appellant requested the following relief:

1. The Appeal of WADA is admissible.

2. The decision rendered on 29 October 2012 by the FIM International Disciplinary Court in the matter of Anthony West is set aside.

3. Mr. Anthony West is sanctioned with a two-year period of ineligibility, starting on the date on which the CAS award enters into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by Mr. Anthony West before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.

4. All competitive individual results obtained by Mr. Anthony West from 20 May 2012 through the commencement of the applicable period of ineligibility shall be annulled.

25. The Appellant's submission in support of its request may be summarized as follows:

a. It is undisputed that the Athlete tested positive for *methylexaneamine*, which is a prohibited substance classified under the category "S6 (b)" (Specified Stimulants) on the 2012 WADA Prohibited List. This substance is prohibited in-competition only. It is established, therefore, that the Athlete committed an anti-doping rule violation pursuant to Article 2.1 of the FIM ADR (presence of a prohibited substance or its metabolites or markers in an athlete's bodily specimen).

b. The cornerstone of the anti-doping legal system is the individual and personal responsibility of the athlete for what he ingests. Therefore, if an athlete uses a product without properly ascertaining whether or not it contains prohibited substances, he bears significant fault or negligence in relation to the anti-doping rule violation committed. This is particularly true – according to the Appellant – with respect to nutritional supplements, where the danger of ingesting prohibited substances is particularly high. This may be inferred not only from the CAS case law, but also from the warnings reported on the Australian Sports Anti-Doping Authority website as well as from the WADA website, according to which "[e]*xtreme caution is recommended regarding supplement use. The use of dietary supplements by athletes is a concern because in many countries the manufacturing and labeling of supplements may not follow strict rules, which may lead to a supplement containing an undeclared substance that is prohibited under anti-doping regulations. A significant number of positive tests have been attributed to the misuse of*

supplements and taking a poorly labeled dietary supplement is not an adequate defense in a doping hearing."

c. The label of the product Mesomorph clearly indicates that this product is a performance enhancer. More specifically, the product's label states that Mesomorph contains geranium oil. The "*Summary of Major Modifications and Explanatory Notes*" for the 2012 WADA Prohibited List provides the following clarification regarding substances classified under the category S6: *"[a]s a reminder some stimulants may be available under several other names, for example "methylhexaneamine", sometimes presented as dimethylamylamine, pentylamine, geranamine, Forthane, 2- amino-4-methylhexane, geranium root extract or* ***geranium oil***" (emphasis added). The Appellant refers to the case of *UK Anti-Doping Agency v. Christian Laing* (a non-CAS case) according to which an athlete bears significant fault even where the label of the product refers to an alternative name (*i.e.* not a product identified on the Prohibited List) and the athlete cross-checks such names against the Prohibited List.

d. Moreover, the official website of the manufacturer also clearly markets this product as performance enhancing, as it indicates that "Mesomorph" is the "*ultimate pre-workout complex*," which will "*unleash your true genetic potential*." The official website of the manufacturer further states that the product is designed for:

- *Bodybuilders, Strength and Recreational Athletes, and Weight Lifters to Enhance the Muscle-Building Effects of Training By Supplying Muscles with Key Anabolic and Anti-Catabolic Compounds*

- *Anyone Involved in Weight Training and Athletics to Jack Up Energy Levels and Increase Work Capacity, Leading Greater Muscle Gains and Enhanced Athletic Performance.*

e. With respect to the Athlete's intent to enhance performance, the Appellant submits that the Athlete cannot establish an absence of intent to enhance his sport performance sufficient, and notes the following:

- The nature of the substance is performance enhancing as it is a strong stimulant.

- The Appellant ingested the Mesomorph just prior to his competition.

- Geranium Oil, which is readily known to be an alternative for *methylhexaneamine*, was identified on the product.

- There is no medical evidence of a therapeutic explanation for the ingestion.

f. Based on the foregoing, the Appellant submits that Article 10.4 of the WADC does not apply, and therefore the standard two-year should be enforced on the Athlete.

g. However, if the Panel contends the Athlete did not intend to enhance his performance such that Article 10.4 of the WADC applies, such that a reduction in sanction is applicable under Article 10.5 of the WADC, the following circumstances which should be taken into account in addition to the above:

- The Athlete did not consult any doctor, physician, or medical support personnel before purchasing or ingesting the product.

- Athletes are warned about the risks associated with taking nutritional or dietary supplements.

- The packaging of Mesomorph expressly mentions that its ingredients include Geranium Oil, which is known to be *methylhexaneamine*.

- The Athlete did not conduct any research on the internet about the product or its ingredients to determine if there were any risks associated with the product.

- The Athlete did not conduct the manufacturer prior to ingestion.

- The fact that the Athlete had never tested positive prior to the doping control test on 20 May 2012 does not constitute a mitigating circumstance.

- All athletes have a duty to inform themselves on the applicable anti-doping rules. So the Athlete's lack of prior instruction (*i.e.* prior of the doping test of 20 May 2012) in anti-doping matters is not a mitigating circumstance.

h. Finally, the Appellant submits that the Athlete does not contest the one-month sanction imposed on him by the FIM IDC. Consequently, such sanction may not be reduced by the Panel based upon the principle of "*ne ultra petita*."

B. The First Respondent

26. In his Answer, the First Respondent requested the following relief:

1. *To accept this answer to the appeal brought by WADA [sic] the decision of the FIM dated 29 October 2012.*

2. *To confirm the FIM decision in full.*

3. *Further and in the alternative, to adopt an award annulling the said decision and adopt a new one declaring that due to the specific circumstances of the event that the Rider should face a minimum sanction of a reprimand and no period of suspension from future events.*

4. *In the alternative, to adopt and [sic] award annulling the said decision and adopt a new one declaring that the Respondent has committed a minor doping violation and should receive a maximum of 3 months ban.*

5. *In the alternative and just in case that a high sanction of those 3 months ban is given, which I think it is unlikely to happen as per the facts of the case, that the sanction should begin from the date that the "A" sample has been notified to the Athlete (13 June 2012) up to the next official FIM competition (it has to resume on April 2013).*

6. *To fix a sum of 25,000 CHF to be paid by the Respondent [sic] to the Appellant [sic], to help with his payments of its defence fees and costs.*

7. *To condemn the Respondent [sic] to the payment of the whole CAS administration costs and the Arbitrators fees*.

27. The First Respondent's submission in support of his request may be summarized as follows:

    a. The Athlete has over 200 FIM racing starts and 13 years of professional race experience without a single anti-doping violation. He is against all forms of drug use – performance enhancing or recreational, and does not drink alcohol. Moreover, his professional behaviour off his race bike subscribes to the financial, religious, and spiritual interests of his racing team – QMFF Racing Team.

    b. He is a frequent consumer of energy drinks, including Red Bull and Monster (both of whom previously sponsored the Athlete). As both the Athlete and his manager Mr. Luis Rodriguez Fernandez admit, these energy drinks contain "way too much sugar." So in December 2011, the Athlete sought to find a replacement energy drink similar to these products, but with less sugar. While returning home for the Christmas holiday, the Athlete, upon recommendation from his sister, visited a nutritional store. He then legally purchased

Mesomorph, a powder-based supplement that when mixed with water, becomes an energy drink.

c. The Athlete did not ingest the Mesomorph until the date of the Le Mans race on 20 May 2012. He was a new addition to his team and had been rigorously training all week and testing out new bikes for his upcoming race. The morning of the race, he woke up early and took practice runs in preparation for his race later that afternoon. In lieu of his usual Red Bull or Monster, the Athlete ingested a small (quarter) dose of the Mesomorph.

d. The Athlete admits that he failed to conduct any research about the product, but states that he doesn't know the ingredients of Red Bull either. He just took the product on the advice of the store clerk at the nutritional store.

e. Upon learning of his positive test results, the Athlete cooperated with Ms. Evelyn Magnin, the Anti-Doping Coordinator with FIM, and voluntarily waived his right to test his B-sample.

f. The Athlete submits that he never received anti-doping education, and had never attended any FIM meetings concerning prohibited substances or "drug lists." He only believed that riders were tested for substances such as alcohol, cannabis, and cocaine. This was his first doping control test.

g. Mesomorph is a product for body builders, which he is not. Motorcycle riders do not try to build muscle mass. If he were looking to body build, he would have ingested the product more frequently. The purpose of taking the product was not to enhance his performance, but to help him "wake up" and "better focus" during his practice runs. Moreover, in road racing, the only way to cheat is modifying the motor or bike parts.

h. The sanction to be imposed on the Athlete should be consistent with the principle of proportionality, according to which there must be a balance between the relevance of the breach committed and the sanction imposed. Based upon the facts of this particular case, the two-year sanction requested by WADA is completely disproportionate. He submits that this is a minor doping violation and that a (3) month period of ineligibility is the maximum proportional sanction.

i. As a point of comparison, the Athlete relies upon the CAS jurisprudence of 2011/A/2645 *UCI v. Alexander Kolobnev v. Russian Cycling Federation* (reprimand); 2009/A/1918 *Jakub Wawrzyniak v. Hellenic Football Federation* (3 months); 2011/A/2518 *Robert Kendrick v. International Tennis Federation* (8 months); 2010/A/2229 *WADA v. FIVB & Gregory Berrios* (12 months), as well as the non-CAS jurisprudence of *Brunemann v. USADA* (26 January 2009) (6

months) and *RFU v. Wihongi* (16 March 2001) (4 months), as a basis for any period of sanction against the Athlete.

C. The Second Respondent

28. In its Answer, the Second Respondent requested the following relief:

1. The Appeal of WADA is dismissed.

2. The Answer of FIM is admissible.

3. The Decision of the FIM International Disciplinary Court (CDI) taken on 29 October 2012 is upheld.

4. Alternatively, the aforementioned decision is partially set aside and its letter c) is rectified as follows:

a. Mr. Anthony West is sanctioned with a period of ineligibility ranging between two months to twelve months maximum, starting on the date on which the CAS award is delivered or on such date which CAS considers appropriate.

i. Any period of ineligibility should, whether imposed on, or voluntary accepted by Mr. Anthony West before this date shall be credited against any such new period of ineligibility.

ii. The one month period already served by Mr. Anthony West shall be in any case credited against any new possible period of ineligibility imposed on Mr. Anthony West.

5. The FIM is granted an award for costs.

29. The Second Respondent's submission in support of its request may be summarized as follows:

a. By participating in this hearing, the FIM does not seek to justify or criticize the decision of the FIM IDC, which was taken independently. Its submissions will not seek to explain the reasoning of the Appealed Decision. Instead, they should be considered as the FIM's submission, and not necessarily the FIM IDC's view of the case.

b. It is not disputed that *methylhexaneamine* is a Specified Substance and that Mesomorph was the source of the banned substance, even if the label on the Mesomorph product did not include the ingredient *methylhexaneamine*. The

Athlete, therefore, could not have taken the *methylhexaneamine* with the intent to enhance his sporting performance as he did not know that Mesomorph could be associated directly or indirectly with MHA. The Athlete only took the product to combat the effects of fatigue, and he was only trying to catch up with his normal form or condition.

c. The Athlete did not search on the internet for the "banned substances list" and did not cross-reference the ingredients of Mesomorph with the 2012 FIM ADR List of Prohibited Substances or the WADA List of Prohibited Substances. Had he done so, he still would not have found any matches because the product label did not include *methylhexaneamine*. And the substance labeled on the Mesomorph, "geranium oil extract," does not appear on the 2012 FIM Prohibited List or the WADA Prohibited List, and its reference in the Explanatory Notes to the WADA Prohibited List is very difficult to locate. Therefore, the Athlete could not have intended to enhance his performance if he did not know that he was ingesting an unlabelled substance. In this regard, the FIM submits that the Panel should follow the CAS jurisprudence of 2012/A/2645 *USADA v. Oliveira*, 2011/A/2645 *UCI v. Alexander Kolobnev v. Russian Cycling Federation*, and 2010/A/2229 *WADA v. FIVB & Gregory Berrios*.

d. WADA should take responsibility for not displaying sufficient visual warnings with respect to *methylhexaneamine* or geranium oil extract.

e. The Athlete is candid, ignorant, and naïve with respect to his anti-doping violation. He has not received any anti-doping education from his national or international federation, or by his national anti-doping organization.

f. The Athlete's negligence, if any, is minor and based on the foregoing, the Athlete established that he acted with no significant fault or negligence.

V. ADMISSIBILITY

30. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

31. This provision of the CAS Code, therefore, provides that the time-limit of 21 days to file the statement of appeal may be derogated by the statutes or regulation of the

association concerned. In this regard, Article 13.6 of the FIM ADR provides, *inter alia*, that *"the filing deadline for an appeal or intervention filed by WADA shall be the later of:*

(a) Twenty-one (21) days after the last day on which any other parties in the case could have appealed, or

(b) *Twenty-one (21) days after WADA's receipt of the complete file relating to the decision."*

32. The Appealed Decision was forwarded to WADA on 27 November 2012.

33. On 18 December 2012, WADA filed its Statement of Appeal/Appeal Brief against the Appealed Decision.

34. The Appellant complied with the time limits prescribed under Article R49 of the Code and Article 13.6 of the FIM ADR. Consequently, this appeal is admissible.

VI. JURISDICTION

35. Article R47 of the Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

36. Article 13.2.1 of the FIM ADR provides that:

In cases arising from competition in a World Championship or Prize Event or in cases involving International-Level Riders, the decision may be appealed exclusively to the Court of Arbitration for Sport ("CAS") in accordance with the provision applicable before such court.

37. Moreover, the Panel notes that the Athlete, having signed his annual 2012 FIM Road Racing Grand Prix Moto2 Rider's license, expressly accepted the jurisdiction of CAS for disciplinary proceedings:

Final decisions handed down by the jurisdictional bodies of the FIM are not subject to appeal in ordinary courts. Such decisions must first be referred to the Court of Arbitration for Sport which has the exclusive authority to impose a definitive settlement in accordance with the Code of Arbitration for Sport which has the exclusive authority to impose a definitive settlement in accordance with the Code of

Arbitration applicable to sport. The rider acknowledges and agrees to the FIM Regulations and Anti-Doping Code.

38. Consequently, the Panel confirms that it has exclusive jurisdiction to hear this appeal.

39. Moreover, the Panel notes that jurisdiction follows from the Order of Procedure, which was duly signed by all parties, and that no party contested jurisdiction throughout this arbitration.

VII. APPLICABLE LAW

40. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

41. The Second Respondent, which is the sports organization that issued the Appealed Decision, has its seat in Switzerland.

42. Given the foregoing, the Panel considers that this appeal shall be decided on the basis of the FIM ADR and where, as necessary, the WADC. The law of Switzerland will apply subsidiarily.

VIII. MERITS

43. In recent years, CAS panels have had multiple occasions to rule on pleas by competitors to reduce two-year bans for doping under the WADC. Some of these decisions contain a degree of complexity which -- to judge by the Parties' pleadings -- impedes predictability. Consultations are under way to reformulate the WADC. Meanwhile, existing disputes must naturally be resolved by reference to the law in vigour at the time of the conduct under examination. This Panel will endeavour to do so in a straightforward fashion, avoiding elaborate distinctions or the gloss of abstractions which it does not believe are conducive to a useful understanding of the rules on the part of those it affects the most.

44. Under Article 10.2 of the WADC, the Period of Ineligibility imposed following detection of the presence of a Prohibited Substance is two years, unless that period is eliminated or shortened under Articles 10.4 or 10.5.

45. Those two Articles are at the heart of this case. They read as follows:

10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances

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.

To justify any elimination or reduction, the Athlete or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the Use of a performance enhancing substance. The Athlete's or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.

Comment to Article 10.4 provided for in the WADC: Specified Substances as now defined in Article 4.2.2 are not necessarily less serious agents for purposes of sports doping than other Prohibited Substances (for example, a stimulant that is listed as a Specified Substance could be very effective to an Athlete in competition); for that reason, an Athlete who does not meet the criteria under this Article would receive a two-year period of Ineligibility and could receive up to a four-year period of Ineligibility under Article 10.6. However, there is a greater likelihood that Specified Substances, as opposed to other Prohibited Substances, could be susceptible to a credible, non-doping explanation.

This Article applies only in those cases where the hearing panel is comfortably satisfied by the objective circumstances of the case that the Athlete in taking or Possessing a Prohibited Substance did not intend to enhance his or her sport performance. Examples of the type of objective circumstances which in combination might lead a hearing panel to be comfortably satisfied of no performance-enhancing intent would include: the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete's open Use or disclosure of his or her Use of the Specified Substance; and a contemporaneous medical records file substantiating the non-sport-related prescription for the Specified Substance. Generally, the greater the potential performance-enhancing benefit, the higher the burden on the Athlete to prove lack of an intent to enhance sport performance.

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.

In assessing the Athlete's or other Person's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article. It is anticipated that the period of Ineligibility will be eliminated entirely in only the most exceptional cases.

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 Metabolites is detected in an Athlete's Sample in violation of Article 2.1 (presence of Prohibited Substance), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation 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 eight (8) years. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.

Comment to Articles 10.5.1 and 10.5.2 in WADC: The Code provides for the possible reduction or elimination of the period of Ineligibility in the unique circumstance where the Athlete can establish that he or she had No Fault or Negligence, or No Significant Fault or Negligence, in connection with the violation. This approach is

consistent with basic principles of human rights and provides a balance between those Anti-Doping Organizations that argue for a much narrower exception, or none at all, and those that would reduce a two year suspension based on a range of other factors even when the Athlete was admittedly at fault. These Articles apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. Article 10.5.2 may be applied to any anti-doping rule violation even though it will be especially difficult to meet the criteria for a reduction for those anti-doping rule violations where knowledge is an element of the violation.

Articles 10.5.1 and 10.5.2 are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases.

To illustrate the operation of Article 10.5.1, an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.)

For purposes of assessing the Athlete's or other Person's fault under Articles 10.5.1 and 10.5.2, the evidence considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article.

While Minors are not given special treatment per se in determining the applicable sanction, certainly youth and lack of experience are relevant factors to be assessed in determining the Athlete's or other Person's fault under Article 10.5.2, as well as Articles 10.3.3, 10.4 and 10.5.1.

Article 10.5.2 should not be applied in cases where Articles 10.3.3 or 10.4 apply, as those Articles already take into consideration the Athlete or other Person's degree of fault for purposes of establishing the applicable period of Ineligibility

46. Under the circumstances of this case, the Athlete had no prospect of achieving the elimination of his suspension under Article 10.5.1 since he admits to having been careless. Article 10.5.2, on the other hand, covers cases of "no significant fault or negligence," which he argues is the proper description of his conduct. But under Article 10.5.2, his suspension cannot be shortened to a period less than 12 months. He therefore naturally seeks to invoke Article 10.4, which could allow his suspension to be reduced to less than 12 months, if not indeed eliminated and replaced with a reprimand.

47. The applicability of Article 10.4 is therefore of central significance in this case. The FIM IDC thought it was applicable, and on that basis pronounced the Athlete to be ineligible for one month. The Appellant considers that this decision was wrong. The Second Respondent defends the decision of the FIM IDC.

A. The Applicability of Article 10.4 of the WADA Code.

48. The analysis of the applicability of Article 10.4 is simplified by the presence of two factors:

- No Party denies that *methylhexaneamine* is a Specified Substance for the potential purpose of reducing the Athlete's suspension under Article 10.4 of the WADC (*methylhexaneamine* is not a steroid or hormone); and

- The Parties accept that the product entered the Athlete's body in the form of a product called Mesomorph, a powder-based supplement which he mixed with water and consumed before the Le Mans race.

49. This leaves only one condition to be satisfied before a reduction of the Athlete's ban could be justified under Article 10.4, namely that the Athlete must establish to the Panel's comfortable satisfaction, based on objective corroborating evidence, that his ingestion of MHA was "not intended to enhance the Athlete's sport performance."

50. This remaining condition has not been understood in the same way by all CAS panels.

51. In 2012/A/2645 *USADA v. Oliviera*, the panel accepted as a matter of fact that the athlete had not known that the product ("Hyperdrive 3.0+") contained a Specified Substance (oxilofrine). It then construed Article 10.4 as requiring the athlete only to negate a performance-enhancing intent with respect to the substance, as opposed to the product in which it is found.

52. The reasoning in *Oliviera* was *obiter dictum* since the suspension there was reduced to 18 months, and therefore could have been equally affected under the strictures of Article 10.5.2. *Oliviera* has nevertheless been frequently cited as authority for the proposition articulated above.

53. The present Panel is unpersuaded (as were other Panels, such as the those in A2/2011 *Kurt Foggo v. National Rugby League* and 2012/A/2804 *Dimitar Kutrovsky v. International Tennis Federation*) by the line of reasoning in *Oliviera*. It does not accept that an athlete's ignorance that a product contains a Specified Substance can establish absence of intent for the purposes of Article 10.4. In plain words, and in contradiction with *Oliviera*, if an athlete believes that a product enhances performance he cannot invoke the benefit of Article 10.4 just because it is accepted that he did not know that the product contained a banned substance. This would have the absurd result of rewarding competitors for being -- and remaining -- ignorant of the properties of the products they ingest, contrary to a fundamental objective of the anti-doping regulations, namely to create powerful incentives for competitors to take active and earnest initiatives to inform themselves.

54. The relevant question therefore becomes whether the Athlete has discharged the burden of proving absence of intent. WADA may well have accepted that the Athlete did not "cheat" in the sense of having intentionally infringed the rules, or in the sense of having behaved surreptitiously in a way of which he would have been ashamed if his fellow competitors had found out about it. The Panel itself is willing to accept that the Athlete was not a "cheat" in this understanding of the word. But that is quite different from the standard of Article 10.4. To establish that someone is a "cheat" requires that the accuser furnishes proof to that effect. Article 10.4, on the other hand, requires the *competitor* to prove that he did not intend to enhance his sport performance -- whether or not he thought he was disobeying the rules.

55. The Panel appreciates that the Athlete did not ingest the product for its muscle building or weight training properties. But Mesomorph is a stimulant, and the Athlete accepts that he took it to give himself a "boost" in the morning of his race as he contemplated the challenge of having to ride his motorcycle in difficult conditions. It is simply not believable that enhanced alertness and concentration do not give a competitive advantage, especially in a sport where riders manoeuvre tight turns and travel at significant speeds. Indeed, evidence was presented that several other riders fell in the rainy conditions of the day, and did not complete the race. The Panel does

not find themselves satisfied to the level required by Article 10.4, which means something beyond the mere balance of probabilities, that the Athlete was not seeking to enhance his sport performance when he ingested the Mesomorph.

56. The Appealed Decision found to the contrary, but did so in a manner which the present Panel finds wholly unconvincing. The intent criterion of Article 10.4 requires "corroborating evidence" apart from the competitor's own assertion. The FIM IDC did not address this requirement at all. One might charitably consider whether the decision contains elements which *impliedly* constitute such evidence. Three conceivable candidates appear in the Appealed Decision, namely the statement of the Athlete's sister, the statement of his team manager (Mr. Rodriguez), and the Athlete's correspondence with Ms. Magnin. If this is what the FIM IDC had in mind, the present Panel gives them no corroborative weight. The Athlete's sister's statement described the circumstances of the purchase of the product, but she was not with him when he ingested Mesomorph at Le Mans, which is the relevant period of time in respect of intent. Mr. Rodriguez testified that the Athlete did not tell him (let alone ask him) anything about his intention to prepare and consume a Mesomorph drink. And the correspondence with Ms. Magnin can hardly convince the Panel of anything relevant in this context as the Athlete's email messages to her were sent after the Adverse Analytical Finding had already been made. This would hardly have contained a confession on his part of an intent to secure competitive advantage. Moreover, as for Ms. Magnin, her messages to the Athlete were from the FIM offices in Switzerland, well after the event, and therefore self-evidently cannot prove anything as to the Athlete's state of mind at Le Mans.

57. The Panel therefore finds that Article 10.4 is unavailable to West. The Panel must therefore examine the applicability of Article 10.5., and will accordingly ascertain the applicable standard of care, before turning to the sanctions for its infringement.

B. The Standard of Care Required of the Athlete.

58. Broadly speaking, the Parties' positions may be described as follows: the Athlete admits that he was slightly careless; the Second Respondent considers that the Athlete was somewhat negligent; and the Appellant insists that the Athlete was gravely negligent. These contentions are made against the backdrop of the explicit proposition that Article 10.5 is intended to alleviate sanctions only in exceptional cases.

59. The Panel has considerable hesitation in characterising the present case as exceptional, but in the end resolves to give the Appellant the benefit of the doubt in this respect. The reasons relate notably to the particular nature of motor sports, and competitors' duty of care with respect to the avoidance of prohibited substances.

60. It was evident from statements at the hearing that the Athlete had a deficient understanding of the duties imposed upon him as a professional rider competing internationally, indeed having participated in more than 200 races over 13 years (roughly the same period of time as FIM has had an anti-doping program in place). The Athlete insisted repeatedly that in his sport, cheating involves the equipment rather than the rider. Consistent with that view, he believed that FIM should have a specific anti-doping regime that takes account of the fact that performance has more to do with engines and chassis than with the physical prowess of the rider. He related that when his fellow competitors heard of his Adverse Analytical Finding and his sanction, they were sympathetic to his plight — they thought, he said, that the sanction was "bullshit." No undue advantage could be procured by consuming an energy drink, let alone a supplement which might assist a weightlifter or bodybuilder over a long period of time in building up muscle mass or body weight, and at any rate the effect would be nil in the short term.

61. It is understandable that one might think that winning motor races has more to do with the power, acceleration, braking system, balance, and manoeuvrability of the vehicle than with the athletic capacities of the rider, and that cheating therefore would involve infringement of technical rules regarding their specifications. But a professional rider cannot be excused for holding such a simplistic view. Doping rules are concerned with the safety of the competitors – not only that of the individual ingesting the product in question, but also those who might be affected by his behaviour while driving under its influence. Motor racing competitors benefit from attributes such as concentration, adroitness, and reactiveness, which might give a competitive advantage and might be enhanced by means of ingesting prohibited substances. It might also create a sense of confidence conducive to excessive risk-taking. Moreover, it is inexcusable for a professional not to understand that when his sport is governed by a comprehensive set of rules applicable to all kinds of sport competitions, serious consequences may flow from transgressions which might not be considered particularly serious in his discipline.

62. The Athlete allegedly purchased Mesomorph over the counter in a shopping mall on the advice of his sister, who informed him that it was a product used by the Australian Army in the training of its personnel, and upon the assurance of the sales clerk that it did not contain "anything bad." He used the powder to prepare drinks during the Christmas holidays back home in Queensland during the end of year holidays in 2011, and brought some with him to Europe -- but did not ingest any of the product until the Le Mans race. Even if he was correct in thinking that it was difficult to determine that "Mesomorph" contained a prohibited substance (a proposition which the Panel finds somewhat doubtful), he had many weeks to conduct further inquiry before using it in the context of a competition. Moreover, according to Mr. Rodriguez's testimony, the Athlete did not tell his team manager he was taking this product at Le Mans, let alone

ask if he should. All of this is explainable if one accepts that he sincerely believed that there was nothing "bad" (or "bad" for motorcycle racers) in Mesomorph, but this is not consistent with the standards of professionalism to which someone like the Athlete is legitimately held.

63. In fact, *methylhexaneamine* is a prohibited *stimulant* with short term effects, and contrary to what the Athlete and some of his fellow competitors might have thought, the policing of the ingestion of such substances is a serious and legitimate matter.

64. FIM has not had major and recurrent doping problems, and this may have contributed to a relative deficit of proactiveness in raising the awareness of riders and team leaders to the importance of active and informed surveillance of what competitors ingest. The Athlete himself complained in his remarks to the Panel about what he deemed to be the lack of information and warnings from the FIM and WADA. For his part, the FIM representative at the hearing did not seek to contradict the Athlete in this respect. While this factor is not exculpatory in a regime based on strict liability, the Panel deems it proper to give it some weight in allowing the Athlete the benefit of Article 10.5.2.

C. Determining the Period of Ineligibility

65. The above conclusion means that the Panel must determine a proper sanction, which reflects the fault and negligence of the Athlete.

66. There is a stream of CAS case law concerning the standard of behavior required of the Athlete concerning nutritional supplements. As a baseline, the Panel refers to CAS 2009/A/1870 *WADA v. Jessica Hardy & USADA*. In *Hardy*, the CAS Panel reduced the two year sanction to twelve months (the maximum reduction under Article 10.5.2) where the standard of No Significant Fault or Negligence was applicable. The athlete had taken several precautionary steps to satisfy her as to the permitted use of the relevant nutritional supplements. The athlete obtained the samples directly from the manufacturer (and not from a shop specializing in nutritional products or an unknown source), used the supplements for eight months without an adverse finding, and obtained an indemnity from the manufacturer with respect to its products. Moreover, the athlete consulted both a nutritionist and her coach about the products prior to ingestion.

67. The appropriate period of eligibility in this case must be considerably higher than 12 months. Here, the Athlete relied on a supplement which he had never used before based simply on the recommendation of his sister and superficial advice from the store clerk. Although having had several months to do so, he did not consult his manager, the FIM doctors, a nutritionist, or anyone else.

68. Moreover, the Athlete failed to conduct any internet research into the product or its ingredients, and did not cross-reference the ingredients of Mesomorph with the 2012 FIM ADR List of Prohibited Substances or the WADA List of Prohibited Substances. This may have been the most basic and easiest precaution available to the Athlete, and likely would have revealed that the ingestion of Mesomorph involved a substantial risk. Instead, the Athlete chose to blindly ingest the supplement.

69. The Athlete's precautionary steps, or lack thereof, are more closely related to the circumstances of the following recent CAS cases: 2012/A/2804, *Dimitar Kutrovsky v. International Tennis Federation* (15 months suspension) where the athlete, who had no anti-doping education, compared each ingredient on the label of the supplement to the Prohibited List but found no matches because the label only listed a synonym for *methylhexaneamine* (which was not on the Prohibited List), but did not research the product on the internet or consult a doctor/trainer; 2012/A/2701, *WADA v. International Waterski and Wakeboard Federation (IWWF) & Aaron Rathy* (15 months suspension) where the athlete did not consult a physician or conduct any internet research, instead merely relying upon the assurances of the salesman prior to ingestion; and 2012/A/2747, *WADA v. Judo Bond Nederland, Dennis de Goede & Dopingautoriteit* (18 months suspension) where the athlete, an experienced competitor, did not conduct any internet research into the product or its substances, and simply relied on his brother's statements that the product was "safe" and "could do no harm."

70. During the hearing, the Athlete did express regret for what happened, and was cooperative and honest about the circumstances which lead the Adverse Analytical Finding. Furthermore, it seems that the Athlete may not have received any formal anti-doping education throughout his 13-year career. Therefore, notwithstanding the duties imposed upon professional athletes when it comes to anti-doping, the Athlete should not be fully at blame for the failures of the anti-doping authorities involved in his sport.

71. In spite of this, the Panel believes that it is important in terms of fair competition between all competitors that athletes comply with the anti-doping rules. Ignorance is no defense. As a consequence, the Panel considers appropriate to impose an 18 month period of ineligibility.

D. Starting Point for the Period of Ineligibility

72. Article 10.9 of the FIM ADR provides that, in principle, the period of eligibility begins on the date of the hearing decision "*providing for Ineligibility*." This provision is consistent with Article 10.9 of the WADA Code.

73. Article 10.9.1 of the FIM ADR provides that "[*w]here there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Rider or other Person, the FIM or Anti-Doping Organisation imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date which another anti-doing rule violation last occurred*."

74. It must also be noted that Article 10.9.3 of the FIM ADR provides that "*[i]f a Provisional Suspension is imposed and respected by the Rider, then the Rider shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed*."

75. A provisional suspension was imposed on the Athlete from one month following the communication of the Appealed Decision, which the Panel presumes happened the same date as the Appealed Decision was signed (29 October 2012). This one-month period shall be credited to the Athlete.

76. It should also be noted that the Athlete was first made aware of his Adverse Analytical Finding on 13 June 2012. Since that time, nearly 15 months have elapsed due to delay in the adjudication of his case due to circumstances not attributable to the Athlete. The Panel, therefore, deems it appropriate to backdate the starting point of the Athlete's period of ineligibility to the date of sample, *i.e*. 20 May 2012. As a consequence, all sporting results obtained by the Athlete from 20 May 2012 up to the end of the sanction must be invalidated.

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IX. COSTS

77. For disciplinary cases of an international nature ruled in appeal, such as this case, Article R65 of the Code provides as follows:

"R65.2 Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS are borne by the CAS.

Upon submission of the statement of appeal, the Appellant shall pay a Court Office fee of Swiss francs 1000.— without which the CAS shall not proceed and the appeal shall be deemed withdrawn. The CAS shall in any event keep this fee.

R65.3 The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties."

78. As this is a disciplinary case of an international nature, the proceedings are free, except for the Court Office filing fee of CHF 1'000, which WADA has already paid. The CAS shall retain this fee.

79. In accordance with the constant practice of the CAS, any amount granted on the basis of Article R65.3 of the Code is a contribution towards the legal fees and other expenses incurred by the prevailing party in connection with the proceedings and not the full amount spent by such party for his/her claim or defence.

80. In light of the outcome of this appeal, the financial resources of the parties, the conduct of the Parties in these proceedings, and the fact that there is conflicting CAS jurisprudence on the issues raised in this case, the Panel orders that the First and Second Respondent shall contribute CHF 1'500 each to the Appellant for its legal and other costs incurred in connection with these arbitration proceedings.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Appeal filed by the World Anti-Doping Agency against the decision of the FIM International Disciplinary Court dated 29 October 2012 is partially upheld.
2. The decision of the FIM International Disciplinary Court dated 29 October 2012 is set aside and replaced with the following:

   Mr. Anthony West is sanctioned with a period of ineligibility of eighteen (18) months, commencing on 20 May 2012.
3. All sporting results obtained by Mr. Anthony West from 20 May 2012 up to the expiry of the period of ineligibilty shall be invalidated.
4. This award is pronounced without costs, except for the Court Office fee of CHF 1'000 paid by WADA, which shall be retained by the CAS.
5. The First and Second Respondent shall contribute CHF 1'500 each to the Appellant for its legal and other costs incurred in connection with these arbitration proceedings.
6. All other or further claims are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 22 November 2013

THE COURT OF ARBITRATION FOR SPORT

Jan Paulsson
President of the Panel

Richard H. McLaren
Arbitrator

Efraim Barak
Arbitrator

Brent J. Nowicki
Ad hoc Clerk