

SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)

ANTI DOPING DISCIPLINARY HEARING

ATHLETE: MR RENIER ERASMUS

RESPONDENT REPRESENTATIVE: ADV ATTIE HEYNS

DATE: 26 NOVEMBER 2012

SPORTS FEDERATION: SOUTH AFRICAN RUGBY UNION

PLACE OF HEARING: PROTEA HOTEL MARINE DRIVE, PORT ELIZABETH, EASTERN
CAPE

DISCIPLINARY PANEL ("PANEL"): MR MARIUS HURTER (CHAIRMAN)
DR DEON-JACQUES PIETERSE (MEDICAL REPRESENTATIVE)
MR ERROL HEYNES (SPORT ADMINISTRATOR)

PROSECUTOR: MR RAHIDIEN CULLIS

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

APPLICABLE LAW

SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended). SAIDS has formally accepted the World Anti-Doping Code ("WADC") adopted and implemented by the World Anti-Doping Agency in 2003. In so doing, SAIDS introduced anti-doping rules and regulations to govern all sports under the jurisdiction of South African Sports Confederation and Olympic Committee, as well as any national sports federation.

The SAIDS Anti-Doping Rules ("the Rules") were adopted and implemented in 2009. These proceedings are therefore governed by the Rules. This SAIDS Anti-Doping Disciplinary Panel has been appointed in accordance with Article 8 of the Rules, to adjudicate whether the Athlete has violated the said Rules, and if so the consequences of such a violation.

PROCEDURAL MATTERS

The Athlete was in attendance represented by Advocate Attie Heyns.

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

SUMMARY OF EVIDENCE AND ARGUMENT

The Athlete was informed through written correspondence addressed to the Athlete on 01 October 2012 informing the Athlete of an Adverse Analytical Finding, informing the Athlete of his rights and the process including the Athlete's right to have a B sample analysed. On 29 October 2012, the Athlete, through written correspondence by his attorney, requested that supplements Evox, Neurocore and USN Pure Creatine be analysed for the presence of *Methylhexanamine*. The Certificate of Analysis was issued on 5 November 2012, confirming that the supplement Neurocore contained *Methylhexanamine*.

The charge against the Athlete was set out in written correspondence addressed to the Athlete on 24 October 2012. The charge against the Athlete read 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 01 September 2012, you provided a urine sample (2723123) during an in-competition test. Upon analysis, the South African Doping Control Laboratory at the University of Free State reported the presence of prohibited substances in your urine sample. The substance identified was Methylhexaneamine. Methylhexaneamine is categorised under Class S6 "Stimulants" in specific (6b) Specified Stimulants, on the World Anti-Doping Code 2012 Prohibited List International Standard.

The Athlete advised that he understood the charge. The Athlete had not requested that his B sample be tested. The Athlete admitted that he was Guilty of the charge as set out, and acknowledged that he understood the implications of such an admission. In his opening, Adv Heyns addressed the panel picturing the circumstances of the Athlete up to the day of the doping test. The Athlete stated that the source of the substance was a product by the name of Neurocore which he used on the morning of the match after he was advised by his friend, David Blumberg, that this will give him energy.

Evidence presented before the hearing was that the Athlete is a U/21 Eastern Province rugby player and also captain of his team. A few weeks leading up to the game between the Valke and EP Kings U/21 teams, the Athlete suffered from bronchitis and consulted a medical doctor during this period. On or around 23 August 2012, the Athlete finished with a series of Antibiotics prescribed to him. The team travelled up to Nigel on Friday 31 August 2012. On Friday night, the Athlete met up with his friend, David Blumberg, and other supporters. The Athlete mentioned to Blumberg that he was not feeling well and had no energy. Blumberg told him that he had this energy drink called Muscletech Neurocore which he (Blumberg) uses when he feels exhausted. The Athlete used this supplement on the morning of the match.

The Athlete further gave evidence that he did not have comprehensive knowledge of doping matters and remembers talks which addressed healthy eating habits, but no comprehensive talks regarding the use, risk and consequences of Prohibited Substances.

Mr David Blumberg was called as a witness and testified that he works in construction and uses the supplement to give him energy. He drove up to Nigel to go and support the Athlete (they are close friends since school) and took the supplement Neurocore with to keep him awake. He gave the supplement to the Athlete and told him that it would give him energy.

Mr Elvis Boltino was also called as a witness and his testimony focussed on the exemplary character of the Athlete and how the Athlete stood out as a person always setting a good example to others with excellent work and training ethics.

Upon the question by the prosecution why the supplements weren't noted on the doping control form, the Athlete replied that the Doping Control Officer never asked him about any other specific supplements and after the Athlete mentioned that he was ill in the weeks leading up to the game, the DCO focussed on the prescription medicine and the issue of other supplements weren't laboured further.

The Athlete in closing acknowledged his guilt taking full responsibility for his negligence and is remorseful regarding his positive test. He understands that he is ultimately responsible for what he takes.

FINDING OF THE CHARGE

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

DISCUSSION ON EVIDENCE AND ARGUMENT AS TO SANCTION

Article 2.1.1 of the Rules reads as follows:

It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1.

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

The Athlete has been found guilty of a doping offence in respect of the substance identified as *Methylhexaneamine*. *Methylhexaneamine* is categorised under Class S6 "Stimulants" in specific (6b) *Specified Stimulants*, on the World Anti-Doping Code 2012 Prohibited List International Standard.

As such, it is for the Panel to determine whether there are grounds for a reduction in the period of ineligibility in terms of Article 10.4 of the rule. Article 10.4 reads 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' *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 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 of *Ineligibility*.

Article 10.4 sets out specific conditions for the reduction of the Ineligibility period to be applied on an athlete following a finding of guilty for the anti-doping violation as set out above:

1. The *Athlete* must produce corroborating evidence in addition to his or her word which establishes 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; and
2. The *Athlete's* **degree of fault** shall be the criteria considered in assessing any reduction of the period of *Ineligibility*.

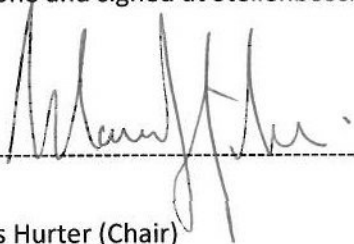
Considering the evidence presented by the Athlete, there are a number of important issues to consider in making this finding:

- He took the substance an energy drink to energise him and before that day, never heard of Neurocore;
- He has not received any formal group or individual anti-doping education;
- He has never been tested previously and has had no previous experience in this regard;
- This was his first offence;
- He waived his right to have his B sample tested;
- He was remorseful and indicated that he would definitely engage and in anti-doping rules and regulations.
- He undertook to attend 3 schools creating awareness and inform about the dangers of taking substances. He further undertook to liaise with SAIDS about the availability of literature such as pamphlets and the like. He will then identify 3 schools that would be willing to provide him with an audience and, with the assistance of the principal or sporting co-ordinator, arrange for opportunities to speak to the learners and agreed to provide SAIDS with a report of these attendances by 1 March 2013.

In light of the above, the sanction on the finding of Guilty is as follows:

1. The Panel is satisfied that it was not the intention of the athlete to enhance his performance and established a low degree of fault in taking the prohibited substance;
2. The Athlete is ineligible to participate in any organised sport, club or higher level or as envisaged in Article 10.10 of the Rules, for a period of 3 (three) months;
3. The period of three months will be effective as of 01 October 2012, to terminate on 31 December 2012, both dates included.

This done and signed at Stellenbosch, December 2012



Marius Hurter (Chair)

For and on behalf of the Tribunal Panel

Dr Deon-Jacques Pieterse, Mr Errol Heynes