

IDSF
DISCIPLINARY COUNCIL

Formal Decision
as of
17 November 2006

regarding

VIOLATION OF THE IDSF ANTI-DOPING CODE

by

Edita Daniute

Vilniaus str. 33 - 3000, Kaunas - Lithuania

represented by Mr. Mike Morgan; Hammonds, 2 Park Lane, Leeds, United Kingdom

- Athlete -

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1. Pursuant to article 1.VII.1 of the IADC, an anti-doping rule violation has been committed by the Athlete.
 2. The athlete, Mrs. Edita Daniute is responsible for the commission of such anti-doping rule violation



3. By virtue of art. 1.VII.1, and in accordance with art. 5.V.2 of the IADC, Mrs. Edita Daniute shall be declared Ineligible for competition for **3 (three) months**, starting from September 14th, date of the first provisional suspension.
For the calculation of the sanction, days where the suspension was temporarily lifted are not to be taken into account. Therefore, the Athlete will be allowed to compete again starting from **December 22nd, 2006**.
4. The athlete shall bear her own costs and expenses of the present procedure.
5. According to article 16 of the IDSF Disciplinary Code, the Athlete shall bear the minimum costs for any proceeding. Therefore, the Athlete shall pay the amount of **CHF 100,00** (one hundred Swiss Francs).
6. The costs and expenses incurred with the IDSF Disciplinary Council shall be borne by the IDSF.

Reasons for the Decision

1. Facts

- 1.1. On Saturday, August 19th 2006, it took place in Stuttgart (Germany), the IDSF Grand Slam Standard competition.
- 1.2. Mrs. Edita Daniute – Lithuania, 11/07/1979 - (hereinafter referred to as the Athlete), as a participant in the competition, had signed the "IDSF Form of Consent for Athletes 2006", hence agreeing to the terms of the IDSF Anti-Doping Code ("IADC" –version in force as of 2006).
- 1.3. At said competition, the Athlete underwent an anti-doping control under the rules of the IADC.

- 1.4. On September 14th, the Anti-doping Director of the ISDF officially informed the Athlete that the result of the test of her urine A-sample (no. 318706) was positive, showing the presence of **Sibutramine**, a stimulant, listed on the Prohibited List of the World Anti-Doping Agency (WADA) under section S6.

The analysis of the A-sample was performed by the "Institut für Dopingsanalytik und Sportchemie Dresden" (Germany), a WADA accredited laboratory, on September 7th 2006.

- 1.5. Additionally, the Athlete was provisionally suspended from any further competition as from September 14th, according to provision set under article 5.IV.1 of the IADC.
- 1.6. On the same date, the Athlete requested the analysis of the B-sample.
- 1.7. On September 25th, the Athlete filed a notice of appeal against the decision of provisional suspension with the ISDF Disciplinary Council.
- 1.8. On October 3rd, the Athlete provided additional information and background, outlining further reasoning for her appeal.
- 1.9. On October 8th, the ISDF Disciplinary Council, duly gathered, rendered the formal decision to temporarily lift the provisional suspension, until the B-sample was analyzed. Such decision was communicated on the same date per phone to the Athlete by the President of the ISDF Disciplinary Council, Mr. Erich Staeldi, and officially in writing on October 16th.
- 1.10. On October 10th, the Anti-Doping Director officially informed both the Athlete and the ISDF Disciplinary Council of the positive result of the B-sample, confirming the result of the A-sample and the presence of **Sibutramine** therein, which resulted in an anti-doping rule violation according to art. 1.VII.1 of the IADC. The analysis was performed by the same German Laboratory on October 9th.
- 1.11. On October 18th, Mr. Staeldi informed the Athlete that, according to the respective formal decision as a consequence of the positive B-sample analysis, the provisional

suspension from any further competition had re-entered into force with immediate effect until the case was decided.

Furthermore, and according to article 14 of the IDSF Disciplinary Council Code, she was duly informed of the composition of the Chamber in Charge responsible to deal with the present case.

1.12. On October 26th, the Solicitors of the Athlete submitted to the Chamber in Charge her Statement of Defence.

1.13. The Athlete has not contested the results of the A and B samples.

1.14. A Certificate for Therapeutic Use Exemption (TUE) has not been issued in favour of the Athlete.

2. Jurisdiction of the IDSF Disciplinary Council / Chamber in Charge

2.1. The competence of the IDSF Disciplinary Council, represented by this Chamber in Charge, is first based on art. 18 of the IDSF Statutes, in its version in force as of June 2006, which provides that:

"The Disciplinary Council ("the DC") is the independent jurisdictional organ of IDSF. It considers and renders judgments on the subjects referred to it by the Code of the IDSF Disciplinary Council and the provisions of the Anti-Doping Code."

2.2. Moreover, the jurisdiction of the Chamber in Charge is explicitly recognised in the IDSF Disciplinary Code –version in force as of June 2006-, when it establishes in its art. 2 and 8, respectively:

"Art. 2 Scope of the IDSF Disciplinary Council

The IDSF Disciplinary Council shall be the sole judicial organ of the IDSF.

It shall be responsible and entitled to render a formal judgement on the following issues: (...)

- Violations of the IDSF Anti-Doping Code"*

“Art. 8 Chamber in Charge

Each case submitted to the Disciplinary Council will be attributed by the Chair to a “Chamber in Charge”, which will consist of an appointed “Chamber Chair” (being either the President or one of the Vice Presidents of the Disciplinary Council) as well as two Ordinary Members”.

- 2.3. Finally, article 6 of the IADC, as the specific regulation for this case, clearly determines that:

“Art. 6. Disciplinary Proceedings

1. The ISDF Disciplinary Committee

3. In the event of disciplinary proceedings initiated by the Anti-Doping Representative, the Disciplinary Committee must assign a Chamber of three of its members to consider and decide the case (...)”

- 2.4 According to the foregoing, this Chamber in Charge has full power to review the facts, the allegations and the law, in order to render a final decision on the case.

3. Applicable Law

- 3.1. Article 6.IV.1 of the IADC establishes that:

“The Disciplinary Committee Chamber must consider and decide the case according to this Code and Swiss Law”.

- 3.2. The Athlete signed the “IDSF Form of Consent for Athletes 2006”, agreeing to all the terms of the ISDF Anti-Doping Code.

- 3.3. The applicable regulations in this case are then the ISDF Anti-Doping Code 2006, and subsidiary the Swiss Law.

4. In Law

- 4.1 Without any doubt this case of doping is extremely complex and has been studied with significant effort by this Disciplinary Council. On the one hand, the will to be as fair as possible in the resolution as we are dealing with decisions that will have a major effect on the sporting career of the Athlete and her sporting life. Sporting interests and also economic and image interests are at stake in a case such as this.
- 4.2 On the other hand, we have also had to consider the effect resolutions like this produce on DanceSport internationally and therefore the scope of the resolutions we take. Last but not least, from a legal point of view, perhaps the main thing in any resolution is stating the application of law, the application of regulations, in other words compliance with the law, the principle of legality that a resolution should intrinsically contain so as to be fair but also legal.
- 4.3 Moreover, the technical complexities of the substances object of this case for doping have led the need for technical information from medical and pharmacological professionals. Their help has been of uncountable value.
- 4.4 We also would like to state that the present decision has been unanimously agreed by all the members of the Chamber in Charge, without any discrepancy between them and acting always with the highest sense of liberty and responsibility with the organization we depend on, which has, at no moment of the procedure, expressed its opinion whatsoever.
- 4.5 Pursuant to Article 1.VII.1 of the IADC, the following constitutes an anti-doping rule violation:

“The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s bodily Specimen (...)”

- 4.6 In the present case, the analysis of the A and B samples of the Athlete after her participation in the IDSF Grand Slam Standard on August 19th revealed the presence in her urine of **Sibutramine**, a stimulant, listed on the Prohibited List of the World Anti-Doping Agency (WADA) under section S6.

4.7 The Athlete did not obtain prior to competition a Therapeutic Use Exemption (TUE) for this substance, nor has it been provided after the competition either.

4.8 Pursuant to the strict liability theory provided in article 5.1.1 of the IADC:

"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 bodily Specimens. 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 Art. 1.VII"

4.9 The doping offence is hence confirmed and the sanctions for this anti-doping rule violation set out under article 5 of the IADC.

4.10 Once the presence of the prohibited substance has been duly accredited, and its ingestion admitted by the Athlete in her writing of October 23rd, it is obvious that we are in presence of an anti-doping rule violation of the IADC and other regulations.

4.11 As a result of the allegations of the Athlete's solicitors contained in their writing of October 26th, by virtue of which an amendment of the Athlete's responsibility is requested due to the alleged commission of inadvertent doping, this Chamber in Charge has studied in depth the technical data necessary aimed to obtain a higher degree of credibility and sureness in order to adopt the final decision on the case.

4.12 Two matters have turned into important elements so as to be able to establish the reality of the facts. First, the possibility that the medicament purchased could be "adulterated" with sibutramine, a practice which is unfortunately possible and secondly, the access the Athlete has and has had to this type of information, in other words the ignorance that the Athlete may or may not have had of all these adulteration processes and mechanisms prepared to obtain unauthorised improvements.

4.13 In the text from the prospectus of the product **Meizitang**, translated into English, there is no mention of the presence of **Sibutramine** in its composition. Nevertheless, results from the drugs control laboratory are unequivocal in this context. Everything seems to

indicate therefore that there is commercial fraud. In this sense, the WHO, in its publication "WHO pharmaceuticals newsletter", 2 of 2005 on page 3 warned that this product contains **Sibutramine** according to analyses carried out in the United Kingdom. Similarly, this article mentions that Dutch authorities had also detected this fraud (see footnote no.4).

4.14 In counter position to what has been stated by the Chairman of the Lithuanian Dance Sport Federation (last letter from Tab. 6 of the EB) a simple search on Internet with the words "Meizitang and doping" and "Sibutramine and herbal products" provide sufficient responses that demonstrate that the Meizitang product contains sibutramine.

4.15 Indeed, these are, among others, the data that can be obtained by anybody:

1) Google. MEIZITANG AND DOPING: 11 references, of which 10 are in Czech or Polish languages. The only one that is in English is the reference below. All of them speak of sibutramine or sybutramin, etc., something that can be appreciated even though the text is in Polish.

London & South East Medicines Information Service
Issue 97, March 2005
Page 135, describes the presence of sibutramine in Meizitang

2) Google. SIBUTRAMINE AND HERBAL PRODUCTS. 215,000 references.

4.16 Therefore, any person may obtain this same information if they look for it without major complications and if they are interested.

4.17 **Sibutramine** is a drug that is authorised on the international pharmaceutical market only to be used as an **anorexigen** (appetite inhibitor) for controlled loss of weight. It has an action mechanism identical to other drugs used as antidepressants and has stimulant effects: tachycardia, nervousness, palpitations, hypertension, etc. This type of effect may be very damaging in certain persons. Its normal dose is 10-15 mg/day.

4.18 Capsules of **Meizitang** contain 400mg of product according to the analysis from the Drugs Control Laboratory. It is therefore very easy to fraudulently introduce a small amount of **sibutramine** into each capsule to ingest approximately 10-15 mg/day. In

this way a loss of appetite and weight can effectively be obtained by apparently only taking natural products.

- 4.19 All these technical elements lead us to think that there exists a “market” oriented to the adulteration of medicaments “apparently” natural and innocuous, in order to obtain more effective reactions and performances way above natural abilities of the Athletes.
- 4.20 It is surprising therefore, that if it really is a case of inadvertent doping, as stated in the written claim of the defendant, no scientific evidence or medical documents have been provided that justify on the one hand the need to ingest Meizitang and on the other hand the necessary medical supervision in the recommendation to use a drug for slimming.
- 4.21 Let us not forget that we are not dealing with an amateur athlete practising the sport as a hobby. Mrs Daniute is a top-level athlete who is at the maximum category¹ and especially she has maximum sporting objectives. Therefore, she should be very responsible with her training and with the substances she ingests and should also always be controlled by the necessary professionals and experts.
- 4.22 Any top level athlete, as is the case of Mrs. Daniute, should control its medication, food and supporting substances. Specially, if it involves a product, that in its presentation does not reflect the different substances that comprises it, neither its chemical composition. A simple visit to something as familiar and normal as the Internet would have enabled her to locate the vast amount of information that we ourselves have found easily without needing to turn to professional experts.
- 4.23 Once the doping infraction has been established, recognised by the Athlete and scientifically accredited, a violation of the anti-doping rules contained in section 1 VII. 1) of the IADC has occurred and consequently should be sanctioned. Let us recall that it is known and recognised that the classification of the infraction occurred from the

¹ Placed first in :International Championships, England (11/10/06); Fiesta Mediterránea 2006, Barcelona (8/07/06); Saint Petersburg Open 2006 (20/05/06); Amber Couple 2006, Lithuania (06/05/06)

Placed second in: Embassy Ball 2006, USA (01/09/06); German Open 2006, Germany (19/08/06); Blackpool Dance Festival, England (31/05/06)

mere result of the analysis, turning this into precisely the necessary proof of disciplinary accusation.

- 4.24 The onus is therefore on the defendant to demonstrate that the result is not true and therefore the form in which the substance has appeared in the result of the analysis.
- 4.25 However, we insist this is not the debate of this case, basically because the Athlete has recognised in her allegations that effectively by ingesting Meizitang she was ingesting a substance prohibited by anti-doping regulations.
- 4.26 The crux of the debate surrounds the degree of responsibility of the Athlete for the substance ingested and whether – finally – the Athlete has the right to have certain legal criteria contained in the regulations that affect the degree of the sanction to be applied or not.
- 4.27 The legal representation of the Athlete in their statement of 26th October, paragraph 4.3 and 4.4, precisely states the circumstances mentioned above and does so gradually and in a decreasing manner.
- 4.28 Effectively, from the study of our regulations we can establish that there are three possibilities to reduce the responsibility of Athletes. The first is established in section 5.1.2 of the IADC:

“If the Athlete establishes in an individual case involving an anti-doping rule violation under Art. 1.VII.1 (...) that he or she bears No Fault or Negligence for the violation, the otherwise applicable period of Ineligibility shall be eliminated (...)”

- 4.29 This is the case that the doctrine defines as inadvertent doping, in other words the Athlete is totally unaware of whether she is ingesting a prohibited substance² and – this element is extremely important – there has not been the slightest possibility or minimally sufficient capacity to verify whether this use is incorrect. Due to it logically

² *The Athlete’s establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had used or been administered the Prohibited Substance or Prohibited Method.*

being the highest level of reduction of the sanction, the regulations establish the recommendation and the possibility that the ineligibility period may be eliminated³.

4.30 This is not the case. This circumstance that modifies responsibility cannot be applied to this case and the reason for this Council is obvious: the Athlete cannot claim ignorance as after carrying out the relevant investigations we have noted that the information on the substance, effects of the substance, on the combination specifically with Meizitang are easily accessible to any person and of course much more accessible to an Athlete who should be informed about the drugs and other substances she takes.

4.31 As stated above, a simple search on Internet with the words "Meizitang and doping" and "Sibutramine and herbal products", provide sufficient responses that demonstrate that the product Meizitang contains sibutramine.

4.32 However, as we mentioned above, even the WHO in its publication "WHO pharmaceuticals newsletter", 2 of 2005, page 3 warned that this product contains **Sibutramine** according to analyses carried out in the United Kingdom. It is also mentioned in this article that the Dutch authorities had also detected this fraud .⁴

4.33 Therefore this Council rules out the possible application of the exculpatory clause of No fault or Negligence alleged by the legal representation of the Athlete.

4.34 There are two more procedures to reduce responsibility in the legislation in force, which are those contained in sections 5.V.1 and .2 of the IADC.

4.35 If we objectively analyse the articles mentioned, we can draw the conclusion that existing the possibility of regulation 5.V.2 since we are dealing with a specific substance, section 5.V.1 results not applicable. The specificity prevails over generality as stated by the regulation itself, for which reason by speaking of sibutramine we can

³ *If the Athlete establishes in an individual case involving an anti-doping rule violation under Art. 1.VII.1 (...) that he or she bears No Fault or Negligence for the violation, the otherwise applicable period of Ineligibility shall be eliminated*

⁴ *"(...)Two other TCM slimming products, Li Da Dai Dai Hua and Meizitang have been seized by the Netherlands' authorities and have been found to contain Sibutramine. Due to the international trade in such products, it is possible that these or similar products have found their way onto the UK market and consumers are urged to be vigilant".*

only evaluate whether it is appropriate or not to definitively consider the possibility introduced by the regulation and that textually establishes:

"V. Sanctions

2. The Prohibited List may identify specified substances which are particularly susceptible to unintentional doping because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents. Where an Athlete can establish that the Use of such a specified substance was not intended to enhance sport performance, the period of ineligibility found in Art. 5 V 1 shall be replaced with the following:

- For a first violation: at a minimum, a warning and a reprimand and no period of Ineligibility from future Events, and at a maximum, one (1) year's Ineligibility"

4.36 And it is specifically this regulatory possibility where this Council considers that not only is the sanction applicable, but rather it should be applied given the circumstances of the case.

4.37 It is obvious that we are dealing with a substance that effectively may give rise to inadvertent doping. Technically, Sibutramine may be "camouflaged" by another innocuous or perfectly legal substance and this also explains the lack of information in the technical prospectus of Meizitang, already alleged on various occasions by the Athlete.

4.38 It is also evident from information we have in this Council, that **sibutramine** is not a substance that initially produces significant help in the performance of an athlete as deliberate consumption of **sibutramine** is instead damaging or in any case uncertain for any type of competition in which Mrs Edita Daniute participates as it may alter, for example, coordination. We know from studies carried out that **sibutramine** may cause adverse effects on motor coordination and have significant risks for health. At the same time, it may have stimulant effects that reduce the sensation of fatigue.

4.39 These negative effects for the athlete also contrast with others that we could poorly denominate "positive effects". Its stimulant effects may enable reducing the sensation of fatigue in a similar way to amphetamines and in this context, any competitor may consider that its consumption will be beneficial to them.

- 4.40 In any case the Committee considers that in light of the allegations, the interpretation of article 5.V.2 of the IADC, from the circumstances that we have been able to evaluate, in this case is fully applicable the mentioned regulation that enables specifically, as alleged by the Athlete's legal representation, replacing the sanction of two years of ineligibility by that set out in this regulation.
- 4.41 Bearing in mind that regulation 5.V.2 foresees a "range" for the sanction from a reprimand (minimum penalty) to a sanction of one-year (maximum penalty), this Council considers that the appropriate sanction is **THREE (3) MONTHS** of Ineligibility for any competition, a time where the periods in which the Athlete was previously suspended by the ISDF should be paid for.

5 Commencement of the Sanction

- 5.1 On September 14th, the Athlete was provisionally suspended from any further competition, according to provision set under article 5.IV.1 of the IADC.
- 5.2 On October 8th, the ISDF Disciplinary Council temporarily lifted the suspension of the Athlete. Therefore, the Athlete has already been ineligible for a total of 25 days.
- 5.3 On October 18th, the Athlete was communicated of the re-entering into force of the suspension with immediate effect.
- 5.4 On a global calculation, and as of today, the Athlete has been suspended a total of 56 days.
- 5.5 Therefore, since the sanction is for three months, i.e. 90 days, and taking into account the days where the Athlete has been already ineligible, Mrs. Daniute shall be entitled to compete again starting from December 22nd .

6 **Disqualification of Subsequent Competition Results**

6.1 According to Art. 6.IV.2 of the IADC:

“An anti-doping rule violation in connection with an Event in which the Athlete participated in several Competitions may, upon the decision of the ruling body of the Event, lead to Disqualification of all the Athlete's individual results obtained in that Event with all consequences, including forfeiture or all medals, points and prizes. (...)”

6.2 As Mrs. Daniute has committed an anti-doping rule violation during the ISDF Grand Slam Standard competition -held on August 19th in Stuttgart (Germany), all results achieved during this event shall be disqualified and all prize money, medals and ranking points in respect of this competition forfeited.

7 **Costs / Expenses**

7.1 According to article 16 of the ISDF Disciplinary Code, the Athlete shall bear the minimum costs for any proceeding. Therefore, the Athlete shall pay the amount of CHF 100,00 (one hundred Swiss Francs).

7.2 As the athlete has been found responsible for the commission of an anti-doping rule violation, she shall bear her own costs and expenses of the present procedure.

7.3 The costs and expenses incurred with the ISDF Disciplinary Council shall be borne by the ISDF.

8. **Appeal**

8.1 The formal decision of the ISDF Disciplinary Council may be appealed to the Court of Arbitration for Sport ("CAS") in Lausanne; Switzerland, according to its rules and jurisdiction;

- 8.2 Any such appeal must be made within **two months** after the reception of this decision (according Art. 11 of the DC Code);
- 8.3 Filing an appeal does not suspend or affect the IDSF Disciplinary Council's decision, which shall remain in full force until the CAS has taken its respective decision;
- 8.4 According Art. 6 VI of the AD Code, and applicable to this case, the following persons shall have the right to appeal to CAS:
- The athlete or other Person who is the subject of the decision being appealed;
 - the International DanceSport Federation (IDSF);
 - the World Anti-Doping Agency (WADA)

Barcelona, November 17th 2006

IDSF DISCIPLINARY COUNCIL

Chamber in Charge

Marcos de Robles
Chairman

Karina Geerts

Antun Marki