

Decision of the Japan Anti-Doping Disciplinary Panel

Case 2015-007

Name of Athlete: X
Sport: Body building

Pursuant to the decision of the Hearing Panel convened for this case, the Japan Anti-Doping Disciplinary Panel has made the following decision with respect to this case.

December 8, 2015
Japan Anti-Doping Disciplinary Panel
Vice Chair: Kazuki Shishido

Hearing Panel Decision

The Hearing Panel for this case, which is composed of the following members appointed by the Chair of the Japan Anti-Doping Disciplinary Panel pursuant to Article 8.3.2 of the Japan Anti-Doping Code (hereinafter, the “Code”), has made the following decision concerning this case pursuant to the results of the hearing (the “Hearing”) held on November 29, 2015.

December 8, 2015
Kazuki Shishido _____
Katsumi Tsukagoshi _____
Masahiro Murayama _____

Decision:

- A violation of Article 2.1 of the Code is found to have occurred.
- In accordance with Articles 9 and 10.8 of the Code, all of the individual results of the Athlete obtained from the date of sample collection through the commencement date of the provisional suspension period (including the competition results at the 16TH EASTERN JAPAN MEN’S BODYBUILDING CHAMPIONSHIP COMPETITION) shall be disqualified, and all medals, points and prizes obtained during such period shall be forfeited.
- In accordance with Articles 10.2.1.2, 10.2.2 and 10.11.3.1 of the Code, a period of ineligibility shall be imposed for a period of two years starting from November 2, 2015.

Reasons:

- The substance “oxilofrine” that was detected from the Athlete in In-Competition testing conducted on September 6, 2015 is designated as a prohibited substance under “S6. Stimulants” in The 2015 Prohibited List International Standard (the “Prohibited List”), and it constitutes a “Prohibited Substance” as prescribed in Article 2.1 of the Code. In response to this, the Athlete neither requested an analysis of the B sample, nor contested the test results or the process and procedure that led to those results at the provisional hearing or the hearing.
- Accordingly, the Athlete can be found to have violated Article 2.1 of the Code (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample) in this case, and it is appropriate to consider that, in accordance with Articles 9 and 10.8 of the Code, all of the individual results of the Athlete obtained from the date of sample collection through the commencement date of the provisional suspension period (including the competition results at the 16TH EASTERN JAPAN MEN’S BODYBUILDING CHAMPIONSHIP COMPETITION; hereinafter, the “Competition”) shall be disqualified, and all medals, points and prizes obtained during such period (if any) shall be forfeited.
- The substance above that was detected in this case, while on the one hand constituting a “Prohibited Substance,” also is a “Specified Substance” under the Prohibited List. The Japan Anti-Doping Agency (“JADA”) does not raise any assertion or proof that the Athlete’s use of the detected substance above was intentional. On the other hand, the Athlete asserts that the detected substance above was contained in a nitric monoxide related supplement called “SP250”, and that the substance above was detected because the Athlete, being unaware that it contained said substance, used said product during the training period before the Competition, and such facts can be reasonably recognized from the results of the Hearing. Therefore, since this case does not fall under a case in which JADA could prove that the violation in this case was intentional, in accordance with Articles 10.2.1.2 and 10.2.2 of the Code, the period of ineligibility shall be for two years as a general rule.
- Next, upon reviewing the whether or not there existed circumstances to recognize elimination or reduction of the period of ineligibility, first of all, with respect to the exceptional elimination of the period of ineligibility under Article 10.4 of the Code, the Athlete does not raise an assertion or proof of the application of the provisions thereof, and as a fact, circumstances to recognize “No Fault or Negligence” on the part of the Athlete cannot be found.
- The issue in this case is whether it can be said that there was “No Significant Fault or Negligence” on the part of the Athlete. In this regard, the Athlete states that the supplement taken in this case was purchased and imported from a website established by an overseas business operator for the purposes of recovering from fatigue at training and pump-up effects, and also asserts that he researched the internet before using the supplement but was not able to confirm the existence of a Prohibited Substance, and that he considered the website to be reliable because of his understanding that the company operating the website, through which the

Athlete purchased such supplement, was a supplement manufacturer formally accredited by the Japan Bodybuilding & Fitness Federation.

- However, such supplement clearly indicated a warning on its label in bold letters that “THIS PRODUCT MAY CONTAIN INGREDIENTS BANNED BY CERTAIN ORGANIZATIONS. USER ASSUMES ALL RISKS, LIABILITIES OR CONSEQUENCES REGARDING TESTING”, and it could easily occur to anyone reading this even only once that there existed the risk of testing positive in a doping test by taking this supplement. In addition, in light of the circumstances that the Athlete, through training and raising of awareness, etc. by the National Sports Federation to which the Athlete belonged, can be found to have been already aware of the danger of a supplement obtained through a mail order website of an overseas business operator containing a Prohibited Substance, and that such formal accreditation does not automatically guarantee that the individual products sold through the website do not contain a Prohibited Substance, even if the website received some kind of accreditation, it cannot at all be said that the Athlete did not have Significant Fault or Negligence in this case.
- Taking into consideration the above circumstances and the fact that this was a first violation, it is appropriate to impose a two year-period of ineligibility pursuant to Articles 10.2.1.2 and 10.2.2 of the Code.
- In this case, the Athlete has been under a provisional suspension pursuant to Article 7.9.2 of the Code from the date of the notice of November 2, 2015 by the responsible person at JADA until the time of the present decision (a provisional hearing was held on November 29, 2015 concerning the relevant provisional suspension). Accordingly, pursuant to Article 10.11.3.1 of the Code, the commencement date for the period of ineligibility shall be November 2, 2015.

Based on the foregoing, we have made our decision as stated above.

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