

Decision of the Japan Anti-Doping Disciplinary Panel

Case 2015-009

Name of Athlete: X  
Sport: Bodybuilding

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.

March 16, 2016  
Japan Anti-Doping Disciplinary Panel  
Vice Chair: Kazuki Shishido

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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 held on February 19, 2016 (hereinafter, the “Hearing”).

March 16, 2016  
Kazuki Shishido \_\_\_\_\_  
Toshio Asami \_\_\_\_\_  
Noboru Mesaki \_\_\_\_\_

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 2015 61<sup>ST</sup> MEN’S JAPAN BODY BUILDING CHAMPIONSHIP COMPETITION) shall be disqualified, and all medals, points and prizes obtained during such period shall be forfeited.
- In accordance with Articles 10.1.2, 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 5, 2015.

Reasons:

- The substance “oxilofrine” that was detected from the Athlete in In-Competition testing conducted on October 12, 2015 (hereinafter, the “In-Competition Testing”) is designated as a prohibited substance under “S6. Stimulants” in The 2015 Prohibited List International Standard (hereinafter, 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 2015 61<sup>ST</sup> MEN’S JAPAN BODY BUILDING 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 oxide supplement sold under the name of “SP250” (hereinafter, the “Supplement”), and that the substance above was detected because the Athlete used said product during the training before the Competition and on the date of the Competition without being aware that it contained said substance, and such facts can also be reasonably recognized from the results of the Hearing. Therefore, since this case does not fall under a case in which JADA proved 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 whether or not there existed circumstances to recognize the 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 has not raised any 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.
- On the other hand, since the Athlete asserts that there was “No Significant Fault or Negligence” in his acts of taking the Supplement, we review the appropriateness of such assertion. In this regard, the Athlete in substance states as follows with respect to the sequence of events in relation to his taking of the Supplement.
  - (1) The Supplement was purchased and imported with the sole purpose of obtaining pump-up

effects through a website established by an overseas business operator.

- (2) Before taking the Supplement, the Athlete used to use a supplement belonging to the same series as the Supplement, and since the results of the doping test performed on the Athlete during the period of use of such supplement were negative, the Athlete was of the perception that the Supplement sold as a successor product to such supplement also did not contain any Prohibited Substance.
  - (3) The website through which the Athlete purchased the Supplement was operated by a sales and import agency stated to be managed by a Japanese person overseas, which not only professed that it was an official sponsor of the Japan Bodybuilding & Fitness Federation (hereinafter, "JBBF"), but also that one of the directors of such agency was a committee member of the JBBF as well as a high-performance staff of the Japan Olympic Committee, etc., and due to such facts the Athlete thought it was inconceivable that such agency would sell a supplement which violated the rules of the World Anti-Doping Agency, much less the Prohibited List.
  - (4) The Athlete conducted a research via the internet on the ingredients of the Supplement (with respect to herbs, including the existence or non-existence of alternate names) before using the Supplement, but could not confirm the existence of any Prohibited Substance.
  - (5) The Athlete also made a notification on the doping control form prepared upon the In-Competition Testing that he was using the Supplement.
- 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 such supplement contained a certain type of Prohibited Substance, and that there existed the risk of testing positive in a doping test by taking this supplement. In this regard, the Athlete explains that, since certain herbs contained in supplements are prohibited in certain countries, he thought that the warning above purported to enhance awareness of such fact. However, the Athlete also stated in the Hearing that the warning above was not described on the labels of the previous products of multiple types previously used by the Athlete, and that he had noticed that the warning came to be first described on the Supplement. In addition to such circumstance, in light of the circumstance that the Athlete could be recognized to have already been aware, through training and awareness enhancement by JBBF, of the risk that supplements obtained through an overseas business operator's mail order website could contain Prohibited Substances, as well as the circumstance that the fact that the website operation business operator was an "official sponsor" of JBBF and the fact that its officer was also a member involved in JBBF and JOC do not automatically guarantee that the individual products and goods sold through the website do not contain Prohibited Substances, etc., 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 notice of November 5, 2015 by the responsible person at JADA until the time of the present decision (a provisional hearing was held on February 19, 2016 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 5, 2015.

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

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