

**CAS A4/2006**

**FINAL ARBITRAL AWARD**

Pronounced by the  
**COURT OF ARBITRATION FOR SPORT**  
**OCEANIA REGISTRY**  
**Ordinary Division**

Sitting in the following composition:

**Panel:**

**Mr David Grace QC**

Sole Arbitrator

In the matter of:

**AUSTRALIAN WEIGHLIFTING FEDERATION Inc**

Applicant

Represented by Mr Anthony Nolan SC, instructed by Mr. D. Boyd of Lander & Rogers, Lawyers

and

**MS CAMILLA FOGAGNOLO**

Respondent

Represented by Mr Paul Horvath, barrister and solicitor

Court assisted by: Mr. Leon Sher, solicitor.

Date and place of hearing: 3 February 2006, Melbourne, Australia

Date of Award: 3 February 2006

Reasons Published: 22 February 2006

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## **PRELIMINARY**

1. Camilla Fogagnolo, the Respondent, is an elite athlete in the sport of weightlifting. At all material times she has been a member of, and has been contracted to, Australian Weightlifting Federation Inc. the Applicant. The Applicant has an Anti-Doping Policy (**ADP**) to which the Respondent has agreed to be bound under the contract comprised by the rules of the Applicant.
2. Article 3.2 of the Applicant's ADP provides, inter alia, that athletes:
  - "**3.2.1** *must be knowledgeable of and comply with all Anti-Doping Policies and rules applicable to them;*
  - 3.2.2** *must read and understand the **Prohibited List** as it relates to them;*
  - 3.2.4** *must take full responsibility, in the context of Anti-Doping, for what they ingest and Use....."*
3. Article 3.4 of the Applicant's ADP provides, inter alia, that the Respondent must:
  - "**3.4.1** *use its best efforts to assist **Athletes** to fulfil their responsibilities under this Anti-Doping Policy....;*
  - 3.4.3** *make reasonable efforts to make this Policy available to **Members, Athletes and Athlete Support Personnel and Persons;***
  - 3.4.4** *develop and implement, in consultation with ASDA and the IWF, drug education and information programs for **Athletes and Athlete Support Personnel;***
  - 3.4.5** *support the initiatives of **ASC, ASDA, the IWF, and the AOC** to stop Doping in sport;*
  - 3.4.6** *adopt and implement Anti-Doping policies and rules which conform with the **Code, IWF, AOC** and the **ASC Anti-Doping Core Provisions;***
  - 3.4.9** *require all **Athletes and Athlete Support Personnel** within their jurisdiction to recognise and be bound by anti-doping rules in conformance with the **Code, IWF, AOC, the ASC** and this Anti-Doping Policy....."*
4. Article 5 of the Applicant's ADP provides, inter alia, as follows:

**"ARTICLE 5 – ANTI-DOPING RULE VIOLATIONS**

The following constitute *Anti-Doping Rule Violations*:

  - 5.1 The presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's bodily Specimen*.**
    - 5.1.1** 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 **Article 5.1**.

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**5.1.2** Excepting those substances for which a quantitative reporting threshold is specifically identified in the *Prohibited List*, the detected presence of any quantity of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample* shall constitute an *Anti-Doping Rule Violation*.

5. The term *Prohibited List* is defined in Appendix 1 of the Applicant's ADP as meaning "*the List identifying the prohibited substances and prohibited methods*". That List is published and revised from time to time by the World Anti-Doping Agency (WADA) and forms part of the World Anti-Doping Code (**Code**). The term *Use* is defined in Appendix 1 as being "*the application, ingestion, injection or consumption by any means whatsoever of any prohibited substance or prohibited method*".

## **BACKGROUND**

6. In October 2005 the Applicant conducted the 2005 Australian Open Weightlifting Championships in Brisbane, Queensland, Australia. The Respondent competed in the 75kg Women's category finishing in second (2<sup>nd</sup>) place. On 30 October 2005 the Respondent was tested in accordance with the Applicant's ADP. The results of the tests of the "A" and "B" samples, completed on 15 November 2005 and 1 December 2005 respectively, revealed the presence of Benzylpiperazine (BZP). BZP is a stimulant but is not specifically referred to in Schedule S.6 of the 2005 Prohibited List of the Code. It is regarded as being included, however, because of the definition "*stimulant*" and the use of the words "*and other substances with a similar chemical structure or similar biological effect(s)*." It is a substance with similar structure or biological effect(s) to amphetamines, which are included in Schedule S.6.
7. There was no challenge by the Respondent to the tests conducted by the Australian Sports Drug Testing Laboratory and the results obtained, nor was there any challenge to the Applicant's assertion that BZP has a similar chemical structure or similar biological effect(s) to the stimulant known as amphetamine, nor that BZP is a prohibited substance as defined by the Code.
8. As a result of the positive tests, the Applicant lodged an Application for a Provisional Suspension of the Respondent with the Court of Arbitration for Sport (**CAS**). The Application was lodged pursuant to Articles 10 and 11 of the Applicant's ADP. The Applicant and the Respondent both agreed to the jurisdiction of CAS and a *Provisional Hearing* was held on 14 December 2005 (CAS A5/2005). The Application for Provisional Suspension by the Respondent was dismissed. The reason for the dismissal of the application was that the Respondent would be incurably prejudiced if she was prevented from competing in

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the selection trials for the Commonwealth Games to be held in Melbourne in March 2006, which trials were scheduled for 17 December 2005, a date prior to any possible hearing of the allegation of an Anti-Doping Rule Violation before the Court. The prejudice would clearly arise as there was no other opportunity for the Respondent to compete prior to the deadline for selection of the team on 15 February 2006.

9. On 20 January 2006 the Applicant lodged and served an Application alleging an Anti-Doping Rule Violation against the Respondent, with CAS.
10. The parties have agreed that the Court has jurisdiction pursuant to Article 11.3 of the Applicant's ADP to determine the matter contained in the Applicant's Application. Pursuant to Article 11.8 of the Applicant's ADP, the Australian Sports Commission, the Australian Sports Drug Agency, the Australian Olympic Committee, the International Weightlifting Federation and the World Anti-Doping Agency all had the right to attend the ultimate hearing of the matter as an observer or interested party. No such body exercised that right.
11. The parties agreed that the Arbitration would be conducted by the Court according to the Code of Sports-Related Arbitration, 2004 Edition, in particular, the rules relating to the Ordinary Division, Rule 38 and following. The parties further agreed for the Court for the purposes of the Arbitration to be constituted by Mr. David Grace Q.C. as sole Arbitrator and that the seat of the Arbitration be in Lausanne, Switzerland. The parties agreed that the Arbitrator would arbitrate on the dispute and render an Award in conformity with the agreement between the parties to submit their disputes for arbitration before the Court and pursuant to the Code of Sports-Related Arbitration, 2004 Edition, so far as it is applicable.
12. Prior to the hearing, an Order of Procedure was agreed to by the parties. That Order included a timetable for the filing and service of written submissions and a brief outline of the evidence witnesses may give at the hearing. After consideration of those written submissions, it became clear to the Court that the Respondent admitted having committed an Anti-Doping Rule Violation and that the only issue to be determined at the hearing of the Court was the appropriate sanction to be imposed. This became clear upon the commencement of the hearing before the Court in Melbourne, Australia on 3 February 2006.
13. By agreement of all parties, the hearing was heard contemporaneously and in conjunction with the hearing involving an allegation of an Anti-Doping Rule Violation made by the Applicant against another weightlifter, Ms Jenna Myers. Ms Myers had tested positive to exactly the same substance as a result of a test conducted at the 2005 Australian Open Weightlifting Championships.

**FINDING**

14. The Court formally finds that the Respondent has committed an Anti-Doping Rule Violation within the terms of the Anti-Doping Policy of the Applicant.

**SANCTION**

15. During the hearing the following provisions were submitted as being applicable in relation to a sanction for an Anti-Doping Rule Violation found to have been committed pursuant to Article 5.1 of the Applicant's ADP (relevant provisions only have been reproduced):

**"ARTICLE 13 – SANCTIONS ON INDIVIDUALS**

- 13.1** *Disqualification of Results in Event During which an Anti-Doping Rule Violation Occurs.*

*An Anti-Doping Rule Violation occurring during or in connection with an Event may lead to Disqualification of all of the Athlete's individual results obtained in that Event with all consequences, including forfeiture of all medals, points and prizes....."*

- 13.2 Imposition of Ineligibility for Prohibited Substances and Prohibited Methods.**

Except for the specified substances identified in **Article 13.3**, the period of *Ineligibility* imposed for a violation of **Article 5.1** (presence of *Prohibited Substance* or its *Metabolites* or *Markers*), **Article 5.2** (Use or Attempted Use of *Prohibited Substance* or *Prohibited Method*) and **Article 5.6** (*Possession of Prohibited Substances* and *Methods*) shall be:

First violation: Two (2) years' *Ineligibility*

Second violation: Lifetime *Ineligibility*

However, the *Athlete* or other *Person* shall have the opportunity in each case, before a period of *Ineligibility* is imposed, to establish the basis for eliminating or reducing this sanction as provided in **Article 13.6**.

- 13.4 Additional Sanction**

**13.4.2** A Committee or the CAS may determine, in addition to applying the sanction outlined in Article 13.1-13.3, that a *Person* who has committed an *Anti-Doping Rule Violation* is required to go to counselling for a specified period

- 13.6 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances.**

**13.6.1** If the *Athlete* establishes in an individual case involving an *Anti-Doping Rule Violation* under **Article 5.1** (presence of *Prohibited Substance* or its *Metabolites* or *Markers*) or Use of a *Prohibited Substance* or *Prohibited Method* under **Article 5.2** that he or she bears *No Fault* or *Negligence* for the violation, the otherwise applicable period of *Ineligibility* shall be eliminated. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Specimen* in violation of **Article 5.1** (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.....

- 13.6.2** This Article 13.6.2 applies only to *Anti-Doping Rule Violations* involving **Article 5.1** (presence of *Prohibited Substances* or its *Metabolites* or *Markers*), *Use of a Prohibited Substance or Prohibited Method* under **Article 5.2**, failing to submit to *Sample* collection under **Article 5.8**. If an *Athlete* establishes in an individual case involving such violations 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 minimum 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 8 years. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete Specimen* in violation of **Article 5.1** (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* reduced.”
- 13.6.3** The IWF may also reduce the period of *Ineligibility* in an individual case where the *Athlete* has provided substantial assistance to the IWF which results in the IWF discovering or establishing an *Anti-Doping Rule Violation* by another *Person* involving *Possession* under Article 5.6.2 (*Possession by Athlete Support Personnel*), Article 5.7 (*Trafficking*), or Article 5.8 (administration to an *Athlete*). The reduced period of *Ineligibility* may not, however, be less than one-half of the minimum period of *Ineligibility* otherwise applicable. If the otherwise applicable period of ineligibility is a lifetime, the reduced period under this Article may be no less than 8 years.”

16. The following terms are defined in Appendix 1 of the Applicant's ADP:

*No Fault or Negligence*: 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*.”

*No Significant Fault or Negligence*: the *Athlete's* establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for *No Fault or Negligence*, was not significant in relationship to the *Anti-Doping Rule Violation*.”

17. It was common ground that the Respondent's Anti-Doping Rule Violation was a first violation and that therefore the period of ineligibility was two years, subject to the applicability of Article 13.6 of the ADP.
18. There was no challenge to an Order being made for the disqualification of the Respondent's individual results obtained in the Australian Championships in October 2005. Accordingly, it was accepted that the Respondent would forfeit her second placing achieved at that Championships including all medals, points and prizes, pursuant to Article 13.1 of the ADP.
19. It was also common ground that pursuant to Article 6.1 of the ADP, the Respondent had the burden of proof to establish specified facts or circumstances pursuant to Article 13.6 of the ADP, the standard of proof being by a balance of probability.

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**EVIDENCE AND THE COURSE OF PROCEEDINGS**

20. The Respondent relied upon the following written material:
- (a) Written submissions;
  - (b) Statement of the Respondent;
  - (c) Statement of Chris Chugg, Coach;
  - (d) Letter from the Respondent to Belinda Van Tienen of Fortius Group Pty. Ltd. dated 10 January 2006;
  - (e) Letter from Paul Horvath, Solicitor, to the Managing Director of Fortius Products dated 27 January 2006;
  - (f) Australian Securities and Investments Commission company extract dated 27 January 2006 in relation to Fortius Group Pty. Ltd.
  - (g) Business Affairs, Victoria, business name extract for Fortius dated 16 December 2005;
  - (h) Pacific Laboratory Medicine Services drug analysis report dated 31 January 2006 (by Peter Bowron, Senior Hospital Scientist) and Launceston Pathology Chain of Custody Form dated 31 January 2006;
  - (i) Character reference from Anthony O'Malley dated 2 February 2006;
  - (j) Letter dated 2 February 2006 from Keith Murphy, Managing Director Fortius Products to Mr. Paul Horvath;
  - (k) Photocopies of advertising literature concerning Fortius Products including Synephrine;
  - (l) Optus telephone records (in relation to telephone calls to the ASDA Hotline).
21. The Respondent and Mr. Chugg (the latter by telephone) were made available for cross-examination by Counsel acting on behalf of the Respondent. Counsel for the Applicant indicated that he accepted the character reference and its contents received from Mr. O'Malley. Counsel for the Applicant also accepted the correctness of the drug analysis conducted by the Pacific Laboratory Medicine Services on 31 January 2006, did not dispute the chain of custody of the substance analysed and accepted that the Respondent had tested positive as a result of consuming a product called "Fortius Synephrine" which was sold by Fortius Group Pty. Ltd. to the Respondent. There was an acceptance by the Applicant that the Respondent had used BZP inadvertently by consuming Fortius Synephrine. It was also accepted that BZP was not listed as an ingredient on the label of the bottle containing the Fortius Synephrine product.

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22. The Respondent had been drug tested on 8 occasions between 11 September 2004 and 17 December 2005. Except for the positive test on 30 October 2005 she has always tested negative. She gave evidence on her own behalf and adopted her statement as being true and correct.

In her statement, she said:

"I am 19 years of age. I began weightlifting in about June 2000 initially in an effort to enhance my Judo training. My weightlifting training has steadily increased since that time.

In 2001, I commenced competing in National competitions, competing for the first time at the National Titles in Melbourne in June, 2002, at which competition I achieved a gold medal in the under 16 competition.

Throughout my period as a weightlifter, I have resided in Tasmania. My particular residential circumstances, namely living in remote locations, and having to live away from home in the past two years to attend university, have meant that in an isolated State, I am more isolated than most people. In particular, I believe that there is little Anti Doping education or information that occurs in Tasmania. Anything learned in that regard is only through efforts undertaken by me, and what I learn anecdotally from others in my training gymnasium.

I was introduced to Fortius Synephrine in 2005 by a fellow weightlifter, Belinda Van Tienen who had been a previous Tasmanian athlete with whom I trained for some years. She told me about the product and about its benefits. I was initially skeptical. In about February 2005, she offered me a bottle of the product for free to sample. She assured me that other weightlifters and other elite athletes endorsed and consumed the product Fortius Synephrine.

I telephoned ASDA to enquire about the contents of the product prior to taking it. I was advised that none of the contents of Fortius Synephrine were banned under the WADA 2005 Prohibited List. I therefore commenced using the product. I have enquired with Optus about telephone records to confirm these calls, but have been advised that as it is a free call number, the telephone call does not show up on call records.

During 2005, I was subject to a number of drug tests. I was notified that none of these tests resulted in a positive finding. This confirmed my belief that the product complied with the AWF anti-doping policy.

In about July, 2005, I had a further conversation with my coach Chris Chugg. He raised a concern that there may be a high level of caffeine in the product Fortius Synephrine, and that I should check to ensure that this did not breach the AWF AD Policy. I again telephoned ASDA and was advised that caffeine was not banned in athletes in any concentration.

I confirm that on 20<sup>th</sup> October, 2005, at the National Weightlifting Titles, I only took 10ml of Fortius Synephrine before my lifts. That was the only amount of Synephrine I took that day. I provided my doping urine test about 2.5 hours after taking Fortius Synephrine.

It was not until 22<sup>nd</sup> November 2005, when I was notified by ASDA that my doping sample from 30<sup>th</sup> October 2005 had tested positive to BZP. I then ceased all use of the product. I carefully considered every food and dietary product that I had consumed in the past few months. The only conclusion I could draw was that the positive test to BZP was caused by the Fortius Synephrine I had taken.

I also set about enquiring as to how the Fortius Synephrine that I had consumed had caused me to register positive to the substance BZP. I am not sure if the Synephrine helped me with any aspect of training or weight loss, as I changed my

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program a great deal around mid 2005, which I believe led to most of my improvements.

I finished the bottle of Fortius Synephrine that I consumed prior to the 30<sup>th</sup> October 2005 doping test in early November 2005. I disposed of the bottle, as is my usual practice. I have retained a second bottle of the product that I received at the same time as my bottle. The second bottle belongs to my mother. The result of that test is detailed in a report of Peter Bowron dated 31<sup>st</sup> January, 2006. It confirms the presence of BZP.....

My current regime involves training about 20-25 hours per week. I believe that the increase in intensity and focus in my training has led to my improved results in weightlifting over the past 18 months. In addition, my inclusion in the senior national team to compete in the United States in the Mermet Cup in 2005 exposed me to a number of techniques (such as two work outs per day) that have helped me to improve.

As a result of this positive finding against me, I will lose my medals from the National Titles in Brisbane, I may well become ineligible to compete in my home Commonwealth Games, a once in a lifetime opportunity, and I was very likely to be awarded a university sports scholarship and a Tasmanian Institute of Sport scholarship, but for the positive test finding.

In terms of drug education, I confirm that my only drug education was the one seminar in about October 2004. My memory is that the focus of that seminar was filling in athlete "whereabout" forms for ASDA, and some other drug related general matters were canvassed. The anecdotal suggestions I received about supplement taking were to make sure that I checked out the supplement's ingredients before taking it. I have always done this."

23. In her oral evidence she said that she had called ASDA on 1 March 2005. She produced her telephone records which revealed a telephone call to a telephone directory enquiry line from which she had been given the telephone number of ASDA. That telephone number was a freecall which was not recorded on her phone records which was the policy of the telephone service provider. She said that she did not commence using the product until after she had spoken to ASDA, a representative of whom had told her that none of the ingredients were prohibited substances and that Synephrine itself was not prohibited. She believed that Fortius Synephrine therefore, was a totally safe supplement. She disclosed her use of it at the various doping tests conducted upon her including at the October 2005 Australian Championship test. She said that she had only ever purchased two bottles of the substance, finishing the last one before notification by ASDA of that positive test result on 22 November 2005. She had purchased a bottle for her mother at the beginning of October 2005 and that was the bottle that was ultimately analysed by the testing laboratory. The original bottle was purchased by her from Belinda Van Tienan in late February 2005. At the time she said that Van Tienan had told her about the good reputation of the Fortius company and that other athletes had taken its products including athletes at an international level. Van Tienan was a distributor of Fortius products on behalf of the company as well as being an elite weightlifter herself. The Respondent was adamant that she was not a drug cheat and she was prepared to assist the Applicant to pursue the

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Fortius company. She said that she trains hard and she is very close to achieving her lifetime goal of being selected for the Australian team to compete in the March 2006 Commonwealth Games in Melbourne. She said that she is a university student earning approximately \$300.00 per week. She said she could not recall receiving the Applicant's ADP nor signing a document saying she had read the Applicant's ADP. She maintained that she had never read the Applicant's ADP in any event. She said that she had attended a drug education seminar held by the Applicant in October or November 2004 but said that the main focus of the seminar was in relation to athletes notifying the Applicant of their whereabouts at all times. She said that she was convinced that she had done everything an athlete could have done to ensure the quality and integrity of the substance and she didn't believe she had taken a risk. She agreed that she had discussed the taking of Fortius Synephrine with a fellow weightlifter Jenna Myers, during training, and had told Jenna Myers that she had checked with ASDA regarding the status of the product and had received confirmation that the product was approved to consume. She agreed that she had also told Myers that she had been drug tested by ASDA while taking the product and that the tests had been negative. She also agreed that she had told Myers that she had reduced her body weight considerably through a combination of the use of Fortius Synephrine, sensible nutrition and an increased training volume. She denied telling Myers that she had looked at the ASDA website in relation to researching the product and said that at no time did she look at the ASDA website.

24. During cross-examination by Counsel for the Applicant, the Respondent stated that she agreed that she was responsible for what she consumed and may have been advised of that generally in conversations around weightlifting circles. She said that she was only aware of general conversation in gymnasiums in relation to the danger of supplements. She accepted that she should have realised that the negative test results for prohibited substances in out-of-competition tests were improper guides as to whether any prohibited substances were contained in the Fortius Synephrine because stimulants were only banned in-competition and not out-of-competition. She accepted that her first in-competition test in 2005 was on 30 October 2005 at the conclusion of the Australian Championships. She accepted that she had received the ASDA Anti-Doping Information Card, which expanded into a large document printed on both sides containing warnings in relation to drug use, on many occasions in the past and including upon occasions when she had been drug tested out-of-competition. She was shown the pro forma document which she had signed on all occasions when she had been drug tested which contained her signature acknowledging that she had been given a copy of the ASDA Anti-Doping Information Card. She was referred specifically to a section in that card which stated the following:

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ASDA ANTI-DOPING INFORMATION CARD  
AUSTRALIAN SPORTS DRUG AGENCY  
REFERENCING THE WORLD ANTI-DOPING CODE PROHIBITED  
LIST (EFFECTIVE 1 JANUARY 2005)

"VITAMIN, HERBAL AND NUTRITIONAL SUPPLEMENTS

ASDA cannot determine the status of vitamin, herbal and nutritional supplement products in sport. Due to their multi-ingredient nature, supplements are considered to present more risk to athletes than registered pharmaceutical products – therefore ASDA is unable to accurately determine the status of any supplement product.

There is a risk that supplements may contain impurities, such as ingredients that are not listed on the label, which could cause a positive test.

ASDA operates a *Supplement Information Scheme*. This scheme allows supplement manufacturers to have the content of their products independently analysed and verified. ASDA communicates the results of this analysis to Australian Athletes – this information better informs athletes on what guarantees supplement product manufacturers are willing to give in relation to their products.

For more information regarding the scheme and to view supplement products that have been analysed, go to the ASDA website - <[www.asda.org.au](http://www.asda.org.au)>

**USE OF SUPPLEMENT PRODUCTS IS AT THE ATHLETE'S OWN RISK"**

She agreed that she had been provided with that information card on many occasions, had looked through it but had not read the warnings in relation to supplements and had not gone to the ASDA website or the WADA website. She was shown a number of extracts from the ASDA website and agreed that Fortius was not listed as an approved manufacturer. She agreed that she had received the ASDA Anti-Doping Information Handbook 2005 and was shown page 19 of that document. Under the heading "Supplements" the following is written:

*"ASDA advises athletes that vitamin, herbal and nutritional supplements, primarily due to their multiple ingredient and chemical properties, could contain impurities such as ingredients that are not listed on the label. If these unlisted ingredients are prohibited substances, use of the particular supplement could lead to a positive drug test result.... for these reasons ASDA is unable to provide a definitive answer regarding the status in sport of any supplement product..... some athletes choose to contact the supplement manufacturer to obtain a written guarantee regarding the status of the ingredients'.... the use of supplements products is at the athlete's own risk"*

She agreed that she had not read that page and she accepted that in relation to the issue as to what more she could have done to check the safety of the product, she agreed that one of the things would have been to have read the information provided to her. She was shown further pages from the ASDA website including

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information as to products deemed acceptable by ASDA. She accepted that she did not know whether Fortius Synephrine had ever been submitted to ASDA for testing and approval. She said that she had relied upon the assurances given to her by Belinda Van Tienan. She maintained that read the ingredients of the label of the Fortius Synephrine bottle in her possession when she contacted the ASDA hotline and was advised that none of the ingredients were prohibited. She could not recall other than in a general sense the conversation that she had with the person on the other end of the ASDA hotline. She rejected the proposition that she had been willfully blind as to the prospect that the Fortius Synephrine contained a prohibited substance. She repeated that she believed she had done everything possible to check the substance. In relation to the drug seminar that she had attended in late 2004, she acknowledged she had signed a document of attendance which evidenced that she had been informed about banned and restricted substances and methods. She accepted that the ASDA records of hotline calls did not reveal any inquiry made by her during the relevant period.

25. In re-examination by Counsel for the Respondent she re-stated the steps she had taken in her conversation with the person on the ASDA hotline and believed in her own mind that she had received confirmation that the product was approved. She said that she had been encouraged about that conclusion because of discussions she had had with Jenna Myers and Mark Brown who advised her that they had checked the substance on the ASDA website and "*it had come out clear*". She said that she was further reassured by the advice she had received from Belinda Van Tienan who had been tested many times herself and was an international weightlifter. She said that she had been tested by the United States Anti-Doping Agency in August 2005 whilst using the substance and there had been a negative result in an in-competition test. She agreed that it was not until sometime after June 2005 that she told Jenna Myers that she had tested negative in out-of-competition tests.

26. Mr. Chris Chugg, the Respondent's coach, in his statement said:

"I am a Physical Education Teacher based in Tasmania at Elizabeth College Hobart. I hold the qualifications of Level 2 weightlifting coach, I have a Bachelor of Education (Physical Education), and am qualified as a Certificate IV Personal Trainer. I have a business – 'Best you can be'.

I have coached in the sport of weightlifting for 30 years. I have coached two Australian teams to international championships. I have coached about thirty (30) state teams to national championships. Of the athletes that have trained under me, seven have competed at international level, including Camilla Fogagnolo. From 1991 to 1997 I was strength and conditioning consultant at the Tasmanian Institute for Sport.

I have coached about 500 weightlifters. When a lifter moves into the top three of four in their national class, regular drug tests are conducted. My elite athletes (about 20 weightlifters) have participated in about 200-300 drug tests. Camilla's positive test is the only positive test during my coaching career. It was devastating for both she and I. We both hold firm views against the use of drugs in sport.

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From my discussions with her, I believed that at no stage did Camilla believe she was taking any product she should not have been. If she had any doubts, she would not have taken Fortius Synephrine. I first spoke to her about Fortius Synephrine when I saw her taking it at the Gym in about June or July, 2005. I asked her whether it was safe, and she advised me that she had checked it with ASDA who had confirmed that none of its ingredients were on the 2005 WADA Prohibited List. I was satisfied with that reply, but I did some internet research myself to be doubly sure, which did not give me any reason to doubt what she had told me.

I commenced coaching the Athlete in the sport of weightlifting in about 2001. I had previously coached her brother, Prisius, and later her mother Barbara in the sport of weightlifting. I am aware that her mother was a state discus champion, her father was a weightlifter and Judo player, her brother Prisius had represented Australia in four sports including weightlifting, and her brother Regulus was an Australian Judo champion. Her family work ethic is in sporting circles in Tasmania, legendary. I am also aware that Camilla's family is very much oriented towards natural health and medicine, certainly not drugs.

From the time I started coaching Camilla, she displayed a high level of application to her weightlifting training. From the start she trained hard up to five times a week, at least two hours per session. Camilla showed promise from the start winning Gold at the 2001 National Titles, under 16 division, in her first year of weightlifting. She has won numerous State and National Titles since then, including Best Female Lifter and Best Lifter Overall in 2004 & 2005 Tasmanian Presidents Cup.

As far as I am aware, there has not been any significant improvement in Camilla's training or competition results due to the use of Fortius Synephrine. I believed that one of the reasons that she took the product was for weight loss, a result she was able to achieve together with a low fat diet and increased aerobic work.

In my time as coach of the Athlete I have formed the view that she is an intelligent person and a committed athlete. Given my experience with hundreds of weightlifters under my tutelage, I have no doubt that Camilla genuinely believed that she was acting at all times within the rules of the AWF and its Anti Doping Policy. Drug cheating is not something I condone, and I know that Camilla shares my views. In my view, she certainly would not have trained as hard as I have seen her train over five years, then take a chance of whether the product Fortius Synephrine contained a banned ingredient, gambling on a possible positive test which would throw away her chances of success and possibly damaging her employment prospects in future."

27. In answers to questions by the Respondent's Counsel, Mr. Chugg confirmed that the Respondent had told him that she had checked the substance with the ASDA hotline and who had told her that the ingredients were approved. He said that he had searched the internet and had no concern about the ingredients. He stated that he was a very careful person and that drugs in sport are something he discusses openly with athletes in the gymnasium. He regarded the Respondent as an intelligent girl with a brilliant work ethic and not careless. She had put in her biggest year yet in training in 2005. She would have received education in relation to inadvertent drug use and he mentioned the seminar held in late 2004. He believed that the Respondent had done everything that was expected of her in relation to checking the product and that if he had had any further concerns about it he would have raised them with her. In cross-examination by Counsel for the Applicant he agreed that it was the athlete's responsibility to ensure that nutritional

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supplements are not contaminated. He said that he didn't tell the Respondent that the substance was safe or not safe. He told her that it may be contaminated and believed there was a risk that Fortius products may be contaminated. He accepted that the athlete bears the responsibility of what he or she ingests.

28. Mr. Anthony O'Malley is the President of Weightlifting Tasmania Inc. He gave a glowing character reference for the Respondent unchallenged by the Applicant. He stated:

"I have known Camilla Fogagnolo since she commenced in the sport of weightlifting as a 14 year old in the year 2000. In the intervening years I have come to know Camilla quite well as we have had regular contact at statewide weightlifting competitions and regular social functions conducted by Weightlifting Tasmania. Periodically, I have also had the opportunity to coach Camilla at interstate competitions such as National Championships. In 2005 I had the opportunity to attend a Commonwealth Games squad training camp in Sydney with Camilla, during which time I was able to observe Camilla living and training in a team environment. Camilla has also trained in the gym that I operate at Triabunna when she has been in the neighbourhood.

Camilla is an honest, reliable, intelligent and intensely hard working young woman who has achieved an outstanding level within the sport of weightlifting. It is particularly notable that Camilla is always ready to invest her time and energies to add value to her chosen sport. To this end, she currently serves on the committee of Weightlifting Tasmania Inc. as an athlete representative. In that position she has served her fellow athletes diligently and enthusiastically. Camilla is always willing to officiate at competitions when required and has freely participated in promotional events for weightlifting. Camilla is in every way an outstanding role model for our younger athletes.

In preparation for the Commonwealth Games, I have observed Camilla to make enormous personal sacrifices. While studying for her University degree in human movement, Camilla has made time to train twice per day over six days of the week, forsaking opportunities for part time employment and social interaction in order to achieve her goal of representing Australia at the Commonwealth Games.

I am aware that when Camilla was notified of her positive doping control test recently, that she was devastated and genuinely astounded as to how the substance came to be in her sample. During the intervening weeks, she has experienced considerable public criticism in the media within Tasmania, having been reported as a drug cheat. Regardless of the pressures and uncertainty of recent weeks, she has continued to get on with the job of training and preparing herself.

I know that Camilla has a keen sense of fair play and sportsmanship and is strongly opposed to those who cheat either by using illegal drugs or other methods. In my own heart and mind I know that Camilla would not knowingly consume illegal performance enhancing substances, nor would she seek to flout the rules of the sport that she loves."

29. In a letter dated 10 January 2006 the Respondent had written to Belinda Van Tienen of the Fortius Group Pty. Ltd. advising that she intended to have analysed the sample of Fortius Synephrine sold to her. She requested that Fortius Group Pty. Ltd. contact the supplier or manufacturer of the substance with a view to ascertaining whether it was possible that the Fortius Synephrine consumed by her was "contaminated" by BZP. She said:

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*"I ask that you enquire with the supplier or manufacturer if they can give any explanations as to how traces of BZP may have come to be in a batch of Fortius Synephrine".*

30. On 27 January 2006 Mr. Paul Horvath, solicitor for the Respondent wrote to the Managing Director of Fortius Products complaining that his client had tested positive as a result of consuming Fortius Synephrine which contained BZP. He said:

*"I seek as a matter of urgency an explanation as to how the product came to contain BZP, given that it is not a substance listed on the label as being an ingredient of Fortius Synephrine".*

31. By letter dated 2 February 2006, Mr. Keith Murphy, Managing Director of Fortius Products replied to the correspondence dated 10 January 2006 and 27 January 2006. The relevant parts of his letter states as follows:

"The product we sell as "Fortius Synephrine" is manufactured by our supplier, a company we have dealt with for over two years.

During the time we have dealt with our supplier, we understand that the product has been used extensively by both weightlifters and other athletes the subject of in competition testing by ASDA. We have no other complaints from athletes in relation to the product and understand that use by them has not resulted in any positive tests.

In addition to the two positive tests recorded by your clients, we are aware of at least two other cases of positive tests having been recorded under circumstances similar to those which we understand relate to your two clients. We believe that your clients are aware of the two athletes (weightlifters) who are involved.

In the above circumstances, we believe that a batch was contaminated with BZP. We have had independent scientific tests performed on samples from what we believe to be the contaminated batch. This process was delayed due to matters out of our control and the control of the scientist undertaking the testing for us.

We have just received the results of the independent testing referred to above which we have been advised confirm the presence of BZP in the products supplied to us and sold as "Fortius Synephrine". We approached our supplier for an explanation. As of today's date we have not had any of our calls returned.

We can assure you and your clients that this matter is of great concern to us and that if we receive a reply from our manufacturer/supplier we will advise you immediately".

32. By the time of the hearing on 3 February 2006 no further advice had been received from Fortius Products.

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**SUBMISSIONS OF THE RESPONDENT**

33. The Respondent made the following submissions:
- 33.1 She had limited drug education and had only attended one drug education seminar in Melbourne in late 2004 and that that seminar had as its primary focus the issue of athletes notifying their whereabouts at all times with very limited discussion in relation to other drug related issues. Furthermore, the drug education provided by the Applicant to the Respondent had been minimal with the only seminar being the one held in late 2004, over a competitive history of approximately 5 years. It was stressed that the Respondent lived in an isolated State of Australia and because of her place of residence it was understandable that she was not as knowledgeable as other athletes in relation to the dangers of nutritional supplements.
- 33.2 The Respondent relied upon the fact that she had bought and used the product in good faith believing the supplier to be reputable and believing the product to be endorsed generally in weightlifting circles. It was submitted that it should be accepted that she had telephoned the ASDA hotline and received advice that none of the listed ingredients were on the 2005 WADA Prohibited List. Furthermore, she spoke to a representative of the supplier and was assured that the product was not prohibited, that others had taken the product and had not tested positive to banned substances, that she had openly used the product and discussed it with other lifters and her coach, that she had declared in her doping control form that she was taking the product and honestly and reasonably believed that she was complying with the Applicant's Anti-Doping requirements.
- 33.3 It was further submitted that due to her limited income, it was not possible for her to have the Fortius Synephrine tested by a scientific laboratory to confirm its contents and that she did not believe this was either necessary or appropriate in any event.
- 33.4 The Respondent submitted that given all the facts and circumstances, the prohibited substance was consumed by her through no fault or negligence on her part, thereby attracting the operation of Article 13.6.1. Alternatively, it was submitted that the Respondent bore no significant fault or negligence (pursuant to Article 13.6.2). It was emphasised that there was no evidence of any intention on the part of the Respondent to consume illegal performance enhancing drugs and that the Respondent's undoubted good character and reputation for honesty and integrity were factors that ought to be taken into account in her favour both in relation to the acceptance of her version of events and generally.

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- 33.5 Counsel for the Respondent relied upon a number of previously decided cases of the Court: *Knauss v ISF CAS 2005/A/847*, *Edwards v IAF CAS OG 04/003*, *Squizzato v FINA CAS 2005/A/830* and *Baggaley v ACI, SLA and ASC CAS 2005/A3*
- 33.6 In *Knauss*, the athlete ingested a nutritional supplement which caused the Anti-Doping Rule Violation. This was in the context of clear warnings by National and International Sports Federations and other appropriate authorities of the risk of contamination and/or mislabelling in nutritional substances. The athlete had requested written certification from the manufacturer that its products were clean. In those circumstances the Court came to the conclusion that notwithstanding his attempts to establish there was no contamination, the athlete had clearly failed to exercise the care required for “no fault or negligence”, namely utmost caution.
- 33.7 In *Edwards* the athlete whilst in a foreign country, ingested glucose which had been purchased for her by her chiropractor. The glucose contained a prohibited substance. She had purchased glucose tablets in stores in the past but on this occasion her chiropractor had obtained the glucose for her. He would normally check the ingredients of over-the-counter medications and was aware of the list of prohibited substances. She argued that it was reasonable for her to accept that the glucose provided to her did not contain any prohibited substances. The fact was, however, that the product had been purchased in a foreign country on that day and no one had examined the packet or the leaflet which accompanied the packet which indicated that the product contained more than glucose. The Court concluded that it would have been clear to any person viewing the tablets that there was more than one ingredient in the tablets and that there was negligence in not ascertaining that no prohibited substance was present within the tablets before they were ingested. The Court found that the factual circumstances did not give rise to the exceptional facts necessary for a reduction of the otherwise mandatory sanction applicable for a doping offence pursuant to the IAAF Rules.
- 33.8 In *Squizzato* the athlete used a cream which she applied to her foot to fight against skin infection between her fourth and fifth toes. The cream was chosen and purchased by her mother who was not aware that it could contain a prohibited substance. The substance did not enhance the athlete’s capacity nor did it favour her performance. The athlete claimed that she bore no fault or negligence. The Court found that although she had established how the prohibited substance entered her system, she had failed to abide by her duty of diligence. With a simple check she could have realised that the cream contained a prohibited substance or at the

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very least she could have asked her doctor, coach or any other competent person to check the contents of the cream. Although the athlete was only 17 years of age she had been competing in the sport of swimming for 10 years and was competing at the highest level. The Court was further of the view that it was indeed negligent for an athlete willing to compete in continental or world events to use a medical product without the advice of a doctor or, at the very least, a physiotherapist. The Court found that she did not bear "*no fault or negligence*". The Court further found that as the athlete appeared: "*to have no intention whatsoever to gain an advantage toward her competitors, her negligence and forgetting to check the content of a medical cream can be considered as mild in comparison with an athlete that is using doping products in order to gain such advantage*". Accordingly, the Court found that the athlete appeared to bear "*no significant fault or negligence*". A period of 12 months ineligibility was ordered.

- 33.9 In *Baggaley*, the athlete consumed a prohibited substance contained within orange juice which had been placed in a refrigerator by his brother. The Court found that the athlete had established how the prohibited substance entered his system and that he had established by balance of probability that he bore no significant fault or negligence when viewed in the totality of the circumstances and taking into account the criteria for no fault or negligence. The Court accepted the athlete's evidence as to his intentions in consuming the orange fruit drink, his lack of intention to consume a prohibited substance and the totality of the evidence called on his behalf. The Court found that the unique circumstances in the case fell within the category of exceptional circumstances and reduced the period of ineligibility from 2 years to 15 months.
- 33.10 Counsel for the Respondent sought to draw analogies from the above-mentioned cases and submitted that the Respondent's conduct bore no more fault than that found by the Court in *Knauss*, *Squizzato* and *Baggaley*.
- 33.11 Counsel for the Respondent places particular emphasis on *Knauss* and the comments by the Court in paragraph 7.3.5 of that case:
- "In the Panel's opinion the requirements to be met by the qualifying element "no significant fault or negligence" must not be set excessively high.... this follows from the language of the provision, the systematics of the rule and the doctrine of proportionality..."*
- 33.12 It was submitted that the Respondent's case was exceptional in the totality of the circumstances and that the case ought to be differentiated from cases such as *Keat* (CAS 2005/A/879) and *Edwards* because of the efforts made by the Respondent to check the contents of the Fortius Synephrine.

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33.13 It was further submitted that the Respondent has provided substantial assistance to the International Weightlifting Federation (*IWF*) pursuant to Article 13.6.3 of the Policy. This submission relied upon the correspondence that was tendered to the Court concerning the source of the prohibited substance in the Respondent's system. Furthermore, the Respondent had displayed a preparedness to assist the Applicant in pursuing the Fortius Group for its part in causing Anti-Doping Rule Violations to occur. It was submitted that the period of ineligibility due to the substantial assistance provided should be reduced to 12 months.

### **SUBMISSIONS OF THE APPLICANT**

34. The Applicant made the following submissions:

34.1 The Respondent had failed to establish that she exercised the utmost caution as required by the "*no fault or negligence*" provision in Article 13.6.1.

34.2 In particular, it was stressed that the Respondent had –

- failed to read the ASDA website which provides sufficient warning of the dangers associated with taking supplement products;
- failed to read the ASDA position statement published on 13 May 2003 concerning contamination of products including supplement products;
- failed to make enquiries under the Supplement Information Scheme offered by ASDA;
- failed to read the information for athletes concerning the Supplement Information Scheme;
- failed to seek a guarantee from the "manufacturer" of the supplement product;
- purchased a product supplement from a manufacturer without making adequate enquiries;
- failed to make enquiries as to whether all of the listed ingredients referred to on the label of the product supplements were prohibited substances.
- failed to read the warnings in relation to supplements found on page 19 of the ASDA Anti-Doping Information Handbook 2005 and the ASDA Anti-Doping Information Card 2005.

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35. In relation to whether the Respondent had established “no significant fault or negligence”, it was submitted that the fact that the Respondent took some steps did not lessen the type of failures outlined above.
36. It was submitted that the circumstances of the case were not truly exceptional and that this was a straightforward case of the ingestion of supplements with the assumption by the Respondent of the risk. It was submitted that the Respondent had not established that the supplement had been purchased from a reputable source after due and proper enquiries had been made to ascertain that the nutritional supplement did not contain any prohibited substances. Reliance upon the advice of friends or product labels was tantamount to a type of wilful blindness on the part of the Respondent, it was submitted.
37. Counsel for the Applicant submitted that none of the previous decisions by the Court relied upon by the Respondent were of much assistance as each case had to be determined pursuant to its own unique facts and circumstances. Particular emphasis was placed on Article 20.5 of the Applicant's ADP which requires the ADP to be interpreted in a manner consistent with the WADA Code.

The commentary on the World Anti-Doping Code contains the following section:

**“10.5.1 Comment:** *Article 10.5.1 applies only to violations under Article 2.1 and 2.2 (presence and use of Prohibited Substances) because fault or negligence is already required to establish an anti-doping rule violation under other anti-doping rules.*

**10.5.2 Comment:** *The trend in doping cases has been to recognised that there must be some opportunity in the course of the hearing process to consider the unique facts and circumstance of each particular case in imposing sanctions. This principle was accepted at the World Conference on Doping in Sport 1999 and was incorporated into the OMADC which provides that sanctions can be reduced in “exceptional circumstances”. The Code is also provides for the possible reduction or elimination of the period of Ineligibility in **the unique circumstances** where the Athlete can establish that she 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 Organisations 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 is 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, 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, she 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***

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**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 (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 associate (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).**

*Article 10.5.2 applies only to the identified anti-doping rule violations because these violations may be based on conduct that is not intentional or purposeful. Violations under Article 2.4 (whereabouts information and missed tests) are not included, even though intentional conduct is not required to establish these violations, because the sanction for violations of Article 2.4 (from three months to two years) already builds in sufficient discretion to allow consideration of the Athlete's degree of fault".*

(Emphasis added)

38. It was submitted that in applying the explanations contained in the commentary on the WADA Code (see above) to this case there was no basis upon which the facts or circumstances involved in this case could fall within the categories of "no fault or negligence" or "no significant fault or negligence". It was emphasised that the Respondent could not clearly establish "that the cause of the positive test was contamination in a common multi vitamin purchased from a source with no connection to prohibited substances and the athlete exercised care in not taking other nutritional supplements". (see the Commentary in paragraph 37 above).
39. It was further submitted that there was no evidence of substantial assistance to attract the operation of Article 13.6.3. The information provided was to assist in the Respondent's own hearing before the Court and that therefore the Respondent was not entitled to any reduction of the period of ineligibility on the basis of "substantial assistance". Accordingly, the sanction that ought to be imposed was 2 years ineligibility.

## **FINDINGS**

40. At the conclusion of the hearing on 3 February 2006 the Court announced its findings and indicated that it would provide full reasons for those findings at a later date. The foregoing rendition of the evidence and the submissions sets out in

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detail the material that the Court has received. The Court has considered the totality of the evidence and the submissions that have been made by the Applicant and the Respondent.

41. As was conceded by the Respondent at the commencement of the hearing, the Court finds that the Respondent has committed an Anti-Doping Rule Violation.
42. There was no challenge to the Respondent's evidence to the effect that the prohibited substance had entered her system through the consumption by her of the product Fortius Synephrine. The Court finds that the Respondent has established by a balance of probability that the prohibited substance entered her system through the consumption by her of the product Fortius Synephrine. The establishment of that fact is a precondition for the elimination or reduction of a period of ineligibility pursuant to Article 13.6.1 or 13.6.2.

#### **Applicability of Article 13.6.1**

43. The Respondent has not established by a balance of probability that she "*could not reasonably have known or suspected even with exercise of utmost caution*" that she had used the prohibited substance. The Court finds that the Respondent had been effectively warned about the dangers of consuming nutritional supplements and that the information provided, and available, to the Respondent was adequate (see paragraph 24 above) to alert her to the dangers of consuming nutritional supplements that had not been approved. There is substantially more that the Respondent ought to have done to have protected herself. Even if it is accepted that the Respondent contacted the ASDA Hotline, on the Respondent's own evidence it is clear that the advice she sought was in relation to some only of the listed ingredients on the label of the bottle of Fortius Synephrine. This was clearly insufficient because of the failure to adhere to the risk that such supplements may contain impurities such as ingredients that were not listed on the label which could cause a positive test. Those warnings were spelled out with absolute clarity in the ASDA Anti-Doping Information Cards (and the ASDA Anti-Doping Information Handbook 2005) provided to the Respondent on a number of occasions prior to the date of the positive test. Furthermore, the Respondent ought to have been aware of the different provisions in relation to the use of stimulants in competition as compared to out-of-competition. The reliance by the Respondent upon the advice of Belinda Van Tienan, Mr. Chugg and the ASDA Hotline (assuming in the Respondent's favour that such advice was given but not formally finding that in fact such advice was given) was clearly insufficient in the circumstances.
44. The commentary in the World Anti-Doping Code on the equivalent to Article 13.6 notes that the Article is meant to have an impact only in cases where the circumstances are truly exceptional. This Court in *Edwards* emphasised that (at

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page 16): *"it would put an end to any meaningful fight against doping if an athlete was able to shift his/her responsibility with respect to substances which enter the body to someone else and avoid being sanctioned because the athlete himself/herself did not know of the substance"*. This approach is consistent with Article 5.1.1 of the ADP (see above).

#### **Applicability of Article 13.6.2**

45. The Court finds that the Respondent has not established that her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for *"no fault or negligence"*, was not significant in relationship to the Anti-Doping Rule Violation. The Court relies upon the matters referred to in paragraph 44 above. It could not be said that the facts and circumstances involved in this case are truly exceptional to attract the operation of this provision. The Court accepts the submission of the Applicant that this was a common case of where an athlete has failed to heed warnings that the Court finds were conveyed adequately to her in written form if not also in spoken form. The Respondent is an intelligent person and studying at a tertiary level. The Court accepts that the Respondent's use of the prohibited substance was inadvertent, not deliberate and most unfortunate given her personal and competitive background and her reputation for honesty and integrity. Indeed there was no challenge to any of those factors by the Applicant. The Respondent may have believed that she had done all that was prudent to have been done, however, when the Court comes to objectively view what the Respondent in fact did it was clearly insufficient in the circumstances. The Respondent has not met the standard of proof incumbent upon her. Furthermore, although not necessary for the decision, the Court finds positively that the Respondent's fault of negligence was significant in relationship to the Anti-Doping Rule Violation.

#### **Applicability of Article 13.6.3**

46. The Court finds that there is no jurisdiction to reduce the period of ineligibility pursuant to Article 13.6.3. The Court finds that it was the clear intent of the Applicant that it is only the IWF that has the power to reduce the period of ineligibility due to the provision of substantial assistance. This conclusion is based upon a careful reading of the relevant Articles of the Applicant's ADP and the clear distinction that is made between the powers that may be exercised by the Applicant on the one hand and the Court on the other. Article 13.4 is an example of that distinction. This is not the only example. The Court's conclusion is further reinforced by the provision to the Court by the Applicant of the template used by Australian Sporting Federations provided by the Australian Sports Commission in

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the formulation of the Applicant's ADP. In that template the opening words of Article 13.6.3 state that "*the hearing body or CAS may also reduce the period ...*". Thus there was a conscious decision by the Applicant to deny the Court jurisdiction to reduce the period of ineligibility pursuant to Article 13.6.3. Even if the Court did have jurisdiction it would find that the assistance could not be described as substantial so as to attract the operation of the provision. The assistance that has been provided is merely to alert the relevant authorities to the fact that the prohibited substance was contained within the Fortius Synephrine product. That level of assistance falls well short of the type of assistance considered in *Knauss*.

### **CONCLUSION**

47. The Court finds that the Respondent cannot avail herself of the provisions of Article 13.6 of the Applicant's ADP and accordingly, the applicable period of ineligibility is 2 years commencing on 3 February 2006.

### **COSTS**

42. The Applicant is the prevailing party and entitled to a contribution towards its legal fees.
43. The Applicant sought Australian AUD \$7374.00 in respect of Counsel's and Solicitors' costs.
44. The Court has taken into account as it is required to do by Rule 64.5 of the Code of Sports-Related Arbitration, the outcome of the proceedings as well as the conduct and the financial resources of the parties. After taking all those matters into account, the Court has determined that the appropriate contribution to be made by the Respondent to the Applicant is \$1000.00.

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**ON THESE GROUNDS**

The Court of Arbitration for Sport Rules that:

1. Camilla Fogagnolo has breached Article 5.1 of the Anti-Doping Policy of the Australian Weightlifting Federation and has thereby committed an Anti-Doping Rule Violation.
2. Camilla Fogagnolo's individual results obtained in the Australian Weightlifting Championships held in Brisbane, Queensland in October 2005 are disqualified; accordingly Camilla Fogagnolo forfeits her second placing achieved at that Championship including all medals, points and prizes, pursuant to Article 13.1 of the Anti-Doping Policy of the Australian Weightlifting Federation.
3. Camilla Fogagnolo is ineligible to compete during the period commencing on 3 February 2006 and expiring at midnight on 2 February 2008.
4. Camilla Fogagnolo is required to pay the sum of \$1000.00 in respect of costs to the Australian Weightlifting Federation.



David Grace Q.C.

Sole Arbitrator

22 February 2006

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