

# WORLD RUGBY

**IN THE MATTER** of the Regulations Relating  
to the Game and an alleged  
doping offence

**BETWEEN** **WORLD RUGBY**

**A N D** **GONZALO CAMPOMAR**  
**SANTAMARIA**  
("the Player")

## **Judicial Committee**

T M Gresson (New Zealand) (Chairman)  
Dr P Wiley (Canada)  
J-N Couraud (France)

## **Appearances and Attendances**

Gonzalo Campomar Santamaria (Player)  
Dr Juan Campomar (Legal Representative for Player)

## **For World Rugby**

Ben Rutherford (Counsel for World Rugby)  
David Ho (Anti-Doping Manager – Compliance and Results)

## **Hearing**

By way of written submissions and correspondence

## **SUPPLEMENTARY DECISION OF THE JUDICIAL COMMITTEE**

1. After the release of the Judicial Committee's decision on 10 October 2016 ("the decision") World Rugby applied for the sanction to be increased on the ground that WADA, subsequent to the release of the decision, advised World Rugby the Player in 2011 had previously committed an Anti-Doping Rule Violation ("ARDV") and on 22 February 2013 was sanctioned by the *Organización Nacional Anti-Dopaje de Uruguay* (National Anti-Doping Organisation of Uruguay) ("ONADU") following an Adverse Analytical Finding

for the banned substance Ephedrine. Pursuant to Regulation 21 the sanction was accepted and applied by the Uruguay Rugby Union ("URU"). Unfortunately, during the hearing process the Player did not disclose the previous anti-doping infraction. As a consequence prior to releasing its decision neither World Rugby or the Judicial Committee were aware of it.

2. Following the subsequent disclosure of the previous anti-doping rule violation, World Rugby applied to the Judicial Committee seeking an amendment of its decision to increase the sanction in respect of the period of ineligibility from four years to eight years as prescribed by Regulation 21.10.7(1)(c)<sup>1</sup>.
3. Following the Application both parties presented written submissions which have been fully considered by the Judicial Committee. The submissions gave rise to several issues.

#### **Jurisdiction to Amend – *Functus Officio***

4. On behalf of the Player, Dr Campomar submitted it was a fundamental principle of law that after a final decision has been released it would be unfair or unjust for it to be amended. Essentially, he relied on the deep rooted legal principle known as *Functus Officio*. As one jurist has stated, "*the kitchen is closed*" namely, once a Court or Tribunal has made its determination in a proceeding it ceases to be operative.
5. In this regard we note Regulation 21.8.2.6 empowers a Judicial Committee to regulate its own procedure and it is not bound by judicial rules governing procedure or the admissibility of evidence. Further, Regulation 21.8.2.8 contains the mandatory provision whereby a Judicial Committee is required to impose sanctions on a player in accordance with Regulation 21.10.

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<sup>1</sup> Regulation 21.10.7.1 provides:

"For a Player or other Person's second anti-doping rule violation, the period of Ineligibility shall be the greater of:

(a) six months;

(b) one-half of the period of Ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under Regulation 21.10.6; or

(c) twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, without taking into account any reduction under Regulation 21.10.6.

The period of Ineligibility established above may then be further reduced by the application of Regulation 21.10.6."

Regulation 21.10.6 is not applicable in the circumstances of this case.

6. In addition, the Courts<sup>2</sup> and Tribunals have held there are narrow exceptions to the *functus officio* principle whereby decision-makers in certain circumstances have the inherent power to correct a decision after it has been issued. They include when there has been a "*slip*" in the drawing up of an order or where a decision-maker has proceeded upon a wrong factual basis, and it is necessary to correct an error. In this respect, we are satisfied that because of the non-disclosure of the previous ADRV our decision in relation to the sanction imposed was factually incorrect. It was predicated on the basis of wrong information and thus, resulted in an error in that this Judicial Committee did not impose the mandatory applicable sanction prescribed by Regulation 21.10.7(1)(c) which replicates the prescribed mandatory sanction in the WADA code.
7. Accordingly, for these reasons, we are satisfied we have the necessary jurisdiction to correct the error as to sanction. Indeed, to rule otherwise would allow a player to take advantage of his lack of proper disclosure.

#### **Other Issues**

8. Dr Campomar raised further issues in support of his submission the sanction should not be increased.
9. First, he submitted the initial sanction was "*invalid*" because the test was conducted in a non-accredited laboratory in Uruguay and the positive test was as a result of ingesting a "*commercialised anti-flu*" medicine. However, for the reasons provided by WADA in its letters to World Rugby dated 27 October 2016 and 15 November 2016 (attached as Appendices 1 and 2) we are satisfied the 2011 positive test result was reliable. In this regard, we note the Player did not challenge the anti-doping rule violation prior to his request for a review in 2013. Further, as WADA noted, the ONADU's revised decision (when the original sanction was effectively reduced from two years to 18 months) was made in accordance with Regulations which were Code Compliant and it was noted the Player had "*introduced the substance found*". In relation to the substance Ephedrine being ingested

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<sup>2</sup> Refer, for example, Piyaratana Unnanse et al v Wahareke Sonuttara Unnanse et al [1950] 2 WWR 796 (PC); Chandler v Alberta Association of Architects [1989] 2 SCR 848; Dawes v Treasure & Son Ltd [2010] EWHC 3218 (TCC); Comptroller-General of Customs & anor v Kawasaki Motors Pty Ltd [1991] FCA 518; Minister for Immigration and Multicultural Affairs v Bhardwaj [2002] HCA 11

because of flu, we infer the circumstances relating to the previous ADRV were fully canvassed by the ONADU when it reviewed the original sanction and imposed the reduced sanction of 18 months.

10. Dr Campomar also submitted in 2011 a six month sanction (for using cocaine) in respect of a professional footballer (S Garcia) was not accepted by the Brazilian Football Association because the test was carried out at a non-accredited laboratory and there was a delay in the overall process. Thus, he argued as a matter of fairness the Player (an amateur) should have been treated on the same basis. Dr Campomar stated:

*“Here another example of the unfair treatment of the amateur player, in the same situation, same regulator, same irregularity in the doping test, the professional player could play but the amateur rugby player was invalidly sanctioned for consumed a medicine for flu, free of sale in any pharmacy of the country. Similar unbalances (sic) circumstances of Russian case, participating in the olympics.”*

11. We are not persuaded by this argument. Firstly, because we have not been provided with the written decision in the Garcia case we are unable to determine exactly how it was resolved. Accordingly, whether we would have necessarily followed the decision of the Brazilian Football Confederation is open to conjecture. Further, as Mr Rutherford submitted, the Player properly complied with the sanction which was imposed and there does not appear to be any evidence the Player at the time sought to rely on the decision of the Brazilian Football Confederation. In relation to the Player’s amateur status, as stated in our decision at paragraph 33, the “*broadchurch*” approach underlying policy behind Regulation 21 is that rugby is a seamless game for all its players. They should all be treated in the same fashion whether amateur or professional, male or female. Nor, as has again been suggested, is there power for a Judicial Committee to depart from the mandatory sanctioning regime prescribed in Regulation 21 which is compliant with the WADA Code (refer para 34 of our decision).

12. Dr Campomar also raised an issue as to how the first anti-doping rule violation was drawn to the attention of World Rugby. As Mr Rutherford submitted we consider this is an irrelevant consideration; the important point being we were not made aware of the fact the Player had been previously sanctioned for an ADRV.

13. Accordingly, for these reasons we do not consider it is appropriate for us to overturn the reviewed sanction imposed in 2013 by the ONADU, particularly when WADA has confirmed the ADRV in relation to this first offence was Code Compliant.
14. As previously mentioned, we consider it would be wrong to allow the Player to take advantage of the lack of disclosure and indeed, it would be unjust in relation to other players who have been sanctioned for multiple violations when there has been disclosure of the previous offending.

#### **Amended Decision**

15. For the foregoing reasons the decision dated 10 October 2016 is amended whereby the sanction imposed for his ADRV committed on 16 June 2016 (being the date the Player provided a urine sample which subsequently returned an AAF) is increased to a period of ineligibility of eight years (96 months) commencing on 5 July 2016 (being the date upon which the Player's provisional suspension commenced) and concluding (but inclusive of) 4 July 2024.
16. Pursuant to Regulation 21.10.12.2 during the period of Ineligibility the Player may return to train with a team or he may use the facilities of a Union, Club, Rugby Body or other member organisation of World Rugby, an Association or a Union, on or after 5 May 2024. During the training period as described the Player may not compete or engage in any activity as described, other than training.

#### **Costs**

17. We do not consider it is appropriate for us to award costs to either party.

#### **Review**

18. The amended decision is subject to a referral to a Post Hearing Review Body (Regulation 21.13.8.1) or an appeal, where the circumstances permit, to the Court of Arbitration for Sport (Regulation 21.13.2.1). In this regard, attention is also directed to Regulation 21.13.8.2, which sets out the process for

referral to a Post Hearing Review Body, including the time within which the process must be initiated.



T M Gresson  
Chairman

20 February 2017



Montreal, 27 October 2016

**Mr. David Ho**

Anti-Doping Manager - Compliance and Results  
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Ireland

**Mr. Ben Rutherford**

Senior Legal Counsel & Integrity Unit Manager  
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*Via email: [David.Ho@worldrugby.org](mailto:David.Ho@worldrugby.org) and [Ben.Rutherford@worldrugby.org](mailto:Ben.Rutherford@worldrugby.org)*

**Re: Mr. Gonzalo Campomar – 2011 case**

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Dear Mr. Rutherford, dear Mr. Ho,

We write to you regarding our telephone conversation on 25 October 2016 regarding the case involving Mr. Gonzalo Campomar.

As discussed, WADA has investigated certain issues regarding the history of Mr. Campomar's alleged first anti-doping rule violation ("ADRV") which occurred in 2011 and for which he was sanctioned on 30 December 2011 (the "first violation").

WADA's position with respect to the decision rendered by the Uruguayan Ministry of Tourism on 30 December 2011 imposing a two year sanction against Mr. Campomar is that the sanction was imposed in a manner that was compliant with the 2009 Code. Indeed, prior to his request for review in 2013, the ADRV was not challenged by Mr. Campomar and there is no



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indication that he violated the prohibition against participation during ineligibility. Further, given that Mr. Campomar's sample in relation to the first violation was not analyzed at a WADA-accredited Laboratory, this case could be reasonably considered as a Code Article 2.2 violation established by reliable means (on the basis of Article 3.2 of the Code).

In light of the above, WADA has no reason to question the validity or Code-compliant nature of the decision that was rendered or the results management process that was conducted in relation to the first violation.

Should you require any further information regarding the above or otherwise, please do not hesitate to contact Mr. Cyril Troussard, Mr. Adam Klevinas or myself.

Sincerely,

**Julien Sieveking**  
Director, Legal Affairs





Montreal, 15 November 2016

**Mr. David Ho**  
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Anti-Doping Manager- Compliance and Results  
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Ireland

*By email only: [David.Ho@worldrugby.org](mailto:David.Ho@worldrugby.org)*

**Case Gonzalo Campomar Santamaría**

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Dear Mr. Ho,

We refer to the above-mentioned case.

WADA has reviewed the player's submission and would like to make the following comments:

1. The initial sanction imposed by decision of the Uruguayan Ministry of Tourism and Sport, rendered on 30 December 2011, was *prima facie* compatible with the provisions of the Code. According to article 6.1 of the 2009 Code, it was not necessary that WADA-accredited laboratories conducted the analysis for 2.2 violations. Moreover, the sanction was the standard two year sanction and therefore not in contravention of the 2009 Code for a use violation.
2. In any event, the decision was revised at a later stage by decision of the Uruguayan Anti-Doping Organization dated 22 February 2013, in accordance with regulations that were recognized as Code-compliant by WADA. Upon revision, the sanction was effectively reduced to 18 months (by cancelling the remainder of the period of ineligibility); the tribunal explicitly noted that the player "introduced the substance found" and that this constituted "his first offence". This revision decision (which replaces the



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original two year decision) was to our knowledge not appealed and therefore constitutes the final and binding decision with respect to the first anti-doping rule violation.

On the basis of the foregoing, WADA considers that the athlete has a previous anti-doping rule violation.

Sincerely,

**Julien Sieveking**  
Director, Legal Affairs

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## **Hearing**

By way of written submissions and correspondence

## **DECISION OF THE JUDICIAL COMMITTEE**

### **Background**

1. On 16 June 2016 Gonzalo Campomar Santamaria ("the Player") in Bucharest, Romania, provided a urine sample, Number 6218383, ("the Sample") during an out-of-competition test conducted as part of World Rugby's 2016 Nations Cup testing programme. Subsequently, the Player's A Sample returned an Adverse Analytical Finding ("AAF") for 3'-hydroxystanozolol-O-glucuronide, 16 $\beta$ -hydroxystanozolol-O-glucuronide, and Stanozolol-N-glucuronide which are metabolites of Stanozolol ("Stanozolol / the Substance"). The AAF was reported on 30 June 2016 by the WADA accredited laboratory in Lausanne, Switzerland.

2. The Substance is classified under S1.1a Exogenous Anabolic Androgenic Steroids in the World Anti-Doping Agency ("WADA") 2016 List of Prohibited Substances and Methods. It is not a Specified Substance. The WADA Prohibited List is included in Schedule 2 of World Rugby Regulation 21. The Substance is prohibited in-competition and out-of-competition. The Player had not applied for, and had not been granted pursuant to Regulation 21.4.4, a Therapeutic Use Exemption allowing him to use the Substance.
3. Following receipt of the analysis result of the Player's A Sample, and after a preliminary review conducted in accordance with Regulation 21.7.2 (which confirmed that an anti-doping rule violation may have been committed) the Player was notified by World Rugby of the AAF and was provisionally suspended on 5 July 2016. On 14 July 2016 the Player indicated he did not require analysis of his "B" sample.
4. This Judicial Committee ("JC") was appointed to consider the Player's case. In accordance with the JC's directions written material (including the Player's sworn affidavit and submissions and World Rugby's submissions) was presented to the JC. The hearing was conducted on the basis of the JC's consideration of the written material.

### **The Evidence**

5. The Player is 28 years of age. He is an Amateur Rugby Player who has represented the Uruguayan National Under 19 Team in 2006 at the Under 19 World Rugby Championship and the Senior National Teams at Nations Cup Tournaments held in 2009 and 2016. The Player signed a Team Member Consent Form dated 1 June 2016 in relation to his participation in the 2016 Tournament. In signing the Consent Form the Player agreed to comply with, and be bound by, World Rugby's Anti-Doping Programme. Further, he acknowledged World Rugby's jurisdiction to impose sanctions. The Player also confirmed he had received a copy of World Rugby's Anti-Doping Handbook and he had completed its on-line anti-doping E-Learning Programme.
6. The Player signed similar forms in respect of his participation in the 2006 and 2009 Tournaments.
7. The Player stated he had "*never consumed any product containing Stanozolol (sic) as one of its components*". He stated between March to May 2016 he had taken a supplement called "*P6 Extreme*" ("the Supplement"), a legal and natural testosterone booster which was purchased in February 2016 for cash by "*a Player's friend*" in

Miami at the GNC Store in Lincoln 622<sup>1</sup>. He explained he had taken the Supplement because following a rugby injury suffered during the first quarter of 2015 he had undergone “*delicate*” spinal surgery in June 2015 and he needed more “*muscle protection*”. Further, the purchaser did not retain the invoice and he was unwilling to disclose his identity or swear an affidavit because he understood the Supplement to be a “*natural formula product*” and he did not wish to be involved in this case. The Player stated *P6 Extreme* is not sold in Uruguay.

8. The Player stated he took the Supplement “*due to his psychological status before playing again*”. He acknowledged he did not declare the product when he provided the sample on 16 June 2016 and signed the Doping Control Form because he had “... *stopped consuming more than 1 month from that date*” (emphasis added).
9. The Player stated after he consumed the Supplement he threw away the container. He provided the following details in relation to the Supplement:

<b>Supplement Facts</b>		
Serving Size: 2 Capsules		
Servings Per Container: 60		
<b>Amount Per Serving</b>		<b>% DV</b>
P6 Extreme Blend	947mg	†
Ovine Placenta powder, Black Cohosh Root extract, <i>Agaricus bisporus</i> extract, Beta-Sitosterol, Wild Yam Root extract (95% Diosgenin), Stinging Nettle Root extract, Myricetin (from Bayberry Bark extract), Sclareolide (from <i>Salvia sclarea</i> whole plant extract)		
<i>Tribulus alatus</i> extract (aerial parts and berries)	250mg	†
† Daily Value (% DV) not established.		
Other Ingredients: Capsule Shell (Gelatin, Titanium Dioxide, FD&C Red #40 and FD&C Blue #1), Microcrystalline Cellulose, Magnesium Stearate and Silica.		
<b>May Contain Soy</b>		

The Player also reproduced marketing information in relation to the Supplement (attached as Appendix 1) which he described as “*misleading*” in that it referred to:

- *legal and natural testosterone cycle, (“ciclo de testosterone legal y natural”)*
- *post cycle legal therapy*

<sup>1</sup> <http://stores.gnc.com/search/mi/grosse+pointe?t=&q=lincoln+road+622&skipDisambig=true>

*("terapia de post ciclo legal")*".

10. The Player suggested that the Supplement's main component (Tribulus Atatus Extract) could have been the source of the Substance. In support of this theory he referred to a web-blog<sup>2</sup> summary of a decision made by an Indian Anti-Doping Tribunal which commented the athlete had to establish how the "*contaminated substance Stanozolol entered into his body through Tri Tribulus supplement which he consumed regularly*". The Player also referred to an article published in the US National Library of Medicine – "*Insights into Supplements with Tribulus Terrestris used by Athletes*"<sup>3</sup> which commented that some recommended supplements for competitive athletes to enhance their performance may be contaminated by androgenic-anabolic steroids due to the inclusion of unspecified ingredients.

#### **Has the Anti-Doping Rule Violation been Established?**

11. Against this background, the first issue requiring our determination is whether World Rugby has proved the Player committed an anti-doping rule violation.
12. Pursuant to Regulation 21.2.1 the "*presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample*" constitutes an anti-doping rule violation. Regulation 21.2.1.1 provides:

**"21.2.1.1** *It is each Player's personal duty to ensure that no Prohibited Substance enters his or her body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Player's part be demonstrated in order to establish an anti-doping rule violation under Regulation 21.2.1"*
13. Pursuant to Regulation 21.3.1 World Rugby has the burden of establishing an anti-doping rule violation to the comfortable satisfaction of the JC. The Player did not request an analysis of his B sample and did not challenge the analytical findings of the Swiss Laboratory. Accordingly, the JC finds that World Rugby has established the anti-doping rule violation to the required standard; that is the presence of the Prohibited Substance Stanozolol in the Player's bodily sample.
14. Having decided the anti-doping rule violation has been established, we turn to determine the appropriate sanction which is required to be imposed pursuant to the regulatory framework prescribed by Regulation 21.

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<sup>2</sup> <http://kaypeem.blogspot.com.uy/2016/05/another-contentious-decision.html>

<sup>3</sup> <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4120469>

## Sanction

### Relevant Provisions in Relation to Sanction

15. The period of ineligibility to be imposed for a violation of Regulation 21.2.1 (Presence of Prohibited Substance or its Metabolites or Markers) which does not involve a Specified Substance is four years for a first violation. The period of ineligibility can be reduced in certain circumstances. In the context of this case they include:
- The Player establishing the anti-doping rule violation was not intentional (refer Regulation 21.10.2.1.1). If established, the period of ineligibility shall be reduced to two years (refer 21.10.2.2).
  - The Player establishing exceptional circumstances as set out in Regulation 21.10.4 (No fault or negligence, in which case, the otherwise applicable period of ineligibility shall be eliminated), or 21.10.5 (No significant fault or negligence, in which case the period of ineligibility shall be at a minimum of a reprimand and no period of ineligibility and at a maximum of two years ineligibility depending on the Player's degree of fault).
16. The Player has the burden of establishing both of these matters. Pursuant to Regulation 21.3.1 the standard of proof shall be by a balance of probability.

### Intention

17. Regulation 21.10.2.3 defines the term "*intentional*" as used in Regulation 21.10.2.1.1. The Regulation provides:
- "... the term "intentional" is meant to identify those Players who cheat. The term therefore requires that the Player or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk."*
18. As can be seen, the definition contains two alternative elements; namely intentional or reckless conduct. For there to be a reduction of the four year period of ineligibility to two years on the basis the Player's conduct was unintentional, he must prove on a balance of probability he did not know his conduct constituted an anti-doping rule violation or he did not manifestly disregard the significant risk of engaging in conduct which might constitute an anti-doping rule violation.

### Contaminated Products – No Significant Fault or Negligence

19. Regulation 21.10.5.1.2 provides:
- "Contaminated Products  
In cases where the Player or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years*

*Ineligibility, depending on the Player's or other Person's degree of Fault.  
[See Comment 31]*

20. Comment 31 states:
- "In assessing that Player's degree of Fault, it would, for example, be favourable for the Player if the Player had declared the product which was subsequently determined to be contaminated on his Doping Control form."*
21. And a Contaminated Product is defined in Appendix 1 as:
- "A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search."*
22. "No Significant Fault or Negligence" is defined in Appendix 1 to Regulation 21 as follows:
- "No Significant Fault or Negligence: The Player or other Person'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. Except in the case of a Minor, for any violation of Regulation 21.2.1, the Player must also establish how the Prohibited Substance entered his or her system."*
23. Fault is also defined in Appendix 1 as follows:
- "Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Player or other Person's degree of Fault include, for example, the Player's or other Person's experience, whether the Player or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. In assessing the Player's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that a Player would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Player only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Regulation 21.10.5.1 or 21.10.5.2. [See Comment 52]*
24. Comment 52 states:
- "Comment 52 (Definition of Fault): The criteria for assessing a Player's degree of Fault is the same under all Regulations where Fault is to be considered. However, under Regulation 21.10.5.2, no reduction of sanction is appropriate unless, when the degree of Fault is assessed, the conclusion is that No Significant Fault or Negligence on the part of the Player or other Person was involved."*

### **Submissions in Relation to Sanction**

#### **World Rugby**

25. On behalf of World Rugby, Mr Rutherford presented submissions which comprehensively addressed the legal and factual issues. The submissions have



been carefully considered but for reasons which will become apparent it is not necessary for us to refer to all of them in detail.

26. Mr Rutherford submitted the Player had failed to prove on a balance of probability the anti-doping rule violation was unintentional in that no "hard" evidence had been provided which corroborated he (the Player) had actually taken the Supplement. In support of the submission the Player was required to prove he took the Supplement, Mr Rutherford cited the case of UKAD v Hastings, National Anti-Doping Panel ("NADP"), 18 November 2015<sup>4</sup>, where it was held, although the Regulation does not specifically refer to the need for proof the method of ingestion, should a player seek to establish an absence of intent then he/she must establish how the prohibited substance entered his/her system. Further, Mr Rutherford submitted the Player had not proved there was an established link between the Supplement and the Substance. In this respect, Mr Rutherford, for several reasons, strenuously discounted the Player's reliance on the "blog" summary of the Indian domestic doping case cited by the Player. He submitted this decision (which Mr Rutherford variously described as "obscure" and a "rogue decision") by a Tribunal, whose competence could be questioned, should not be regarded as a reliable authority for the proposition there is a link between "*Tribulus alatus*" extract and the Substance. Mr Rutherford referred to the website WebMD<sup>5</sup> which in discussing "*Tribulus*", commented the plant does not appear to increase testosterone in humans.

27. Mr Rutherford also noted:

- the Supplement is advertised as a "*Testosterone booster*"; accordingly it has no connection with the Substance
- the lack of forensic evidence which supported the theory the Supplement was contaminated. In this regard, he commented that "*peer-reviewed scientific literature suggests that 28 days is the likely limit in which 5 mg of Stanozolol could be detected in current anti-doping testing*"<sup>6</sup>.
- the Supplement is advertised in countries in which anabolic steroids are strictly controlled and subject to criminal sanction
- the Player did not test positive for testosterone
- the Player's awareness of World Rugby's Anti-Doping regime.

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<sup>4</sup> <http://www.ukad.org.uk/anti-doping-rule-violations/download-decision/a/6955>

<sup>5</sup> <http://www.webmd.com/vitamins-supplements/ingredientmono-39-tribulus.aspx?activeingredientid=39&activeingredientname=tribulus>

<sup>6</sup> W.Schänzer et al. *Expanding analytical possibilities concerning the detection of Stanozolol misuse by means of high resolution/high accuracy mass spectrometric detection of Stanozolol glucuronides in human sports drug testing*, Drug Testing and Analysis, 26 June 2013

28. For these reasons, it was submitted in relation to the first limb of the term "*intentional*" (refer para 17 supra) the Player engaged in conduct which he knew constituted an anti-doping rule violation; the suggested motivation being "*the Player suffered a severe injury to his spine (following which his doctor advised him to retire from rugby on medical grounds) and regrets that it is unfortunately a common circumstance that an injured player seeks illegal chemical assistance in order to be able to return to play which has been seen in previous cases*<sup>7</sup>. On a balance of probabilities, World Rugby submits that the Player intentionally resorting to Stanozolol to assist his recovery and enable him to continue his "passion for rugby" against medical advice is more likely than any other hypothesis based on the evidence".
29. Alternatively, Mr Rutherford submitted, if the JC determined the Player has proved on a balance of probability the Supplement was the source of the Substance he (the Player) had not satisfied the requirements of the second limb of Regulation 21.10.2.3 in that (citing from a passage at paragraph 69 in the Sharapova<sup>8</sup> case) the Player "*knowingly took the risk of committing an actual violation of the Regulations and still ingested the supplements regardless of that risk*". In advancing this submission, Mr Rutherford referred to World Rugby's E-Learning Programme and its Handbook which clearly highlighted the risk of taking supplements and the special care which needed to be taken when following surgery, without making appropriate enquiries from medically qualified personnel, he decided to build his muscle strength by increasing his testosterone production.
30. For various reasons Mr Rutherford also discounted any suggestion there was an absence of Significant Fault or Negligence on the Player's part and submitted there were no other Regulations<sup>9</sup> which would permit any reduction in the imposition of a four year period of ineligibility.

#### Player's Submission

31. In relation to the issue of the appropriate sanction, the Player stated that as an amateur player he has a "*passion for rugby*" and apologised for the "*reputational*" damage he had caused to the game, World Rugby, his Union and Club. The imposition of a sanction of four years suspension he stated will be "*a very sad end*" to his career. Accordingly, he sought a reduced sanction of one year or if he is

<sup>7</sup> See, for example, World Rugby v Gargalic (2014) <http://keeprugbyclean.worldrugby.org/downloads/cases/88/J-141128-GM-Gargalic-Reasons.pdf>, World Rugby v Ralepelle (2014) [http://keeprugbyclean.worldrugby.org/downloads/cases/96/150616%20Ralepelle%20Decision\\_final.pdf](http://keeprugbyclean.worldrugby.org/downloads/cases/96/150616%20Ralepelle%20Decision_final.pdf) and IRB v Parada Heit (2012) <http://keeprugbyclean.worldrugby.org/downloads/cases/63/J-121030-Heit%20Decision.pdf>

<sup>8</sup> <http://www.itftennis.com/news/231175.aspx>

<sup>9</sup> Including Regulations 21.10.6.1.1 (Substantial assistance), 21.10.6.2 (Admission of Anti-Doping Rule Violation in the absence of other evidence) and 21.10.6.3 (Prompt admissions)

suspended for a period of four years, a partial sanction whereby he can continue playing domestic rugby. In making this submission, the Player suggested the sanction could be determined by way of a settlement discussion conducted in a similar fashion to a CAS conciliation hearing. The Player submitted he should be permitted to continue playing Club Rugby in the Uruguayan amateur domestic competition because:

- he is an amateur player; and
- he experienced psychological suffering following his spinal injury; and
- due to misleading information in relation to the Supplement he made a mistake; and
- his passion for continuing to play rugby despite his spinal injury; and
- he will educate others as to anti-doping.

32. The Player emphasised he had not been untruthful as to his consumption of the supplement. He commented if he "*wanted to lie about the contaminated product, could do so with a more neutral product (such as contaminated meat, proteins – declared in form- or something like that)*". He was also critical of World Rugby's suggestion that he had resumed playing rugby against medical advice and requested the JC to adopt the IOC's recent "*flexible case by case*" approach in respect of individual sports participation at the 2016 Olympic Games. In this respect, he submitted such an approach was justified when all the surrounding circumstances are considered, namely the fact he is an amateur player and he had received no support from the Uruguayan Rugby Football Union and his club and did not have the resources to "*hire any expert*" (emphasis added).

### **Discussion**

33. As indicated, the Player submitted in relation to the sanction the JC should make an allowance for the fact he is an Amateur Player. However, Regulation 21 does not prescribe different sanctioning regimes for amateur and professional players. Essentially, the "*broadchurch*" approach underlying the policy behind Regulation 21 (and most other World Rugby Game Regulations, including Regulation 17 (Foul Play)) is that rugby is a seamless game for all its participants and players; whether amateur or professional, male or female, should be treated in the same fashion.
34. Further, with regard to the Player's settlement discussion proposal, and the JC adopting a similar "*flexible*" approach as the IOC in respect of Russian athletes' participation at the Rio de Janeiro 2016 Olympic Games, again the JC does not have the power to depart from the mandatory sanctioning regime prescribed in Regulation 21 which, as mentioned, is in compliance with the World Anti-Doping Code. Thus, the Player's request that we impose a sanction where he is only

suspended from playing rugby at an international level is not permissible under Regulation 21. Indeed, if we departed from applying the sanctioning principles as prescribed by Regulation 21, inevitably this would lead to successful appeals by WADA, not to mention World Rugby.

35. Accordingly, in applying Regulation 21, we are required to determine whether the Player has proved, on a balance of probability, the anti-doping rule violation was unintentional; in that the positive test result was likely to have been caused by the consumption of the Supplement in respect of which the Player was unaware it was contaminated with the Substance. If the Player is unable to satisfy the burden of proving the anti-doping rule violation was unintentional then the mandatory sanction of four years suspension must be imposed.
36. In relation to this issue, as mentioned the Player stated he took the Supplement over a period of approximately two months, but provided only limited details as to its purchase and he did not produce any independent evidence which corroborated his account he was in possession of the Supplement and had consumed it between March and May 2016. However, the Player provided in accordance with the Law of Uruguay sworn testimony he consumed the Supplement and in the absence of any cross-examination or other evidence which specifically undermined his account and raised issues as to the credibility of his uncorroborated evidence we hesitate to completely reject it and put it aside.
37. But, for several reasons, ultimately that is not determinative of this issue. First, in our view the Player has not provided reliable and probative forensic evidence which supported his claim the Supplement was likely to have been contaminated as a result of the Substance entering his bodily system through the ingredient *Tri Tribulus*. In this respect, a tenuous “*blog*” summarising an Indian domestic doping case cannot be regarded as authoritative. Indeed, the passage cited by Mr Rutherford from the Tribunal’s decision clearly referred to there being only an unproven claim *Tri Tribulus* was the source of the Substance. It was not tested. Further, *Tri Tribulus* is not the same as *Tribulus alatus*<sup>10</sup>, which is the ingredient described in the Supplement Facts (refer para 9 supra) and, the list of ingredients produced by the Player appeared to have been obtained from the Internet; therefore, there is an issue as to whether the Supplement actually purchased by “*the Player’s friend*” actually contained the same ingredients (including “*Tribulus alatus*”).
38. Next, although the Supplement purchased by the Player’s friend was not available for testing he has not adduced any other evidence which scientifically indicated the

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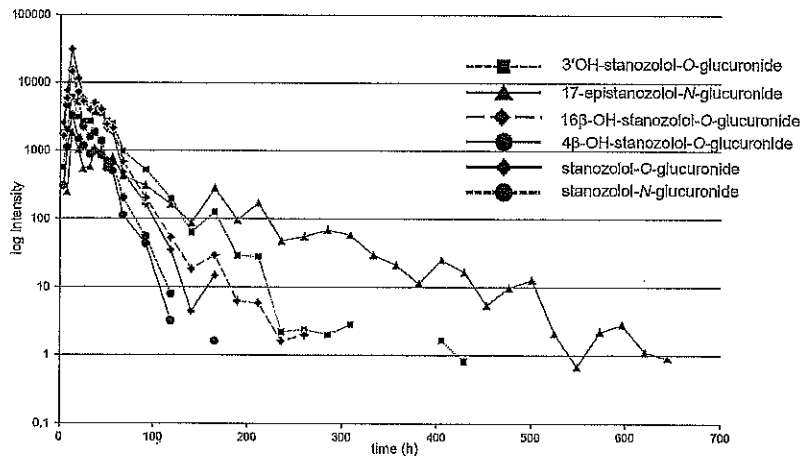
<sup>10</sup> Wikipedia describes Tribulus Alatus is a variety of Tribulus

*P6 Extreme* product could be linked to the Substance. In this regard, we note World Rugby's comment; the Supplement is freely advertised and available for sale in countries where anabolic steroids are strictly controlled and subject to criminal sanctions and for this reason it is unlikely there is a connection between *P6 Extreme* and the Substance.

39. Further, in our view, for two reasons the limited forensic evidence which has been produced did not indicate the Supplement could have been the source of the Substance and it is more likely the anabolic steroid was ingested independently of the Supplement.
40. First, we note the Supplement and Substance are designed and advertised for different purposes. The Supplement is designed to stimulate natural testosterone production, whereas the anabolic steroid was designed for its anabolic (muscle growth) effect. It is not designed to boost testosterone production. Thus it is unlikely the Stanozolol derivatives could have contaminated the Supplement. As an aside we note also the Player did not test positive for testosterone; ie. there was not testosterone at an elevated level in the urine sample. However, we accept this could be for a number of reasons, including the timeline involved in allowing for an increase of testosterone and then returning to the normal level of the Player.
41. Second, the Player stated he ceased consuming the supplement "*more than 1 month*" prior to 16 June 2016 but the authoritative German research article referred to the JC (refer Footnote 6) contained significant and relevant findings by the Authors<sup>11</sup>. On our reading of the discussion in the article the detection window for the ingestion of 5 mg of the Substance is probably 17 days or less; which is less than the 28 days suggested by World Rugby. This is because the Stanozolol metabolites detected in the Player's urine sample were 3'-hydroxystanozolol-O-glucuronide, 16 $\beta$ -hydroxystanozolol-O-glucuronide and Stanozolol-N-glucuronide which have detection windows documented by the article of about 17 days, 11.5 days and 7 days respectively, as summarised in Figure 5 which we reproduce from the article.

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<sup>11</sup> Wilhelm Schänzer, Sven Guddat, Andreas Thomas, Georg Opfermann, Hans Geyer and Mario Thevis. They referred to thirty five articles which substantiated the many findings included in their report of the study. The study was supported by Antidoping Switzerland (Berne, CH), the Irish Sports Council (Dublin, Ireland) and the Federal Ministry of the Interior of the Federal Republic of Germany.



**Figure 5.** Elimination curves of six metabolites monitored in the administration study urine samples collected after application of 5 mg of stanozolol. The *N*-glucuronide of 17-epistanozolol was detected up to 28 days.

42. It follows from the findings by Wilhelm Schänzer et al in relation to the relevant detection windows for the Stanozolol metabolites, the Player's theory as to the inadvertent source of the Substance was the Supplement which was contaminated with Stanozolol is unlikely to be correct. In other words, it is unlikely the AAF for the sample taken on 16 June 2016 could be explained by the possible ingestion of the Supplement more than one month previously.
43. For all of these reasons, together with the Player's awareness of World Rugby's Anti-Doping Programme and the dangers of taking banned substances and supplements which may be contaminated, we are not satisfied the Player has discharged the burden of establishing his ingestion of the Substance was unintentional. In our view, the circumstantial evidence and the Player's failure to provide probative evidence points to it being more likely the Substance was ingested independently of the Supplement. Accordingly, the Player has failed to prove he has engaged in unintentional conduct which he knew did not constitute an anti-doping rule violation. Alternatively, in relation to the second limb of Regulation 21.10.2.3, the Player has failed to prove that in independently ingesting the Substance he did not know there was a significant risk his conduct might constitute or result in an anti-doping rule violation and he manifestly disregarded that risk.
44. Given our decision the Player has not established the Supplement was the source of the Substance, we do not consider it necessary to discuss the application of the second limb of Regulation 21.10.2.3 on the basis of the theory the Supplement was contaminated.

45. Also, as a consequence of our findings in relation to the Player failing to prove his ingestion of the Substance was unintentional, we are unable to apply Regulation 21.10.5 in relation to the Player's submission there was no significant fault or negligence on his part.

#### **Decision**

46. For the foregoing reasons, the sanction imposed for this anti-doping rule violation is a period of ineligibility of four years (48 months) commencing from 5 July 2016 (being the date upon which the Player's provisional suspension commenced) and concluding (but inclusive of) the 4 July 2020.
47. Pursuant to Regulation 21.10.12.2 during the period of Ineligibility the Player may return to train with a team or he may use the facilities of a Union, Club, Rugby Body or other member organisation of World Rugby, an Association or a Union, on or after 5 May 2020. During the training period as described the Player may not compete or engage in any activity as described, other than training.

#### **Costs**

48. If World Rugby wishes us to exercise our discretion in relation to costs, written submissions should be provided to the JC via Mr Ho by 17:00 Dublin time on 21 October 2016, with any responding written submissions from the Player to be provided by no later than 17:00 Dublin time on 4 November 2016.

#### **Review**

49. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.13.8.1) or an appeal, where the circumstances permit to the Court of Arbitration for Sport (Regulation 21.13.2.1). In this regard, attention is also directed to Regulation 21.13.8.2, which sets out the process for referral to a Post Hearing Review Body, including the time within which the process must be initiated.



T M Gresson  
Chairman

10 October 2016

EXHIBIT II

SOURCE: <http://www.laproteina.es/tienda/1512-p6-extreme-180-caps.html>



**P6 EXTREME 180 CÁPSULAS**  
**Natural Testosterone Booster**  
**Advanced Anabolic Stack**

Precio recomendado: 89.49 €

Marca: [Cellucor](#)



Se acabaron los días en que había que comprar más de 3 productos para un ciclo de testosterona legal y natural.



**P6 Extreme** de Cellucor es un revolucionario potenciador de la testosterona que utiliza una potente y avanzada fórmula 3 en 1 para disparar tus niveles de testosterona, bloquear el estrógeno, y minimizar la conversión a DHT, y todo ello en un solo producto.

**P6 Extreme** proporciona una fuerza y unas ganancias de masa muscular libre de grasa sin igual, aumenta la libido, aumento de los niveles de energía y del metabolismo, todo incluido en un solo producto. Hasta ahora, no había nada parecido en el mercado.

La amplia y exclusiva fórmula de **P6 Extreme** elimina complicados esquemas de dosificación y la necesidad de "ciclar" el producto, o de terapias de post ciclo. De hecho, la fórmula exclusiva 3:1 de **P6 Extreme** es en última instancia una terapia de post ciclo legal.