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FINA Doping Panel 2/04

The

FINA Doping Panel,

comprised of

Harm Beyer	Chairman
Jean Lob	Member,
Ben Belkacem Farid	Member

in the proceedings against

the swimmer

**Mette Jacobsen**

affiliated to the

Danish Swimming Federation

represented by: Merethe Stagetorn  
Attorney at Law

on 20<sup>th</sup> July 2004 decided:

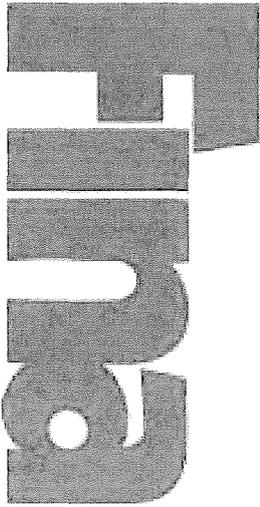
The athlete is found to have committed an anti-doping rule violation under FINA Rules DC 2.1 and DC 10.3.

She is given a

**Warning and Reprimand.**

This judgement shall become effective immediately.

The Danish Swimming Federation shall be obliged to reimburse FINA for all costs related to the anti-doping violation committed by the swimmer.



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## I THE PARTIES INVOLVED

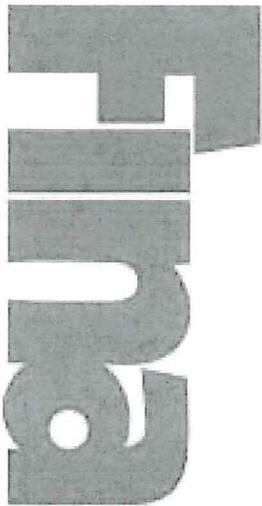
1. The FÉDÉRATION INTERNATIONALE de NATATION (FINA) is the world-wide aquatic sports organisation. FINA has established and is carrying out *inter alia* an Anti - Doping - Control Program, in-competition as well as out-of-competition.
2. The LIGUE EUROPÉENNE de NATATION (LEN) is a Continental Organisation recognised by FINA (FINA Rule C 14.1). Also LEN is conducting doping controls according to FINA Rules.
3. Mette Jacobsen is a 31 years old female elite class swimmer. She is affiliated to the Danish Swimming Federation which is a Member Federation of FINA as well as of LEN. She started competitive swimming in the age of six years, won her first medal in the age of 13 years and participated for her first time in the Olympic Games 1988. Since then she is an elite swimmer, having won lots of titles and medals.

Never in her competitive career the swimmer was in question in regard to any anti-doping rule violation.

## II THE FACTS

4. The swimmer, representing her country, participated in the European Swimming Championships, held from 5<sup>th</sup> to 16<sup>th</sup> May 2004 in Madrid (ESP).

On 16<sup>th</sup> May 2004, after having participated in the event 200 m butterfly, in which she won a bronze medal, she had to



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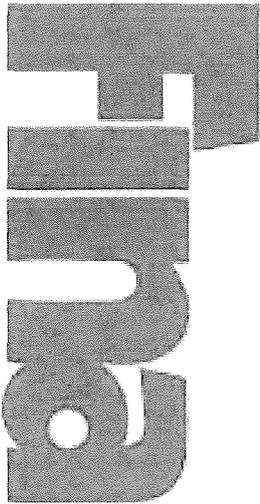
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undergo a doping control. A urine sample was collected from her in the doping control station at the venue and split in an A sample and a B sample, each coded with the number 348993. The samples were sent on the same day to the WADA accredited laboratory in Madrid (ESP).

5. On 20<sup>th</sup> May 2004 the laboratory reported to FINA that the A sample showed the presence of *prednisolone, prednisone and salbutamol* (1282 ng/ml; D=53,4ng/ml;C.V.=4,2%).
6. In regard to *salbutamol* a Therapeutic Use Exemption (TUE) had been granted before by FINA to the swimmer. However, the swimmer neither had applied for nor had been granted a TUE in regard to *glucocorticosteroids* (*prednisolone and prednisone*).

### III Proceedings

7. After consultation with the FINA Doping Control Review Board (DCRB) according to FINA Rule DC 7.1.2 FINA informed the swimmer through the Danish Swimming Federation about the positive result of the analysis.
8. The swimmer, represented by her lawyer Merethe Stagetorn, by correspondence of 14<sup>th</sup> July 2004 advised, that she will not request the analysis of the B sample.
9. Following the request of the swimmer and the Danish Swimming Federation as well as FINA an immediate hearing before the FINA Doping Panel was scheduled and held on 20<sup>th</sup> July 2004. The hearing was attended by



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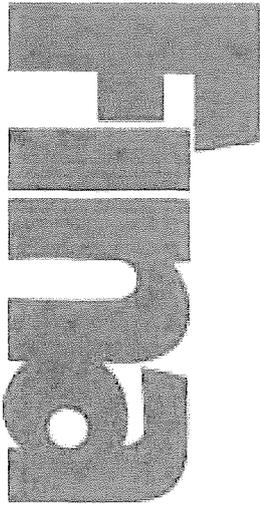


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- the swimmer Mette Jacobsen,
- her lawyer Merethe Stagetorn
- Ms Pia Holmen, Director of the Danish Swimming Federation
- Kim Jensen, Cand.Psych.Sportpsychologist, in care of the swimmer
- Dr. Allan Bundgaard, the doctor treating the swimmer

### III MOTIONS and CONTENTIONS

10. The swimmer informed that since 1993 she is suffering from asthma. Since then she is under the care and treatment of Dr. Bundgaard, who is the only doctor she is consulting. Only in exceptional situations, p.e. when she is travelling abroad and Dr. Bundgaard is not around, it may happen that she consults another doctor in case there is need.
  
11. The swimmer further informed that in February 2004 she was together with the national team of the Danish Swimming Federation in a training camp in Orlando (USA). She fell ill and the doctor being with the team diagnosed *pneumonia*. He ordered some medication which she was reluctant to take. She called Dr. Bundgaard and asked him, whether she might take it. Dr. Bundgaard expressed not to be able to give any comment without seeing her. Finally she was given and took *antibiotics*.
  
12. After having returned to Denmark she immediately consulted Dr. Bundgaard who advised to proceed with inhalation of *salbutamol*. (According to Dr. Bundgaard it is very difficult to clearly diagnose whether it is severe *asthma* or *pneumonia*).

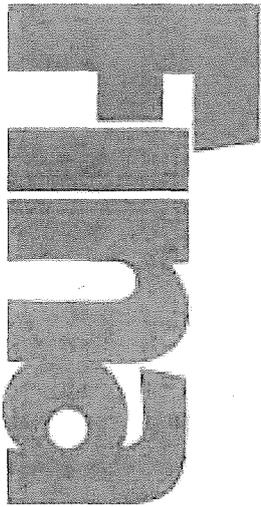


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13. The swimmer further informed that some weeks later, in April 2004, she had to drop out from a competition held in Vienna (AUT). She could not breathe while swimming and felt ill. She returned home on Friday, 23<sup>rd</sup> April 2004, and she consulted Dr. Bundgaard on Saturday, 24<sup>th</sup> April 2004 or Sunday 25<sup>th</sup> April 2004. Dr. Bundgaard advised to increase the inhalation of *salbutamol* and to come back to him after some days in case there would be no improvement.
14. In fact she did not feel better after some days and saw him again on Thursday 29<sup>th</sup> April 2004. Dr. Bundgaard decided to give her *antibiotics* again. He took a vessel from a bag, which he had with him. Out of the vessel he took several pills and put them in a white envelope. On the envelope he wrote the medication, according to which she had to take 3 x 1 tablets per day, and this for ten days.
15. A few days later she travelled together with the team to Madrid (ESP) where the European Championships were going to be held. As far as she remembers she continued to take the pills received from Dr. Bundgaard according to his instruction.
16. Finally the swimmer stated that she was informed in regard to the positive analysis of the sample delivered after the 200m butterfly race in Madrid when she was in a training camp in Sicily (ITA). She could not believe that she had tested positive and initially thought the analysis must have been carried out wrongly.
17. Dr. Bundgaard, who was heard as a witness, confirmed the information given by the swimmer. He especially confirmed that he on 29<sup>th</sup> April 2004 decided to start an antibiotic treatment of the swimmer, and that he handed *antibiotics* to



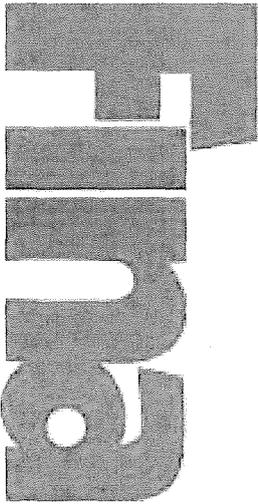
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her from his own small bag containing the most needed medication for acute medical treatment. The medication handed out to Mette Jacobsen had been bought by him before from a local pharmacy in Denmark. He counted the tablets (1 tablet x 3 daily, for ten days) and gave them to her in an envelope. For him it was a usual procedure. He also confirmed that he informed her to take all the tablets to complete the treatment.

18. Dr. Bungaard stated that it was surprising for him to hear from a doping test on Mette Jacobsen of 16<sup>th</sup> May 2004 containing *prednisone* and *prednisolone*. As it was him who almost all medicine did prescribe to Mette Jacobsen during all the years, *prednisone* could only appear in the test because he had given it to the swimmer. For him there is only one possibility, why the analysis of the sample, taken from Mette Jacobsen, showed the presence of *prednisolone* and *prednisone*. He must have given wrong tablets to her.
19. In the bag, from which he took the *antibiotics* for Mette Jacobsen he also carried *prednisone* in case of need for an acute treatment of asthma patients. He had decided to give Mette Jacobsen *antibiotics* but unfortunately he must have given *prednisone* tablets to her as a fault. He later found an irregularity in the quantity of this medicine in his bag.
20. The Panel drew attention to copies of documents submitted to the Panel according to which the swimmer on 24<sup>th</sup> June 2004 applied for a TUE in regard to "*Beta-2-agonists (salbutamol)*". This application was submitted to FINA. On the same day she also applied for a TUE in regard to "*Beta-2-agonists salbutamol, flixotid, flexonase, neophyllise*", but this application was submitted to the IOC. Both applications were accompanied by declarations of Dr. Bungaard, that the



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treatment with the medications mentioned, were to be administered as the correct treatment for the named medical condition. Neither the swimmer, nor Dr. Bundgaard nor the representative of the Danish Swimming Federation were able to explain why this difference occurred in the two applications.

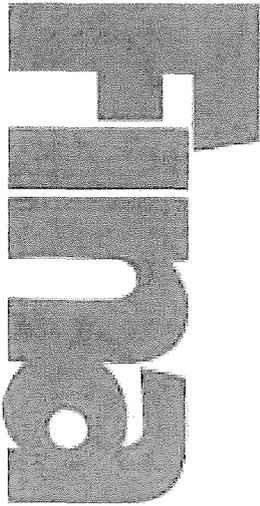
21. According to the copy of another document, submitted to the Panel, the IOC Medical Commission already on 15<sup>th</sup> June 2004 granted to the swimmer a TUE for use at the Olympic Games 2004 in Athens (GRE) permitting the use of the “*inhaled glucocorticosteroids salbutamol and fluticasone*”. However, no information could be obtained during the hearing in regard to this TUE and about an application for it.

#### **IV IN LAW**

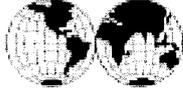
22. The Anti-Doping Rules approved by the FINA Congress on 11 July 2003 are to be applied.
23. Hearings and sanctions in regard to anti-doping rule violations occurring at a Competition conducted by a Continental Organisation recognised by FINA are under the jurisdiction of the FINA Doping Panel (FINA Rule DC 5.2.5).

#### **VI CONCLUSION**

24. Ms. Mette Jacobsen has committed an anti-doping rule violation under FINA Rule DC 2.1. The substances *prednisolone, prednisone* and *salbutamol* were found to be in her bodily specimen. Ms Mette Jacobsen is not contesting



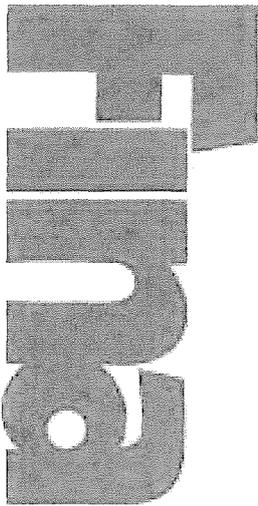
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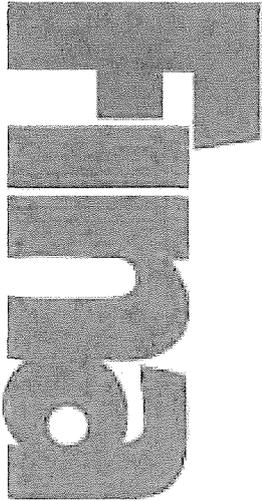
the findings of the laboratory. She is acknowledging the possibility of the presence of *prednisolone* and *prednisone* in her bodily specimen.

25. *Glucocorticosteroids* (*prednisolone* and *prednisone*) are listed under "Specified Substances" (FINA Rule DC 10.3) on the "prohibited list 2004" published by WADA and recognised by FINA (FINA Rule DC 4.1). According to FINA Rule DC 4.4 the swimmer had been granted a TUE in regard to *salbutamol*, however, she had not been granted by FINA a TUE for the use of *prednisolone* and *prednisone*.
26. According to medical expertise *glucocorticosteroids* are not performance enhancing. They are just a possibility to bring about a proper feeling of an athlete. FINA following the advice of the DCRB and the FINA Medical Committee recommended not putting *glucocorticosteroids* on the prohibited list of WADA at all. However, WADA did not follow that recommendation. They are on the list under "specified substances".
27. The swimmer is responsible for the prohibited substances *prednisolone* and *prednisone* found to be present in her bodily specimen (FINA Rule DC 2.1.1).
28. The swimmer is claiming that it was not her fault that the prohibited substances were found in her bodily specimen. She did not take them intentionally or by negligence. It must have happened due to a fault committed by Dr. Bundgaard. He must have given her wrong tablets, which she could not have known. However, the swimmer did not establish without any doubt that it was a fault of Dr. Bundgaard, why the prohibited substances got into her bodily specimen. This is only a possibility.



## VII SANCTION

29. The sanction to be imposed on the swimmer is “At a minimum, a warning and reprimand and no period of ineligibility from future competitions, and at a maximum, one (1) year’s ineligibility.” (FINA Rule DC10.3)
30. The anti-doping rule violation committed by Ms Mette Jacobsen is involving a “*specified substance*” according to FINA Rule DC 10.3. The prohibited substances found in the bodily specimen of the swimmer had no performance enhancing effect. The anti-doping rule violation to be considered is the first one committed by the swimmer.
31. It is not possible to eliminate or reduce the sanction provided for in FINA Rule DC 10.3 according to FINA Rule DC 10.5. The swimmer did not establish how the prohibited substances *prednisolone* and *prednisone* entered her system. She just indicated a possibility. She also did not establish that she bears no fault or negligence for the violation.
32. In regard to the sanction to be imposed on the swimmer the Panel considered:
- *glucocorticosteroids (prednisolone, prednisone)* are substances not performance enhancing,
  - FINA itself is not in favour of *glucocorticosteroids* being on the “*prohibited list*”,
  - the IOC Medical Committee granted a TUE to Ms Mette Jacobsen for the use of *glucocorticosteroids* at the Olympic Games 2004,



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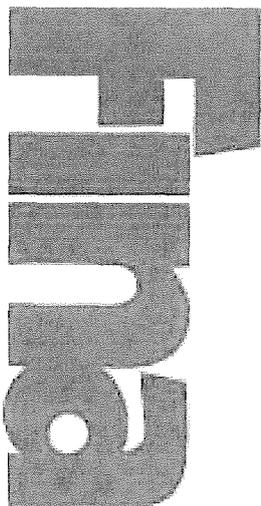
- on 24 June 2004 the swimmer has applied once more a TUE for the use of *glucocorticosteroids* to be granted by the IOC,
- most probably the swimmer would have been granted a TUE for the use of *glucocorticosteroids* by FINA if she would have applied well in time before 16<sup>th</sup> May 2004,
- the swimmer in all her long sportive career never was in question in regard to her integrity and honesty

33. Summarising these considerations the Panel felt it was sufficient to give the swimmer

### **a Warning and Reprimand**

and not to impose a period of ineligibility from future competitions.

34. The swimmer is also facing disqualification of the result achieved during the European Championships on 16<sup>th</sup> May 2004 in the event 200m butterfly and she will have to give back the bronze medal she won. However, But this was not to be decided by the FINA Doping Panel (FINA Rule DC 5.2.5 – 2<sup>nd</sup> sentence).



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## VIII THE COSTS

34. According to FINA DC Rule 12.2 the Danish Swimming Federation is obliged to reimburse FINA for all costs related to this case including laboratory fees.

Harm Beyer

Jean Lob

Farid Ben Belkacem

Signed on behalf of all three Panel Members

Harm Beyer

### Appeal Instruction

An appeal against this decision may be referred tot the Court of Arbitration for Sport (CAS), Lausanne, Switzerland not later than one (1) month after receipt of this judgement (FINA Rule C 12.8.3).