



Arbitration CAS 2011/A/2398 World Anti-Doping Agency (WADA) v. World Triathlon Corporation (WTC) & Timothy Marr, partial award of 19 August 2011

Panel: Mrs Maidie Oliveau (USA), President; Prof. Richard McLaren (Canada); Mr Christopher Campbell (USA)

Triathlon

Doping (amphetamine)

Characterization of Adderall

The component ingredients of Adderall include amphetamine, which is specifically included on the Non-Specified Stimulants list. Therefore, Adderall is a Non-Specified Stimulant.

The Appellant, World Anti-Doping Agency (WADA) is a Swiss private law foundation whose headquarters are in Montreal, Canada, but whose seat is in Lausanne, Switzerland. It is a global regulator whose self-proclaimed mission is

“To promote, co-ordinate and monitor the fight against doping in sport in all its forms”.

The First Respondent, World Triathlon Corporation (WTC) is a Florida based company that is the owner and organizer of Ironman and Ironman 70.3 branded events.

The Second Respondent, Mr. Timothy Marr (“Marr”), is a professional triathlete from Hawaii.

On 18 July 2010, Marr was the 5th place finisher at the 2010 Vineman Ironman 70.3 competition (the “Event”).

Following the Event, Marr was selected to provide a bodily sample. The A-sample was tested by the UCLA Olympic analytical Laboratory (the “Lab”) and that sample was reported positive for amphetamine.

At the request of Marr, the B-sample was opened and analyzed by the Lab. The B-sample confirmed the presence of amphetamine in Marr’s sample.

Marr was advised of these results by letter dated 7 September 2010 and was advised that he was declared ineligible for a period of two years beginning on 13 August 2010.

Marr challenged the decision and elected to appeal the decision before the American Arbitration Association (AAA).

In a decision dated 22 February 2011, the AAA Arbitrator ruled that Marr's period of ineligibility should run from 13 August 2010, until the date of the Award (the "AAA Decision") a period just over six (6) months. In the AAA Decision, the Arbitrator held that Adderall (the substance which the Athlete had ingested) was a Specified Substance according to the World Anti-Doping Code (the "Code"). In particular, the Arbitrator wrote

"Adderall's constituents (dextroamphetamine sulphate, dextroamphetamine saccharate, amphetamine [sic], amphetamine aspartate monohydrate and amphetamine sulphate) would have been included in this listing of "Non-Specified Stimulants" if Adderall was not to be treated as a Specified Substance".

It is this decision which is the subject of this Appeal.

On 5 April 2011, WADA filed its Statement of Appeal with the Court of Arbitration for Sport (CAS), requesting the CAS rule:

1. *The Appeal of WADA is admissible.*
2. *The Award rendered on 22 February 2011 by (...) [a] sole arbitrator of the American Arbitration Association in the matter of Mr Timothy Marr (arbitration No 74 190 00738 10 JENF) is set aside.*
3. *Mr Timothy Marr is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility (whether imposed to or voluntarily accepted by Mr Timothy Marr) before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*
4. *All individual competitive results obtained by Mr Timothy Marr from 13 August 2010, through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.*
5. *WADA is granted an Award for costs.*

On 15 April 2011, WADA filed its Appeal brief with accompanying Exhibits. The Request for Relief in paragraph 3 was amended as follows:

3. *Mr Timothy Marr is sanctioned with a period of ineligibility to be set in accordance with article 10.5.2 WTC ADR, between 12 and 24 months, starting on the date on which the CAS award enters into force. Any period of ineligibility (whether imposed to or voluntarily accepted by Mr Timothy Marr) before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*

On 12 May 2011, WTC filed its Answer and accompanying Exhibits. In its Answer, the WTC requested the CAS to rule:

1. *The Appeal of WADA is admissible.*
2. *The award rendered on 22 February 2011 by (...) [the] sole arbitrator of the American Arbitration Association in the matter of Mr. Timothy Marr (Arbitration No. 74 190 00738 10 JENF) is set aside.*
3. *Mr. Marr is sanctioned with a period of ineligibility to be set in accordance with Article 10.5.2 WTC ADR, between 12 and 24 months, starting on the date on which the CAS award enters into force. Any*

period of ineligibility (whether imposed to or voluntarily accepted by Mr. Timothy Marr) before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.

4. *All individual competitive results obtained by Mr. Timothy Marr from 13 August 2010 through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.*
5. *That WADA be granted an Award for costs solely from Mr. Timothy Marr. That WADA should not be granted an award for costs from WTC since, at all times, WTC has consistently advocated the positions expressed by WADA.*

On 13 May 2011, Marr filed his Answer Brief with accompanying Exhibits. In his Answer Brief, Marr requested the CAS make the following ruling:

1. *The Award by the AAA Arbitrator, rendered on February 22, 2011, was appropriate and should be affirmed based on any and all of the following:*
 - a) *Adderall is a Specified Substance under the WADA Prohibited List because none of Adderall's component substances are expressly listed in the S6.a list of Non-Specified Stimulants;*
 - b) *any ambiguities regarding the WADA Prohibited List should be construed against the drafter, WADA, and therefore, Adderall and/or its component substances should be classified as a Specified Substance; and*
 - c) *Adderall is a Specified Substance by implication because the WADA Prohibited List expressly lists several types of amphetamine substances as Non-Specified Stimulants, yet none of those amphetamine substances are contained in Adderall.*
2. *In the alternative, the period of ineligibility should be eliminated altogether because Mr. Marr has met the no fault no negligence standard under the WTC Anti-Doping Rules.*
3. *Mr. Marr is granted an award for costs.*

On 30 May 2011 the Panel having reviewed the parties' submissions, and correspondence, made a ruling that it would determine as a preliminary issue whether Adderall should be considered a Specified Substance.

On 14 June 2011, WADA submitted its Supplementary Submission, including the Affidavit of Dr Olivier Rabin, on the issue of Adderall as a Specified Substance.

On 1 July 2011, WTC submitted its Supplementary Submission stating inter alia, that it is "*in complete agreement with the position of WADA in this proceeding regarding the classification of Adderall as a non-specified stimulant expressly listed on the WADA prohibited list*".

On 5 July 2011, Marr submitted his Reply to WADA's Supplementary Submission.

Following receipt of the parties' supplementary submissions on the issues, the Panel deliberated and rendered this Partial Award.

LAW

Jurisdiction of the CAS

1. Article R47 of the CAS Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

2. The parties agreed that the CAS has jurisdiction to hear this dispute.
3. Pursuant to article 13.2.1 of the WTC Anti-Doping Rules for Ironman Triathlon Events Version 3.0 (January 2010) (the “WTC ADR”), in cases arising from competition in an Ironman Triathlon event or in cases involving members of the WTC’s registered testing pool, the decision may be appealed exclusively to the CAS in accordance with the provisions applicable before such Court.
4. Under 13.2.2(e) of the WTC ADR, WADA has the right to appeal to CAS against the decision rendered on 22 February 2011.
5. The parties agree that this Court has jurisdiction and the Panel is satisfied that it may hear and decide this Appeal.

Applicable Law

6. Article R58 of the CAS Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

7. Marr participated in the Event. In participating in the Event, Marr agreed to be bound by the WTC ADR.
8. The parties agreed that the WTC ADR are the regulations applicable to this procedure.

9. Article 4 of the WTC ADR

ARTICLE 4 THE PROHIBITED LIST

4.1 Incorporation of the Prohibited List

These Anti-Doping Rules incorporate the Prohibited List which is published and revised by WADA as described in Article 4.1 of the Code (...)

4.2.2 For purposes of the application of Article 10 (Sanctions on Individuals), all Prohibited Substances shall be "Specified Substances" except (a) substances in the classes of anabolic agents and hormones; and (b) those stimulants and hormone antagonists and modulators so identified on the Prohibited List (...).

10. S.6.a of the WADA Prohibited List:

PROHIBITED SUBSTANCES

S6. STIMULANTS

All stimulants (including both optical isomers where relevant) are prohibited, except imidazole derivatives for topical use and those stimulants included in the 2011 Monitoring Program.*

Stimulants include:

a: Non-Specified Stimulants:

Adrafinil; amfepramone; amiphenazole; amphetamine; amphetaminil; benfluorex; benzphetamine; benzylpiperazine; bromantan; clobenzorex; cocaine; cropropamide; crotetamide; dimethylamphetamine; etilamphetamine; famprofazone; fencamine; fenetylline; fenfluramine; fenproporex; furfenorex; mefenorex; mephentermine; mesocarb; methamphetamine(d-); p-methylamphetamine; methylenedioxyamphetamine; methylenedioxymethamphetamine; modafinil; norfenfluramine; phendimetrazine; phenmetrazine; pentermine; 4-phenylpiracetam (carphedon); prenylamine; prolintane.

A stimulant not expressly listed in this section is a Specified Substance.

b: Specified Stimulants (examples):

*Adrenaline**; cathine***; ephedrine****; etamivan; etilefrine; fenbutrazate; fencamfamin; heptaminol; isometheptene; levmetamfetamine; meclofenoxate; methylephedrine****; methylhexaneamine (dimethylpentylamine); methylphenidate; nikethamide; norfenefrine; octopamine; oxilofrine; parahydroxyamphetamine; pemoline; pentetrazol; phenpromethamine; propylhexedrine; pseudoephedrine*****; selegiline; sibutramine; strychnine; tuaminoheptane; and other substances with a similar chemical structure or similar biological effect(s).*

The Substantive Arguments

11. Marr's position can be summarized as follows:

- Adderall is a stimulant composed of (1) dextramphetamine sulphate, (2) dextroamphetamine saccharate, (3) amphetamine aspartate monohydrate, and (4) amphetamine sulphate – a mixture of specific types of amphetamines.
- None of the component ingredients of Adderall are listed on the Prohibited Substance list, under S6.a. Non-Specified Stimulants and thus it cannot be considered a Non-Specified Substance.
- If Adderall was not to be treated as a Specified Substance, its constituents would have been included in the listing of Non-Specified Substances.
- WADA is attempting to re-write the Prohibited List to match its own goals. The plain language of the Rules requires that a substance be specifically identified in order for it to be a non-specified substance.
- The WADA Code provides that any stimulant not expressly listed as a non-specified substance is a specified substance.
- There is no contention that the component parts of Adderall are not in the list of non-specified substances
- If the drafters had intended for the term amphetamine to include any substance where the active ingredient was listed regardless of any other ingredient that composed the drug, that could have been accomplished by a simple clarifying phrase.
- If an athlete were to examine the list of ingredient in Adderall and compare it to S.6.a of the WADA Code, the athlete would not see the ingredients listed and could therefore reasonably conclude that the drug Adderall was a specified substance.

12. WADA's and the WTC's positions are summarized below:

- Adderall literature explains that it is a "*mixed salts of a single-entity amphetamine product*".
- Adderall is a commercial multi-ingredient pharmaceutical preparation composed of two active ingredients: dexamphetamine (or dextroamphetamine) and amphetamine. Since these two molecules are positively charged naturally, it is necessary to add negatively charged chemical salts to chemically neutralize them and thus facilitate their biodistribution in the body.
- In the case of amphetamine, salts of aspartate and sulphate were selected by the manufacturer for the neutralization. Nevertheless, the active ingredient remains amphetamine.
- The Prohibited List names the active ingredients and do not reflect the associated chemical salts.
- Adderall contains amphetamine salts, hence amphetamine is the active molecule, and there is no ambiguity about the fact that amphetamine is listed as a non-specified stimulant.

- Sulphate, aspartate and saccharate are just salts which are added to amphetamine to facilitate biodistribution in the body.
- According to the literature provided by Marr, Adderall is composed of dextroamphetamine sulphate, dextroamphetamine saccharate, amphetamine aspartate monohydrate, and amphetamine sulphate capsules.
- In the stipulation of uncontested facts which the Athlete accepted in January of 2011, it states:
 - *That the UCLA Laboratory, through accepted scientific procedures and without error, determined the sample positive for the finding of amphetamine.*
 - *[...] this finding is consistent with the amphetamine known as Adderall.*
- Amphetamine is the active ingredient in Adderall, therefore it must be considered as a non-specified stimulant.

The Panel's Findings on the Merits

13. Adderall is described in Exhibit "B" of Marr's Answer Brief, product literature from the manufacturer of Adderall, as follows:

"Adderall XR ® (mixed salts of a single-entity amphetamine product) dextramphetamine sulphate, dextroamphetamine saccharate, amphetamine aspartate monohydrate, amphetamine sulphate capsules".
14. In the Warning section of this same literature, it further states,

"Amphetamines have a high potential for abuse; prolonged administration may lead to dependence. (...) Misuse of amphetamines may cause sudden death and serious cardiovascular adverse reactions".
15. The Martindale, a drug reference from the Royal Pharmaceutical Society of Great Britain classifies Adderall under the sub-heading "*Amphetamine Sulfate*", which is a subcategory of "*Amphetamine*". In addition, the Panel notes that Adderall has previously been found by a CAS panel to contain amphetamine, as included in the Non-Specified Substances list, in the case TAS 2007/A/1252.
16. The parties agreed in the Stipulation of Uncontested Facts and Issues that:
 - the Lab "*determined the sample positive for the finding of amphetamine which is prohibited in the Class of Stimulants on the 2010 WADA Prohibited List*";
 - the B-Sample "*confirmed the Positive Test for the presence of amphetamine (...)*"; and
 - a subsequent analysis "*revealed that the specimen contained 60% D-amphetamine and 40% L-amphetamine; and that this finding is consistent with the amphetamine known as Adderall*".
17. Furthermore, while the Panel is making no finding at this stage regarding Marr's intentions, fault or negligence, for the purposes of the Prohibited List, the panel finds that the bodily specimen contained amphetamine.

18. For all of the foregoing reasons, this Panel is of the opinion that the component ingredients of Adderall include amphetamine, which is specifically included on the Non-Specified Stimulants list.
19. Having made the determination that Adderall is composed of Amphetamine, which is a Non-Specified Stimulant, the Panel's discretion in determining Marr's period of ineligibility is based solely on the provisions of WTC ADR. A Non-Specified Stimulant cannot be a Specified Substance under the provisions of Article 4.2.2 for the purposes of the application of Article 10. Therefore, the "*Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances*" provided for in Article 10.3 may not be considered.

Conclusion

20. In summary, the Panel concludes that Adderall is a Non-Specified Stimulant.

The Court of Arbitration for Sport rules:

1. Adderall is a Non-Specified Stimulant as listed in the WADA Prohibited List.
2. The matter shall proceed, with the Panel to conduct a hearing to determine Marr's period of ineligibility.