Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2005/A/967 Alexis Chardenoux v/IWGA

ARBITRAL AWARD

rendered by

COURT OF ARBITRATION FOR SPORT

sitting in the following composition :

President: Mr John A. **Faylor**, Attorney-at-Law, Frankfurt am Main, Germany

Arbitrators: Mr Michele A. R. **Bernasconi**, Attorney-at-Law, Zurich, Switzerland
Mr Goetz **Eilers**, Attorney-at-Law, Frankfurt am Main, Germany

between

Mr Alexis **Chardenoux**, Niévroz, France
represented by Prof. Dr Renata Dendorfer, Attorney-at-Law, Munich, Germany

- Appellant -

and

The World Games Association ("IWGA"), Colorado Springs, USA
represented by Mr J. de Mooy LLM, Chairman of IWGA Anti-Doping Panel,
Steenbergen, the Netherlands

- Respondent -

I. Facts

1. The Parties to the Proceeding

1. The Appellant, born in 1978, is a Rock'n'Roll dancer and a registered member of The World Rock'n'Roll Federation ("WRRC"). The latter, with its administrative office in Munich, Germany, is an associated member of the International DanceSport Federation ("IDSF"). The IDSF, which is based in Lausanne, Switzerland, claims at present 81 national member federations, 53 of which are recognized by their respective National Olympic Committees. IDSF is a member of the General Association of International Sports Federations ("GAISF") and the Association of IOC Recognized Sports Federations ("ARISF"). IDSF's aim is to introduce dance sport as a medal sport in the Olympic Games.

2. The Respondent, hereinafter also referred to as "IWGA", was founded as a non-governmental international organization in 1981. It maintains its executive headquarters at Colorado Springs, Colorado (USA) and is comprised of international sports federations representing a broad range of sport disciplines, including dance sport organized under the IDSF. The IGWA administers a quadrennial and multi-disciplinary sports event, The World Games, which aspires to equal and exceed the importance of world championships organized by each federation, individually. Since its founding, the Respondent's membership has increased from 12 to 32 international sports federations. In order to become a member of the IWGA, an international federation must be recognized by the IOC and/or must be a member of the GAISF. An additional requirement is that the sport or sport discipline proposed for inclusion in The World Games by the federations is not currently on the Olympic program.

3. Both the Respondent and the IDSF have recognized The World Anti-Doping Code ("WADA Code") of The World Anti-Doping Association ("WADA") and work together in the fight against doping. In addition to being the chairman of the IWGA Anti-Doping Panel, Mr J. De Mooy, legal representative of the Respondent, is also the IDSF Anti-Doping Director.

2. Background

1. At The World Games 2005 held in Duisburg, Germany between 14 and 24 July 2005, Rock'n'Roll competition was featured for the first time alongside the IDSF's other dance

disciplines as a medal event. The Rock'n'Roll competition took place on 16 and 17 July 2005 under the rules and regulations of the WRRC.

2. On or around 13 July 2005, the Appellant submitted to the Respondent a signed "Acknowledgement and Agreement" as a prerequisite for registration in the 2005 World Games in which he confirmed the following:

> *"1. I have received information on the IWGA Anti-Doping Rules and was given the prior opportunity to review the IWCA Anti-Doping Rules.*
>
> *2 I consent and agree to comply with and be bound by all of the provisions and conditions of the WADA Anti-Doping Code, the IWGA Anti-Doping Rules and Anti-Doping Regulations of the International Federation administering my sport, including all amendments and International Standards as mentioned.*
>
> *3 I acknowledge and agree that IWGA and the International Federation administering my sport have jurisdiction to impose sanctions as provided for in the WADA Anti-Doping Code, IWGA Anti-Doping Rules and the Anti-Doping Regulations of the International Federations administering my sport.*
>
> *4 I also agree and accept in particular the exclusive competence of the Court of Arbitration for Sport in Lausanne, Switzerland, which will resolve definitely any dispute in accordance with the Code of Sport-Related Arbitration. Applicable law is Swiss Law"*

3. For a period of three years prior to The World Games 2005, the Appellant had been suffering from abnormal androgenic hair loss. Due to the Appellant's alleged inability to use other treatments, his personal physician prescribed the use of a medication bearing the name Propecia which contained the prohibited substance finasteride.

4. On 11 July 2005, five days prior to the Rock'n'Roll competition at The World Games, the Appellant sent an email to the IDSF Anti-Doping Director requesting the following information:

> *"I am Alexis CHARDENOUX from France. I attend the next World Games in Duisburg as competitor in dance Akrobatik Rock'n'Roll. [sic]*
>
> *I would like you to tell me the exact address where I have to send the document "TUE". Before I am going to send to you by fax the document.*
> *Thank your very much.*
> *Kind Regards, Alexis"*

5. On the same day, 11 July 2005, the IDSN Anti-Doping Director responded that

> *"If its used in the competition you must have a copy with you."*

6. On 13 July 2005, the Anti-Doping Director sent to the Appellant the following email:

> *"Dear Mr Chardenoux,*
>
> *Reference: your mail dated July 11th latest and my reply of the same day Today I received your TUE Standard Application Form.*
>
> *A few remarks:*
> *--The accompanying papers of your physician are in Frenche [sic] The IDSF and international dance sport uses the English language. Some of the phsicians in our commission will have problems with the French language. I don't think they will accept the Application as presented;*
>
> *--you informed me that the papers are to be used at the next world Games at Duisburg July 14-24. This seems to me impossible. To my knowledge [sic] the dancesport [sic] competitions are to be held this coming weekend. Your Certificate will not be ready this weekend. Without a proper issued Certificate the use of medicines, forbidden substances, is not allowed.*
>
> *I will do what I can but I don't promise you anything.*
>
> *kind regards,*
> *Ko de Mooy*
> *IDSF Anti-Doping Director"*

7. Pursuant to Articles 5.1 and 5.2 of the IWGA Anti-Doping Rules (the "IWGA Rules"), the authority to conduct anti-doping testing during The World Games lies with the Respondent and the Respondent's Medical Committee. The authority to grant standard Therapeutic Use Exemption Certificates ("TUE Certificates") remains, however, with the international federations pursuant to Article 4.4.2 of the IWGA Rules, i.e., in the case of the Appellant, with the IDSF. The IWGA Medical Committee selected the Appellant for anti-doping control on the evening of 17 July 2005 following his participation in Rock'n'Roll events on both 16 and 17 July 2005. At these events, the Appellant took third place in the competition and received the Bronze Medal.

8 The A-sample of the Appellant's specimen was analyzed by the Institut für Biochemie – Deutsche Sporthochschule Köln, a WADA-accredited testing laboratory in Cologne, Ger-

many. The adverse analytical findings of the Appellant's A-sample were reported to Respondent's Medical Committee on 19 July 2005. The analysis showed the presence of carboxy-finasteride, a prohibited substance listed under section S5, Diuretics and other Masking Agents, on the WADA Prohibited List 2005. The Appellant was not in possession of a TUE Certificate issued by the IDSF on the date of the testing.

9. Upon the reporting of these findings by the Cologne laboratory to the Respondent's Medical Committee on 19 July 2005, the latter informed the Respondent's Anti-Doping Panel pursuant to Article 8.1 of the IWGA Rules for consideration and decision. By order of the Respondent's president, the chairman of the Respondent's Anti-Doping Panel informed the Appellant and the IDSF of the adverse analytical finding, the presence of a rule violation and the athlete's right to request an analysis of the B-sample. Notice of the provisional suspension of the Appellant was issued on 21 July 2005 in accordance with Article 8.3.1 of the IWGA Rules.

10. On 30 July 2005, the IDSF Anti-Doping Commission issued a TUE Certificate in which it denied the Appellant the requested exemption to use Propecia containing finasteride, but issued an exemption for Appellant's continued use of a medication for migraine headaches.

11. In an email dated 3 August 2005, the Respondent reminded the Appellant that it had not received a request from him to analyze the B-sample and informed him that the notification issued to him on 21 July 2005 containing the analysis of the A-sample would be treated as the "final result of your anti-doping test at The World Games 2005". In the same email, the Respondent reminded the Appellant that it had not yet received "final information" from him whether he requested an oral hearing. The Respondent then informed the Appellant in the email of 3 August 2005 as follows:

> *"If you request an oral hearing you have to inform me at August 8th next at the latest to arrange for the hearing.*
>
> *The hearing will then be on Monday August 15th next at Duisburg. Time and place will be informed later. If you don't request a oral hearing as said afor the Panel will consider your case based on the documents received so far."*

12. In an email dated 5 August 2005, legal counsel for the Appellant questioned why the date for the oral hearing had been moved forward from 16 August to 15 August 2005 and requested announcement of the "time and location" of the hearing.

13. In its email response to the Appellant's legal counsel on the following day, 6 August 2005, the Respondent cited its earlier email of 3 August which asked for confirmation of the Appellant's request to hold an oral hearing and denied that it had ever suggested a hearing for 16 August 2005. The Respondent also named the time and place of the oral hearing, the members of the Chamber designated to hear the dispute and informed the Appellant of his right to be represented by counsel.

14. The oral hearing took place in Duisburg on 15 August 2005. Prior to the hearing, the Appellant submitted a defence brief in which he confirmed that he would attend the scheduled hearing, but reserved his right "to contest the procedure and other circumstances regarding the invitation, the Panel, the timing of this hearing, etc."

3. The Decision of the IWGA Anti-Doping Panel Chamber of 15 August 2005

1. On 15 August 2005, the hearing was held in Duisburg, the site of the 2005 World Games, before a Chamber comprised of three members of the IWGA Anti-Doping Panel.

2. In response to the Appellant's challenge that the Respondent's notice of the hearing violated Rule 8.4.7 of the IWGA Rules by having been made, not in writing, but by email, the IWGA Anti-Doping Panel Chamber (hereinafter "IWGA Chamber") held as follows:

> *"As the Anti-Doping Panel shall decide the means of communicating . . . and without no doubt the electronic mail is a means of communication, there is no violation of Article 8.4.7 of the IWGA Anti-Doping Rules."*

3. In response to the Appellant's challenge that, in addition to not being in written form, the notice did not comply with the "one week" minimum period pursuant to Article 8.4.7 of the IWGA Rules, in addition to not setting forth "the rights of the athlete for a due process" and for a "certain protection of his matters", the IWGA Chamber held as follows:

> *"Notice was given at Aug. 3rd. Date of hearing was scheduled for August 15th, what means, the minimum of one week time limit was not violated (see e-mail of Chair of Anti-Doping Panel Aug. 3rd). At Aug. 8th, there was only the confirmation of the date after the athlete's lawyer asked for a change of the date. There is no hint in the file,*

> *that Aug. 16th was scheduled before. The Chamber of Anti-Doping Panel had never any informations before the hearing date at Aug. 16th."*

4. The Appellant further protested that he was not provided enough time for preparation because his legal counsel would be "in vacation the week before the hearing". The Respondent violated procedure by not providing "sufficient arguments" for the Respondent's decision not to re-schedule the hearing. The IWGA Chamber held as follows:

> *"A change of the date would have caused difficulties for the Chamber to find a new date for a timely hearing, as all members of the Chamber – doing the job on a non-profit-basis – live at different locations all over Germany, while on the other side, only the vacation of the athlete's lawyer was affected."*

5. The Appellant further asserted that with regard to the IDSF Rules for TUEs, the application of which in the present case is uncontested by the Appellant, the IWGA Rules implicitly refer to the rules of the corresponding international federations. These, in the view of the Appellant, "become part of the jurisdiction of the IWGA Anti-Doping Panel . . . otherwise [the athlete] would be without legal protection of the IWGA Doping Rules." The IWGA Chamber held as follows:

> *"The IWGA-Rules do not refer to the TUE procedures of the International Federations. At no place of [sic] the IWGA-Rules is stated, that IF procedures do form the IWGA-Rules. The IWGA-Rules refer only to the World Anti-Doping Code."*

6. The Appellant pleaded that he was not able to submit the TUE application prior to 11 July 2005 because he lacked information regarding "the correct address of the IDSF Anti-Doping Commission". The Chamber further held that the correct address of the IDSF Anti-Doping Commission could be found on the website of the IDSF. The Appellant knew since March 2005 that he would participate at The World Games. This should have caused him to investigate the required information about the medical drugs he was using and to start the TUE procedure months in advance.

7. The Appellant alleges that he was not aware that a formal TUE Certificate was required until he received the email of 13 July 2005 from the IDSF Anti-Doping Director following his return from The World Games on 19 July 2005. Here, however, the Appellant contends that the Anti-Doping Director "kept the door open" for the issuance of the TUE Certificate by stating in the email:

> *"I will do what I can but I don't promise you anything."*

8. The Appellant further asserts that an earlier application was not possible because of the vacation of his personal doctor. In response hereto, the IWGA Chamber cited Article 3.1 of the IDSF TUE Procedure 2004 which states that the athlete "should" submit an application for a TUE not less than 21 days before participating in an event or competition. In this regard, the IWGA Chamber held as follows:

> *"The athlete knew since a long time, he will attend the World Games in Duisburg as a competitor. When he knows his medical doctor is in vacation, he has to apply for the TUE at a time, all this facts – medical doctor's vacation, time for the anti-doping –commission to decide – have to be considered. The athlete could have informed himself by reading the WADA Information, e.g. "Questions and answers- Therapeutic Use Exemptions". WADA also refers to 21-days time limit before participating in an Event or competition. Beside this, the athlete's doctor was in vacation June 26th till July 10th. Although the signature of the doctor date was signed before July 10th."*

9. The Appellant further submitted that he had no certainty and no clear rules to follow in order to speed up the application process or to apply for an "urgent and intermediate decision only applicable for The World Games." For this reason, in the view of the Appellant, the rules are null and void. The IWGA Chamber held as follows:

> *"The Rules are clear and understandable. The factor of time was caused by the athlete. If he would have applied for a TUE within a minimum of 21 days before the competition starts (16th of July) – deadline was June 25th – there is no doubt to the chamber of anti-doping panel of reaching a clear decision* [sic] *in time. To apply for a TUE at July 11th – 5 days before the day of competition – seems to be a special kind of negligence."*

10. The Appellant further submitted that the Anti-Doping Director of the IDSF, Mr de Mooy, and Dr Carlos Wollein, a member of the IDSF Anti-Doping Commission responsible for WRRC,

> *" . . knew about the fact that the Athlete Alexis Chardenoux were* [sic] *under therapeutical treatment with potential prohibited substances. Both also knew that Alexis Chardenoux participates in the Dance Competition of the World Games. Both let the Athlete in the status to believe that he undertook all necessary and relevant steps with respect to the Anti-Doping regulations. This kind of treatment is unfair and especially misleading for the Athlete. It violates the principles of fair treatment and Due Process and is therefore illegal."*

In response hereto, the IGWA Chamber held as follows:

> *"The Chamber cannot see a violation of the principles of fair treatment and Due Process if the athlete missed the time-limit for the apply of a TUE* [sic] *while Mr. de*

Mooy tried to speed up the process of decision of the anti-doping-commission, but failed to do so "

11. After all of the above, the Chamber concluded that:

"There is no excuse of Alexis Chardenoux not to present a valid TUE during the games. It is the fault (negligence) of the athlete, to apply for a TUE only a few days before attending the competition of the World Games."

"The adequate sanction for this anti-doping rule violation is a period of ineligibility of Word Games [sic] *2005 according to article 10.3 of the IWGA Anti-Doping Rules.*

The case will be handed over to the international dance sport federation for further handling and decision."

12. The ruling of the IWGA Chamber was as follows:

"1. the athlete is ineligible for the rock'n'roll-contests
2. disqualification of the results in the rock'n roll-contests including forfeiture of all medals, points and prizes
3. the athlete shall carry the costs of an amount EURO 2 000,00 of this case

4. The Appellant's Statement of Appeal and his Appeal Brief

1. On 23 September 2005, the Appellant filed his Statement of Appeal against the decision of the IWGA Chamber dated 15 August 2005. The decision had been served upon the Appellant on 3 September 2005.

2. In his Statement of Appeal, the Appellant also petitioned the CAS pursuant to Art. R48 of the Code of Sports-related Arbitration ("the Code") to stay the execution of the IWGA decision until the issuance of an award by the CAS Panel. Appellant's request for a stay was denied by the Deputy President of the Appeal's Arbitration Division by an order dated 21 October 2005.

3. After requesting and being granted from CAS an extension for submission of his Appeal Brief, the Appellant filed his Appeal Brief pursuant to Art. R51 of the Code on 19 October 2005. The Appellant repeated the grounds on which his personal physician advised the use of *finasteride*. If the treatment with *finasteride* had been stopped, so his physician, the risk of sudden hair loss and its psychological consequences could not be excluded.

4 The Appellant again cited the reasons for the submission of his TUE application on 11 July 2005, namely the vacation of his personal physician and his inability to locate the correct address of the IDSF Anti-Doping Commission.

5. Both in the Appeal Brief and also during the oral hearing in Lausanne on 14 February 2006, the Appellant emphasized that he understood the advice of the IDSF Anti-Doping Director in his email of 13 July 2005 to mean

> *"... it is only necessary to take the TUE application form with him to the competition in Duisburg. He [the Appellant] was not aware at this time that he needed a formal certificate as it was later announced by Mr. de Mooy in his further E-mail dated 13 July 2005."*

6. This responding email of 13 July 2005 from the IDSF Anti-Doping Director was not opened by the Appellant because he had already left his office that evening and had already departed France the next day, 14 July 2005, for Duisburg. The Appellant read this email only on 19 July 2005 after his return from the competition.

7. The Appellant acknowledges that the IDSF Anti-Doping Director forwarded the TUE application to the members of the IDSF Anti-Doping Commission immediately on 13 July 2005, informing them that the Appellant intended to participate in The World Games in Duisburg and wanted "to use the certificate the coming weekend". In this telefax, the IDSF Anti-Doping Director asked for a decision "as soon possible" and for a "soonest" professional opinion, while also cautioning the members of the Commission that the issuance of the certificate "seems impossible to me as I told the athlete". The Appellant points out that the same telefax was sent to Dr Carlos Wollein, "the official medical doctor of The World Rock'n'Roll Confederation" responsible for all athletes of the WRRC.

8. In light of the foregoing, the Appellant emphasizes that, on the basis of this telefax information of 13 July 2005, both the IDSF Anti-Doping Director and Dr Carlos Wollein had knowledge that the Appellant was using a prohibited substance on the Anti-Doping List of the IDSF. Both were also aware that the Appellant intended to participate in the 2005 World Games in Duisburg without possessing the necessary TUE Certificate. Both the IDSF Anti-Doping Director and Dr Wollein were present "from the beginning of the competition day" of the dance sport competition and the 2005 World Games, but failed to inform him that participation in the competition would constitute a doping violation.

9. The Appellant alleges that he asked Dr Wollein on the morning of the first day of competition, 16 July 2005, whether everything "was proper and in order regarding his TUE application". The latter, according to the Appellant, answered that "the file has been sent late, but just in

time and that everything is o k. insofar." The Appellant offered the testimony of Dr Wollein at the hearing on 14 February 2006.

10. The Appellant further alleges that Mr Wolfgang Steuer, president of the WRRC, received no warning from the IDSF Anti-Doping Director that the Appellant was taking a prohibited substance and would participate in the 2005 World Games.

11. For the remaining part, the Appellant repeats in his Appeal Brief the procedural challenges raised before the Chamber of the IWGA Anti-Doping Panel regarding the insufficient preparatory time, improper scheduling and noticing of the hearing before Chamber on 15 August 2005. In particular, the Appellant cites the email of 6 August 2005 from the Respondent which confirmed his earlier email of 3 August 2005 stating that the hearing would be held on 15 August 2005 in Duisburg. In its confirmatory email of 6 August 2005, the Respondent designated the starting time and the location of the hearing in Duisburg and also the persons who were designated to constitute the deciding Chamber. The Appellant alleges that because 6 August 2005 was a Saturday, not a working day, the notice must be deemed as having been received by the Appellant on Monday, 8 August 2005. As a result, the receipt of the notice and the date scheduled for the hearing did not comply with Article 8.4.7 of the IWGA Rules which requires that the athlete be given a one week notice "as minimum" prior to the date of the hearing. The date of the notice and the date of the hearing, in the interpretation of the Appellant, are not to be included in the calculation of the one week period. The Appellant asserts that the denial of the required one week minimum notice period violated "the principles of fair treatment and honesty" and the basic principles of "due process".

12. The Appellant further challenges the legality of the IDSF TUE Procedure 2004, citing the "legal uncertainty" regarding the process of granting the TUE.

> *"These rules do not include any time limit for the granting process, any procedural steps, any protection of the applicant's rights or any rules for an intermediate urgent proceeding . . . Insofar, the IDSF TUE Procedure Rules violated principles of Due Process and the principles of fair treatment, honesty and ethics as described in the IWGA Anti-Doping Rules, the World Anti-Doping Code and as they are basis in all relevant jurisdictions."*

13. The Appellant further asserts that the findings of the IWGA Chamber regarding the negligence of the Appellant must be reversed. In addition to the arguments raised by the Appellant before the IWGA Chamber, the Appellant asserts that the application procedure for a TUE

was "very new for the athletes of the WRRC". The Chamber did not take into consideration that

> *". . . the Appellant is not a professional athlete, but doing his job on a non-profit basis as amateur dancer. . The athlete is in the world ranking of Rock'n'Roll on place 3 which means on the top of the athlete's ranking. This needs an efficient and continuous training all over the week and on the weekends which must be coordinated with the available hours of his partner."*

14. Based upon the Appellant's full-time employment schedule and his training requirements, the Appellant concludes that

> *"it is very well an excuse that an athlete does not consider all the Anti-Doping rules which are legally complex and hard to understand for a non-legal person months or weeks before the competition".*

15. Citing Article 3.1 of the IDSF TUE Procedure, the Appellant emphasizes that the 21 day filing requirement is not a "must" provision, but states merely that "the athlete should submit his/her application not less than 21 days prior to participating in an event or competition." The Appellant could not meet this requirement because his medical doctor was on vacation. This fact was not taken into consideration by the IWGA Anti-Doping Chamber.

16. The Appellant contends that he was misled by the "reactions" of the IDSF Anti-Doping Director because he received on 11 July 2005 an email which was unclear in its wording and which caused him to believe that it was enough to take a copy of the TUE application with him to the Duisburg World Games. Indeed, the Appellant showed this copy during the doping test. The Appellant did not receive, and cannot be held responsible for the fact that he could not read the IDSF Anti-Doping Director's email of 13 July 2005 in which he stated that

> *"Your Certificate will not be ready this weekend. Without a proper issued Certificate the use of medicines, forbidden substances, is not allowed."*

The email was sent to his place of employment late after his departure; 14 July was a national holiday in France and he was already enroute on this day to Duisburg.

17. Finally, the Appellant relied on the statement made by "the person he trusted most", Dr Wollein, in response to his question whether everything was in order with his TUE application. This was confirmed. The Appellant could also trust that the IDSF Anti-Doping Director would have informed him if he "was in danger regarding a doping violation during The World

Games." In the view of the Appellant, an athlete must be excused if he receives information that "everything is o.k." and if he does not receive a prior warning by the responsible officials.

18. In addition to asserting that bias played a role in the decision taken by the IWGA Chamber, the Appellant cites the wording of the Chamber's decision of 15 August 2005 with regard to the Appellant's ineligibility.

> *"this wording is unclear, misleading and incomplete. Which kind of contests has been decided by the Chamber? Which kind of medals, points and prizes have been disqualified? What is the reasoning for the amount of the Euro 2.000,00 "*

19. In conclusion, the Appellant raises the following motions for relief:

(1) to set aside the decision of the IWGA Anti-Doping Panel Chamber dated 15 August 2005, and

(2) to decide that the Appellant is not ineligible for the Rock'n'Roll contest as ruled by the IWGA Anti-Doping Panel Chamber, and

(3) to decide that the Appellant is not disqualified of the results in the Rock'n'Roll contest during The World Games 2005, and

(4) to hold that Appellant did no violate the IWGA Anti-Doping Rules and/or the corresponding IDSF Anti-Doping Rules, and

(5) to impose all costs of the arbitration proceedings, including the costs as ruled by the IWGA Anti-Doping Panel Chamber and the costs of this appeal procedure to the Respondent

5. Answer of the Respondent

1. On 20 December 2005, after requesting and being granted an extension for the submission of its Answer from CAS, the Respondent filed its Answer to the Appellant's Appeal Brief.

2. In addition to confirming the sequence of events leading up to the hearing before the IWGA Chamber on 15 August 2005, the Respondent asserts that it is clearly known by the athletes, or "should be known by the athletes", on the basis of the information provided by the Respondent at its website, that without an issued TUEC, the use of prohibited substance in competition is not permitted. The proper procedure for obtaining a TUE Certificate is outlined in Article 4.4 of the IWGA Rules. Although it is the policy in most sports, including dance sport, to permit the use of certain medicines for athletes "really in need of such medicines for health reasons", the use of finasteride to prevent hair loss has not been exempted by the medical ex-

perts of the IDSF Anti-Doping Commission. Therefore, the use of finasteride has not been in the past and will not be permitted in a TUE Certificate issued by the IDSF.

3. The Respondent further asserts that the Appellant's excuse for not being able to submit his TUE application prior to 11 July 2005 is "utterly nonsense". All relevant information regarding the application procedures for a TUE Certificate, including the correct address of the Anti-Doping Director, were available on the IDSF website. The Appellant could and should have applied for a TUE Certificate exempting the use of his medicines already in Autumn 2004 and not just one week prior to the start of The World Games. The fact that the statement of his personal physician was issued in the French language is further evidence of the Appellant's negligence. The Respondent claims to have correctly informed the Appellant on 13 July 2005 that "without a properly issued Certificate the use of medicines, forbidden substances, is not allowed." The return email on 13 July 2005 was sent to the same address from which it came. If the Appellant did not receive this mail in time, "then this is totally for his own account". The Respondent's application was "too late in every respect."

4. Mr J. de Mooy was present in his capacity as chairman of the IWGA Anti-Doping Panel only "part-time'" during The World Games. Mr de Mooy had "not the slightest idea that the Appellant was competing on Sunday, 17 July 2005", and that he was selected for anti-doping testing by the IWGA Medical Committee on that day. The Respondent continues,

> *"de Mooy knew that Chardenoux applied for a TUE Certificate but de Mooy was not aware that Chardenoux was using his medicines during that particular weekend. The information given by de Mooy to Chardenoux earlier that week that the use of medicines was not allowed unless a proper TUE certificate was issued, was sufficient. The statement of Chardenoux that de Mooy or any other member of the IDSF Anti-Doping Commission, should have warned Chardenoux at the competition venue that Chardenoux could be in danger of participating without a certificate is missing a proper foundation. De Mooy has no such duty and/or authority in neither IWGA Anti-Doping Rules nor the IDSF Anti-Doping Code. In fact by doing so as suggested by Chardenoux would have breached the rules of anti-doping control. The Chair of the IDSF Anti-Doping Commission has no authority to intervene in or during competitions. The athlete was given sufficient information to make his own decision and take his own responsibility according to art. 2.1.1 of the World Anti-Doping Code (WADC).*

5. The Respondent further asserts that it is the athlete who is primarily responsible for obtaining information regarding the substances which he is taking and their permissibility under the applicable IWGA Rules. "The obligation to inform can never be the duty of the international

federation." The international federation must cooperate in providing the information, but it can never relieve the athlete of his "own and original" personal responsibility imposed by art. 2.1.1 of the IWGA Anti-Doping Rules.

> *"An athlete has to simply make him/herself familiar with the instructions or ask for those when they cannot find it. Chardenoux did nothing of this at all. Millions of athletes all over the world are successfully dealing with the problems of anti-doping, but Chardenoux could not find the address, not even within more than one year, where to send his application"*

6. The Respondent asserts that a rescheduling of the hearing date agreed with the Appellant by email on 5 August 2005 was not possible, because the majority of the members of the Chamber could not arrange for a different date in their respective calendars. Despite the vacation of the Appellant's legal counsel in Ireland, she offered in her email of 5 August 2005 to "work on the file during the upcoming week". The Appellant's legal counsel was not hindered in her preparation of the case.

7. The Respondent asserts that the Appellant is incorrect in alleging that the notice of the hearing must include also the place and time of the hearing. Art. 8.4.7 in conjunction with art. 8.4.3 provide clearly that the Anti-Doping Panel Chamber meets at the location of the Games.

8. The Respondent further asserts that the Appellant's right to a fair hearing, including his right to due process, has not been violated. On 3 August 2005, the Appellant was reminded again by email that he had still not requested an oral hearing. In this email the Appellant was already informed that, subject to his confirmation by no later than 8 August 2005, the hearing would take place

> *". . . on Monday, August 15th, next at Duisburg. Time and place will be informed later "*

9. On 5 August 2005, the Appellant requested such an oral hearing by email of his legal counsel. Despite the Appellant's confusion with regard to 16 August or 15 August as the date of the hearing, the Appellant confirmed 15 August 2005 as the date of the hearing and requested "immediately" specific information as to starting time and location.

10. With regard to the issue of fault or negligence, the Respondent alleges that the Appellant failed to understand that the principles of strict liability (Art. 2.1.1 of the IWGA Rules and the WADA Code) and the rules of prima facie evidence (Art. 3.2.1 of the IWGA Anti-Doping

Rules) find application in the case at hand. The mere fact that the Appellant did not know where to send his TUE application on 11 July 2005, five days prior to the start of the event, makes it completely clear that the Appellant never showed any interest at all in anti-doping and anti-doping procedures.

11. In conclusion, the Respondent requests that the CAS dismiss the Appellant's appeal and confirm the decision of the IWGA Chamber.

6. The Testimonies of Dr Carlos Wollein and Mr Wolfgang Steuer taken at the Hearing on 14 February 2005.

1. At the request of the Appellant, a hearing was held before the CAS Panel on 14 February 2006 in Lausanne which was attended by the Appellant, personally, and his legal counsel. The Respondent was represented by the Chairman of its Anti-Doping, Mr J de Mooy. The parties summarized the pleadings from their respective briefs submitted during the course of the proceedings.

2. On the day before the hearing, the CAS Panel received by telefax affidavits in lieu of oath from both Dr Carlos Wollein and Mr Wolfgang Steuer, both of whom were named as witness by the Appellant. Because they were unable to attend the hearing on 14 February 2006 *in persona*, the Appellant arranged to have both witnesses available for questioning by means of a conference call facility. Both witnesses were, individually, conferenced into the hearing, instructed with regard to their obligation to tell the truth, and questions were raised to each of the witnesses by the parties and the CAS Panel.

3. Both in his written affidavit received by the CAS on 13 February 2006 and confirmed in oral testimony during the conference call during the hearing, Dr Wollein stated that he could not remember meeting the Appellant on the morning of 16 July 2005. This meeting, however, "could not be excluded". Before the start of competition on that day, Dr Wollein was informed by a member of the WRRC that Mr de Mooy was looking for him. Shortly thereafter, he met with Mr de Mooy who asked him whether he had received a telefax from him. After responding that he had not received such a telefax, Mr de Mooy, without informing him in detail regarding the content of the telefax, stated merely that he (de Mooy)

> *". . . needs my opinion as member of the Anti-Doping Commission regarding an application for an exemption."*

4. After the competition on 16 July 2005, Dr Wollein conferred with his wife regarding the telefax and learned from her that it had indeed been received shortly before their departure. Upon returning to his hotel in the evening, he was confronted "for the first time" with the medication taken by the Appellant. After establishing that the Appellant's application for the TUEC had been sent directly to the IDSF for the attention of Mr de Mooy as chairman of the IDSF Anti-Doping Committee, Dr Wollein stated:

> *"The correspondence was in French language as well as the description for the medication. I informed immediately some members of the chairmanship of the WRRC who already state [sic] in the lobby of the hotel regarding the possible problems. At this occasion I also met Alexis. In order not to cause any frustration after the first day of the competition I told him that Mr. de Mooy has received his application in time."*

5. Upon questioning by the Panel, Dr Wollein was not able to recall whether he told the Appellant at this meeting that "everything is o.k. insofar". Dr Wollein also confirmed that he was unaware at this time that finasteride was a prohibited substance published in the Anti-Doping List.

6. In his written affidavit received by the CAS on 13 February 2005, Mr Wolfgang Steuer, President of the WRRC, stated that he did not receive any "warning or hint" from Mr de Mooy prior to the competition in Duisburg on 16 July 2005 "regarding the doping problem of the Appellant." Upon questioning by the Panel, the witness stated that no one knew that a TUE Certificate was required. In his words, "everyone thought the doctor's statement, which the athlete submitted at the time of testing, was sufficient."

7. During the hearing, the Appellant confirmed that he had since stopped the use of finasteride and had commenced using an alternative medication against hair loss which was not listed in the 2005 Anti-Doping List.

II. The Law

1. Jurisdiction of the CAS; Appointment of the Panel

1. The jurisdiction of the CAS has been agreed by the parties in the terms of the Order of Procedure and reaffirmed in the hearing of 14 February 2006. The jurisdiction of the CAS is also established in Article 13.2.1 in conjunction with Article 8.1.3 of the IWGA Rules. As a prerequisite for participation in the 2005 World Games, the Appellant also submitted to the jurisdiction of the CAS in the terms of his "Acknowledgement and Agreement" dated 13 July 2005.

2. In his Statement of Appeal dated 23 September 2005, the Appellant chose Mr Michele Bernasconi as his arbitrator; by letter to the CAS dated 22 October 2005, the Respondent appointed Mr Goetz Eilers as its arbitrator. On 8 November 2005, the CAS notified the parties of the formation of the Panel and that Mr John A. Faylor had been appointed as its President.

2. Applicable Law

Pursuant to Art. R58 of the Code, the Panel will decide the dispute pursuant to the provisions of the IWGA Rules and Swiss law. With regard to TUEs, Article 4.4.2 of the IWGA Rules provides that athletes, prior to their participation in The World Games, must obtain a TUE from their respective IF. Hence, in the case at hand, the rules applicable to the issuance of the Appellant's TUE shall be governed by the IDSF TUE Procedure 2004.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

3. The Merits

A. The Doping Violation

1. It is undisputed by the Applicant that the prohibited substance, finasteride, was found in his A-sample. Following the disclosure of the Cologne laboratory's adverse analytical finding to the Respondent's Medical Committee, the Appellant did not request the opening of the B-sample. It is further undisputed that finasteride is a prohibited substance explicitly named under S5 (Diuretics and other Masking Agents) of the WADA 2005 Prohibited List. As a result, the presence of finasteride in the Appellant's specimen fulfilled the objective requirements under Article 2.1 of the IWGA Rules for a doping violation. This provision states as follows:

> ***2.1 The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's bodily Specimen.***
>
> *2.1.1 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 2.1*
>
> *2.1.2 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*
>
> ***2.2 Use or Attempted Use of a Prohibited Substance or a Prohibited Method.***
>
> *2.2.1 The success or failure of the Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was used or attempted to be used for an anti-doping rule violation to be committed.*

2. Article 4.4 of the IWGA Rules dealing with TUEs provides the following:

> *4.4.1 Athletes with a documented medical condition requiring the use of a Prohibited Substance or a Prohibited Method must first obtain a Therapeutic Use Exemption ("TUE").*

4.4.2 Athletes prior to their participation in the World Games must obtain a TUE from their respective IF (regardless of whether the Athlete previously has received a TUE at the national level). TUE's granted by IF shall be reported to the Athlete's National Federation and to WADA

4.4.3 Athletes participating in the World Games who do not have an abbreviated TUE, can request an abbreviated TUE to the IWGA Medical Committee for the duration of the World Games. IWGA shall obtain a written agreement with the IFs prior to the start of the World Games to resolve this delegation of authorization to the IWGA. All applications for standard TUE's should be addressed to the respective IF, including during the period of the World Games.

3. Article 9 of the IWGA Rules provides that "a violation of these Anti-Doping Rules in connection with an in-Competition test automatically leads to Disqualification of the individual result obtained in that Competition with all resulting consequences, including forfeiture of any medals, points and prizes."

4. Whereas Article 9 mandates the automatic disqualification of individual results, Article 10 addresses the sanctions on individuals and the disqualification of all of the athlete's individual results obtained in The World Games with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1. Article 9 and Article 10.1 of the IWGA Anti-Doping Rules deal, therefore, with two different subject matters: (1) the disqualification of individual results in the competition in which the anti-doping rule violation occurred and (2) disqualification of all individual results in the other Competition.

5. Importantly, under Article 10.1 of the IWGA Rules, the right of the athlete to establish that he or she bears "No Fault or Negligence" for the violation applies only with regard to the "other Competition" which is not related to the Competition in which the anti-doping violation occurred. Article 10.1.1 reads as follows:

"10.1.1 if the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete's individual results in the other Competition shall not be disqualified unless the Athlete's results in Competition, other than the Competition in which the anti-doping rule violation occurred, were likely to have been affected by the Athlete's anti-doping rule violation."

6. A literal reading of Article 9 leads inexorably to the conclusion that, given the adverse analytical finding following the A-sample testing (the Appellant waived his right to open the B-sample), the Appellant must automatically be disqualified from his third place ranking in the Rock'n'Roll competition at the 2005 World Games and must forfeit his bronze medal. The

IWGA Rules do not provide the accused athlete the right to raise a "No Fault or Negligence" defence to avoid disqualification in the competition in which the anti-doping rule violation occurred. This is a strict liability offence. The Appellant participated in no other dance sport competitions at The World Games 2005. This result follows from the *ratio legis* behind Article 9: Regardless of the fault or innocence of the athlete, it is unfair to the "clean" athletes, if an "unclean" athlete is permitted to benefit from his or her competitive results.

7. The IWGA Chamber ruled in Pt. 1 of its decision of 15 August 2005 that "the Athlete is ineligible for the rock 'n roll-contests." A review of the applicable provisions of the IWGA Rules reveals that "Ineligibility" is quite possibly – due to the poor drafting of Article 10.3 -- not a prescribed penalty within the IWGA's sanctioning system. The term "Ineligibility" is defined in Appendix 1 (Definitions) of the IWGA Rules as one of the "Consequences of Anti-Doping Rules Violations":

> *Consequences of Anti-Doping Violations. An Athlete's or other Person's violation of an anti-doping rule may result in one or more of the following:*
>
> *(a) Disqualification means the Athlete's results in a particular Competition or Event are invalidated, with all resulting consequences including forfeiture of any medals, points and prizes;*
>
> *(b) Ineligibility means the Athlete or other Person is barred for a specified period of time from participating in any Competition or other activity or funding as provided in Article 10.9*
>
> *(c) Provisional suspension means the Athlete or other Person is barred temporarily from participating in any Competition prior to the final decision at a hearing conducted under Article 8 (Right to a Fair Hearing).*

8. In reviewing the sub-sections under Article 10 (Sanctions on Individuals) of the IWGA Anti-Doping Rules, however, the reader will look far and wide for a sub-section 10.9. Upon questioning by the Panel during the hearing on 14 February 2006, the legal representative for the Respondent confirmed that an error in drafting the Rules had occurred. The correct reference should be to sub-section 10.3 of the IWGA Rules which had been drafted on the language of Article 10.9 of the WADA Code Both provisions deal with the scope of activities in which an athlete may engage after he or she has been declared ineligible. Article 10.3 of the IWGA Anti-Doping Rules reads as follows:

> *"No Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in the World Games or activity (other than authorized anti-doping education or rehabilitation programs) authorized or organized by IWGA or an International Federation Member. . . "*

9. Importantly, the IWGA Rules do not provide sufficient clarity on whether "Ineligibility" is established in the Rules as an additional sanction (next to Disqualification and Provisional Suspension) against an athlete who has committed a doping violation. The absence of a clear categorization of the "Ineligibility" sanction in the IWGA Rules must be evaluated against the background that the scope of the IWGA's sanctioning jurisdiction is restricted to the 10 day period of The World Games. This restricted timeframe was confirmed by the legal representative of the Respondent at the hearing on 14 February 2006. The World Games take place every four years. As a consequence, the only real and effective sanction which the IWGA may impose upon an athlete who has violated the IWGA Rules is one of disqualification for the term of the current World Games.

10. With regard to the Ineligibility addressed in Article 10.3, it could be argued that this sanction deals only with a period of ineligibility following The World Games which may be imposed by the athlete's respective IF. Without commenting upon the jurisdiction of the athlete's respective IF, however, the Panel is of the opinion that the sanction of "Ineligibility" is a necessary and valid sanction under the IWGA Rules if a doping violation is committed and adjudicated before an IWGA Chamber within the framework of the current World Games. Only in this case does the barring of the athlete's participation in the remaining competitions and events of The World Games make sense. To this extent, the Panel confirms the Ineligibility sanction imposed under Pt 1 of the IWGA Chamber's decision, but for purposes of clarity has chosen to expressly define the temporal scope of the sanction in harmony with the applicable provisions of the IWGA Rules. The Panel wishes, however, to call the Respondent's attention to the urgent need for further refinement of its Rules.

B. The Negligence of the Appellant

11. Although Article 2.1.1 of the IWGA Rules clearly provides that 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 2.1", the Panel takes the position that it is appropriate to address the presence of negligence both on the part of the Appellant and the Respondent in the case at hand

12. The Appellant has pleaded both in his Appeal Brief and at the hearing that neither the IDSF Anti-Doping Director nor Dr Carlos Wollein informed him that he was required to produce a TUE Certificate at the Rock'n'Roll competition on 16 and17 July 2005. Accordingly, the Appellant takes the view that he was the victim of the Respondent's negligence in the performance of its duties and obligations under the applicable anti-doping rules.

13. In response hereto, the Panel wishes to establish that the Appellant was clearly negligent in having taken the prescribed medication containing the prohibited substance finasteride without having first obtained a TUE Certificate. The taking of a prohibited substance without a TUE Certificate is prohibited by the IWGA Rules and the WADA Code. The Appellant could have confirmed the commission of the violation if he had conscientiously reviewed the relevant information provided in the websites of the IWGA and the IDSF. Obviously, the Appellant was aware that a problem existed in the use of the medication; otherwise, he would not have contacted the IDSF Anti-Doping Director by email on 11 July 2005. If he had read Section 2.1.1 of the IWGA Rules, he would have established beyond doubt that "it is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body."

14. Without wishing to comment upon the explanations submitted by the Appellant to excuse his delay in applying for a TUE Certificate, it should be obvious to any objective bystander that the submission of a TUE application three days prior to the start of the Rock'n'Roll competition poses insurmountable obstacles to obtaining a timely review of the requested exemption. Although Article 3.1 of the IDSF TUE Procedure 2004 provides that the athlete "should" submit an application for a TUE not less than 21 days before participating in an event or competition, it should be clear to any conscientious applicant who has properly informed him/herself of the procedure that a decision "in time", i.e., prior to start of the competition, will hardly be likely when the application is submitted so close to the start of competition. The Appellant should have been aware from the IDSF TUE Procedure 2004, which could easily be downloaded from the IDSF website, that the IDSF Anti-Doping Commission, the competent body to decide the application, would include at least three physicians, several of whom may be residing in different countries.

15. Moreover, a close reading of the Appellant's initial email to Mr de Mooy of 11 July 2005 does not permit the conclusion that Mr de Mooy clearly understood that the Appellant intended to

submit a TUE application. To the contrary, the Appellant requested in this email the exact address where he could send "the document TUE". Mr de Mooy's immediate response on the same day that

> "If its used in the competition you must have a copy with you"

permits the more likely interpretation that Mr de Mooy understood the document to be the TUE Certificate. Upon receipt of the Appellant's TUE application on 13 July 2005, Mr de Mooy immediately responded to the Appellant, informing him that the issuance of a TUE Certificate "seems to me impossible". The ISDF Anti-Doping Director further states in very clear language that "without a proper issued Certificate the use of medicines, forbidden substances, is not allowed".

16. The IDSF Anti-Doping Director cannot be held negligent in having dispatched this email to the same email address from which he had received the Appellant's previous correspondence. The Appellant provided him no alternative contact details, although the Appellant knew he would be departing France for Duisburg on 14 July 2005. Assuming the Appellant did not read the Anti-Doping Director's email of 13 July 2005, it is difficult to understand why the Appellant made no attempt to contact Mr de Mooy in the hours prior to the start of competition on 16 July 2005 in order to establish the status of his TUE application. The Panel concludes from the Appellant's conduct in the five days leading up to the start of competition that the Appellant either was or should have been aware of the risk to which he was exposed if he competed without a TUE Certificate. Nevertheless, he knowingly took this risk into account in entering the competition on 16 July 2005, assuming that he might not be called for testing.

17. Notwithstanding the Appellant's negligence, the Panel holds that the conduct of the IDSF Anti-Doping Director also evidences a degree of fault. Although the Appellant alleges not to have read Mr de Mooy's email of 13 July 2005, the Anti-Doping Director initiated measures with good intent on the same day to obtain a timely approval of the TUE application by the IDSF Anti-Doping Commission. On the one hand, the Director informed the Appellant on 13 July 2005 that he would proceed to process the application ("I will do what I can but I don't promise you anything"); on the other hand, it was clear to him that he had no expectation that the TUE Certificate would be issued prior to the start of competition. This is made abundantly clear, almost in apologetic form, in the Anti-Doping Director's letter to his fellow

Commissioners of 13 July 2005. The speed with which the Anti-Doping Director acted in the hope of obtaining the TUEC is laudable; on the other hand, it would have been fairer to the Appellant to have informed him unequivocally that there was no chance to obtain a Certificate and that his use of the prohibited substance without a properly-issued TUE Certificate in the competition on 16 and 17 July 2005 would constitute a doping violation.

18. Against the background of the IDSF Anti-Doping Director's candid assessment of the situation, but nevertheless having offered the Appellant the prospect of "doing what I can, but I don't promise you anything", the Panel takes the view that the Anti-Doping Director acted negligently by not having made the attempt to contact the Appellant prior to the start of competition on 16 July 2005 to inform him of the illegality of his actions and the probable consequences. The Panel does not share the IDSF Anti-Doping Director's view that he had "no such duty and/or authority" under the IWGA Rules or the IDSF Anti-Doping Code to inform the Appellant of the pending violation. Mr de Mooy assumed at the start of competition that the Appellant had received his email of 13 July 2005. Having initiated the TUE review procedure with the IDSF Anti-Doping Commission and having awakened the Appellant's expectation of a possible timely decision of his application, he assumed an implicit duty as initiator and overseer of the application process to protect the interests of both the Appellant, the Respondent and the IDSF by ensuring that the Appellant would not act on the basis of false, incomplete or misleading information.

19. The Panel finds no culpability in the conduct of Dr Wollein or Mr Wolfgang Steuer. Dr Wollein could not remember having met the Appellant in the hotel on the morning of 16 July 2005. In his written affidavit, he states clearly that he spoke with the Appellant on the same evening after he had read the file. At this point, however, the Appellant had already committed the doping violation. Dr Wollein could not remember having told the Appellant that "everything is o.k. insofar". Importantly, even if Dr Wollein and Mr Steuer had been informed of the Appellant's use of finasteride and the pending doping violation, neither of them could have competently advised the Appellant regarding the risk because neither of them were sufficiently informed of the status of finasteride and the prevailing practice of TUE commissions in the various IFs to prohibit the exempted use of finasteride. Mr Steuer was not even aware of the applicable procedure to obtain a TUE Certificate and assumed that the showing of an application form at the time of testing would suffice.

C. The Appellant's Procedural Challenges

20 The Panel follows the reasoning of the IWGA Chamber regarding the form of communication, the scheduling and noticing of the hearing on 15 August 2005.

21. The Appellant's attempt to invalidate the Respondent's notice of the date and place of the hearing in its email of 6 August 2005 on formalistic grounds is without merit. The Appellant overlooks the fact that his legal counsel confirmed the setting of the hearing date for 15 August 2005 and the city of Duisburg as the location of the hearing in her email of 5 August 2006. The Panel is unable to glean from the file any hint or innuendo that an earlier scheduling of the hearing on 16 August 2005 was discussed or suggested by the Respondent at any time. The Respondent had already announced the date of "Monday, August 15th, next at Duisburg" in its email of 3 August 2005. In this email the Respondent specifically requested to be informed "at August 8th next at the latest" to arrange for the hearing. The Appellant's email of 5 August 2005 responds to this email of 3 August. On the following day, 6 August 2005, the Respondent provided all additional details regarding the hour and location of the hearing, including the members constituting the Chamber, and confirmed the Appellant's right to be accompanied by counsel. The Panel finds no authority in the IWGA Rules which addresses the content of the notice of a hearing other than Article 8.4.7 of the IWGA Rules which states that the "IWGA Anti-Doping Panel shall determine the time and place for the hearing" and that, in a case to be decided after The World Games have ended, the athlete "must be given a one week notice as a minimum." These requirements were met by the Respondent.

22. In addition, Article 8.4.7 of the IWGA Rules provides that the IWGA Anti-Doping Panel decides the means of communicating the notice of the hearing "in its absolute discretion provided always that its decision must be based on a bona fide attempt to provide real and effective notice to the Athlete by the best methods possible under all of the circumstances". The parties had efficiently communicated with each other by means of email since 11 July 2005. Neither the Appellant nor his legal counsel had ever protested this form of communication in the Appellant's email exchanges with the Respondent. When the Appellant's legal counsel responded to the Respondent on 5 August 2005, she did so by means of email and admonished the Respondent to "correspond in the future directly also with me, using two email-addresses . . ". The Appellant cannot now challenge the validity of the Respondent's correspondence on the grounds that email is not a recognized form of written communication or that the opening

on 8 August of an email received on 6 August must be deemed to be a violation of the one week minimum notice period.

23. The Appellant's challenge to the IDSF TUE Procedure 2004 on the grounds that it violates the basic principle of "due process" by denying the Appellant "legal certainty" regarding the TUE procedure is also without merit. The IDSF TUE Procedure 2004 is based on procedures developed by the WADA for application in all relevant jurisdictions by the IFs and their national sport federations. The 21 day submission period set out in Article 3.1 of the IDSF Procedure, while containing a "should" qualification, serves to place the athlete on notice that, in order to be processed within a reliable time period, the application should be submitted by no later than 21 days "before participating in an Event or competition". Conversely, the athlete must assume that the submission of the TUE application less than 21 days prior to the Event or competition will indeed expose him to the risk that the application will not be decided in time. If this provision causes uncertainty on the part of the athlete, it is uncertainty created for the benefit of the athlete.

4. The Costs

1. With regard to the award of costs by the IWGA Chamber in its decision of 15 August 2005, the Panel sees no legal basis which permits a revision of the Chamber's cost decision based on the notion of shared negligence. Article 8.6.2 of the IWGA Rules provides that "if sanctions are imposed, the athlete shall pay the costs of the case".

2. With regard to the appeal proceedings before the CAS, the Panel cites Art. R65.1 of the Code, pursuant to which the fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS are borne by the CAS. In accordance with Art. R65.2 of the Code, the CAS shall retain the Court Office fee of CHF 500. Art. R65.3 of the Code requires the Panel to decide which party shall bear the costs or in what proportion such costs will be shared between them, taking into account the outcome of the proceedings as well as the conduct and financial resources of the parties.

3. The Panel has considered the application of the provision of Art. R65.3 of the Code and rules that, given the lack of clarity in the IGWA Rules with regard to the sanction of Ineligibility

and in the formulation of the award of 15 August 2005, each of the parties shall bear his/their own costs.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules:

1. The Appellant's motion on appeal to set aside the decision of the IWGA Anti-Doping Panel Chamber of 15 August is dismissed.

2. The decision of the IWGA Anti-Doping Panel Chamber of 15 August 2005 is to be supplemented in Pt. 1 and Pt. 2 with the following clarifying language:

   "1. The Athlete is declared ineligible for Rock'n'Roll competition for the entire term of the 2005 World Games held in Duisburg, Germany between 14 and 24 July 2005.

   2 The Athlete is disqualified of all results achieved in the Rock'n'Roll competition of the 2005 World Games held in Duisburg, Germany between 14 and 24 July 2005, in particular, his third place ranking and shall forfeit all medals received

3. This award is rendered without costs except for the Court Office fee of CHF 500 (five hundred Swiss Francs), which is retained by the CAS.

4. The Parties shall bear the costs which they have individually incurred in the present arbitration procedure.

Done in Lausanne, 5 April 2006

THE COURT OF ARBITRATION FOR SPORT

President of the Panel

John A. Faylor

Goetz Eilers
Arbitrator

Michele A. R. Bernasconi
Arbitrator