Tribunal Arbitral du Sport
Court of Arbitration for Sport

By fax

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Lausanne, 10 November 2011/WS/cm

Re: CAS 2011/A/2518 Robert Kendrick v. International Tennis Federation

Dear Sirs,

Please find enclosed the Arbitral Award, with grounds, issued by the Court of Arbitration for Sport in the above-referenced matter.

You will receive an original copy of the award, signed by all the arbitrators, in due course.

Please be advised that I remain at the parties' disposal for any further information.

Yours faithfully,

William STERNHEIMER
Counsel to the CAS

Enc.
c.c.: Panel

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2011/A/2518 Robert Kendrick v. ITF

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Graeme Mew, barrister-at-law in Toronto, Canada

Arbitrators: Mr Jeffrey G. Benz, attorney-at-law in Los Angeles, California, USA

The Hon. Michael J. Beloff Q.C., barrister-at-law in London, United Kingdom

in the arbitration between

ROBERT KENDRICK, USA
Represented by Mr Brent J. Nowicki, attorney-at-law in Buffalo, New York, USA and Mr Paul J. Greene and Ms Erin Berry, attorneys-at-law in Portland, Maine, USA

- Appellant-

and

INTERNATIONAL TENNIS FEDERATION, London, United Kingdom
Represented by Mr Jonathan Taylor, solicitor in London, United Kingdom

- Respondent-

1. THE PARTIES

1.1 The Appellant, Robert Kendrick ("Kendrick") is a 31 year old professional tennis player from the United States.

1.2 The Respondent, International Tennis Federation ("ITF") is the world governing body for the sport of tennis. Its responsibilities include the management and enforcement of the Tennis Anti-Doping Programme (the "Programme").

2. THE DECISION

2.1 Kendrick appeals a decision of the Independent Anti-Doping Tribunal of the ITF (the "ITF Tribunal") dated 29 July 2011 (the "Decision") imposing sanctions upon him for a doping offence.

2.2 The appeal is against the sanctions only.

3. FACTUAL BACKGROUND

3.1 Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

3.2 The facts in this case are straightforward and are not substantially in dispute.

3.3 Kendrick is an experienced 31 year old professional tennis player who was ranked in the top 100 in the ATP weekly rankings. He lives in Orlando, Florida, in the United States, but his tennis schedule requires him to travel internationally to compete in the top tennis events worldwide. He became a professional tennis player in 2000.

3.4 On 19 May 2011, Kendrick left his home in Florida to travel to Paris to participate in the Grand Slam French Open Championship (the "French Open") at Roland Garros. He arrived in Paris late the following morning and his first match was scheduled for 22 May 2011, just two days later.

3.5 Kendrick travelled to this tournament so close to his first competition date because his fiancée was very late in the term of her pregnancy with the couple's first child – she was 37 weeks pregnant - and he did not want to be away from her for longer than he was required to be. Kendrick was therefore keen to reduce his risk of suffering the negative effects of jetlag with respect to his participation in the French Open since he

had suffered episodes of jetlag arising from similar tight scheduling when he had competed in Barcelona and Munich earlier in 2011.

3.6 Sometime during the week of 9 May 2011, approximately a week prior to his departure for the French Open, Kendrick discussed his jetlag concerns with an acquaintance, Mr. Jim Rich ("Rich"), in the presence of his coach, Mr. Richard Schmidt ("Schmidt"), at Kendrick's home practice facility, the Winter Park Racquet Club in Florida, where Schmidt was the head teaching professional. Kendrick had known Rich for approximately four years. Rich was described as a US Tennis Association certified tennis teaching professional with over 30 years' experience who also coached at that facility.

3.7 During his discussions with Kendrick, Rich suggested that Kendrick should try a product called Zija XM3 ("Zija"). Rich also handed to Kendrick an unmarked package containing two Zija capsules. Rich represented to Kendrick that he had previously given the product to several other athletes to assist with jetlag problems and that he had always received positive feedback about their effect. Kendrick asked Rich if Zija contained anything that was illegal or banned and Rich assured him that it did not. According to Kendrick, Rich told him that Zija was "an all-natural and organic product from the Moringa tree." Rich also told Kendrick that he was not aware of any athlete ever having tested positive for a banned substance after taking Zija. Schmidt, Kendrick's long time coach, was present through this entire conversation and did not express concerns to Kendrick, although he did suggest to Kendrick that he should do Internet research on the product before taking it. Because Rich's wife was a distributor of Zija, Kendrick considered Rich a trustworthy source of information about Zija.

3.8 In his over 10 years on the professional circuit, Kendrick had been tested approximately 20-25 times prior to this episode without incident, so he was aware of his obligation to avoid ingesting prohibited substances and told us that, accordingly, he tried to fulfill it in this case. Kendrick also admitted at the hearing that he knew that nutritional supplements could be contaminated and could give rise to inadvertent positive tests for prohibited substances and that they "were a risk area."

3.9 Kendrick acknowledged having received a wallet card from the ITF containing information about the Programme and the Prohibited List and providing a telephone number for doping-related inquiries. He conceded, however, that he had not retained the card. There was testimony from Kendrick and other witnesses that athletes in ITF events generally did not pay much attention to the wallet card. The Panel must express their concern about this phenomenon which tends to undermine the fight against doping.

3.10 Kendrick was apparently not prepared to rely solely on Rich's representations and spent some time researching Zija on the Internet. Kendrick testified that he spent about 30 minutes on the Internet doing his research the first day, after returning from

the tennis facility, in trying to find an ingredient list for the product (in the proceeding below, Kendrick had estimated that he had spent an hour in this research). Kendrick also testified that he conducted further research the next day and "another day". The amount of time he claimed to have spent varied between his testimony before the ITF Tribunal and before us, but as will be plain from our decision below, the amount of time under any of his estimates was not considerable and, in our judgment, insufficient given what was at stake. Kendrick was apparently unsuccessful in his efforts to locate an ingredients list or otherwise determine the ingredients contained in Zija on the Internet.

3.11 As a result of his search for "Zija XM3 and Approved by World Anti Doping Agency", Kendrick located two web pages on the Internet that stated the following about Zija:

APPROVED BY THE
WORLD ANTI DOPING ASSOCIATION
and WORLD ANTI DOPING ASSOCIATION APPROVED

Can you strength train and condition using the XM3 drink without the worry of a governing body (NCAA, NFL, MLB, NBA, IOC)?

The answer is a resounding yes!!! XM3 is legal under all FDA regulations because it does not contain the alkaloids restricted by the Food and Drug Administration . . .

With all the scrutiny regarding vitamins, hormones and supplements in today's athletic world, you can relax and enjoy the Zija XM3 with the knowledge that we are concerned for your health and follow the strictest protocols for acquisition of ingredients and manufacturing.

XM3 is used as a training mainstay for many professional and amateur athletes. Names such as Anton Apollo [sic] Ono (Olympic speed skater), Monterio Hardesty (running back of Cleveland Browns), Chris Scott (offensive lineman for the Pittsburgh Steelers), and Tyler Smith (Former Tennessee men's basketball star) make the SM3 energy drink a daily part of their training regimen . . .

XM3 is energy enhancement, appetite suppression and nutrition formulated from safe and all-natural ingredients.

3.12 Kendrick also searched the web by searching in google.com the following search terms: "Zija", "banned substance", "approved by World Anti Doping Agency", "organic", "safe", "moringa", and "Apollo Anton Ohno."

3.13 As a result of finding the above websites, the claimed use of Zija by other high level athletes and his inability to discover anything negative about Zija, in particular that it contained banned or prohibited substances on the Internet, Kendrick concluded that it would be appropriate for him to take one capsule of the Zija that had been given to him by Rich in the unmarked package.

3.14 Kendrick apparently overlooked numerous websites that would have been featured on the first page of his searches using his search terms that could have alerted him to the significant issues with the Zija websites he did find. Specifically, there was evidence that Kendrick missed websites listing the ingredients of Zija which showed that labelled packages for Zija indicating the presence of dimethylpentylamine, the ingredient for which Kendrick ultimately tested positive, was disclosed. In addition, there were blogs that were apparent from Internet searches using the terms used by Kendrick indicating that there were serious issues with the various claims made by the two webpages found by Kendrick, including the claim – incorrect as it emerged - that USADA and WADA had approved Zija and that Apolo Ohno used Zija.

3.15 Mr. Taylor, for the ITF, suggested to Kendrick that he was resiling from evidence that he gave to the ITF Tribunal concerning an Internet article entitled "Zija – Why I Don't Like It". A link to this article showed up on a Google search for "Zija XM3". Before the ITF Tribunal, Kendrick said that while he recalled identifying the link to the article, he had not looked at the article itself. In his evidence to the Panel, Kendrick said that he had been nervous when he gave evidence to the ITF Tribunal. He testified that if he had in fact seen the link to the article, it would have raised a red flag and he was sure he would have followed the link to the article. Whichever the correct version of events, he, on his own admission, did not read the article to which a link was indeed available.

3.16 Following his arrival in Paris, Kendrick ingested one Zija capsule on 20 May 2011 with his lunch. Later that evening he also took Ambien, a prescription sleep aid. Kendrick knew he would be subject to in competition testing at the French Open but did not expect to test positive for a banned substance because, as a result of his research, he had no reason to believe that Zija contained any such substance.

3.17 Kendrick testified that at this time, due both to his fiancée being 37 weeks pregnant and to this being his swansong year on the tour, he had serious matters on his mind other than the tennis at hand, although he agreed that he nonetheless focused on competing the French Open.

3.18 On 22 May 2011, Kendrick played in his first round match in the French Open where he lost in four sets. Afterwards, Kendrick provided an in-competition urine sample. He did not disclose his use of either Ambien or Zija on the Doping Control Form which he completed at that time.

3.19 After being notified that his in competition urine sample had tested positive for the prohibited substance dimethylpentylamine aka methylhexaneamine or MHA, Kendrick, to his credit, promptly (within two days) accepted a voluntary suspension from competition, so that the ITF could embark on the proceedings that ultimately led to this appeal.

3.20 There is no dispute over whether or not Kendrick ingested Zija to enhance his athletic performance. The evidence was uncontroverted – and the ITF accepted - that Kendrick took Zija simply to counteract the negative effects of jetlag and he made some effort to determine that Zija did not contain prohibited substances, however deficient that effort might have been.

3.21 On 29 July 2011, a hearing took place in London before the Independent Anti-Doping Tribunal of the ITF, which heard from Kendrick (via videolink) and from Dr. Stuart Miller, the ITF Anti-Doping Manager. The ITF Tribunal also had before it affidavits from Jim Rich, Richard Smith and Kendrick himself. Following the hearing, the ITF Tribunal made the following determinations:

... the Tribunal:

(1) Confirms the commission of the doping offence specified in the Charge;

(2) Orders that Mr Kendrick's individual result must be disqualified in respect of the French Open 2011, and in consequence rules that the 10 ranking points and €15,000 in prize money obtained by him from his participation in that event must be forfeited;

(3) Orders further that Mr Kendrick be permitted to retain the prize money obtained by him from his participation in the subsequent UNICEF Open;

(4) Finds that Mr Kendrick has established that the circumstances of his doping offence bring him within the provisions of Article M.4 of the Programme;

(5) Declares Mr Kendrick ineligible for a period of 12 months, commencing on 22 May 2011, from participating in any capacity in any event or activity (other than authorised anti-doping education or rehabilitation programmes) authorised by the ITF or by any national or regional entity which is a member of the ITF or is recognised by the ITF as the entity governing the sport of tennis in that nation or region.

4. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

4.1 On 2 August 2011 Kendrick filed an appeal with the Court of Arbitration for Sport (the "CAS") against the decision of the Independent Anti-Doping Tribunal of the ITF dated 29 July 2011 (the "ITF Decision") pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code").

4.2 Pursuant to Article R52 of the Code, the CAS, with the agreement of the parties, proceeded in an expedited manner.

4.3 On 5 August 2011, in accordance with Article R51 of the Code and the procedural timetable agreed upon by the parties, Kendrick filed his appeal brief.

4.4 On 12 August 2011, in accordance with Article R55 of the Code and the procedural timetable agreed upon by the parties, the Respondent filed its answer.

5. THE CONSTITUTION OF THE PANEL AND THE HEARING

5.1 By notice dated 9 August 2011, the CAS notified the parties that the Panel to hear the appeal had been constituted as follows: Mr Graeme Mew, President of the Panel, Mr Jeffrey Benz and the Hon. Michael J. Beloff QC, arbitrators. The parties did not raise any objection as to the constitution and composition of the Panel then or at the hearing.

5.2 On 11 August 2011, an Order of Procedure was made (amended on 12 August 2011).

5.3 The Order of Procedure scheduled a hearing on 18 August 2011 in New York, NY, United States of America for reasons of urgency arising out of Kendrick's desire, if his appeal succeeded, to participate in the Grand Slam US Open Championship at New York, NY, from 23 August 2011.

5.4 On 18 August 2011, a hearing was duly held at the premises of the International Centre for Dispute Resolution, a division of the American Arbitration Association, in New York, NY..

5.5 The following persons attended the hearing:

For the Appellant: Mr Paul J. Greene, Mr Brent J. Nowicki and Ms Erin Berry, counsel for the Appellant
Mr Robert Kendrick, the Appellant

For the Respondent: Mr Jonathan Taylor, counsel for the Respondent
Dr Stuart Miller, ITF Anti-Doping Manager

5.6 The Panel was assisted at the hearing by Mr William Sternheimer, Counsel to the CAS.

5.7 At the hearing the Panel heard the detailed submissions of counsel as well as the evidence of the following witnesses:

- Kendrick, who testified on his own behalf concerning his background and experience as a tennis player, his knowledge of anti-doping measures, his use of Zija, the efforts taken by him to ensure that not prohibited substance entered his body and the consequences of the sanction imposed by the ITF Decision.
- Mr. Tom Gullikson, a national coach employed by the United States Tennis Association and a former professional tennis player, who testified by telephone about his acquaintance with Kendrick since Kendrick was a junior player, Kendrick's contributions to the sport as a player and role model and the consequences of the sanction imposed by the ITF Decision.
- Mr. James Blake, a professional tennis player and a member of the Players' Council for two years, who also testified by telephone that he and Kendrick had played together on the professional tennis circuit since 2000. He said that Kendrick was a responsible, well-liked and respected professional. He too spoke of the consequences for Kendrick of the sanction imposed by the ITF Decision and about the ITF anti-doping wallet card and its use by players.

6. JURISDICTION OF THE CAS AND ADMISSIBILITY

6.1 Article R47 of the 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.

6.2 CAS jurisdiction in this matter is derived from Rule O of the Programme which states that a participant who is the subject of a decision may appeal an ITF decision regarding consequences for an Anti-Doping Rule Violation to the CAS within 21 days from the date of receipt of the decision.

6.3 The ITF Decision rendered its decision on 29 July 2011. Kendrick's statement of appeal was filed on 2 August 2011 and is therefore admissible.

7. APPLICABLE LAW

7.1 Article R58 of the 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.

7.2 This appeal is governed by the Provisions of the Programme and the World Anti-Doping Code (the "WADC"), as interpreted and applied by the CAS (with relevant decisions of lower panels of persuasive authority). The comments to the WADC are to be used as a guide to the interpretation of the Programme, and English law applies complementarily (Programme, Article A.8)

8. ISSUES

8.1 The standard of review on appeal and, in particular, whether there should be any deference to the ITF Decision; and

8.2 Whether Kendrick's degree of fault merits a reduction or change of the period of Ineligibility of 12 months imposed by the ITF Decision.

9. THE PARTIES' SUBMISSIONS

A. Appellant's Submissions and Requests for Relief

9.1 In summary, Kendrick submits the following in support of its appeal:

9.2 There should be no deference to the ITF Decision. Article R57 of the Code provides that the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged, or annul the decision and refer the case back to the previous instance body.

9.3 The 12 month sanction imposed by the ITF Decision was grossly disproportionate and should be reduced to three months, running from the date of sample collection (i.e. 22 May 2011).

9.4 Kendrick's adverse analytical finding arose from his use of a supplement – Zija – which was provided to him to assist with jetlag before he left Orlando to travel to Paris to participate at the 2011 French Open.

9.5 Kendrick received the Zija from Rich, a USTA professional tennis coach and a colleague of Kendrick's coach, Schmidt. Rich had told Kendrick that Zija was a 100% organic energy and nutritional supplement which would assist him in overcoming the effects of jetlag after his arrival in France. Kendrick took one of the two capsules of

Zija that he had been provided shortly after landing in Paris (and two days before he competed in the French Open).

9.6 The ITF Decision had accepted that Zija was the source of the MHA which was subsequently detected in Kendrick's system, and that Kendrick did not ingest Zija to enhance sport performance.

9.7 Before using Zija, Kendrick had received Rich's assurance that he had given Zija to other athletes and that it was "clean". Kendrick had known Rich for several years, and his conversation with Rich had taken place in the presence of Schmidt, Kendrick's coach. Kendrick's trust in Rich was reasonable.

9.8 In addition, Kendrick had undertaken his own research. He had noted the claim on the manufacturer's website that Zija XM3 was approved by the "World Anti-Doping Association". He had failed to realise that the correct name for WADA is the World Anti-Doping Agency but it was unfair to characterise that failure as evidence of a "casual attitude" on Kendrick's part (as found by the ITF Decision) or "reckless or "cavalier" behaviour.

9.9 Furthermore greater consideration should have been given to the Kendrick's personal circumstances at the time. His fiancée was 37 weeks pregnant and scheduled to give birth at any time, which is why he delayed his departure to Paris until the last moment.

9.10 As a result of the adverse analytical finding, Kendrick's expected losses from the 2011 French Open, and the Hertogenbosch and Wimbledon events are US$46,000 – nearly half of his total earnings for the year to date. He will also have lost so many valuable ranking points that, if his sanction were not reduced to three months, he may have fallen too far back to even consider playing another year on tour.

9.11 As it is, Kendrick had planned to retire from the tour after playing in the 2011 US Open. Reduction of the period of ineligibility to three months would enable him to end his career in the major tournament in the country of which he is a national.

9.12 The WADC directs the Panel to consider an athlete's degree of fault for ingesting a Specified Substance when determining the applicable sanction. When considering fault, the Panel should focus on three points:

a. The fault must be the player's own (Kendrick accepts that any fault associated with his actions is his own, notwithstanding what Mr. Rich may have said or the results of his internet research);
b. Culpable conduct that resulted in the commission of a doping offence exhbits a greater degree of degree of fault than mere inadvertence;
c. Where the player neither sought nor obtained any actual unfair sporting advantage from ingesting a banned substance and there is consequently no

unfairness to other players, respect for the "proportionality" makes it proper for the Panel to take into consideration the fact that the player will have suffered for his fault significantly by losing, among other things, ranking points and money.

9.13 Jurisprudence from the CAS as well as of other sports federations and associations supports the view that a 12 month sanction is grossly disproportionate in the light of similar MHA and Specified Substance cases which involved similar levels of lack of due diligence, and not in keeping with the WADC's goal to "harmonize" sanctions throughout sport:

a. *Foggo v National Rugby League,* CAS A2/2011 – a professional rugby league player purchased and used a supplement called "Jack3d" which had resulted in an adverse analytical finding form MHA. The use of pre workout supplements was encouraged by the athlete's club. The athlete himself had received very limited formal anti-doping education. However the athlete had been assured by the store owner that the product was clean and had consulted his conditioning coach and undertaken research on the ASADA website in respect of the ingredients of Jack3d which had not resulted in the identification of any specified substances. A sanction of **six months** ineligibility was imposed.

b. *Koubek v ITF*, CAS 2005/A/828 – a professional tennis player received a glucocorticosteroid from a doctor (who he had never previously consulted) to assist with pain in his wrist. He was informed by the doctor that the injection would not cause any difficulty with doping. However the player had not kept, and hence did not show the doctor, an anti-doping wallet card that had been provided to athletes. For that, and several other reasons, he was held not to have behaved with utmost caution. Two weeks later he was tested resulting in an adverse analytical finding. The sanction of **three months** ineligibility was imposed.

c. *UKAD v Dooler*, UKNADP, 24 November 2010 – a semi-professional rugby league player tested positive for the presence of MHA. The source of this result was a product called "Xtreme Nox Pump" which he had taken at half time during a match to alleviate post-match fatigue and muscle pain. The product was in fact more directed towards improving training performance. He did not discuss his use of the product on match days with his team doctor and/or coaches. However, it was accepted that internet searches would not readily have identified that the product might contain MHA. A sanction of **four months** ineligibility was imposed.

d. *RFU v Steenkamp* RFU Disciplinary Hearing, 22 March 2011 – a semi-professional rugby union player used what he believed to be an energy drink. The drink had been recommended by a qualified fitness instructor who had, after checking, assured him that the product contained no banned substances. He tested positive for MHA. A sanction of of **three months** of ineligibility was imposed.

e. *RFU v Wihongi* RFU Disciplinary Hearing, 16 March 2011 – a professional rugby union player picked up a green bottle in the team dressing room at half-time during a match, believing it to contain water. He started to drink the contents but quickly realised that it contained a sport drink that had been prepared by team coaching personnel for another player and stopped drinking. He subsequently tested positive for MHA. A sanction of **four months** ineligibility was imposed.

f. *SARU v Ralapelle and Basson* (SARU Judicial Committee Hearing, 27 January 2011), in which international rugby two players tested positive for MHA, identified as sourced in a nutritional supplement which had been provided to the South African team touring Ireland and the UK. The SARU Doping Tribunal found that the players were not at fault but nevertheless imposed the sanction of a **reprimand** (the Panel notes that subsequent to the hearing in this matter a Judicial Committee of the International Rugby Board concluded that on the issue of fault, the SARU Judicial Committee in that case was incorrect and, consequently, that "the decision in *Ralapelle and Basson* should not be relied upon as authority for the proposition that players who rely on the professional assistance and judgment of team medical advisers in respect of supplement use will not be at fault if the supplements they use subsequently turn out to be the cause of an anti-doping rule violation": *IRB v Gurusinghe, Swarnathilake and Kumara*, IRB Judicial Committee, 12 September 2011).

B. Respondent's Submissions and Requests for Relief

9.14 In summary, Respondent submits the following in response to the appeal:

9.15 A CAS panel has the power, but not the duty under the Code, to approach an appeal *de novo*, without giving any deference to the ITF Decision. Exercise of such power would not be appropriate where, as in the present case, the decision below was before a very experienced, independent, anti-doping tribunal and there was an absence of any procedural unfairness.

9.16 Due deference should therefore be given to the ITF Decision, and, in particular, its findings of fact. More specifically, the Panel should not interfere with the ITF Decision unless it believes that the sanction "is evidently and grossly disproportionate to the offence" (*WADA v Hardy & USADA*, CAS 2009/A/1870; *Wawrzyniak v Hellenic Football Federation* CAS 2009/A/1918).

9.17 In each case, an athlete's fault should be measured against the fundamental duty he owes under the WADC and the Programme to do everything that he can to avoid ingesting any prohibited substances. The question is always how far he departed from the behaviour required of him in discharging that duty. Cases decided under Article M.5 of the Programme (Article 10.5 of the WADC) ("Elimination or Reduction of

Period of Ineligibility Based on Exceptional Circumstances") properly inform the analysis.

9.18 The ITF Decision correctly identified what behaviour was expected of Kendrick in avoiding the inadvertent ingestion of a prohibited substance through the taking of a supplement.

9.19 An athlete's onerous duty to use "utmost caution" to prevent banned substances from entering of his system is heightened still further in cases of medications and (especially) supplements. The risks involved in the use of supplement are so great and so well-known than an athlete will not be able to sustain a plea that his fault was "insignificant" even where the supplement was in fact contaminated, unless he can show that he made "a good faith effort to leave no reasonable stone unturned".

9.20 An athlete's personal circumstances, such as the amount of money he would lose during a ban, or the fact that he would miss out on specific competitions, or that the ban would "effectively end his career", are all irrelevant to the determination of sanction.

9.21 The authorities cited by Kendrick have been "cherry-picked" from the current MHA caselaw. Furthermore, the Panel should be very cautious about allowing sanctions decisions in other cases to determine its analysis of the sanction in this case because each case depends very much on its own particular facts, and it is not always easy from the reports of the case in question to understand why the particular decision on sanction was reached. The Panel should be particularly wary of giving precedent weight to cases in which there was no hearing but, rather, the sanction was the result of agreement between the parties.

9.22 With those reservations in mind the Panel should take into account the following:

a. *Wawrzyniak vs. Helenic Football Federation*, CAS 2009/A/1918 a very early MHA case. MHA was not, at the time, mentioned by name on the Prohibited List but was instead said to be banned as a "related substance" to another stimulant which was expressly named on the Prohibited List. The player in that case had consulted with the doctor of both his former and present club, who informed him (presumably because of the lack of mention of MHA on the Prohibited List) that there was no problem with taking the supplement. The applicable disciplinary code provisions stipulated that "at least a caution shall be given for the first offence and two-year suspension in the case of repetition". The panel imposed a ban of **three months.**

b. *RFU vs. Wihongi*, RFU Disciplinary Hearing, 16 March 2011 – relied upon by Kendrick – was a case in which, with very little fault on the part of the player, a ban of **four months** was nevertheless imposed. The fault of the player in that case was far less than that of Kendrick.

c. *RFU vs. Stenkamp*, RFU Disciplinary Hearing, 22 March 2011 – also relied upon by Kendrick – involved a semi-professional rugby player with a punishing work and training schedule, who had received very little anti-doping education. He used a product on the recommendation of a qualified fitness instructor who said it was "a high energy drink like Red Bull but stronger" in order to combat drowsiness and to avoid falling asleep while driving on his job or to and from training. MHA was not listed as an ingredient of the energy drink. The case appears to have been one of contamination. Despite the good faith efforts of the Player to leave no unreasonable stone unturned, he was found to be at fault for failing to consult a doctor or anti-doping specialist, or to have the substance analysed, prior to using it. Again, the degree of fault of the Player in question – who received a **three month** ban – was far less than that of Kendrick.

d. *UKAD vs. Dooler*, UKNAPD Hearing, 24 November 2010 – relied upon by Kendrick– the player had checked the ingredients of the supplement against the Prohibited List and found nothing amiss. His girlfriend had checked Global DRO (an anti-doping database maintained by UK Anti-Doping) to the same effect (the Dimethylpentylamine in the supplement was not listed as such, or as MHA, but instead as "geranium root extract"). A sanction of **four months** was imposed. The circumstances stand in contrast to the present case where Kendrick both failed to identify the ingredients of the supplement and check they did not include any Prohibited Substances, and failed to contact the product information line provided by the ITF.

e. *Foggo vs. NRL*, CAS A2/2011 – relied upon by Kenrick – the reasoning behind a sanction of **six months** was limited. It appears as if the CAS panel in that matter may have measured the athlete's fault not against the 0–24 month spectrum but, instead, relative to the fault of the athletes in *UKAD vs. Wallader*, UKNADP, 29 October 2010 and its progeny. This would be an error, especially given that the NADP tribunal in *Wallader* itself appears to have made a similar mistake in measuring the athlete's fault not against the 0–24 month spectrum but, rather, against the nine months given to a footballer for inadvertent ingestion of a different substance as part of a cold remedy. Furthermore, *Foggo* involved a young player who had been given "very limited formal drug education". The player had made inquiries not only with the store owner who sold him the product but also with one of his club's coaches as well as conducting further searches with the mother. Crucially, the player had also located a list of the ingredients of the supplement and had made the effort to log onto the website of the Australian Sports Anti-Doping Authority and to check each of those ingredients against the information on that website. By contrast, Kendrick is an experienced professional who is well aware of his anti-doping responsibilities. If Kendrick had done what Foggo did, he would have found out that one of the ingredients of the Zija supplement that he was proposing to take was a banned stimulant.

f. *NADP vs. Wallader*, UKNADP Hearing, 29 October 2010 – a female shot putter received a **four month** ban for testing positive for MHA caused by her use of a

supplement called "Endure". The athlete was 21, a student, and was given the supplement by her very experienced coach, who had received specific assurances from the supplier that it was "legal". The athlete had, herself, both checked the ingredients against the 2009 Prohibited List and found no matches (because neither MHA nor Dimethylpentylamine was included by name on the Prohibited List at that point), and checked against the Global DRO, again without any red flags appearing (this time because the name MHA was used in the database, but not the synonym Dimethylpentylamine). The athlete, who it was accepted by the Tribunal did not have had specialist medical assistance readily available to her – was found to have exercised "considerable diligence". The tribunal assessed her fault as significantly less than that of a English footballer (Kenny) who had received a nine month ban for a Specified Substance (not MHA) that was an ingredient in a cold remedy.

g. *UKAD vs. Duckworth*, UKNADP Hearing, 10 January 2011 – a 21 year old semi-professional rugby league player used a supplement called "Jack3d" which he had seen advertised for sportsmen. He was considered by the tribunal to be a young man to whom medical advice was not easily available. He had taken "reasonable (but not sufficient) steps to satisfy himself that the Jack3d could be taken safely". In particular he had an e-mail from the supplier giving him assurances that the supplement was clean and he had again checked every ingredient of the supplement against the Global DRO. An appeal panel of the UKNADP imposed a sanction of **six months** Ineligibility.

h. *DFSNZ vs. Brightwater-Wharf*, STNZ 29 November 2010 – the athlete took a supplement containing MHA to address "significant pre-menstrual effects". She had previously sought and obtained confirmation from the supplier (and, via the supplier, the manufacturer) that the product contained no banned substances. Again, at that stage – 2009 – MHA and Dimethylpentylamine were not expressly included on the Prohibited List. She had, however, failed to take other steps readily open to her, such as consulting the hotline provided by Drug-Free Sport New Zealand. A term of **six months** Ineligibility was imposed.

i. *DFSNZ vs. Jacobs*, STNZ 22 June 2011 - a club level swimmer who had never been part of any high performance programme (and who had, consequently, never participated in any anti-doping education) ingested MHA as an ingredient of the supplements in "Jack3d" and "Super Space Pump". He had checked the labelling and believed from them that the supplements were energy drinks containing creatine and caffeine that would assist him in getting over the tiring effects of a working day and give him energy for training. He did nothing else to check for Prohibited Substances. He accepted that he had been wrong in relying upon informal assurances rather than making proper inquiry. The tribunal imposed a period of **twelve months** Ineligibility. Whereas Kendrick may well have done more than Jacobs, he was also considerably more experienced and educated as to his anti-doping responsibilities.

9.23 Judging against those decisions, but, more importantly, all the facts and circumstances of Kendrick's case, the ITF Decision was correct in all respects and should not be disturbed.

10. MERITS OF THE APPEAL

A. The Scope of the Panel's Powers in an Appeal Procedure

10.1 As noted above, Mr Taylor for the ITF took a threshold point as to the scope of the Panel's powers in an appeal procedure. He contended that "due deference" should be paid to the ITF Decision and that the Panel should not simply substitute its own view as to appropriate sanction for that of the ITF tribunal, even if its assessment differed from theirs.

10.2 The Panel cannot accept this submission. Rule 57 of the Code, the source of the Panel's powers, is phrased in the widest terms. The power is firstly a "full one" and, secondly "to review the facts and the law"; i.e. both. It has been described in awards too numerous to name as a *de novo* power. The Panel can, as it did in this case, hear the key witnesses and indeed receive oral testimony by telephone from those who did not give such evidence below.

10.3 It may well be that the main inspiration for providing for appeals to CAS from the decisions of sports related bodies was to ensure that sportsmen and women were not wrongly disadvantaged by failures of due process or wrongly advantaged by "home town" decisions, but the text of the Rule does not confer upon CAS panels appellate powers limited to those - or any other – specified circumstances.

10.4 Mr Taylor said, however, that a consistent line of CAS jurisprudence supported his submission. He referred us in particular to *WADA v Hardy & USADA* CAS 2009/A/1870 where a CAS panel said (at para 48):

In general terms, the Panel subscribes to the CAS jurisprudence under which the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence.

To similar effect is the pronouncement of the panel in *Wawrzniak v Hellenic Football Federation* CAS 2009/A/1918 at para 59.

10.5 In the Panel's view, Mr Taylor imposes more weight on those adverbs – "evidently and grossly" disproportionate - than they will properly bear. They can more compatibly with the rule be read as words of emphasis of the importance of proportionality in this context rather than as words imposing the limitation on a CAS panel's powers, which Mr Taylor contends for. It is notable that in neither case - nor in any other case known

to this Panel - did the panel say that it would itself have come to a different conclusion to the first instance body but refrained from allowing the appeal because of application of some concept of "due deference". Even if they meant what Mr Taylor says they meant, they would be *obiter dicta* only.

10.6 Where, as is the case with Article R57 of the Code, rules or legislation confer on an appellate body full power to review the facts and the law, no deference to the tribunal below is required beyond the customary caution appropriate where the tribunal had a particular advantage, such as technical expertise or the opportunity to assess the credibility of witnesses. This is not, of course to say that the independence, expertise and quality of the first instance tribunal or the quality of its decision will be irrelevant to the CAS Panel. The more cogent and well-reasoned the decision itself, the less likely a CAS panel would be to overrule it; nor will a CAS panel concern itself in its appellate capacity with the periphery rather than the core of such a decision.

10.7 The Panel repeats and endorses what was said in the recent case of *Bucci v FEI* CAS 2010/A/2283 where a similar argument was advanced and rejected. At para 14.36 of that decision the Panel said:

The Panel would be prepared to accept that it would not easily "tinker" with a well-reasoned sanction, ie to substitute a sanction of 17 or 19 months' suspension for one of 18. It would naturally (as did the Panel in question) pay respect to a fully reasoned and well-evidenced decision of such a Tribunal in pursuit of a legitimate and explicit policy. However, the fact that it might not lightly interfere with such a Tribunal's decision, would not mean that there is in principle any inhibition on its power to do so.

10.8 Finally on this issue, we consider that Mr Taylor's proposition that the time and money spent in constructing a fair and effective ITF tribunal system would be wasted, if an unrestricted appeal to CAS were permitted, is unduly pessimistic. If the ITF tribunal produces a convincing decision after observing due process, a sportsman or woman will be disinclined to appeal, bearing in mind the possibility of adverse costs sanctions and the prospect that on appeal a sanction could be increased.

B. The Evaluation of Fault

10.9 The parties accept that the source of Kendrick's anti-doping rule violation was the Zija XM3 product that he used and that he did not take the supplement with the intent to enhance his sport performance or to mask the use of another illicit substance. Accordingly the preconditions of Article M.4 of the Programme (equivalent to Article 10.4 of the WADC) are met, so that the issue before the Panel is the appropriate sanction, which would include a period of Ineligibility in a range from 0 to 24 months, depending on our assessment of Kendrick's fault.

10.10 The Panel emphasises that even though the following discussions concern both Article M.4 of the Programme (Article 10.4 of the WADC) and Article M.5 of the Programme (Article 10.5 of the WADC) in order valuate Kendrick's fault, only Article M4 of the Programme is applicable to the present case.

10.11 Article M.4 of the Programme (Article 10.4 of the WADC) ("Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances"), like Article M.5 of the Programme (Article 10.5 of the WADC) ("Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances") applies to eliminate or reduce the presumptive sanction of two years Ineligibility for a first anti-doping rule violation for the presence of a Prohibited Substance.

10.12 Article M.5 applies to all Prohibited Substances (and Markers or Metabolites thereof) and enables a tribunal to reduce the otherwise applicable sanction by up to 50% if the athlete is able to establish that he or she bore No Significant Fault or Negligence for the anti-doping rule violation. If the athlete shows that the substance entered his or her system through No Fault or Negligence of his or her own, the otherwise applicable period of Ineligibility will be eliminated.

10.13 If the Athlete cannot surmount that evidential hurdle, then assuming that the athlete can show (i) how the substance got into his or her system, (ii) that the substance is a "Specified Substance", (iii) that he or she did not take it with intent to enhance his or her sport performance or for masking purposes, then the Panel has a discretion to reduce the 2-years presumptive sanction under Article M.4/Article 10.4 to something between zero and 24 months, and "*[t]he Athlete's or other Person's degree of fault shall be the criterium considered in assessing any reduction in the period of Ineligibility.*" Alternatively, if it is not a "Specified Substance" case, the Panel has discretion to reduce the period of Ineligibility (by a maximum of 50%) if it finds No Significant Fault or Negligence under Article M.5.2/Article 10.5.2.

10.14 In each case, the Athlete's fault is measured against the fundamental duty which he or she owes under the Programme and the WADC to do everything in his or her power to avoid ingesting any Prohibited Substance. In *Vencill v. USADA*, CAS 2003/A/484 at para. 57 that panel stated:

We begin with the basic principle, so critical to anti-doping efforts in international sport...that "[i]t is each Competitor's personal duty to ensure that no Prohibited Substance enters his or her body" and that "Competitors are responsible for any Prohibited Substance or its Metabolites or Markers found to be present their bodily Specimens". The essential question is whether [the athlete] has lived up to this duty..."

In *FIFA & WADA*, CAS 2005/C/976 & 986 a panel offered the following opinion at paras. 73 and 74:

The WADC imposes on the athlete a duty of utmost caution to avoid that a prohibited substance enters his or her body...The Panel underlines that this standard is rigorous, and must be rigorous, especially in the interest of all other competitors in a fair competition...It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping violation has been identified. "No fault" means that the athlete has fully complied with the duty of care.

10.15 Any mitigating circumstances put forward on behalf of an athlete should be considered in the context of the standards which are expected of the athlete. To succeed with a plea of "No Fault or Negligence", an athlete must show that he or she used "utmost caution" to keep him- or herself clean of any prohibited substances, i.e. that the athlete did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he or she had ingested the prohibited substance (*Puerta v. ITF*, CAS 2006/A/1025, para. 11.25; *FIFA & WADA*, CAS 2005/C/976 & 986, para. 74. The athlete must show that he or she "has fully complied" with this "duty of utmost caution" (*FIFA & WADA*, CAS 2005/C/976 & 986 at para. 74), that is, that he or she has "made every conceivable effort to avoid taking a prohibited substance" (*Knauss v. FIS*, CAS 2005/A/847 at para. 7.3.1) and that the substance got into his or her system "despite all due care" on his or part (commentary to WADC Article 10.5). If the athlete cannot surmount that evidential hurdle, then provided that he or she can meet the preconditions to Article M.4 of the Programme/Article 10.4 WADC (Specified Substances), he or she can get the period of Ineligibility reduced to between zero and 24 months, based on his or her relative fault.

10.16 The major difference between Article M.4/Article 10.4 and Article M.5/Article 10.5 is that there is no 50% cap limiting a panel's discretion to reduce the presumptive period of Ineligibility if it finds No Significant Fault or Negligence. Instead, the panel can, in a Specified Substances case, where the preconditions have been met, make whatever reduction it considers properly reflects the Athlete's degree of fault, within the zero to 24 month spectrum. We agree with the observation in the Decision that this is to provide the extra "flexibility" desired by stakeholders. We also agree with the submission of the ITF that the analysis of relative fault under Article 10.4 is exactly the same as under Article 10.5, that is, made by reference to the degree to which the Athlete has departed from the standards of behaviour expected of him or her. It follows that we disagree with Kendrick's argument that "the level of scrutiny and review under 10.5 is significantly higher when determining whether an athlete bears no significant fault or negligence for committing a doping violation, then it is under 10.4". It also follows that the Panel rejects the argument that Article 10.5 non-Specified Substances cases are irrelevant to an Article 10.4 case. Rather, when a tribunal decides on what reduction is warranted below the two-year sanction established by Article 10.2 – based on its assessment of the athlete's relative fault, i.e., the degree to which the athlete departed from the accepted standards of behaviour – the Panel is not limited a

50% reduction but instead can go to the place on the spectrum (between zero and 24 months) that best reflects its assessment of the Athlete's relative fault.

10.17 Our conclusion that the analysis of fault under Article 10.4 is not different from the analysis of fault under Article 10.5 is supported and underscored by the commentary to the WADC, which uses similar language to describe the analysis under both Articles which is an admissible aid to construction: section 24.2 of the WADC provides that The comments annotating various provisions of the WADC shall be used to interpret the WADC.

Thus, the comment to Article 10.4 explains:

In assessing the Athlete's or other Person's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article

The comment to Article 10.5 states:

For the purposes of assessing the Athlete's or other Person's fault under Articles 10.5.1 and 10.5.2, the evidence considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete has only a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article.

10.18 The ITF submits, and the Panel agrees, that that fact that the language is effectively identical confirms that the analysis required is the same, i.e., under each Article it is necessary to ascertain by how far the Athlete departed from the standards of care expected of him or her under the WADC. The Panel also notes that other CAS decisions and a decision of the NADP Appeal Tribunal in the U.K. have cited and applied Article 10.5.2 "non-Specified Substance" cases when assessing fault under Article 10.4: *Foggo v. NRL*, CAS A2/2011 at para. 54 citing *WADA v. Lund*, CAS OGO6/001; *UKAD v. Wallader*, NADP Award dated 29 October 2010 at para. 46, citing *WADA v. Hardy & USADA*, CAS 2009/A/1870. It is important to note that the Panel is not limited to seeking such guidance as may be useful from cases involving the same substances: in any event under the WADC the Panel is required to evaluate the facts and circumstances of each case and the athlete's degree of fault in each case, as it often happens that two athletes can ingest the same substance in situations that indicate very different degrees of fault.

10.19 The Panel had the advantage over the ITF Tribunal of hearing and seeing Kendrick face-to-face (rather than through the medium of videoconferencing, as had occurred at the hearing before the ITF Tribunal). We also had the benefit of receiving the evidence of Mr. Gullikson and Mr. Blake. As a result, we were able to revisit some of the evidence which had been regarded as unsatisfactory by the ITF Tribunal in the Decision (for example, the Decision had found a reference in Kendrick's affidavit to the distributor role of Mr. Rich's wife to be "likely to mislead"; Before the Panel Kendrick was able to provide an explanation which satisfied it that there was no intention to mislead).

10.20 In the Panel's view, circumstances favourable to Kendrick's position include the following:

a. The manufacturer of Zija XM3 appears to have lied about its properties. The representations that the product was approved by the "World Anti-Doping Association" and that Apolo Ohno used it were false.
b. Kendrick's anti-doping rule violation occurred at a very stressful time for him. The birth of his first child was imminent and he was preparing to participate in his swansong year as a top level professional tennis player before retiring from the sport.
c. Kendrick did undertake some Internet research in respect of the product prior to use.
d. Although Kendrick acknowledged that he could have consulted a doctor, he did not have his own personal doctor from whom he could have obtained immediate advice and plausibly (albeit wrongly) did not notice the discrepancy in the name "World Anti-Doping Association" (as opposed to "World Anti-Doping Agency"). He took further comfort from the references, in the online information he consulted, to the FDA (Food and Drug Administration), IOC (International Olympic Committee) and the names of various athletes who were said to use the product.
e. Kendrick, upon reflection, did not recall seeing an Internet article "Zija – Why I Don't Like It" (having said to the ITF tribunal that "I probably read that" - see para 3.15 - and having heard and seen him we assess him as an honest witness and again accept what he says on this point.).
f. Kendrick immediately accepted a provision suspension after learning of his positive test.
g. He had character references from distinguished contemporary competitors about his awareness of the importance of the need to eliminate doping from tennis.

10.21 Circumstances adverse to Kendrick include the following:

a. The Internet research which Kendrick undertook was inadequate, particularly for an experienced professional athlete who represented that he took great care not to ingest prohibited substances.
b. Kendrick both failed to consult the wallet card that had been provided to him by the ITF and failed to make any or sufficient efforts to contact the ITF's hotline.
c. Kendrick used a product which he received from someone who was not his own coach and which was contained in an unmarked wrapper.
d. Kendrick relied on unqualified people for advice on whether the supplement he used was "safe" or not. In conducting superficial Internet searches he was content to rely on "puff pieces" without any critical consideration of what he was reviewing.
e. While the stress which Kendrick was under may explain why he departed from the applicable standard of care, it does not reduce that standard of care.
f. He failed to disclose his use of Zija on the Doping Control Form which he completed at the time of testing.

C. The Appropriate Sanction

10.22 The Panel notes that the parties agree that whatever decision the Panel makes as to the length of the sanction, 22 May 2011 is the appropriate starting date.

10.23 We agree with Mr. Taylor that sanctions imposed by international federations and by national anti-doping organisations without adjudicated determination by an independent tribunal are of limited or no assistance. However, the decisions of national and international doping tribunals provide helpful guidance, particularly where they contain sufficient details of the circumstances and reasoning of the tribunal. Although consistency of sanctions is a virtue, correctness remains a higher one: otherwise unduly lenient (or, indeed, unduly severe) sanctions may set a wrong benchmark inimical to the interests of sport.

10.24 It seems to us that, absent circumstances evidencing a high degree of fault bordering on serious indifference, recklessness, or extreme carelessness, a twelve month sanction would be at the upper end of the range of sanctions to be imposed in a MHA case falling within Article M.4 of the Programme/Article 10.4 WADC. In the present case, however, Kendrick's serious lack of due diligence and his failure to recognise at the time the risk of using an unfamiliar product contained in an unmarked wrapper is somewhat mitigated by the stressful circumstances that he found himself in at the time of the anti-doping rule violation.

10.25 Having regard to all of the circumstances, including the evidence which was not before the ITF panel, we have come to the conclusion that the twelve month sanction imposed by the ITF Decision was too severe. This Panel has not, however, been persuaded that a three month sanction, put forward by Kendrick, would be appropriate. Having regard to Kendrick's degree of fault and, to both the mitigating and aggravating factors

listed above, the Panel concludes that an appropriate sanction would be a period of Ineligibility of eight months. This Panel emphasises that this is not simply a decision to, effectively, split the difference between the periods of Ineligibility urged by the parties but, rather, represents the Panel's own evaluation and weighing of the evidence and the submissions received, as well as our careful, if cautious, consideration of the authorities that we have found to have relevance.

11. CONCLUSION

11.1 The Panel would allow Kendrick's appeal to the extent that the twelve month period of Ineligibility imposed by the ITF Decision should be reduced to eight months. The starting date for the term of Ineligibility is 22 May 2011.

11.2 In coming to its decision, the Panel has attached considerable weight to the well reasoned and comprehensive decision of the ITF Panel. Our different conclusion is a reflection of the evidence that was presented at the appeal hearing (which differed in some respects from that heard by the ITF Tribunal) together with our independent view that a consideration of all of the circumstances warranted a more proportionate – and in this case lesser – sanction than that imposed by the Decision.

12. COSTS

12.1 For disciplinary cases of an international nature ruled in appeal, such as this case, Article R65 of the Code provides as follows:

"*R65.2 Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. 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.*

Upon submission of the statement of appeal, Kendrick shall pay a Court Office fee of Swiss francs 500.— without which the CAS shall not proceed and the appeal shall be deemed withdrawn. The CAS shall in any event keep this fee.

R65.3 The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.

R65.4 If all circumstances so warrant, the President of the Appeals Arbitration Division may decide to apply Article R64 to an appeals arbitration, either ex officio or upon request of the President of the Panel".

12.2 As this is a disciplinary case of an international nature, the proceedings will be free, except for the Court Office filing fee of CHF 1,000, which Kendrick already paid. This fee shall be retained by the CAS.

12.3 In accordance with the constant practice of the CAS, any amount granted on the basis of Article R65.3 of the Code is a contribution towards the legal fees and other expenses incurred by the prevailing party in connection with the proceedings and not the full amount spent by such party for his/her claim or defence.

12.4 In the present case, in consideration of the divided success achieved by the parties to this appeal, the Panel finds reasonable to order that each party shall bear his/its legal and other costs incurred in connection with these arbitration proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Robert Kendrick on 2 August 2011 against the International Tennis Federation (ITF) concerning the decision taken by the International Tennis Federation Independent Anti-Doping Tribunal on 29 July 2011 is partially upheld.

2. The decision of the International Tennis Federation Independent Anti-Doping Tribunal of 29 July 2011 is set aside.

3. Mr Robert Kendrick is suspended for a period of eight months from 22 May 2011.

4. Mr Robert Kendrick's individual results obtained at the French Open 2011 are disqualified. The 10 ranking points and EUR 15,000 in prize money obtained by Mr Robert Kendrick at the French Open 2011 are forfeited.

5. Mr Robert Kendrick is permitted to retain the prize money obtained by him from his participation in the subsequent UNICEF Open.

6. This award is pronounced without costs, except for the Court Office fee of CHF 1,000 paid by Mr Robert Kendrick which shall be retained by the CAS.

7. Each party shall bear his/its legal and other costs incurred in connection with these arbitration proceedings.

8. All other or further claims are dismissed.

Operative part of the award issued on 22 August 2011
Lausanne, 10 November 2011

THE COURT OF ARBITRATION FOR SPORT

Graeme **Mew**
President of the Panel