

**DECISION OF THE INTERNATIONAL TENNIS FEDERATION  
PURSUANT TO ARTICLE 8.1.4 OF THE 2019 TENNIS ANTI-DOPING PROGRAMME**

**I. Introduction**

1. The International Tennis Federation (the **ITF**) is the international governing body for the sport of tennis. Further to its obligations as a signatory to the World Anti-Doping Code (the **Code**) and its responsibilities as custodian of the sport, the ITF has issued the 2019 Tennis Anti-Doping Programme (**TADP** or **Programme**), which sets out Code-compliant anti-doping rules applicable to players competing in '**Covered Events**' (as defined in TADP Article 1.10).<sup>1</sup>
2. Camilla Emilia Maffei Bossi (the **Player**) is a 16-year old tennis player from Brazil. She has competed on the junior circuit since 2017, and, in 2019, in two World Tennis Tour events. When she registered for an International Player Identification Number (IPIN) on 7 January 2017 and in each subsequent year, the Player expressly agreed to be bound by and to comply with the Programme. By virtue of that agreement, and by virtue of her participation in ITF World Tennis Tour events (which are '**Covered Events**' under the TADP), the Player became bound by and required to comply with the 2019 TADP.
3. The ITF charged the Player with the commission of an anti-doping rule violation under the TADP and has proposed certain Consequences based on its analysis of the degree of fault that the Player bears for that violation. The Player has admitted the anti-doping rule violation charged and acceded to the Consequences proposed. The ITF therefore issues this decision further to TADP Article 8.1.4, which provides: '**In the event that [...] the Participant admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by the ITF [...], a hearing before the Independent Tribunal shall not be required. Instead the ITF shall promptly issue a decision confirming [...] the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences (including, if applicable, a justification for why the maximum potential sanction was not imposed) [...]**'.

**II. The Player's commission of an anti-doping rule violation**

4. On 27 March 2019, while competing in the singles competition at the Pro Circuit W25 Campinas held in Sao Paulo, Brazil from 25 March to 31 March 2019 (the **Event**), the Player was required to provide a urine sample for drug testing pursuant to the TADP. The Player was 15 years old at the time, and therefore a Minor. It was the first time that she had been tested for anti-doping purposes. The sample she provided was given reference number 3128357 and was split into an A sample and a B sample, which were sealed in tamper-evident bottles and transported to the WADA-accredited laboratory in Montreal (**Laboratory**) for analysis. The Laboratory detected the presence in the A sample of SARM S-22 (aka Ostarine or Enobosarm), at an estimated concentration of 0.3 ng/mL. SARM S-22 is an anabolic agent banned at all times under Section S1.2 (Other Anabolic Agents) of the 2019 WADA Prohibited List. The Player does not have a therapeutic use exemption permitting use of SARM S-22.
5. The Adverse Analytical Finding reported by the Laboratory in respect of the A sample was considered by an independent Review Board in accordance with TADP Article 7.3. The Review Board did not identify any apparent departures from the applicable sample collection or sample analysis procedures that could have caused this Adverse Analytical Finding. It therefore decided that the Player had a case to answer for breach of TADP Article 2.1. Accordingly, on 7 May 2019

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<sup>1</sup> Any term in this Decision that begins with a capital letter and that is not otherwise defined in this Decision has the meaning given to it in the Programme.

the ITF sent the Player a formal Notice of Charge, asserting that the presence of SARM S-22 in her sample collected on 27 March 2019 constitutes an anti-doping rule violation under TADP Article 2.1.

6. The Laboratory subsequently analysed sample B3128357, and reported on 18 May 2019 that it had detected the presence of SARMS-22, which confirmed the Adverse Analytical Finding made in respect of the A sample.
7. Given that SARM S-22 is not classified as a Specified Substance under the TADP, the Player was subject to a mandatory provisional suspension under TADP Article 8.3.1, which came into effect on 6 June 2019.
8. TADP Article 2.1 is a strict liability offence that is established simply by proof that a Prohibited Substance was present in the sample, i.e., the ITF does not have to prove how the substance got into the Player's system or that the Player took the substance intentionally (or even knowingly).
9. In her preliminary response dated 16 May 2019, the Player accepted that SARMS-22 was present in her sample, and therefore admitted that she had committed the Article 2.1 anti-doping rule violation charged.

### III. Consequences

#### III.A **Period of Ineligibility**

##### (a) **How the SARM S-22 got into the Player's system**

10. The Player has asserted that she did not intend to cheat and that her positive test was caused by her consumption of a supplement contaminated (without her knowledge) with SARM S-22. In summary, she asserts that her physician, a sports medicine specialist, prescribed her two capsules per day of a bespoke supplement (containing resveratrol, methylsulfonylmethane, chromium picolinate and magnesium) that was specifically created to order by a compound pharmacy in Sao Paulo (the **Bespoke Supplement**). In support of her explanation, the Player provided (among other things) a statement from her physician and photographs of the remaining capsules of the Bespoke Supplement still in her possession, which were from the same bottle as the capsules of the Bespoke Supplement that she had ingested in the days prior to the sample collection on 27 March 2019.
11. At the ITF's request, the remaining capsules of the Bespoke Supplement were sent to the Laboratory for testing. The Laboratory detected SARM S-22 in both capsules tested. According to Prof. Christiane Ayotte, Director of the Laboratory, the level of SARM S-22 detected in the capsules could have caused the concentration of SARM S-22 detected in the Player's sample if the capsules had been taken as prescribed for the period of time claimed by the Player.
12. The ITF notes that when the Player's urine sample was collected on 27 March 2019, she was asked to declare on the Doping Control Form (**DCF**) 'any prescription/non-prescription medications or supplements, including vitamins and minerals, taken over the past 7 days'. The Player listed a number of supplements and medications on the DCF, including 'Picolinato de cromo, magnesio quelato, resveratrol' (which are the names of three of the four Bespoke Supplement ingredients, in Portuguese).
13. Given all of these circumstances of this case, the ITF accepts the Player has established that it is more likely than not that the presence of the SARM S-22 found in her urine sample 3128357

was due to her ingestion of capsules of the Bespoke Supplement in the days prior to 27 March 2019 when her urine sample was collected.

**(b) TADP Article 10.2**

14. This is the Player's first doping violation.
15. TADP Article 10.2.1 specifies a mandatory four-year ban for a TADP Article 2.1 violation that is 'intentional' and is a first violation. If the prohibited substance in question is classified as a non-Specified Substance (as here), the player has the burden of proving that the violation was not 'intentional'. If the player can do so, then TADP Article 10.2.2 provides for a two-year period of ineligibility, subject to mitigation. TADP Article 10.2.3 explains that in this context 'the term "intentional" is meant to identify those Participants who cheat. The term, therefore, requires that the Participant engaged in conduct that he/she knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk'. The jurisprudence is clear that what counts in this context is what the Player actually knew, not what she should have known.
16. Since the ITF has accepted that the Player has shown the source of the prohibited substance was an undisclosed contaminant of a supplement prescribed for her by her doctor, the ITF accepts that the Player has met her burden of demonstrating that her commission of the violation was not 'intentional' within the meaning of TADP Articles 10.2.1 and 10.2.3, and so the two-year period of ineligibility prescribed by TADP Article 10.2.2 applies, subject to possible reduction in accordance with TADP Article 10.4 or Article 10.5.

**(c) TADP Articles 10.4 and 10.5**

17. In order to get the sanction eliminated or reduced below two years, the Player must show that she bears 'No Fault or Negligence' for the violation under TADP Article 10.4, or (alternatively) that she bears 'No Significant Fault or Negligence' for the violation under TADP Article 10.5.
18. TADP Article 10.4 provides that if a player establishes that she bears No Fault or Negligence for the anti-doping rule violation in question, the otherwise applicable period of ineligibility will be eliminated. No Fault or Negligence is defined in the TADP as follows: 'The Player or other Person establishing that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule'.
19. TADP Article 10.5.1(b) provides that where the player can establish that she bears No Significant Fault or Negligence and that the Prohibited Substance came from a Contaminated Product, then the otherwise applicable two-year period of ineligibility may be reduced by up to 100% (in which case there would be a reprimand only). A 'Contaminated Product' is defined in the TADP as a 'product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search'. The definition of No Significant Fault or Negligence is: 'The Player or other Person establishing that his/her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the Anti-Doping Rule Violation'. Where No Significant Fault or Negligence is found, the amount of reduction to be given depends upon the degree of the player's Fault.

20. A plea of No Fault or Negligence or No Significant Fault or Negligence is assessed by considering how far the player departed from their duty under the TADP to use 'utmost caution' to ensure that they would not ingest any prohibited substances or otherwise do anything that might constitute or result in the commission of an anti-doping rule violation.<sup>2</sup> 'The difference between the two [...] is one of degree: to establish No Fault or Negligence, the athlete must show that he took every step available to him to avoid the violation, and could not have done any more; whereas to establish No Significant Fault or Negligence, he must show that, to the extent he failed to take certain steps that were available to him to avoid the violation, the circumstances were exceptional and therefore that failure was not significant'.<sup>3</sup> The TADP definition of 'Fault'<sup>4</sup> makes clear that the first question is how far the player departed from the duty of utmost caution (objective fault) and the second question is whether there is any acceptable explanation for that failure (subjective fault).
21. The Court of Arbitration for Sport (CAS) jurisprudence is clear that the standard of 'utmost caution' is very onerous, and requires a player to show that they 'made every conceivable effort to avoid taking a prohibited substance'.<sup>5</sup> It follows that 'even in cases of inadvertent use of a Prohibited Substance, the principle of the Athlete's personal responsibility will usually result in a conclusion that there has been some degree of fault or negligence'.<sup>6</sup>
22. The Player asserts that she bears No Fault or Negligence, so that no period of ineligibility should be imposed, or No Significant Fault or Negligence, so that only a reprimand or a significantly reduced suspension should be imposed, because: (i) she consulted a doctor that specialises in sports nutrition and only took those products that she was prescribed, (ii) the Bespoke Supplement was made to prescription by a reputable pharmacy, which was recommended by the prescribing doctor, (iii) the bottles she was given containing the Bespoke Supplement capsules contained the name of the pharmacist, the date of manufacture, and the list of ingredients, which did not mention any prohibited substance, (iv) the Player's parents checked

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<sup>2</sup> See, e.g., Kutrovsky v ITF, CAS 2012/A/2804, para 9.49 ('the athlete's fault is measured against the fundamental duty that he or she owes under the Programme and the WADC to do everything in his or her power to avoid ingesting any prohibited substance'); FIFA & WADA, CAS 2005/C/976 & 986, paras 73-75 ('The WADC imposes on the athlete a *duty of utmost caution* to avoid that a prohibited substance enters his or her body. [...] It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping violation has been identified').

<sup>3</sup> IBAF v Luque, IBAF Anti-Doping Tribunal decision dated 13 December 2010, para 6.10.

<sup>4</sup> 'Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Player or other Person's degree of Fault include, for example, the Player or other Person's experience, whether the Player or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. In assessing the Player or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that a Player would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Player only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2'.

<sup>5</sup> Knauss v FIS, CAS 2005/A/847, para 7.3.1; WADA v NSAM et al, CAS 2007/A/1395, para 80 ('The burden is therefore shifted to the athlete to establish that he/she has done all that is possible to avoid a positive testing result').

<sup>6</sup> Adams v CCES, CAS 2007/A/131, para 155.

each time they purchased the Bespoke Supplement that each bottle was numbered and the pharmacist was listed on it, (v) the Player is a minor (she was fifteen years old at the time of the violation), and (v) she had received no anti-doping education prior to the Event, which was her first professional tournament (for which she had received a wild card by winning a girl's tournament).

23. These factors weigh in favour of the Player. However:

23.1 It has long been well-known that supplements may contain substances that are not listed as a named ingredient. The CAS has clearly stated that any player who takes a supplement assumes the risk that it may contain one or more prohibited substances, and so cannot plead No Fault or Negligence.<sup>7</sup> The same is also set out in the comment to Code Article 10.4, which states: 'No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination)'.<sup>8</sup>

23.2 These principles apply whether the supplement is an off-the-shelf product produced in bulk by a manufacturer, or a bespoke compound mixed at a local pharmacy. For example, in *FINA v Cielo Fihlo and CBDA*, CAS 2011/A/2495, the athletes were Brazilian swimmers who were prescribed caffeine pills by their doctor. They had those pills made up by a reputable pharmacy, which inadvertently contaminated those caffeine pills with furosemide during the production process. This was a very high profile case, in Brazil and elsewhere. Furthermore, three other Brazilian tennis players (Marcelo Demoliner, Thomaz Bellucci, and Igor Marcondes) have tested positive for prohibited substances in the last three years. In each case, the player blamed the positive test on the contamination of bespoke pills produced in laboratories. Those players received bans of three, five, and nine months, respectively. Those cases were reported on the ITF website at the time and in the media.<sup>8</sup> Several other cases involving athletes from other sports and similar fact patterns have also been publicly reported.<sup>9</sup>

23.3 As a result, the Player should have known, and is deemed to have been on specific notice that, there was a risk that using bespoke vitamin formulations that required the pharmacy to mix different ingredients carried a risk of inadvertent contamination during production, even if a reputable pharmacy was used. She therefore could not assume that by following the advice of her doctor, and having the prescription made up by a reputable pharmacy, she was avoiding the risk of such contamination. To the contrary, she is deemed to have voluntarily assumed that risk.

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<sup>7</sup> See *FINA v Cielo*, CAS 2011/A/2495, award dated 29 July 2011, para 8.8.

<sup>8</sup> In particular, Mr Bellucci's case was widely reported in the media: see e.g. an ESPN article at [http://www.espn.co.uk/tennis/story/\\_/id/21961711/thomaz-bellucci-gets-5-month-ban-doping](http://www.espn.co.uk/tennis/story/_/id/21961711/thomaz-bellucci-gets-5-month-ban-doping), as was Mr Marcondes' case: see e.g. [https://www.tennisworldusa.org/tennis/news/ATP\\_Tennis/60295/igor-marcondes-banned-for-nine-months-for-using-hydrochlorothiazide/](https://www.tennisworldusa.org/tennis/news/ATP_Tennis/60295/igor-marcondes-banned-for-nine-months-for-using-hydrochlorothiazide/).

<sup>9</sup> Since the date that the Player provided the sample that tested positive, another South American tennis player (Franco Agamenone) tested positive for a prohibited substance that was later found to be an unlisted ingredient in bespoke supplement pills created by a local pharmacy, and received a ten-month ban. It is apparent that the ingestion of bespoke supplements, in particular those made in South America, carries with it a significant degree of risk for sportspersons subject to anti-doping rules.

24. Based on the foregoing, the Player could not sustain a plea of No Fault or Negligence. However, the same Code comment quoted above goes on to say: ‘depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.5 based on No Significant Fault or Negligence’. The ITF accepts that, in the specific circumstances of this case, the Player's fault was not 'significant' within the meaning of TADP Article 10.5.1, justifying a reduction from the two-year starting point. The ITF also accepts that the Player has shown that the detected prohibited substance came from a Contaminated Product, in that the prohibited substance was not disclosed on the product label, nor would it have been disclosed in information available in a reasonable internet search. While the Player is to be deemed to have accepted the risk that the supplements mixed to her bespoke prescription might contain a prohibited substance, the ban may still be significantly less than two years. The ITF is mindful of the bans imposed in other recent cases involving bespoke supplements: Mr Demoliner (three months), Mr Bellucci (five months), and Mr Marcondes (nine months). The Player is necessarily more at fault than each of those players (because she was on greater notice particularly with respect to the dangers of supplements made in a compound pharmacy), and because the earlier bans on those players clearly did not deter other players from taking similar risks. However, the Player's youth and lack of anti-doping education must also be considered.<sup>10</sup> Therefore, the ITF has proposed, and the Player has acceded to, a period of ineligibility of six months.
25. Due to her prompt admission of her anti-doping rule violation, the Player is entitled to the benefit of TADP Article 10.10.3(b), such that her six-month period of ineligibility will be deemed to have started running from 27 March 2019 (the date of collection of her sample) and so expired at midnight on 26 September 2019. Given that the Player has served a provisional suspension since 6 June 2019, the Player has actually served more than half of her period of ineligibility, thereby meeting the requirement of TADP Article 10.10.3(b). Accordingly, as from the date of this decision, the Player is no longer subject to a period of ineligibility or provisionally suspended.

### **III.B Disqualification of results**

26. The results obtained by the Player at the Event and in subsequent events are disqualified pursuant to TADP Articles 9.1 and 10.8, and the points and prize money that she won at those events are forfeited in accordance with the same provisions.

### **III.C Costs**

27. Each party shall bear its own costs of dealings with this matter.

### **III.D Publication**

28. In accordance with TADP Article 8.8, this decision will be publicly reported by being posted (in full and/or summary form) on the ITF's website.

### **III.E Acceptance by the Player**

29. The Player has accepted the consequences proposed above by the ITF for her anti-doping rule violation, and has expressly waived her right to have those consequences determined by the Independent Tribunal at a hearing.

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<sup>10</sup> See the TADP definition of 'Fault', at footnote 4, above.

**IV. Rights of appeal**

30. This decision constitutes the final decision of the ITF, resolving this matter pursuant to TADP Article 8.1.4.
31. Further to TADP Article 12.2.1, each of WADA and the Autoridade Brasileira de Controle de Dopagem (**ABCD**) has a right to appeal against this decision to the Court of Arbitration for Sport in Lausanne, Switzerland, in accordance with the procedure set out at TADP Article 12.6.
32. As part of this resolution of the matter, the Player has waived her right to appeal against or otherwise challenge any aspect of this decision (both as to the finding that the Player has committed an anti-doping rule violation and as to the imposition of the consequences set out above), whether pursuant to TADP Article 12.2.1 or otherwise. However, if an appeal is filed with the CAS against this decision either by WADA or ABCD, the Player will be entitled (if so advised) to exercise her right of cross-appeal in accordance with TADP Article 12.6.3.

London, 11 November 2019