

DECISION
OF THE FIM INTERNATIONAL DISCIPLINARY COURT (CDI)

Sitting in the following composition:

President: **Mr Anand SASHIDHARAN**
Mr Sakari VUORENSOLA
Mr Frantisek SCHULMAN

in the following case:

Championship: 2018 AMA Supercross, a FIM World Championship

Event: Round at Daytona International Speedway, Florida, USA – March 10, 2018

Circuit: Daytona International Speedway, Florida, USA

Case concerns: Anti-doping rule violation based on Adverse Analytical Finding (presence of heptaminol, S.6 Stimulants) notified in the Analytical Report of the sample taken from Mr. Christian Craig at Daytona International Speedway, Florida, USA

Present at the Hearing (Video Conference):

Mr Christian Craig, Rider
Howard L. Jacobs, Rider's Representative
Lindsay S. Brandon, Rider's Representative
Paige Craig

Mr Jan Stovicek, FIM Board Member

Mr. Ludovic Agassiz, FIM Legal Department

Mr Anand Sashidharan
Mr.Sakari Vuorensola
Mr.Frantisek Schulman

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I. RECAPITULATION OF THE RELEVANT FACTS

1. Mr. Christian Craig (hereinafter referred to as '*Mr. Craig*' or '*Rider*') is a Professional rider and was participating in the 2018 AMA Supercross, an FIM World Championship ("hereinafter referred to as 'the Championship').
2. Mr. Craig participated in the round of the Championship held at Daytona International Speedway, Florida, USA on March 10, 2018.
3. On 10th March, 2018, as a part of a routine In-Competition doping control, Mr. Craig's urine sample was taken together with the Doping Control Form submitted by the Rider. The rider's urine sample (A-Sample Code No. 4123180) was sent to Deutsche Sporthochschule Köln Institut für Biochemie, a WADA accredited Laboratory, for testing.
4. The above-mentioned WADA accredited laboratory tested the 'A' Sample and issued Analytical Report No.AR201802048 dated 09.04.2018, which contained an Adverse Analytical Finding as follows:

**Substance:
Heptaminol
(S6. Stimulants)**

This is a specified substance under the head 'S.6 Stimulants' of the FIM Anti-Doping Code.

5. By letter of 23rd July 2018, the FIM Medical Director informed the FIM Legal Department that the WADA accredited laboratory had informed them that the result of the anti-doping control carried out on the Rider reveals the presence of a prohibited substance, heptaminol, as per S6 Stimulants of the WADA List of Prohibited substances. It was also confirmed that Mr. Craig has not requested for a Therapeutic Use Exemption (TUE) and that the ADAMS Programme also does not contain mention of any national TUE Certificate in respect of Mr. Craig.
6. The Rider was informed by the FIM by letter dated 23rd January 2019 of the adverse analytical finding of the WADA-accredited Laboratory in Cologne, Germany revealing the presence of Heptaminol, which indicates anti-doping rule violations under Article 2 of the FIM Anti-doping Code (hereinafter referred to as '**ADC**') [i.e. Presence (Article 2.1 ADC), Use (Article 2.2 ADC) and Possession (Article 2.6 ADC) of prohibited substance]. The Rider was asked to confirm as to whether he wanted the B-Sample tested and the Rider was also informed, among other things, that:

- a) The FIM did not receive any Therapeutic Use exemption request from the Rider before the test;
 - b) In accordance with Article 7.9.5 of the ADC, the Rider may accept a provisional suspension voluntarily pending the resolution of the matter and if the Rider voluntarily accepts a provisional suspension and respects it, the Rider will receive a credit against any period of ineligibility which may be ultimately imposed.
 - c) Under Article 7.10.1 of the ADC, at any time during the results management process, the FIM and the Rider may agree on the consequences of an anti-doping violation;
 - d) If the analysis of the B Sample is waived or confirms the A Sample analysis, subject to the possibility of a Resolution without a Hearing as per Art. 7.10 of the ADC, the case will, as a rule, be referred to the FIM International Disciplinary Court (CDI) in accordance with Art. 8.1.1 of the ADC and Art.3.3.2 of the FIM Disciplinary and Arbitration Code to determine whether or not the Rider has committed an anti-doping violation under Article 2 of the ADC in order to impose a sanction on the Rider in accordance with Article 10 of the ADC.
7. While no provisional suspension was imposed by the FIM, Mr. Craig did not voluntarily accept a provisional suspension and he continued to participate in various events, as he was entitled to under the ADC. Furthermore, Mr. Craig requested for the analysis of the B Sample on 23 January 2019. On 12 February 2019, Mr. Craig was informed by the FIM that the B Sample has confirmed the result of the A Sample.
8. By letter dated 27th February 2019, Mr. Craig was informed of the appointment of the members of the CDI and he was informed that the hearing would be held on 15th March 2019. Mr. Craig was also asked to answer the following questions:
1. *How did you ingest the prohibited substance?*
 2. *Why did you ingest the prohibited substance?*
 3. *Did you intend to enhance your sports performance in ingesting it?*
 4. *If any, what precautionary steps did you take to avoid the present anti-doping rule violations (i.e. presence of Heptaminol in your body)?*

In order to benefit from a possible elimination or reduction of the otherwise applicable period of Ineligibility as provided for under Articles 10.4 and 10.5 of the ADC (No Fault or Negligence or no Significant Fault or Negligence with regard to the present anti-doping rule violations).

9. Mr. Craig and the FIM had made attempts to reach a settlement to resolve the anti-doping violation without a hearing and accordingly, it was requested that the hearing fixed for 15th March 2019 be postponed. The request was acceded to and the hearing stood postponed. However, Mr. Craig and the FIM were unable to reach a settlement in terms of the ADC and therefore letter dated 12th June 2019 was issued by the FIM informing Mr. Craig that the hearing would be on 17th June 2019, which subject to his consent could be held through Skype video conference. The Rider was informed that Mr. Jan Stovicek will attend the hearing on behalf of the FIM as a party in terms of Article 3.2-A1 of the FIM Disciplinary and Arbitration Code. Mr. Craig was also once again asked to answer the questions posed to him in the letter dated 27th February 2019. Mr. Craig was also informed of the possibility to file written submissions on or before 14th June 2019.
10. In terms of Article 8.1.1 of the ADC and Article 3.3.2 of the FIM Disciplinary and Arbitration Code, the hearing was conducted on 17th June 2019 (“the CDI Hearing”) through Skype. The CDI Hearing was attended by Mr. Craig, Mrs. Paige Craig, Mr. Howard L. Jacobs, Mrs. Lindsay S. Brandon and Mr. Jan Stovicek on behalf of FIM.

II. ASSESSMENT IN LAW AND IN FACT BY THE CDI

PROCEDURAL ISSUES

A. CDI Jurisdiction

11. The CDI has jurisdiction to handle this case and decide on its merits in accordance with Article 8.1.1 ADC and Article 3.3.2 of the FIM Disciplinary and Arbitration Code.
12. In addition, the CDI notes that Mr. Craig has never called into question or challenged the competency of the CDI in the proceedings.
13. Mr. Anand Sashidharan, Mr. Sakari Vuorensola and Mr. Frantisek Schulman were appointed as the members of the CDI, which was communicated to Mr. Craig by letter dated 27th February 2019 while no objection regarding the constitution of the CDI was raised in response to the letters convening the hearing or at the hearing.

14. During the CDI Hearing on 17th June 2019, in accordance with Article 8 ADC, Mr. Craig was given the opportunity to exercise in full his right to be heard (present his version of the facts, arguments and submit relevant evidence in particular).

MERITS (Procedure before the CDI)

B. Scope of review of the CDI

15. When adjudicating in first instance, the CDI enjoys, as usual, full powers to establish the relevant facts and applies the law applicable to the case.
16. While the CDI has considered all the facts, allegations, legal arguments and evidence submitted by Mr. Craig and his representatives, Mr. Howard L. Jacobs and Mrs. Mrs. Lindsay S. Brandon in the present proceedings as well as the submissions of Mr. Jan Stovicek on behalf of the FIM, it refers in its Decision only to the submissions and evidence it considers necessary to explain its reasoning.

C. Applicable law

17. The 2018 FIM Anti-Doping Code, the FIM Disciplinary and Arbitration Code, and as usual and complementarily Swiss law, if necessary, as the FIM has its seat in Switzerland [cf. Arbitration CAS 2003/A/461 & 471 & 473 WCM-GP Limited v/ Fédération Internationale de Motocyclisme (FIM), Award of 19 August 2003] apply to this case. The CDI shall also consider the relevant case law of the Court of Arbitration for Sport (“CAS”).

D. The CDI Hearing

18. The following documents were furnished to the CDI:
1. Notification of AAF from FIM to Mr. Craig dated 23rd January 2019,
 2. Appendices to Notification of AAF (Analytical Report dated 9th April 2018, doping control form submitted by the Rider etc.)
 3. CMI Bureau Report of AAF, absence of TUE dated 23rd July 2018
 4. Pre-Hearing Brief of Mr. Craig together with the Exhibits mentioned in the brief.
 5. Affidavit of Mr. Ben Bostrom dated 16th June 2019
 6. Affidavit of Mr. Craig dated 16th June 2019
 7. Affidavit of Mrs. Paige Craig dated 16th June 2019

8. Report dated 16.02.2019 issued by M/s. Aegis Sciences Corporation based on a voluntary test of a sample submitted by Mr. Craig.
 9. Letters to Mr. Paul Scott, Korva Labs under which supplements were submitted for testing for possible contamination of Heptaminol
 10. Letters dated 25th April 2019, 13th May, 2019 and 30th May 2019 from the Law Offices of Mr. Howard L. Jacobs to the FIM
 11. Letter from FIM to Mr. Howard L. Jacobs on 14th May 2019
 12. Letters dated 21 May 2019 issued by Mr. Paul Scott, Korva Labs, reporting that the samples submitted do not indicate the presence of Heptaminol
 13. Letters dated 27th February 2019 and 12th June 2019 from FIM to the Rider convening the hearing.
 14. List of events that Mr. Craig has participated in since the date of the sample collection.
19. Mr. Craig's evidence sent to the CDI was reviewed and discussed in detail at the CDI Hearing. At the hearing, the oral evidence of Mr. Craig, Mrs. Paige Craig and Mr. Ben Bostrom (including evidence in cross examination of the said witnesses) was taken on record and the documents in support of his case were also taken on record. The following were the relevant submissions of Mr. Craig:
- a) While the in-competition urine sample (which tested positive for heptaminol) was provided by Mr. Craig on 10 March 2018, a specified substance. Mr. Craig was not notified of this positive test until 23 January 2019, 10 months after the alleged adverse analytical finding.
 - b) Mr. Craig has never knowingly ingested heptaminol and believes his ingestion of the prohibited substance to be the result of a contaminated supplement provided to him promotionally or by a friend and former rider who custom blended a supplement that he believed at the time was made from safe products. Therefore, Mr. Craig is entitled to a significant reduction of the otherwise applicable 2-year default sanction.
 - c) FIM's unreasonable delay in notifying Mr. Craig of his positive test made it impossible for him to test the supplements he ingested before his sample collection (as they were no longer in existence 10 months later).
 - d) Mr. Ben Bostrom, a friend of Mr. Craig's and former drug-tested FIM athlete himself had personally created a supplement for Mr. Craig and since he knew that Mr. Craig was subject to the FIM Anti-Doping Rules, he took care to ensure that he only used what he believed to be quality

ingredients in his supplement. Mr. Craig took two other supplements, namely

- (i) MRM Reload BCAA+G Post Workout Recovery; and,
 - (ii) Ryno Power Sports Supplements Hydration Fuel Electrolyte Blend.
- e) After Mr. Craig learnt of the adverse analytical finding, the Bostrom Supplement was recreated in order to ascertain as to whether the supplement was the source of Heptaminol. While the ingredients from the same batch could not be sourced, the same ingredients from other batches of the same manufacturers were sourced. A sample of the Bostrom Supplement and samples of the other two supplements were sent to Korva Labs to test for Heptaminol presence / contamination, however, all three tested negative.
- f) Because the FIM cannot prove that Mr. Craig intentionally took heptaminol, the default sanction is 2 years.
- g) Mr. Craig's positive test was more likely than not caused by his ingestion of a contaminated supplement
- h) Because the FIM's conduct is the direct cause of Mr. Craig's inability to provide direct evidence that a supplement that he took was contaminated with heptaminol, the FIM should be estopped from requiring such direct evidence as a condition of proving that the positive test was more likely than not caused by a contaminated supplement.
- i) The ADC itself does not require an athlete to provide direct evidence that a supplement that he took was contaminated with a banned substance; so circumstantial evidence can be used to meet the athlete's burden of proof as well.
- j) Mr. Bostrom was unable to provide the ingredients from the same lot numbers as those included in the original "CC38" supplement made for Mr. Craig. However, it is known that at least three (3) of the ingredients listed on Mr. Bostrom's ingredient list for the Bostrom supplement include supplements from manufacturers who have manufactured contaminated supplements into the stream of commerce.
- k) Bostrom used '**Bulk Supplements**', a manufacturer who manufactured a creatine powder contaminated with ostarine on a previous occasion and Mr. Craig's counsel had personally had 'Bulk Supplements' products tested in a prior doping matter in which it was found that the supplement

was contaminated. It is therefore possible that the “Bulk Supplements” product contained in Mr. Bostrom’s custom blend, or any of the other ingredients within for that matter, could have contained heptaminol.

- l) Because the source of Mr. Craig’s positive test was more likely than not a contaminated supplement, his sanction should be reduced in terms of Article 10.5.1.2.
 - m) Viewing Mr. Craig’s degree of diligence and the fact that the positive test was the result of a contaminated supplement, his degree of fault is light.
 - n) Due to the delay in notification by the FIM, the appropriate start date of Mr. Craig’s sanction is the date of his sample collection
 - o) Mr. Craig had cited many articles reporting cases of Anti-doping violations on account of contaminated supplements and also cited various decisions in support of the contentions above-mentioned.
20. During the CDI Hearing, in addition to the submissions mentioned above (which are not repeated for the sake of brevity), Mr. Craig, through his counsel made the following submissions:
- a) Mr. Craig did not knowingly take Heptaminol, which is
 - (i) a fairly obscure stimulant; and
 - (ii) not available for purchase /not an easy substance to buy.
 - b) It is not Mr. Craig’s burden to prove that he did not intentionally commit the anti-doping violation or enhance performance
 - c) If the FIM rejects the theory of contamination of the Bostrom Supplement, then they should have an alternate theory.
21. On behalf of the FIM, the following submission were made
- a) FIM did not find any evidence of intentional use of the prohibited substance.
 - b) It is for Mr. Craig to establish how the prohibited substance entered his body in order for him to benefit from the reduction of period of ineligibility and the FIM does not agree that the source of Heptaminol is from contaminated products.
 - c) Mr. Craig should demonstrate what precautionary steps were taken by him in order to avoid an Anti-doping violation.

- d) The FIM concedes that there was a delay in notification and that the period of ineligibility may commence from the date of taking the sample.
22. During the CDI Hearing, Mr. Craig was examined as a witness and cross examined by Mr. Stovicek. The following questions and answers during cross examination are relevant:

Q: Did you visit a Toxicologist, a specialist doctor in the field of Anti-doping, as to whether the supplements contained any prohibited substances?

A: *I did not read every ingredient on the label. I take a lot of pride in working hard and do not cheat I never thought I would be in this position.*

Q: What about Mr. Bostrom's Product. What precautions did you take?

A: *He was a professional Rider and he uses natural products. I reached out to him. Ben was also a nutritionist. He was really smart about that. I did not test the stuff but I did believe him.*

Q. Did you discuss this with a physician?

A: *No*

Q. Personally, in your opinion, what is the source of Heptaminol?

A: *I don't know. Maybe fruit. That is what I have read. I have no idea where it came from.*

23. The following questions and answers during re-examination are also relevant:

Q: Did you meet with Mr. Ben Bostrom before taking it?

A: *No. I only spoke to him on the phone.*

Q: Did you recall discussing Anti-doping Code with Mr. Ben Bostrom?

A: *Yes. He told me that everything is natural. There was nothing. He knew what was going into the mix.*

Q: Was this a custom mix for you?

A: *Yes. He would make the supplement himself. I told him I had no energy. He put in ingredients to help me with that.*

24. Mr. Ben Bostrom was also examined as a witness and cross examined. The CDI also put questions to Mr. Bostrom. Mr. Bostrom has stated as follows:
- a) I am a professional athlete. I am aware of the Anti-doping code. I have had many tests done.
 - b) I do not have any medical training

- c) I have not attended any Anti-doping Seminars or hearings.
- d) Mr. Ebersol is a chemist who helps me with work on supplements

E. Findings of the CDI

25. In the opinion of the CDI, the following are the issues to be decided by the CDI:

- I. Whether the Anti-Doping Rule Violation has been established?*
- II. What is the period of ineligibility in terms of Article 10.2 of the ADC?*
- III. Whether the Rider is entitled to reduction of period of ineligibility under Article 10.5.1.1 or 10.5.1.2?*
- IV. Has the rider established how the Prohibited Substance entered his system?*
- V. Significant Fault or negligence of the rider (Article 10.5.1.1 of the ADC)*
- VI. What is the appropriate sanction for Mr Craig?*
- VII. When does the period of ineligibility commence?*
- VIII. Whether Mr Craig should be disqualified from the races in which he participated from the date of sample collection, including the race on March 10th 2018 at Daytona International Speedway in terms of Article 9 and Article 10.8 of the ADC respectively?*

I. Whether the Anti-Doping Rule Violation has been established?

- 26. At the outset, the first question to be answered by the CDI is whether there was an Anti-Doping Violation, i.e. presence of a Prohibited Substance, namely, Heptaminol (S6. Stimulants), in the Rider's sample.
- 27. In the present case, the evidence in support of the use of the prohibited substance is the Adverse Analytical Report No.AR201802048 dated 09.04.2018 issued by the Deutsche Sporthochschule Köln Institut für Biochemie, a WADA accredited Laboratory, which tested Mr. Craig's 'A' sample has confirmed the presence of Heptaminol (which is a specified substance included in Class **S6. Stimulant** of the 2018 Prohibited List of the ADC).

28. The Rider has accepted the presence of the prohibited substance, which amounts to an anti-doping violation under Article 2.1 of the ADC.
29. The CDI therefore finds that it is undisputable that Mr. Craig committed an anti-doping rule violation under Article 2.1 ADC, namely the presence of a prohibited substance or its metabolite in the Rider's sample.

II. What is the period of ineligibility in terms of Article 10.2 of the ADC?

30. In terms of Article 10.2, in so far as an anti-doping rule violation involving a prohibited substance which is a specified substance is concerned, the period of ineligibility shall be four years if the violation was intentional and 2 years if the anti-doping violation was not intentional. The burden of proof is on the FIM to establish that the anti-doping violation is intentional. The period of ineligibility may be subject to reduction under Articles 10.4, 10.5 or 10.6 of the ADC.
31. Therefore, the first issue to be addressed is whether the anti-doping rule violation was intentional in order to determine the period of ineligibility in terms of Article 10.2.
32. The FIM has admitted that there is no material available which would indicate intentional anti-doping violation. Therefore, the period of ineligibility shall be two years, subject to the provisions of Article 10.5 as the Rider has not sought for any elimination or reduction of period of ineligibility under Articles 10.4 or 10.6
33. Accordingly, in terms of Article 10.2.2, the period of ineligibility to be imposed on Mr. Craig is 2 years, subject to the application of Article 10.5, which is discussed below.

III. Whether the Rider is entitled to reduction of period of ineligibility under Article 10.5.1.1 or 10.5.1.2?

34. Mr. Craig's argues that the anti-doping violation was caused by a contaminated supplement and that the supplement that was contaminated was the supplement prepared by Mr. Ben Bostrom, which was specially prepared for Mr. Craig. Mr. Craig has sought for reduction of the period of ineligibility under Article 10.5.1.2

35. Article 10.5.1.2 provides for reduction of period of ineligibility in cases where the rider can establish that the anti-doping violation has occurred due to No Significant Fault or Negligence and that the detected prohibited substance came from a contaminated product.
36. Contaminated Product has been defined as follows in the ADC:
'Contaminated Product: A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.'
37. In the present case, the prohibited substance is said to have been ingested due to the allegedly contaminated supplement provided by Mr. Bostrom. Admittedly, the supplement provided by Mr. Bostrom was a custom mix prepared specifically for Mr. Craig and this was not generally available in the market. There is no product label nor is information available in a reasonable internet search and therefore the provisions relating to a contaminated product are not applicable in the present case.
38. Only those products which contain a prohibited substance which is not disclosed on the product label or in information available in a reasonable internet search can qualify as 'contaminated products'. When the ingredients are not disclosed, the product cannot be considered to be a contaminated product. Therefore, Mr. Craig is not entitled to any reduction under Article 10.5.1.2

IV. Has the rider established how the Prohibited Substance entered his system?

39. In order to determine as to whether the Rider is eligible for reduction of the period of ineligibility in terms of Article 10.5.1 (No Significant Fault or Negligence for specified substances) the Rider has to establish on a balance of probability (as required under Article 3 of the ADC) as to how the Prohibited Substance entered his system.
40. The CDI notes the following case law "*In case the Panel is offered several alternative explanations for the ingestion of the prohibited substance but it is satisfied that one of them is more likely than not to have occurred, the Athlete is deemed to have met the required standard of proof regarding the means of ingestion of the prohibited substance. It remains irrelevant that there may also be other possibilities of ingestion, as long as they are considered by the Panel to be less likely to have occurred. In other words, for the Panel to be satisfied that a means of ingestion is demonstrated on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51% chance of it having occurred. The Player thus only needs*

to show that one specific way of ingestion is marginally more likely than not to have occurred.” See point 32 of CAS 2009/A/1926 & 1930 - ITF v. Richard Gasquet & WADA v. ITF & Richard Gasquet and “For the Panel to be satisfied that a means of ingestion is demonstrated on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51% chance of it having occurred. The athlete thus needs to show that one specific way of ingestion is marginally more likely than not to have occurred” (See para. 113 of Contador’s case, CAS 2011/A/2384). Therefore, there is no doubt that the standard of proof is balance of probability and the Rider has to establish that there is 51% chance of the explanation given by Mr. Craig having occurred.

41. In a nutshell, Mr. Craig made the following submissions in support of his explanation as to the manner in which the prohibited substance was ingested:
- a) Due to the delay in notification of the Adverse Analytical Finding, he was unable to source the same ingredients and identify the source of the prohibited substance;
 - b) Since the reason for being unable to identify the source of the prohibited substance is due to the delay of the FIM, the FIM is estopped from requiring the Rider to prove the source of the prohibited substance;
 - c) The testing of the samples of the supplements taken by him, although from different lots, did not indicate the presence of Heptaminol.
 - d) He cannot be required to prove how the prohibited substance entered his body through direct evidence;
 - e) In the absence of an alternate theory being propounded by FIM, the explanation of the Rider is required to be accepted;
 - f) Contamination of supplements has been the source of Heptaminol in other cases in the past
 - g) Mr. Bostrom had sourced ingredients from manufacturers, who have manufactured contaminated supplements.
 - h) There is only a light degree of fault on the part of Mr. Craig
42. In the opinion of the CDI, based on the balance of probability test, unless the CDI is satisfied that the prohibited substance was ingested in the manner claimed by the rider, the CDI does not have the power to reduce the period of ineligibility. This will be notwithstanding any delay in notification by the FIM. The CDI’s power to reduce the period of ineligibility is circumscribed by its satisfaction regarding the manner in which the prohibited substance was ingested. There can be no estoppel against the CDI as the CDI is an independent authority that adjudicates and determines the dispute. Further, in the case of Bohdan Ulihrach v ATP, the anti-doping violation was caused

by a supplement provided by the ATP and many players were affected by it. In these circumstances, it was held that

“Equitable estoppel is to be applied as a matter of fairness and good conscience to estoppe the person whose conduct has brought the situation about from asserting their legal rights against another party who may have been misled or affected by that conduct.”

43. In the present case, the mere delay in notification of the adverse analytical finding will relieve the rider of his burden to establish how he ingested the prohibited substance.
44. The CDI notes that unless the CDI is satisfied that the Rider ingested the prohibited substance in the manner claimed, the level or degree of fault cannot be ascertained. The non-availability of samples from the same lot cannot be a ground to claim that the burden of establishing the manner of ingestion of the prohibited substance is discharged, especially when subsequent tests do not indicate the presence of the prohibited substance. It is admitted that the direct evidence need not be furnished in order to establish that the prohibited substance was ingested through a contaminated supplement, however, merely based on a theory, the manner of ingestion as claimed by the Rider cannot be accepted.
45. The reports in various newspaper articles and websites of cases wherein consumption of supplements caused an anti-doping violation is not relevant as the facts in each of the cases are different. In Unufe’s case, the prohibited substance was not displayed on the product. This is not relevant in the present case as the claim of the Rider is that there was a contaminated supplement and not that the prohibited substance was not displayed. The other cases of contaminated supplements causing an indication of anti-doping violation due to the presence of Ostarine, only shows that there have been cases that supplements can be contaminated. However, none of these cases indicate that the supplement consumed by Mr. Craig was also contaminated in the same manner.
46. The argument that one of Mr. Bostrom’s suppliers, namely Bulk Supplements, was earlier found to have manufactured a contaminated supplement containing Ostarine will not be relevant as this would not imply that there can be contamination by other substances such as Heptaminol.
47. The Rider has not been in a position to establish which ingredient of the Bostrom Supplement was contaminated either. Further, the evidence of Mr. Craig and Mr. Bostrom also do not suggest that this was the manner in which the prohibited substance was ingested. On the other hand, it is the Rider’s

case that this is only a possibility. It is also noticed that the doping control form submitted by Mr. Craig does not disclose the consumption of the Bostrom Supplement, while the other supplements are disclosed in the doping control form. Therefore, the CDI is not satisfied that there is 51% chance that the ingestion of the prohibited substance was through the Bostrom Supplement.

48. The CDI is also unable to agree with the submission of Mr. Craig's counsel that in the absence of an alternate theory as to the manner of ingestion of the prohibited substance that the theory of the Rider has to be accepted. The nature of doping is such that the international sports federation cannot be required to establish how the prohibited substance was ingested. Article 2.1 of the ADC states that "*It is each Rider's personal duty to ensure that no Prohibited Substance enters his or her body. Riders are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples*". Once the Anti-doping violation is proved by the international sports federation, it is for the athlete / rider to establish how the substance was ingested in order to claim the benefit of the provisions of Article 10.5.1.1.
49. The CDI is of the opinion that there is no evidence, direct or indirect to even suggest that the supplement provided by Mr. Bostrom was contaminated and accordingly the rider has not established how the prohibited substance was ingested. Since Mr. Craig was unable to establish how the prohibited substance was ingested, the benefit of reduction of period of ineligibility cannot be granted to the Rider.

V. **Significant Fault or negligence of the rider (Article 10.5.1.1 of the ADC)**

50. While Mr. Craig is not eligible to the benefit of reduction of period of ineligibility under Article 10.5.1.1 as he was unable to establish as to how the prohibited substance was ingested, the CDI also thinks it fit to give its findings on whether there was no significant fault or negligence on the part of Mr. Craig and if so, to what degree was the Mr. Craig's level of fault.
51. In terms of the ADC, no significant fault or negligence is to be determined based on the rider's Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for 'no Fault or negligence', the significance of such fault or negligence in relation to the anti-doping violation.
52. No Fault or Negligence is defined as '*The Rider or other Person's establishing that he or she **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 Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule.

53. Mr. Craig is a professional rider and as mentioned above, in terms of Article 2.1 of the ADC, it is his personal duty to ensure that no Prohibited Substance enters his body. Today, athletes and riders are required to be extremely cautious about what they consume in order to avoid an anti-doping violation.
54. The extent of fault or negligence on the part of Mr. Craig in committing the Anti-doping Rule Violation has to be “*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 substances*”, as held by the CAS in the case of Dimitar Kutrovsky Vs. ITF, CAS 2012/A/2804.
55. Even assuming for the sake of argument that the prohibited substance was ingested due to the contamination of the Bostrom Supplement, the degree of fault of Mr. Craig has to be examined against his fundamental duty to ensure that no prohibited substance enters his body. Admittedly, Mr. Bostrom has no medical training and had not attended any anti-doping seminars. The sourcing and consumption of a custom mix concocted by Mr. Bostrom, which was also not tested for prohibited substances, was extremely risky behaviour, which in the opinion of the CDI amounts to significant fault or negligence on the part of Mr. Craig in complete disregard to his fundamental duty that he owes to the Anti-doping program. As stated above, it is also noticed that the doping control form submitted by Mr. Craig does not disclose the consumption of the Bostrom Supplement, while the other supplements are disclosed.
56. The Bostrom supplement is a custom supplement without any labels and the Rider did not seek any medical advice with respect to the supplement either. While the CDI is satisfied that there was no intention to commit an anti-doping violation, the CDI is of the opinion that it cannot be said that there was no significant fault or negligence on the part of the Rider. Therefore, Mr. Craig is not entitled to reduction of the period of ineligibility under Article 10.5.1.1

VI. What is the appropriate sanction for Mr Craig?

57. As stated above, in the present case, the period of ineligibility shall be two years and the Rider is not entitled to reduction of period of ineligibility under Article 10.5 for the reasons stated above and accordingly the period of ineligibility of two years is the appropriate sanction.

VII. When does the period of ineligibility commence?

58. Article 10.11 provides that except as provided in Article 10.11, the period of ineligibility shall start on the date of the final hearing decision providing for ineligibility. Article 10.11.1 carves out an exception and provides that where there is substantial delay in the hearing process or other aspects of Doping Control not attributable to the Rider or other Person, FIM may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection.
59. The FIM has admitted that in the present case there was a substantial delay in notifying the adverse analytical finding as the adverse analytical report was received in April 2018 and the CMI had confirmed the absence of a TUE in July 2018, however the notification of the adverse analytical finding was issued only on 23rd January 2019. Mr. Craig has sought commencement of the period of ineligibility from 10th March 2018 (i.e. the date of sample collection).
60. The CDI is satisfied that there was substantial delay in the process, which was not attributable to Mr. Craig and accordingly, the period of ineligibility shall commence from 10th March 2018, i.e. the date of taking the sample.

VIII. Whether Mr Craig should be disqualified from the races in which he participated from the date of sample collection, including the race on March 10th 2018 at Daytona International Speedway in terms of Article 9 and Article 10.8 of the ADC respectively?

61. In terms of Article 9, an anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting consequences, including forfeiture of any medals, points and prizes. Therefore, Mr. Craig is automatically disqualified from the race at Daytona International Speedway held on 10th March 2018
62. Article 10.8 of the ADC states that *“In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (...) or any other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified, with all of the resulting consequences including forfeiture of any medals, points and prizes.”*

63. Since the period of ineligibility commences from the date of sample collection, i.e. 10th March 2018, Mr. Craig is Disqualified from the following competitions in which he participated:

Race Circuit	Class	Date
Thunder Valley	250	June 1, 2019
Pala	250	May 25, 2019
Hangtown	250	May 18, 2019
Minneapolis	250SX East	February 9, 2019
Glen Helen	450	May 26, 2018
Hangtown	450	May 19, 2018
Las Vegas	450SX	May 5, 2018
Salt Lake City	450SX	April 28, 2018
Foxborough	450SX	April 21, 2018
Minneapolis	450SX	April 14, 2018
Seattle	450SX	April 7, 2018
Indianapolis	450SX	March 24, 2018
St. Louis	450SX	March 17, 2018
Auckland, New Zealand	Supercross	24 November 2018
Geneva, Switzerland	Supercross	30 November 2018 & 1 December 2018

with all of the resulting consequences including forfeiture of any medals, points and prizes.

F. Costs of Procedure

64. As regards the costs of the CDI proceedings, Article 6 of the 2018

Disciplinary and Arbitration Code provides that: "The costs of a disciplinary or arbitration decision will be assessed by the FIM Executive Secretariat and will be awarded against the losing party, unless the Court decides otherwise."

65. Given the outcome of this case, the CDI considers that Mr. Christian Craig, as the penalised party, will bear the said costs as assessed by the FIM Administration.

**On these grounds,
The International Disciplinary Court rules that:**

- I. Mr. Christian Craig is sanctioned with a period of ineligibility of 2 years commencing on 10th March 2018. Accordingly, the period of ineligibility shall end on 9th March 2020.
- II. Mr. Christian Craig is disqualified from the race at Daytona International Speedway held on 10th March 2018 and the races in which he participated from the date of sample collection (10th March 2018) till this date, which races have been mentioned in Paragraph 63 above.
- III. The costs of the case shall be borne by Mr. Christian Craig

Decision rendered on 29th July 2019

INTERNATIONAL DISCIPLINARY COURT


Mr. Anand SASHIDHARAN


Mr. Sakari VUORENSOLA


Mr. Frantisek SCHULMAN

An Appeal against this decision may be lodged before the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland within 21 days from the date of receipt of the CDI decision pursuant to Article 13.7 of the 2018 FIM Anti-

Doping Code. Moreover, Articles R47 ff. of the Code of Sports-related Arbitration shall apply.

The full address and contact numbers of the CAS are the following:

Court of Arbitration for Sport

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