

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION
Panel for WTC Doping Disputes**

AAA CASE NO. 77 190 00214 12 JENF

In the Matter of the Arbitration between

WORLD TRIATHLON CORPORATION,

Claimant

and

KEVIN MOATS,

Respondent

AWARD OF ARBITRATORS

WE, THE UNDERSIGNED ARBITRATORS (“Panel”), having been designated by the above-named parties in accordance with the applicable rules, and having been duly sworn and having duly heard the voluminous and extensive proofs, arguments, witness testimony, and allegations of the parties, and, after a lengthy, full-day hearing held on August 28, 2012, in Los Angeles, California do hereby render the Panel’s full reasoned award as follows:.

1. SUMMARY

1.1 Based on an adverse analytical finding occurring from an out of competition test, the Claimant World Triathlon Corporation (“WTC”) requests the Panel to impose a sanction of no less than two (2) years’ ineligibility on age group triathlete Respondent Kevin Moats (“Mr. Moats”).

1.2 The Panel finds that a doping offense has occurred under the WTC Anti-Doping Rules (“WTC ADR”), but the Panel has determined, under the facts and circumstances of this

case, that a reduction of the period of ineligibility from the usual two (2) years to one (1) year is warranted under WTC ADR Section 10.5.2, which applies when an athlete can establish no significant fault or negligence, and that such period of ineligibility for Mr. Moats should commence from the date of sample collection. Here, while there was an adverse analytical finding and an admission of use of exogenous testosterone without any effort to seek a Therapeutic Use Exemption (“TUE”), there was substantial evidence of possibly contradictory, or at best ambiguous, instruction by the WTC on whether a TUE was required in advance of an event for an age group athlete who had received no anti-doping education under a relatively new anti-doping regime applicable to WTC events.

2. PARTIES

2.1 Claimant WTC is the for profit corporation that owns, manages, and runs Ironman branded triathlon events worldwide and has undertaken responsibility for conducting drug testing and results management for such testing under the WTC ADR. The WTC is a voluntary signatory to the World Anti-Doping Code and asserts that it follows the World Anti-Doping Code in all material respects.

2.2 At the Hearing, WTC was represented by Frank Jakes, Esq., of the law firm of Johnson, Pope, Bokor, Ruppel & Burns, LLP, of Tampa, Florida.

2.3 The Respondent, Mr. Moats, was a member of USA Triathlon (“USAT”)¹ for the time period in question in this case and Mr. Moats was a signatory to the I Am True 2012 World Championship Athlete Anti-Doping & Qualifying Slot Waiver for Age Group Athletes form, which was required by WTC to be filed by all participants in the WTC-run Ironman World Championships. Mr. Moats is an age group athlete who participates in Ironman triathlons.

¹ USAT is the United States Olympic Committee and International Triathlon Union recognized National Governing Body (“NGB”) for the sport of triathlon in the United States.

2.4 At the Hearing, Respondent was represented by his counsel Howard Jacobs, Esq., of the Law Offices of Howard Jacobs of Westlake Village, California..

2.5 The Panel appreciates and commends the excellent briefing and oral presentations of counsel for both parties in this matter.

3. JURISDICTION

3.1 The Panel has jurisdiction over this doping dispute pursuant to the WTC ADR and the I Am True 2012 World Championship Athlete Anti-Doping & Qualifying Slot Waiver for Age Group Athletes mandatory form agreementsigned by Mr. Moats of entry in the prospective 2012 Ironman World Championship. The parties' agreement to arbitrate is set forth in the above-referenced documents.

4. RULES APPLICABLE TO THIS DISPUTE

4.1 The rules related to the outstanding issues in this case are contained in the WTC ADR.²The relevant rules are as follows:

WTC ADR VERSION 4.0 (SEPTEMBER 2011)

ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

Athletes and other *Persons* shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the *Prohibited List*.

The following constitute anti-doping rule violations:

2.1 The presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's* Sample

2.1.1 It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body. *Athletes* are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their *Samples*. Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on

² The Panel notes that despite the claims of WTC that it is a signatory to the World Anti-Doping Code and that it follows the same there are many substantial variations in language of the WTC ADR and deviations from the World Anti-Doping Code, some of which, as noted by the Panel herein, are substantial.

the *Athlete's* part be demonstrated in order to establish an anti-doping violation under Article 2.1.

2.1.2 Sufficient proof of an anti-doping violation under Article 2.1 is established by either of the following: presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in the *Athlete's A Sample* where the *Athlete* waives analysis of the *B Sample* and the *B Sample* is not analyzed; or, where the *Athlete's B Sample* is analyzed and the analysis of the *Athlete's B Sample* confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the *Athlete's A Sample*.

* * *

ARTICLE 4 THE PROHIBITED LIST

4.4 Therapeutic Use

4.4.1 *Athletes* with a documented medical condition requiring the use of a *Prohibited Substance* or a *Prohibited Method* must first obtain a *TUE*. The Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* (Article 2.1), *Use or Attempted Use* of a *Prohibited Substance* or a *Prohibited Method* (Article 2.2), . . . consistent with the provisions of an applicable *TUE* issued pursuant to the *International Standard* for Therapeutic Use Exemptions shall not be considered an anti-doping rule violation.

4.4.2 Subject to Article 4.4.4

Athletes included by the WTC in its *Registered Testing Pool* must obtain a *TUE*. In accordance with Article 15.4 of the *Code*, any *TUE* granted to an *Athlete* by or on behalf of a *Signatory* (including any *TUE* granted prior to the Effective Date) will be recognized under these Rules in accordance with the terms of the grant, provided that the grant is consistent with the *Code* and is within that *Signatory's* authority. Otherwise, however, an *Athlete* is required to obtain a *TUE* from the WTC TUE Committee. The application for a *TUE* must be made as soon as possible (in the case of an *Athlete* in the *Registered Testing Pool*, this would be when he/she is first notified of his/her inclusion in the pool) and in any event (save in emergency situations) no later than 30 days before the *Athlete's* participation in the Event. *TUE* [*sic*] granted by the WTC shall be reported to the *Athlete's National Federation* and to *WADA* through *ADAMS*.

4.4.3 Subject to Article 4.4.4, *Athletes* who are not included by the WTC in its *Registered Testing Pool* must obtain a *TUE* from their *National Anti-Doping Organization* or other body designated by their relevant *National*

Federation, as required under the rules of the *National Anti-Doping Organization* or the relevant *National Federation*. The application for a *TUE* must be made as soon as possible (in the case of an *Athlete* in the *Registered Testing Pool*, this would be when he/she is first notified of his/her inclusion in the pool) and in any event (save in emergency situations) no later than 30 days before the *Athlete's* participation in the *Event*. *National Federations* shall promptly report any such *TUE* to the *WTC* and *WADA*, through *ADAMS*.

4.4.4 The WTC shall appoint a panel to consider requests for *TUE's* [*sic*] (the "TUE Panel") in accordance with the *International Standard* for Therapeutic Use Exemptions. The TUE Panel member(s) shall promptly evaluate the request in accordance with the *International Standard* for Therapeutic Use Exemptions and render a decision on such request, which shall be the final decision of the WTC.

* * *

ARTICLE 5 TESTING

5.1 Authority to Test

All *Athletes* participating in WTC Events shall be subject to *Testing* by WTC, its *Event Licensee*, the *Athlete's National Federation*, and any other *Anti-Doping Organization* responsible for *Testing* at a *Competition* or *Event* in which they participate. All *Athletes* under the jurisdiction of a *National Federation*, including *Athletes* serving a period of *Ineligibility* or *Provisional Suspension*, shall be subject to *Testing* at any time or place, with or without advance notice, *In-Competition* or *Out-of-Competition* by the WTC, its *Event Licensees*, *WADA*, the *Athlete's National Federation*, the *National Anti-Doping Organization* of any country where the *Athlete* is present or of which the *Athlete* is national, resident, licence holder or member of a sport organization, and any other *Anti-Doping Organization* responsible for *Testing* at a *Competition* or *Event* in which they participate. . . .

5. FACTUAL FINDINGS

5.1 While 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.

5.2 Mr. Moats is an age group athlete (aged 58) who participates in the sport of Ironman triathlons. He has participated in over 50 Ironman World Championships and hundreds

of other triathlons. Prior to the provisional sanction in this matter, he participated in the 55 year old to 59 year old category. He is a real estate developer by profession.

5.3 On November 5, 2011, Mr. Moats, as an applicant to the 2012 Ironman World Championship triathlon event, executed WTC's Anti-Doping Waiver for Age Group Athletes by which he agreed to be bound by WTC's ADR and cooperate with WTC's Anti-Doping testing, including through out of competition testing.

5.4 Mr. Moats used medically-prescribed testosterone under medical supervision to treat andropause and hypothyroidism since 2005. The evidence demonstrated that Mr. Moats used the testosterone inconsistently during his treatment period, often to the chagrin of his doctor, but he did use it regularly.

5.5 Mr. Moats testified that he used the prescribed testosterone in accordance with the directions of his doctor approximately seven days before the out of competition test. When asked why he did not disclose such use on the disclosure form provided by the doping control officer at the time of the collection of his specimen, Mr. Moats testified that the form only requested disclosure of substances ingested within the three days prior to giving his sample, which the form does in fact say on its face.

5.6 This was Mr. Moats' first adverse analytical finding for a prohibited substance.

5.7 The WTC provides the following information on its website titled "Therapeutic Use Exemption (TUE) Information | Ironman Pro Membership"

[<http://ironmanpromembership.com/anti-doping/therapeutic-use-exemption-tueinformation/>]:

"Important Reminder for ALL Athletes

All Professional and Age Group athletes are advised to check with their National Anti-Doping Agency and their National Triathlon Federation to determine if there are domestic or federation policies which may be different from those of the WTC. Stricter TUE requirements could be applicable to you based on requirements of other sanctioned triathlon competitions (ie ITU, Xterra) and/or required based on domestic policy or National Federation membership.

Important Notice for ALL US Athletes

The WTC advises that ALL US Athletes, by virtue of their USAT Membership, are required to follow the TUE Policies of the US Anti-Doping Agency and should contact USADA to confirm if a TUE is required.

...

Know Your Category at WTC Events

Participation Category	Prohibited In-Competition	Prohibited Out-of-Competition
Professional Athletes . . .	A TUE is required prior . . .	A TUE is required prior . . .
WTC Professional . . .	A TUE is required prior . . .	A TUE is required prior . . .
Age-Group Athletes	No advance TUE needed***	No advance TUE needed***

*** Athletes classified in the Age-Group division (Appendix 1 – WTC Anti-Doping Rules) at an IRONMAN® Triathlon event are not required by the WTC to submit a Therapeutic Use Exemption (TUE) in advance. However, ALL Age Group athletes are advised to check with their National Anti-Doping Agency and their National Triathlon Federation to determine if there are domestic or federation policies which may be different from those of the WTC. Stricter TUE requirements could be applicable to you based on requirements of other sanctioned triathlon competitions (ie, ITU, Xterra) and/or required based on domestic policy or National Federation membership.

An age-group athlete who has a first AAF caused by the Use of a Prohibited substance will not have committed an anti-doping rules violation provided the rules below are followed:

1. The Age-group Athlete has a medical condition which was well documented in his or her medical records prior to the date doping control was performed.
2. The Age-Group Athlete, at the Athlete’s expense, promptly undergoes any additional medical examination and testing requested by the WTC.
3. The facts and circumstances of the case put to rest any reasonable suspicion that the Athlete used the substance for the purpose of enhancing the Athlete’s performance. Completing the “Declaration of Use” shall be considered strong proof that the use of the substance was not intended to enhance performance.
4. If the Age-Group Athlete intends to compete further in any IRONMAN® Triathlon event that may be drug tested by the WTC, the Athlete must apply for a TUE for any prohibited substance in advance of any IRONMAN® Triathlon event.

If an Age-Group Athlete has incurred a previous AAF caused by the use of any substance they shall be liable for an anti-doping rules violation for any future positive drug test for any substance unless they have applied for and been granted a TUE for the substance in accordance with the IS TUE.”

5.8 Mr. Moats testified that though he did not read the WTC ADR or any other rules, he did read this information and based on the chart at the end saying no advance TUE was required for Age Group athletes he determined that he did not need to apply for a TUE for his use of testosterone.

6. PROCEDURAL ASPECTS OF THE CASE

6.1 On January 30, 2012, Mr. Moats provided a urine sample as part of WTC's out of competition drug testing program. The WADA accredited laboratory (the parties' stipulation indicated the UCLA lab conducted the testing but the lab documentation showed SMRTL in Salt Lake City, but the lab location is immaterial to the result here given the parties' stipulation of facts) found Mr. Moats' A sample positive for the presence of an elevated T/E ratio with the presence of exogenous testosterone being confirmed. The WTC first notified Mr. Moats of the A sample results by letter dated April 4, 2012. Mr. Moats was not advised until May 2, 2012 that the B sample later confirmed the results of the A sample. Prior to the January 30, 2012 test, Mr. Moats had not obtained a Therapeutic Use Exemption ("TUE") from the applicable authorities for his use of testosterone.

6.2 By letter dated May 2, 2012, the WTC requested that Mr. Moats accept a two (2) year period of ineligibility commencing on April 4, 2012, the date he was notified of the adverse analytical finding.

6.3 This arbitration was initiated by the WTC on July 18, 2012. The Panel was appointed in accordance with the WTC ADR. The Panel set the preliminary hearing for August 7, 2012 and a preliminary hearing was conducted on that date.

6.4 Shortly after the preliminary hearing, the Panel transmitted the preliminary hearing order to the parties on August 8, 2012.

6.5 The hearing commenced in Los Angeles, California on August 28, 2012.

6.6 On September 7, 2012, the Panel issued an operative summary decision to the parties, as it had been requested to do so, stating as follows:

“On behalf of the panel consisting of James Murphy, Jeffrey Benz and Jeffrey Mishkin, the following order is issued pursuant to the requests of the parties made at the hearing:

The Panel has determined that the WTC established that a doping offense in violation of the WTC Anti-doping Rules occurred, but that pursuant to Section 10.5.2 of the WTC Anti-doping Rules the penalty for such offense should be reduced to the minimum suspension term possible. One half of the period of ineligibility otherwise applicable, one year, is imposed as a result of a showing to the comfortable satisfaction of the Panel of no significant fault by the athlete.

The period of ineligibility shall commence on the date of sample collection.

The Panel reserves its decision on costs, fees, and all other claims, arguments, issues, and/or requests for relief not specifically addressed herein.

The Panel has determined that this summary decision should not be published at this time.

The Panel will issue a reasoned award within thirty days from the close of the hearing. Should the parties have any issues or concerns with this process or timing for issuing the reasoned award, please advise the Panel immediately. This hearing is declared closed for all other purposes.”

6.7 After its request, and its determination that, for purposes of its request subject to reallocation later, WTC would bear the costs thereof, the Panel received a copy of the transcript of the hearing on September 19, 2012.

6.8 On September 27, 2012, the AAA confirmed that the parties had consented to the Panel issuing its decision by October 10, 2012.

6.9 The Panel deliberated in multiple sessions on the evidence and arguments it had received and thereupon issued this reasoned decision.

7. LEGAL ANALYSIS

7.1 WTC argued that Mr. Moats had committed a doping violation as a result of his adverse analytical finding for an elevated T/E ratio caused by the presence of exogenous testosterone in his sample, that he did not obtain the required TUE in advance for such use, and

that he did not seek to obtain such a TUE at any time even to the date of the hearing. WTC sought a two year period of ineligibility as the sanction.

7.2 Mr. Moats argued that he was taking testosterone under a physician's care and direction to alleviate a valid medical condition and was in fact a therapeutic use, that WTC's own rules did not require age group athletes like him to obtain a TUE in advance so therefore there could not be a doping offense here, that WTC cannot seek to enforce the rules of USA Triathlon, that WTC is estopped by its own conduct and communications from arguing that Mr. Moats was required to obtain a TUE prior to his test, that punishing Mr. Moats under the facts of this case would violate the Americans with Disabilities Act, and that this is a case of either no fault or no significant fault and Mr. Moats is entitled to a reduction under Article 10.5 of the WTC ADR. Mr. Moats argued that any period of ineligibility under Article 10.5 of the WTC ADR should be reduced to the maximum extent possible and that the start date of any sanction should be the date of sample collection.

Finding of Anti-Doping Violation

7.3 The Panel accepts the parties' stipulation of uncontested facts and issues which provided among other things that Mr. Moats gave the urine sample in question, that each aspect of its analysis was conducted appropriately and without error, that there were no chain of custody issues for the sample, and that the laboratory determined the sample positive for a T/E ratio greater than 4 with results consistent with the presence of exogenous steroids.

7.4 Here, irrespective of the confusing communications and other factors present in this case and identified below, the WTC ADR provides in paragraph 4.4.3 as follows:

“Subject to Article 4.4.4, Athletes who are not included by the WTC in its Registered Testing Pool must obtain a TUE from their National Anti-Doping Organization or other body designated by their relevant National Federation, as required under the rules of the National Anti-Doping Organization or the relevant

National Federation. The application for a TUE must be made as soon as possible (in the case of an Athlete in the Registered Testing Pool, this would be when he/she is first notified of his/her inclusion in the pool) and in any event (save in emergency situations) no later than 30 days before the Athlete's participation in the Event."

7.5 The WTC's Director of Anti-Doping testified, without contradiction, that Mr. Moats was not included in WTC's Registered Testing Pool and accordingly was subject to the provisions of Article 4.4.3.

7.6 The term "Athletes" is broadly defined in WTC's rules and clearly includes Mr. Moats. He was therefore obligated to obtain a TUE in advance, in this case from USADA. Mr. Moats did not do so.

7.7 On the basis of the parties' stipulation of uncontested facts and issues and the relevant WTC ADR provisions, the Panel is compelled to find that a violation of WTC ADR Article 2.1 has occurred.

Reduction of the Period of Ineligibility

7.8 Having concluded that Respondent committed an anti-doping rule violation, the Panel must determine whether Respondent has established that he bore "no fault or negligence" or "no significant fault or negligence" in violating the WTC ADR.

7.9 Rule 10.5.1 of the WTC ADR provides:

"If an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Fault or Negligence*, the otherwise applicable period of *Ineligibility* shall be eliminated. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Sample* in violation of Article 2.1 (presence of *Prohibited Substance*), the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* eliminated. In the event this Article is applied and the period of *Ineligibility* otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of *Ineligibility* for multiple violations under Article 10.7."

7.10 “No Fault or Negligence” is defined in the WTC Anti-Doping Rules as “[t]he *Athlete*’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*.”

7.11 In the present case, there exists no doubt that Respondent acted with at least some degree of fault and negligence in failing to obtain a TUE. Despite obtaining a prescription for testosterone, a widely recognized prohibited substance, Mr. Moats testified that he did not consult the WTC ADR to determine whether he required a TUE. Mr. Moats further testified that he did not contact the WTC, USA Triathlon, or USADA to ascertain whether he required a TUE. The Panel concludes that Respondent’s failure to read the applicable anti-doping rules and/or contact the appropriate governing bodies regarding the need for a TUE fell below the mandated standard of care, namely “utmost caution”, required for a finding of “no fault or negligence.”

7.12 Though Respondent has failed to demonstrate that he bore “no fault or negligence”, the question remains whether his fault or negligence was “significant” within the meaning of Rule 10.5.2. WTC ADR 10.5.2 states:

“If an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Significant Fault or Negligence*, then the otherwise applicable period of *Ineligibility* may be reduced, but the reduced period of *Ineligibility* may not be less than one-half of the period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this Article may be no less than 8 years. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete*’s *Sample* in violation of Article 2.1 (presence of *Prohibited Substance* or its *Metabolites* or *Markers*), the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* reduced.”

7.13 “No Significant Fault or Negligence” is defined in the WTC ADR as “[t]he *Athlete*’s establishing that his or 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.”

7.14 As a preliminary matter, WTC ADR 10.5.2 requires the athlete to establish how the prohibited substance entered his system. The Panel concludes that Respondent has satisfied this threshold requirement. Mr. Moats presented undisputed testimony and documentary evidence that starting in 2005, Dr. Ken Knott prescribed Respondent testosterone injections, and later testosterone cream to treat andropause and hypothyroidism. Mr. Moats presented further evidence to demonstrate that he periodically used the prescribed testosterone, and that he was using the testosterone cream around the time of his positive doping test. Claimant WTC did not present any evidence to the contrary. Accordingly, Mr. Moats has met this threshold showing.

7.15 In determining whether a period of ineligibility should be reduced under WTC ADR 10.5.2, the Panel must assess whether the athlete’s fault or negligence was “not significant” when viewed in the totality of the circumstances of the case.

7.16 Mr. Moats testified that in evaluating whether the WTC required him to obtain a TUE for his medically prescribed use of testosterone, he relied on the WTC “Therapeutic Use Exemption (TUE) Information” webpage. Specifically, Mr. Moats testified that he reviewed the “Know Your Category at WTC Events” chart stating “[n]o advance TUE needed” for age-group athletes. Mr. Moats further testified that he relied on the statement in the corresponding footnote that “[a]thletes classified in the Age-Group division (Appendix 1 – WTC Anti Doping Rules) at an IRONMAN® Triathlon event are not required by the WTC to submit a Therapeutic Use Exemption (TUE) in advance.” Respondent acknowledged that the footnote goes on to advise “ALL Age Group Athletes . . . to check with their National Anti-Doping Agency and their National Triathlon Federation to determine if there are domestic or federation policies which

may be different from those of the WTC”, and that “[s]tricter TUE requirements could be applicable to you based on requirements of other sanctioned triathlon competitions (ie ITU, Xterra) and/or required based on domestic policy or National Federation membership.” Mr. Moats claimed, however, that he understood this note to mean only that he should check with USADA or USAT to determine if a TUE was needed for non-WTC events, but that he was not required to obtain a TUE for WTC events.

7.17 The Panel finds Respondent’s testimony both credible and persuasive. WTC directs athletes to its website to obtain information on anti-doping rules. Indeed, the WTC Director of Anti-Doping testified that the WTC website is “the primary portal for all of [WTC’s] anti-doping information . . . designed as an informational resource for athletes or public who might be interested in more information on the WTC’s [anti-doping] program.” The website provides what is meant to be a “user-friendly” chart for athletes to quickly and easily determine whether they require a TUE based on their participation category. The chart states that for age-group athletes, “[n]o advance TUE needed.” Respondent’s belief that he did not require a TUE for a WTC event based on this statement was reinforced by the very first sentence of the corresponding footnote which plainly states that an age-group athlete is “not required by the WTC to submit a Therapeutic Use Exemption (TUE) in advance.” The Panel finds that these statements on WTC’s website caused Mr. Moats’ mistaken, yet reasonable, belief that he was not required to obtain a TUE for WTC events.

7.18 The Panel acknowledges that the webpage contains multiple reminders that athletes should check with their National Anti-Doping Agency and their National Triathlon Federation to determine if stricter TUE policies may be applicable. The website also contains an express notice directed specifically to US athletes advising them to contact USADA to confirm

whether a TUE is required. The Panel finds, however, that these warnings could reasonably be understood to mean only that stricter TUE policies might apply for non-WTC competitions. The reasonableness of such interpretation is supported by the multiple recitations identified above that WTC did not require age-group athletes to obtain a TUE, as well as language in the general notice stating in part that “[s]tricter TUE requirements could be applicable to you *based on requirements of other sanctioned triathlon competitions (ie ITU, Xterra)*” (emphasis added). The Panel concludes that Mr. Moats reasonably interpreted the website to indicate that WTC rules did not require him to obtain a TUE for WTC events.

7.19 Respondent asserts that this is a “*Quigley case*” and thus no sanction should be imposed. In *USA Shooting & Q. v. Union International de Tir (UIT)*, CAS 94/129 (widely known as “the *Quigley case*”), an American skeet shooter fell ill while competing in Cairo. The athlete’s team summoned a doctor who, after being shown the list of prohibited substances, prescribed a cough syrup which, unknown to Quigley, contained a prohibited substance. Quigley thereafter tested positive for the presence of a prohibited substance, was eliminated from the US team, and had his gold medal revoked after UIT concluded that Quigley had committed a doping violation. Under the express terms of UIT’s doping rules then in force, “[d]oping means the use of one or more substances mentioned in the official UIT Anti-Doping List *with the aim of attaining an increase in performance*” (emphasis added). UIT concluded that Quigley committed a doping violation, despite unequivocally stating that “[t]he Executive Committee is convinced that [Q.] had no intention to use forbidden medication in order to improve his performance and obtain an advantage over his competitors” (alteration in original). Quigley appealed and the CAS panel hearing the case concluded that UIT had blatantly ignored the requirements of its own doping rules, and that there existed no legal basis for the sanction

imposed because the UIT rules required use of a prohibited substance “with the aim of attaining an increase in performance,” while the Executive Committee had expressly found Quigley did not act with the aim of attaining an increase in performance.

7.20 The present case is distinguishable from *Quigley*. Unlike *Quigley*, this case does not involve a sports governing body imposing a sanction in express contravention of its own rules. Rather, the present case involves confusing and unclear statements made by WTC in characterizing its rules.

7.21 Although the present case is distinguishable from *Quigley*, the Panel finds the principles underlying the decision in *Quigley* instructive. The panel in *Quigley* emphasized:

“The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule-apppliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorized bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the *de facto* practice over the course of many years of a small group of insiders.”

7.22 Given the strictness of WTC’s anti-doping regime and the significant impact that the imposition of doping sanctions can have on an athlete’s career, we must hold WTC to a similarly strict standard with respect to the statements it makes to athletes in characterizing its anti-doping rules. The statements on WTC’s website regarding an age-group athlete’s need for a TUE were susceptible to a meaning different than that intended by WTC and reflected in WTC ADR 4.4.3. Specifically, the statements on WTC’s website could reasonably be construed to mean that WTC did not require age-group athletes to obtain a TUE for WTC events, but that such athletes may require a TUE for non-WTC events.

7.23 Notably, despite recently updating its anti-doping rules, WTC did not provide its athletes with any formalized anti-doping training. At the hearing, the WTC Director of Anti-Doping testified that while WTC “provide[s] information to . . . athletes [and] make ourselves available,” WTC offers no in-person training to athletes on the WTC Anti-Doping Rules. Several CAS panels have considered an athlete’s experience, education and anti-doping training in determining an athlete’s degree of fault or negligence.

7.24 For example, in *Oliveira v. USADA*, 2010/A/2107, a CAS panel determined that a competitive cyclist was at “no significant fault” for her doping violation when she had little experience as an elite international athlete and had received no formal doping training. Oliveira, an elite professional cyclist who had quickly moved through the ranks from recreational to professional cycling, took a dietary supplement that, unbeknownst to her, contained a prohibited stimulant. In reducing Oliveira’s sanction from two years to eighteen months based on a finding of “no significant fault or negligence,” the panel emphasized that Oliveira had received no formal anti-doping education.

7.25 Similarly, in *WADA v. USADA and Thompson*, CAS 2008/A/1490, a CAS panel gave substantial weight to factors such as an athlete’s lack of experience in doping matters and lack of formalized drug education training at the national or international level in finding “no significant fault” under WADC Article 10.5.2. In *Thompson*, a high school athlete tested positive during the USA Junior National Track and Field Championship after voluntarily consuming a small amount of cocaine. The panel, imposing a one-year suspension despite the presumptive two-year period of ineligibility, concluded that under the totality of the circumstances, the athlete bore no significant fault or negligence when he had never received any formal anti-doping education training, had never been drug tested, and received no guidance

from his high school coaches regarding drug testing. *See also USADA v. Brunemann*, AAA No. 77 10 E 00447 08 JENF (reducing a collegiate swimmer's period of ineligibility after noting "the fact that Respondent did not receive any formalized anti-doping instruction or training other than printed materials or e-mail reminders also likely contributed to her mistake").

7.26 Like the athletes in *Oliveira*, *Thompson*, and *Brunemann*, Mr. Moats received no formal anti-doping training from his federation, WTC. As an amateur athlete with limited exposure to previous doping tests, it is not difficult to understand why Mr. Moats, although an experienced age-group triathlete, mistakenly interpreted WTC's representations on its website about TUE rules. Had Respondent received formal training regarding the WTC rules on TUEs, we think it far less likely that he would have made the mistake that gave rise to this proceeding.

7.27 While not a matter for decision by the Panel, the Panel would respectfully suggest that WTC consider amending and clarifying its anti-doping rules and website, as well as offering formal anti-doping education and training. In addition to the confusing statements on WTC's website already identified, the Panel notes that the WTC ADR contain their own elements of confusion. While Mr. Moats admits that he did not read the WTC ADR, and the Panel by no means condones such conduct, WTC's poorly drafted rules are not appropriate practice for a strict liability regime. For example, WTC ADR 4.4.3 requires athletes not in the WTC registered testing pool to obtain a TUE from their National Anti-Doping Organization or relevant National Federation if so required by those organizations. The rule, however, then contains a misplaced reference to athletes in the registered testing pool. The definition of "registered testing pool" suffers from similar drafting deficiencies and fails to make clear when an athlete is or is not part of WTC's registered testing pool. WTC should take care to provide its athletes with clear, easy to understand rules so athletes need not struggle to determine what conduct

constitutes an anti-doping rule violation. It bears repeating that as the panel in *Quigley* noted, while “[t]he fight against doping is arduous, and it may require strict rules . . . the rule-makers and the rule-appliers must begin by being strict with themselves.” By amending and clarifying its anti-doping rules and website, and providing formal training regarding those rules, the WTC would be taking significant steps to minimize instances where, as here, an athlete innocently misinterprets what the WTC requires of him.

7.28 The Panel considers that although consistency of sanctions is a virtue, the concept of proportionality that underlies Article 10.5.2 is of equal importance. Having regard to all of the circumstances, the Panel concludes that the 24-month sanction sought to be imposed by the WTC is too severe. Having regard to Mr. Moats' degree of fault and, to both the mitigating and aggravating factors listed herein, the Panel concludes that an appropriate sanction would be a period of ineligibility of 12 months. This Panel emphasizes 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 the Panel's careful, if cautious, consideration of the authorities that it has found of relevance.

7.29 The Panel concludes that Mr. Moats has established that under the totality of the circumstance he bore no significant fault or negligence in failing to obtain a TUE as required by WTC ADR 4.4.3. Based on the totality of the circumstances and after giving due consideration to Respondent's degree of negligence, this Panel finds it appropriate to reduce Mr. Moats' period of ineligibility to the maximum extent of such reduction permitted by WTC ADR 10.5.2. Accordingly, the Panel concludes that a one-year period of ineligibility is both fair and reasonable under the facts of this case.

Start Date For Period of Ineligibility

7.30 The Panel is of the view that where as here the sample was collected in January but the athlete was not notified until April, and a hearing could not be held until August, it is proper to commence the period of ineligibility as of the date of sample collection, which in this case was January 30, 2012.

Costs of Proceedings

7.31 The only item of costs that the Panel believes it is empowered to allocate is the cost of the reporter's transcript. Here, WTC requested a court reporter and made arrangements for the court reporter's attendance at the hearing. While the Panel requested the transcript for its use in crafting its award, given the facts and circumstances in this case, pursuant to R-48, the Panel allocates the costs of the reporter's transcript to the WTC.

Publication of Decision

7.32 Mr. Moats has requested that this decision not be made public. Unfortunately for his position, the WTC ADR make clear in that portion of Appendix 3 under R-42 that, "The award is public and shall not be considered confidential." Similarly, WTC ADR Article 14 requires publication. Accordingly, since the Panel found that a doping offense was committed, the Panel is unable to issue a contrary decision on the publication of this decision or the publication of the identification of the substance or the athlete at issue.

8. DECISION AND AWARD

On the basis of the foregoing facts and legal aspects, this Panel renders the following decision:

8.1 Respondent has committed a doping violation under Article 2.1 of the WTC ADR.

8.2. The following sanction shall be imposed on Respondent: Respondent's sanction, a period of ineligibility for his first anti-doping offense, shall be reduced from two (2) years to one (1) year commencing on January 30, 2012, the date of collection of his sample that was the subject of this arbitration.

8.3 The parties shall bear their own attorney's fees and costs associated with this arbitration, and in addition WTC shall bear the costs of the court reporter and the transcript of the hearing.

8.4 The administrative fees and expenses of the American Arbitration Association, and the compensation and expenses of the arbitrators and the Panel, shall be borne by the parties as provided in the WTC ADR.

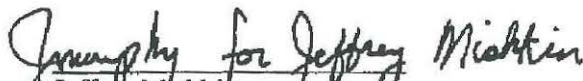
8.5 This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

8.6 This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.


Dated: October 10, 2012



Hon. Jim Murphy, Chair



Jeffrey Mishkin



Jeffrey Benz