

**DECISION OF THE INTERNATIONAL TENNIS INTEGRITY AGENCY
PURSUANT TO ARTICLE 7.14 OF THE 2022 TENNIS ANTI-DOPING PROGRAMME**

I. Introduction

1. The International Tennis Integrity Agency (**ITIA**) is the delegated third party, under the World Anti-Doping Code (**Code**), of the International Tennis Federation (**ITF**), the international governing body for the sport of tennis and signatory of the Code. Under the delegation, the ITIA is responsible for the management and administration of anti-doping across professional tennis in accordance with the Tennis Anti-Doping Programme (the **TADP** or the **Programme**), which sets out Code-compliant anti-doping rules applicable to players competing in Covered Events.

2. Mariska Venter (the **Player**) is a 26-year-old wheelchair tennis player from South Africa. She has achieved a career-high ITF singles ranking of 27. By virtue of (among other things) her ITF ranking and participation in Covered Events in 2022, the Player was bound by and required to comply with the TADP.

3. The ITIA charged the Player with the commission of anti-doping rule violations under Article 2.1 and/or Article 2.2 of the TADP (copied below), and proposed certain Consequences based on its analysis of the degree of fault that the Player bears for those violations:

“2.1 The presence of a Prohibited Substance or any of its Metabolites or Markers in a Player’s Sample, unless the Player establishes that such presence is consistent with a TUE granted in accordance with Article 4.4.”

“2.2 Use or Attempted Use by a Player of a Prohibited Substance or a Prohibited Method, unless the Player establishes that such Use or Attempted Use is consistent with a TUE granted in accordance with Article 4.4.”

4. The Player has admitted the anti-doping rule violations charged and acceded to the Consequences proposed by the ITIA.

5. In such circumstances, Article 7.14 of the 2023 TADP provides that:

“7.14.1 At any time prior to a final decision by the Independent Tribunal, the ITIA may invite the Player or other Person to admit the Anti-Doping Rule Violation(s) asserted and accede to specified Consequences [...]

7.14.2 In the event that the Player or other Person admits the Anti-Doping Rule Violation(s) asserted and accedes to Consequences specified by the ITIA [...], the ITIA will promptly issue a reasoned decision confirming the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences [...], will send notice of the decision to the Player or other Person and to each Interested Party, and will Publicly Disclose the decision in accordance with Article 8.6. [...]

7.14.3 Any decision issued by the ITIA in accordance with Article 7.14.2 that an Anti-Doping Rule Violation has been committed [...] will address and determine (without limitation):

(1) the factual basis of the decision that an Anti-Doping Rule Violation was committed; and (2) all of the Consequences to be imposed for such Anti-Doping Rule Violation, including the reasons for imposing the Consequences specified, and in particular the reasons for exercising any discretion not to impose the full Consequences available under this Programme.”

II. The Player's commission of anti-doping rule violations

6. On 29 July 2022, while competing at the Belgian Open 2022 event held in Jambes, Belgium (the **Event**), the Player was required to provide a urine sample for drug testing pursuant to the TADP. The sample she provided was given reference number 1073575 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 (the **Laboratory**) for analysis.
7. The Laboratory detected the presence in sample A1073575 of metabolites of sibutramine. Sibutramine is a stimulant banned at all times under Section S6 (Stimulants) of the 2022 WADA Prohibited List. Sibutramine is a Specified Substance.
8. 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 7.4. The Review Board did not identify any apparent departures from the applicable sample collection and sample analysis procedures that could have caused these Adverse Analytical Findings. It therefore decided that the Player had a case to answer for breach of TADP Articles 2.1 and/or 2.2.
9. Accordingly, on 11 November 2022 the ITIA sent the Player a formal pre-charge Notice, asserting that the Player had a case to answer for breach of TADP Articles 2.1 and/or 2.2.
10. The Laboratory subsequently analysed sample B1073575 and reported, on 18 November 2022, that it had detected the presence of metabolites of sibutramine, i.e., the B sample analysis confirmed the Adverse Analytical Finding made in respect of the A sample.
11. TADP Article 2.1 is a strict liability offence that is established simply by proof that a prohibited substance was present in the Player's sample, i.e., the ITIA 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).
12. On 8 December 2022, the ITIA sent the Player a formal Charge Letter, asserting that the presence of metabolites of sibutramine in her sample collected on 29 July 2022 constituted anti-doping rule violations under TADP Articles 2.1 and/or 2.2.
13. Given that sibutramine is classified as a Specified Substance under the TADP, the Player was not subject to a mandatory provisional suspension under TADP Article 7.12.1. However, the Player voluntarily suspended herself on 14 December 2022.
14. In her preliminary response to the Charge Letter, on 20 December 2022, the Player denied that she had committed the anti-doping rule violations with which she was charged. However, she subsequently asserted that the sibutramine could have come from a supplement she was taking.

III. Consequences

A. Period of Ineligibility

(i) How sibutramine got into the Player's system

15. The Player has asserted that she did not intend to cheat and did not knowingly ingest sibutramine. She asserts that she took weight loss pills (with a brand name of 4S Forever) outside of competition to help her maintain her weight for her modelling career, which she does alongside being a wheelchair tennis player.
16. In support of her explanation, the Player provided (among other things): (i) a copy of the ingredients list of 4S Forever, which claimed to only contain plant based ingredients; (ii) confirmation that the Player had checked the ingredients list of 4S Forever against the South African Institute for Drug-Free Sport (**SAIDS**) website to check that none of the ingredients were prohibited; (iii) photographs of the packaging of 4S Forever; and (iv) an explanation of when in the two weeks prior to sample collection the Player ingested 4S Forever and the doses she took in that period.
17. When the Player received the ITIA's Charge Letter on 8 December 2022, she still had in her possession several capsules from the pack of 4S Forever which she was taking in the days before 29 July 2022. The Player arranged for these capsules and a new pack of 4S Forever, of the same batch that the Player was using at the time of the doping control test, to be tested at the WADA-accredited laboratory in Ghent, Belgium. The laboratory found sibutramine at a roughly estimated concentration of 13.4mg/capsule (67mg/g of powder).
18. The ITIA consulted Professor Christiane Ayotte, Director of the INRS Centre Armand-Frappier Santé Biotechnologie, the WADA-accredited laboratory in Montreal, Canada. Prof. Ayotte confirmed that the analysis results of the sample collected on 29 July 2022 could have been caused by the Player's exposure to 4S Forever and acknowledged that the 4S Forever consumed by the Player in the days before the positive test contained sibutramine, which could explain the Adverse Analytical Finding.
19. Given all of the circumstances of this case, the ITIA accepts the Player has established that it is more likely than not that the presence of the sibutramine found in her urine sample 1073575 was due to the presence of sibutramine (an undisclosed ingredient) in capsules of 4S Forever that she consumed in the days prior to collection of that sample.

(ii) TADP Article 10.2

20. This is the Player's first doping violation.
21. TADP Article 10.2.1 mandates a four-year ban for a TADP Article 2.1 and/or 2.2 violation that is "*intentional*" and is a first violation.¹ If the prohibited substance in question is classified as a Specified Substance (as here), the ITIA has the burden of proving that the violation was

¹ In accordance with TADP Article 10.9.4.1, for the purposes of imposing consequences under the TADP, the anti-doping rule violations will be "*considered together as one single first Anti-Doping Rule Violation, and the sanction imposed will be based on the Anti-Doping Rule Violation that carries the more severe sanction*" if (as here) the Player did not commit the second anti-doping rule violation after she received notice of the first.

“intentional.” If the ITIA does not believe, or is not able to prove, that the violation was “intentional”, then TADP Article 10.2.2 provides for a two-year period of ineligibility, subject to potential further mitigation. TADP Article 10.2.3 explains that in this context “*the term ‘intentional’ is meant to identify those Players or other Persons who engage in conduct that they 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.²

22. As set out above, the ITIA has accepted that an undisclosed ingredient of 4S Forever was more likely than not the source of the Player’s positive test. While there have been previous cases of contaminated supplements, the Player (i) did not know that 4S Forever contained sibutramine; and (ii) checked the ingredients list of 4S Forever in advance. In such circumstances, the ITIA considers that the Player did not manifestly disregard the risk that 4S Forever contained a prohibited substance. Accordingly, the ITIA accepts that the Player’s 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 set out in TADP Article 10.2.2 applies.

(iii) TADP Articles 10.5 and 10.6

23. TADP Article 10.5 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 they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule.*”
24. TADP Article 10.6.1.2 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 their 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 relation to the Anti-Doping Rule Violation*”. Where No Significant Fault or Negligence is found, the amount of reduction to be applied depends upon the degree of the player’s Fault.
25. 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.³ “*The difference between*

² ITF v Sharapova, Independent Tribunal decision dated 6 June 2016, para 68, not challenged on appeal, Sharapova v ITF, CAS 2016/A/4643.

³ 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*

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".⁴ The TADP definition of Fault⁵ 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).

26. The standard of "utmost caution" is very onerous and requires a player to show that she "made every conceivable effort to avoid taking a prohibited substance".⁶ 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".⁷
27. The Player does not assert that she bears No Fault or Negligence for her violation. She asserts however that she bears No Significant Fault or Negligence, so that a period of ineligibility of less than two years should be imposed, because she checked the ingredients list of 4S Forever against the SAIDS website to check that none of the ingredients were prohibited.
28. The ITIA accepts that this factor weighs in the Player's favour. However:
 - 28.1 Article 1.3.1 of the TADP states that it is the "personal responsibility" of each player bound by the TADP to "be knowledgeable of and comply with this Programme at all times", "take responsibility for what they use", "carry out research regarding any products or substance that they intend to Use to ensure that Using them will not constitute or result in an Anti-Doping Rule Violation", and "ensure that any medical treatment they receive does not violate this Programme".

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").

⁴ IBAF v Luque, IBAF Anti-Doping Tribunal decision dated 13 December 2010, para 6.10.

⁵ "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's or other Person's degree of Fault include, for example, the Player's or other Person's experience, whether the Player or other Person is a Protected Person, 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's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player's 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 their career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2".

⁶ 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").

⁷ Adams v CCES, CAS 2007/A/131, para 155.

- 28.2 Article 4.2.1.5 of the TADP specifically reminds players that “[m]any Prohibited Substances may appear (either as listed ingredients or otherwise, e.g., as unlisted contaminants) within supplements and/or medications that may be available with or without a physician's prescription. Since Players are strictly liable for any Prohibited Substances present in Samples collected from them (see Article 2.1.1), they are responsible for ensuring that Prohibited Substances do not enter or come to be present in their bodies by any means and that Prohibited Methods are not Used”.
- 28.3 In any event, it has long been known that supplements may contain substances that are not listed as a named ingredient. The comment to Code Article 10.5 is clear that a plea of No Fault or Negligence cannot succeed in the case of “a positive test resulting from a mislabelled 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”.
29. As a result of the foregoing, the Player knew, and is deemed to have been on specific notice that, there is a significant risk that supplements may contain prohibited substances that are not listed as ingredients. However, the Code comment to Article 10.5 that is 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 10.6 based on No Significant Fault or Negligence”. The ITIA accepts that, in the specific circumstances of this case, the Player's fault was not ‘significant’ within the meaning of TADP Article 10.6.1, justifying a reduction from the two-year starting point. The ITIA also accepts that the Player has shown that the prohibited substance in her sample 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. Therefore, discretion arises to reduce the two-year ban applicable under TADP Article 10.2.2 by up to 24 months, depending on the Player’s level of objective and subjective fault.
30. In determining the appropriate period of ineligibility, the ITIA is mindful of the bans imposed in other recent tennis cases involving supplements. The Player should have been on notice due to recent cases of contaminated supplements. In addition, it appears that the previous sanctions have not been sufficient to deter players from using utmost caution to avoid ingesting prohibited substances even inadvertently. Taking the foregoing and the specific facts of this case into account, the ITIA has proposed, and the Player has acceded to, a period of ineligibility of 12 months.
31. In accordance with TADP Article 10.13.2, the Player is entitled to credit for the period of provisional suspension served to date, such that her 12-month period of ineligibility will be deemed to have started running from 14 December 2022. Therefore, it will expire at midnight on 13 December 2023.
32. During her period of ineligibility, the Player's status will be as set out under TADP Article 10.14, i.e., she may not play, coach or otherwise participate in any capacity in (i) any Covered Event; (ii) any other Event or Competition, or activity (other than authorised anti-doping education or rehabilitation programmes) authorised, organised or sanctioned by the ITF, the ATP, the WTA, any National Association or member of a National Association, or any Signatory, Signatory's member organisation, or club or member organisation of that Signatory's member organisation; (iii) any Event or Competition authorised or organised by any professional league or any international or national-level Event or Competition organisation; or (iv) any elite or national-level sporting activity funded by a governmental agency. Nor will she be given accreditation for or

otherwise granted access to any Event referred to at points (i) and (ii). In accordance with TADP Article 10.14.5.2, the Player may use the facilities of a club or other member organisation of a Signatory's member organisation for training purposes in the last two months of her period of ineligibility, i.e., from 13 October 2023 on.

B. Disqualification of results

33. The results obtained by the Player at the Event and in subsequent events are disqualified pursuant to TADP Articles 9.1 and 10.10, and the points and prize money that she won at those events are forfeited in accordance with the same provisions.

C. Costs

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

D. Publication

35. In accordance with 2022 TADP Article 8.6, this decision will be publicly reported by being posted (in full and/or summary form) on the ITIA's website.

E. Acceptance by the Player

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

IV. Rights of appeal

37. This decision constitutes the final decision of the ITIA, resolving this matter pursuant to 2022 TADP Article 7.14.
38. Further to 2022 TADP Article 13.2.1, each of WADA and the SAIDS has a right to appeal against this decision to the CAS in Lausanne, Switzerland, in accordance with the procedure set out at 2022 TADP Articles 13.8 and 13.9.
39. 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 anti-doping rule violations and as to the imposition of the consequences set out above), whether pursuant to 2022 TADP Article 13.2.1 or otherwise. However, if an appeal is filed with the CAS against this decision either by WADA or SAIDS, the Player will be entitled (if so advised) to exercise her right of cross-appeal in accordance with 2022 TADP Article 13.9.4.

Issued Decision of the ITIA

London, 15 March 2023

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