

DECISION

rendered by the

ATP ANTI-DOPING TRIBUNAL

sitting in the following composition:

Chairman: **L. Yves Fortier**, C.C., Q.C., Canada

Arbitrators: **Dr. Martial Saugy**, Switzerland

E. H. Derose, MD, PhD, Brazil

(hereinafter, the "**Tribunal**")

Ad hoc Clerk: **Stephen L. Drymer**, Esq., Canada

in the case between

MR. NICOLAS COUTELOT

12 rue du Docteur Debat, 92380 Garches, France

Represented by Me **Cecile Huet**, of the law firm **Leclerc De Hautecloque Poncins & Associés**, 139, rue Tahère, 92210 Saint-Cloud, FRANCE

Petitioner

– and –

ATP TOUR, INC.

201 ATP Blvd., Ponte Vedra Beach, Florida 32082, USA

Represented by **Stephen D. Busey**, Esq. and **John F. MacLennan**, Esq. of the law firm **SMITH HULSEY & BUSEY**, 225 Water Street, Suite 1800, Jacksonville, Florida 32202, USA

Respondent

**DECISION RENDERED BY THE ATP
ANTI-DOPING TRIBUNAL**

In the case between:

Mr. Nicolas Coutelot

Appellant

- and -

ATP Tour, Inc.

Respondent

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I. FACTUAL BACKGROUND

A. The Parties

1. Mr. Nicolas Coutelot ("**Petitioner**" or the "**Player**") is a professional tennis player from France. Mr. Coutelot has been a Division I member of the ATP since 16 August 2000.
2. ATP Tour, Inc. ("**Respondent**" or the "**ATP**") is a non-profit membership organization whose members are individual male professional tennis players as well as certain tennis tournaments.

B. Events Giving Rise to the Arbitration¹

3. As stated in the Brief filed by the Player on 1 July 2004, Mr. Coutelot petitions the Tribunal in respect of a notice dated 27 May 2004 (the "Notice") addressed to him by the ATP stating that the ATP Anti-Doping Program Review Board (the "**Review Board**") "has determined that you have a case to answer under Article C (Doping Offenses) of the 2004 Tennis Anti-Doping Program". According to that Notice, the IOC-accredited laboratory located in Montreal, Canada (the Laboratoire de contrôle du dopage INRS – Institut Armand Frappier) had reported that a urine specimen collected from Mr. Coutelot in-competition on 7 February 2004 in Viña del Mar, Chile, had tested positive for a metabolite of cannabis: the "A" sample revealed the presence of cannabis metabolite at a concentration of 56 ng/mL. Mr. Coutelot's "B" sample, which was subsequently tested in March 2004, revealed the presence of cannabis metabolite at a concentration of 48 ng/mL.
4. These facts are not in dispute. Indeed, by letter dated 15 July 2004 the parties informed the Tribunal that they had agreed the following stipulations:

1. The urine sample marked as No. 379905 (the "Sample"), tested by the WADA accredited Laboratoire de contrôle du dopage Montreal, Canada in February and

¹ Other than as discussed in the following paragraphs, the Tribunal does not consider it necessary or useful to describe at length the events giving rise to the present arbitration. Although the Tribunal has considered all of the factual allegations, legal arguments and evidence submitted by the parties, it reviews herein only those submissions and proof in respect of which it considers it necessary to do so in order to explain its reasoning and decision.

March 2004, was provided by the Player at the ATP tournament in Viña Del Mar, Chile on February 7, 2004.

2. The Sample tested positive by the laboratory for the presence of a metabolite of cannabis.

5. In fact, as explained more fully below, the Player admits that he committed a doping offense under the Rules of the ATP's Tennis Anti-Doping Program 2004 (the "Rules" or the Anti-Doping Program"). As such, and as explicitly acknowledged by both parties, the only question to be determined by the Tribunal is the sanction to be imposed.

II. PROCEEDINGS BEFORE THE TRIBUNAL

A. The Procedural Order

6. In accordance with the Article K.1.g of the ATP Rules, the Chairman of the Tribunal conducted a pre-hearing meeting with the parties by way of conference call on 21 June 2004 at 11:00 Eastern Daylight Time. Participating in the call were Me Cecile Huet, counsel for the Petitioner, Messrs. Stephen Busey, Esq. and John MacLennan, Esq, counsel for the ATP, as well as the Petitioner himself. Also participating was Stephen L. Drymer, Administrative Secretary to the Tribunal.

7. Further to the 21 June 2004 pre-hearing meeting, the Chairman of the Tribunal issued Procedural Order No. 1, dated 22 June 2004, setting out a number of procedural directions relating to the pre-hearing and hearing phases of the arbitration.

B. Written Proceedings

8. In accordance with the directions set out in Procedural Order No. 1, the parties filed the following written submissions:

- On 1 July 2004, the Player submitted a Brief containing his position and argument on all issues that he wished to raise in the arbitration, with supporting documents;
- On 12 July 2004, the ATP submitted its Statement of the Case. Its supporting documents were filed on 23 July 2004;
- On 15 July 2004, as mentioned above, the parties submitted a list of agreed stipulations of fact;

- On 16 July 2004, the Petitioner submitted a Reply Brief;
- On 23 July 2004, the Parties submitted their respective witness lists and summary of the subject areas of their witnesses' anticipated testimony;
- On 28 July 2004, the parties submitted a joint proposal regarding the conduct of the hearing.

C. The Hearing

9. As agreed with the parties and confirmed in Procedural Order No. 1, the hearing of this matter was held by telephone conference on 2 August 2004. The hearing commenced at approximately 11:30 Eastern Daylight Time and lasted approximately one hour and ten minutes.

10. During the hearing, the Tribunal heard the oral submissions of counsel for both parties, as well as the evidence. Mr. Nicolas Coutelot, who testified on his own behalf concerning his background and experience as a professional tennis player, his history of cannabis consumption in the years prior to 2004, and what he described as his "addiction" to the substance.

11. The ATP, for its part, chose not to call any witnesses to testify during the hearing. Counsel for the ATP stated that the ATP based its position on the stipulations of fact agreed by the parties, the Player's own testimony and its written submissions and exhibits.

12. At the conclusion of the hearing, the Chairman declared the proceedings closed and noted, with thanks, the cooperation on the part of counsel and the parties which had enabled the arbitration to be conducted with such efficiency.

D. The Parties' Submissions²

(i) The Player's Submissions

13. Mr. Coutelot's position was succinctly stated by him, and reiterated by his counsel, at the hearing. In sum, the Petitioner claims that for some time prior to 1 January 2004, he was a chronic user of cannabis and was in fact addicted to the substance. He claims that he learned for the first time on 27 November 2003, during a telephone call that he received from Ms. Stephanie Natal (an

² In the following paragraphs, the Tribunal summarizes the principal points of fact and law raised by the parties in their written and oral submissions that it considers pertinent to an understanding of the issues addressed later in this Decision. These summaries do not purport to comprise complete re-statements of the parties' positions in the arbitration. Additional references to the parties' positions, insofar as considered necessary or useful by the Tribunal, are also contained in Part III, below.

employee of the ATP), that as of 1 January 2004, cannabis would become a Prohibited Substance for in-competition testing in tennis. He also claims to have learned from Ms. Natal on that date, for the first time, that cannabis can continue to be excreted by the body for "several weeks" after consumption ceases.

14. According to Mr. Coutelot, he ceased consuming cannabis after receiving Ms. Natal's telephone call. However, he experienced withdrawal symptoms – sweating, shaking, insomnia – so severe that he was unable to train or to conduct himself as normal. On the advice of his coach, he determined to wean himself from his addiction gradually: commencing approximately four or five days after 27 November, and for a period of approximately one week, Mr. Coutelot smoked cannabis every night before bed, so as to enable him to sleep. Thereafter, and until approximately 27 or 28 December 2003, he smoked cannabis approximately every other day. As of 27 or 28 December 2003, he ceased consuming cannabis altogether, and has not used the substance since that time.

15. In his testimony at the hearing, Mr. Coutelot admitted clearly and directly – and his counsel confirmed – that he recognises that cannabis was found in the specimen taken from him on 7 February 2004 and that he is guilty of a doping offence. He stated, however, that the facts demonstrate that he did everything within his power to comply with the 2004 Rules, from the moment that he learned that cannabis would become a Prohibited Substance (that is, as of 27 November 2003). In the circumstances, the Player seeks the minimum applicable sanction, which, according to Article M.3 of the 2004 Rules, comprises (for a first offense) a "warning and reprimand and no period of Ineligibility from future Events".

(ii) The ATP's Submissions

16. As regards the appropriate sanction, the ATP denies that the Player in fact did everything in his power to comply with the applicable Rules. As admitted by Mr. Coutelot, the Player in fact competed in tournaments in Doha (Qatar) and at the Australian Open on 5 and 12 January 2004, respectively – barely one week and no more than two weeks after having consumed cannabis for the last time. This, says the ATP, does not reflect the responsibility incumbent on. A responsible course of conduct, according to the ATP, would have been for Mr. Coutelot *not* to compete unless and until he was certain that cannabis was no longer being excreted by his body, and to have himself tested in order to ensure that this was the case. In the words of the ATP's counsel, by playing in Doha,

Australia and Chile so soon after stopping his chronic use of cannabis, "the Player chose to take a risk".

17. The ATP submits that, in the circumstances, a mere warning and reprimand are insufficient and that a period of ineligibility is called for. Although acknowledging that the Tribunal enjoys a certain discretion concerning the duration of such a period of ineligibility under Article M. 3 of the 2004 Rules, the ATP submits that a two-month suspension is reasonable in the circumstances, with no forfeiture of any points or prize money obtained between the date his positive sample was collected (7 February 2004) and the date of commencement of his suspension (see Article M.7 of the 2004 Rules).

18. Significantly, insofar as the application of Article M.3 of the Rules is concerned, the ATP has acknowledged, in both its written and oral submissions, that there are no grounds to refute Mr. Coutelot's evidence that his use of cannabis was never intended to obtain any advantage or to enhance his sport performance.

III. ANALYSIS AND DETERMINATION

19. As reiterated on several occasions by the parties, both in writing and orally, and as discussed above, the only issue to be determined by the Tribunal is the sanction to be imposed on Mr. Coutelot for his admitted doping violation.

20. The relevant facts are described above. They are not seriously in dispute and need not be reiterated here.

21. Nor is there any dispute as to the applicable Rule, which, for ease of reference, is reproduced in full:

M. Sanctions on individuals

(...)

3. Lesser Sanctions for Specified Substances

The **Prohibited List** may identify substances that are particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products or that are less likely to be successfully abused as doping agents (a "**Specified Substance**"). Where a Player can establish that the Use of such a Specified Substance was not

intended to enhance sport performance, the period of **Ineligibility** found in Article M.2 shall be replaced by the following:

First offense: At a minimum, a warning and reprimand and no period of **Ineligibility** from future **Events**, and at a maximum, one (1) year's **Ineligibility**.

Second offense: Two (2) years' **Ineligibility**

Third offense: Lifetime **Ineligibility**

However, the **Participant** shall have the opportunity in each case, before a period of **Ineligibility** is imposed to establish the basis for eliminating or reducing (in the case of a second or third offense) this sanction as provided in Article M.5.

22. As of 1 January 2004, cannabis became a Specified Substance under the Rules of the Tennis Anti-Doping Program.

23. From the foregoing it is clear that, although the Tribunal enjoys a certain discretion in determining an appropriate sanction under Article M.3, as submitted by the ATP, the scope of that discretion is effectively bounded by the plain words of that Article: the sanction for a first offense may be no less than "a warning and reprimand" and no more than "one (1) year's Ineligibility". In the present case, the ATP requests that the Tribunal impose a period of ineligibility of two months. Although the Tribunal is in no way constrained by that request, we see no reason in the circumstances to impose a sanction greater than that requested by the ATP. Effectively, then, the Tribunal must choose from among potential sanctions ranging from a warning and reprimand and no period of ineligibility, to a two-month suspension.

24. The members of the Tribunal have great sympathy for the Player. They appreciate the candour and sincerity with which Mr. Coutelot described his situation and the forthrightness with which he admitted the occurrence of a doping offense. Most importantly, the Tribunal recognises the difficulties inherent in curtailing an addiction to cannabis and the efforts made by Mr. Coutelot to do so prior to the coming into effect of the 2004 Rules in which, for the first time, cannabis became listed as a Prohibited (more specifically, a "Specified") Substance.

25. The Tribunal is, however, also mindful of the fundamental tenants of the Tennis Anti-Doping Program, the most basic of which is the *"each player's personal duty to ensure that no prohibited substance enters his body. A player is responsible for any prohibited substance or its Metabolites or Markers found to be present in his Specimen"* (Article C.1.a).

26. In the circumstances, the Tribunal has no hesitation in finding that a period of ineligibility is indeed called for. Mr. Coutelot admits using cannabis up to the very eve of the coming into force of the 2004 Rules. He admits that cannabis metabolites were found in the specimen collected from him in-competition on 7 February 2004 and that he is therefore guilty of a doping offense. Although that is the only offense of which he stand accused, the Tribunal considers it relevant that Mr Coutelot also admits having competed in Doha and Sydney in early January 2004, no more than two weeks after he claims to have stopped using cannabis, notwithstanding his admitted knowledge that it could take at least "several weeks" for all traces of the substance to be excreted by his body.

27. As stated in Article A.1 of the 2004 Rules, "the purpose of this Tennis Anti-Doping Program ... is to maintain the integrity of tennis and to protect the health and rights of all tennis players". The responsibilities incumbent on Mr. Coutelot, as a professional athlete and member of the ATP, surely include the responsibility to "maintain the integrity of tennis ... ". This includes the respect not only of the rules regarding the use of prohibited substances but also the maintenance of the image of the ATP and its members.

28. For these reasons, the Tribunal does not consider a mere reprimand and warning to be a sufficient sanction in the circumstances. Rather, the Tribunal is unanimously of the view that a two-month period of ineligibility is just and reasonable.

29. In arriving at this conclusion, the Tribunal has been swayed in part by the evidence presented by the Player himself. According to Mr. Coutelot, he ceased consuming cannabis on 27 or 28 December 2003. He nonetheless tested positive for cannabis metabolites on 7 February 2004, six weeks later. Had he refrained from competing until his system was clear of such Metabolites, which it was clearly his responsibility to do, Mr. Coutelot would have had to remove himself from competition for at least six weeks. A period of ineligibility of two months, commencing on the date that the present decision is issued, is therefore a fair and reasonable approximation of the period during which Mr. Coutelot should have voluntarily refrained from competition.

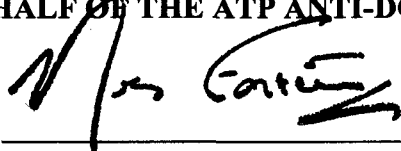
IV. DECISION AND ORDER

30. For all the foregoing reasons, The ATP Anti-Doping Tribunal unanimously decides and orders as follows:

1. The Player, Mr. Nicolas Coutelot, has committed a Doping Offense under Article C.1 of the Rules of the Tennis Anti-Doping Program 2004;
2. The Player is ineligible for competition from ATP sanctioned Events for a period of two months as of the date of the present Decision;
3. Any competitive results obtained by the Player between 7 February 2004 and the date of the present Decision remain valid are not disqualified or otherwise disturbed.

Montreal, 10 August 2004:

ON BEHALF OF THE ATP ANTI-DOPING TRIBUNAL

A handwritten signature in black ink, appearing to read "L. Yves Fortier", written over a horizontal line.

L. Yves Fortier, CC, QC
Chairman