

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF  
WORLD ATHLETICS**

Before:

Anna Smirnova (Chair)

**BETWEEN:**

**WORLD ATHLETICS**

**Anti-Doping Organisation**

- and -

**CHARLES KARANJA KAMAU**

**Respondent**

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**DECISION OF THE DISCIPLINARY TRIBUNAL**

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**I. INTRODUCTION**

1. The Claimant, World Athletics (hereinafter, the "WA") is the governing body for the sport of athletics worldwide, having its registered seat in Monaco. In these proceedings World Athletics is represented by the Athletics Integrity Unit (hereinafter, the "AIU") as per

Rule 1.2 of the World Athletics Anti-Doping Rules in force from 31 March 2023 (hereinafter, the "ADR").

2. The Respondent, Mr. Charles Karanja Kamau, born 5 August 1997, is a road runner from Kenya (hereinafter, the "Athlete"). In these proceedings, from 25 September 2023 until 3 October 2023, the Athlete was represented by Mr. Thomas Horton acting *pro bono* and, from 16 October 2023 until 13 November 2023, the Athlete was represented by Mr. Louis Weston acting *pro bono*.
3. The AIU and the Athlete are hereinafter collectively referred to as the "*Parties*".
4. By the Notice of Charge issued on 29 August 2023, the Athlete was charged by the AIU with Anti-Doping Rule Violations (hereinafter, the "ADRVs") relating to a urine Sample collected from the Athlete, namely:
  - a. Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample (specifically exogenous Testosterone and its metabolites) pursuant to Rule 2.1 ADR, and
  - b. Use of a Prohibited Substance (specifically Testosterone) pursuant to Rule 2.2 ADR.
5. The Athlete denied the ADRV and exercised his right to a hearing before the Disciplinary Tribunal.

## **II. FACTUAL BACKGROUND**

6. On 21 May 2023, the Athlete provided an In-Competition urine Sample at the 2023 Seiko Golden Grand Prix in Yokohama, Japan, which was given the code (7135969) (hereinafter the "*Sample*"). Testing was carried out by the AIU on behalf of WA.
7. The Sample was analysed by the World Anti-Doping Agency's (hereinafter, "*WADA*") accredited laboratory in Tokyo, Japan (hereinafter, the "*Laboratory*"). The analysis of the Sample revealed an Adverse Analytical Finding (hereinafter, the "*AAF*") consisting of the presence of Testosterone and its Metabolites Androsterone, Etiocholanolone, 5 $\alpha$ -

androstane-3 $\alpha$ ,17 diol (“5 $\alpha$ Adiol”) and 5 $\beta$ - androstane-3 $\alpha$ ,17 diol (“5 $\beta$ Adiol”) consistent with exogenous origin.

8. Pursuant to the WADA 2023 Prohibited List category S1.1 (Anabolic Androgenic Steroids), Testosterone (when administered exogenously) is a Prohibited Substance. It is a Non-Specified Substance prohibited at all times.
9. On 4 July 2023, in accordance with Article 5.1.2.1 of the International Standard for Results Management (hereinafter, the “*ISRM*”), the AIU addressed the Notice of Allegation of ADRVs to the Athlete and imposed a mandatory Provisional Suspension and Public Disclosure, effective immediately (hereinafter, the “*Notice of Allegation*”).
10. By means of the Notice of Allegation, the AIU *inter alia* invited the Athlete to, by no later than 11 July 2023:
  - a. provide a full and detailed written explanation for the AAF; and
  - b. decide if the Athlete wished to request the analysis of the B Sample. It was underlined that the costs of the B Sample analysis would be borne entirely by the Athlete.
11. By means of the email of 11 July 2023, the Athlete requested analysis of the B Sample.
12. On 11 July 2023, the AIU informed the Athlete that the cost of the B Sample analysis would be USD 1,500 and requested that the Athlete confirm, as soon as possible and by no later than 14 July 2023, whether the Athlete maintained the request for the B Sample analysis. Therewith, the AIU also requested the Athlete to provide his postal address for the issuance of the invoice for the costs of the B Sample analysis and confirm whether he and/or a nominated representative would attend the Laboratory to witness the opening and analysis of the B Sample.
13. By means of the email of 14 July 2023, the Athlete provided the AIU with his postal address in Kenya.
14. On 17 July 2023, the AIU requested that the Athlete, by no later than 20 July 2023, provide the proof of payment for the costs of the B Sample analysis.

15. On 20 July 2023, the Athlete sent an email to the AIU whereby he informed them that he “*had not been able to raise the amount of money required for B Sample*” analysis. In the same email, the Athlete pointed out that he “*only used supplement [sic]*”.
16. On 21 July 2023, the AIU informed the Athlete that unless he confirmed by 27 July 2023 that he had proceeded with making the payment, the Athlete would be deemed to have waived his right to the B Sample analysis. In addition, therewith, the Athlete was requested to provide additional information concerning the medication(s) and supplement(s) he had used prior to the doping control test on 21 May 2023, including photos of the packaging of each supplement or medication, confirmation where they were purchased, the dosage and prescription.
17. In the email of 27 July 2023, the Athlete notified the AIU that he had not been able to proceed with the payment for the B Sample analysis.
18. In the same email, the Athlete informed the AIU that prior to the doping control test, on 21 May 2023, he took “*extra survival*” (5 tablets a day for 7 days, from 15 May to 20 May 2023, and 10 tablets, on 21 May 2023), “*extra oxyup*” (4 tablets every morning for 7 days before the race, from 14 May to 20 May 2023, and 8 tablets, on 21 May 2023), “*iron supplements*” (1 tablet each day prior to the race), “*MVP*” (1 sachet, from 14 May to 21 May 2023), “*testo*” (2 tablets a day, from 13 May to 18 May 2023, and 8 tablets, from 19 May to 21 May 2023), “*energizer*” (1 tablet a day, from 14 May to 20 May 2023, and 4 tablets, on 21 May 2023) and “*magnesium*” (1 tablet a day, from 14 May to 20 May 2023, and 2 tablets, on 21 May 2023). The Athlete also provided screenshots of the supplements (extra survive, extra oxyup, MVP, and testo) and an invoice from Amazon, which partially related to the mentioned supplements.
19. Also, on 27 July 2023, the Athlete informed the AIU that another receipt was given to him by a friend, however, the Athlete had not been able to access the receipt.
20. On 1 August 2023, the AIU confirmed receipt of the afore-mentioned emails from the Athlete and requested him *inter alia* to clarify under which name each of the supplements was declared in the Doping Control Form (hereinafter, the “*DCF*”), if any supplement had not been mentioned in the DCF and why; and to disclose of the name of the friend who had given the other supplements (with no proof of purchase) to the Athlete.

21. On 4 August 2023, the Athlete replied to the AIU that he had listed the supplements on the DCF, as follows: “*Iron supplements [...] 1 Energizer, 2 magnesium supplement, 3 testo supplement*”. Additionally, the Athlete informed the AIU of the name of the friend, as requested.
22. On 11 August 2023, the AIU invited the Athlete to an interview scheduled for the morning of 17 August 2023 (Kenya time).
23. On 15 August 2023, the Athlete replied that he was having problems with his phone and requested two months of extension in order to get a new phone.
24. On 23 August 2023, the AIU informed the Athlete that in the light of his circumstances, the AIU had decided not to proceed with an interview.
25. On 29 August 2023, the AIU issued the Notice of Charge (hereinafter and accordingly referred to as the “*Notice of Charge*” and the “*Charge*”), whereby the Athlete was charged with committing the following ADRVs:
  - a. Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample, pursuant to Rule 2.1 ADR, by virtue of the presence of exogenous Testosterone or its Metabolite in the Sample; and
  - b. Use of a Prohibited Substance (i.e. Testosterone), pursuant to Rule 2.2 ADR.
26. The AIU requested that the Athlete provide a reply to the Notice of Charge by 13 September 2023.
27. On 12 September 2023, the Athlete replied, with an email, that he did not use Testosterone. The Athlete also requested additional time before making any decision regarding the Notice of Charge.
28. On 13 September 2023, the AIU agreed to extend the deadline for the Athlete to reply to the Notice of Charge until 19 September 2023.
29. By means of the email of 19 September 2023, the Athlete denied the Charge and requested the assistance of *pro bono* counsel.

### III. PROCEDURE BEFORE THE DISCIPLINARY TRIBUNAL

30. On 25 September 2023, Sport Resolutions, the Secretariat to the Tribunal, informed the Parties that Ms. Anna Smirnova had been appointed as Chair of the Panel determining the matter.
31. Following the Athlete's request for *pro bono* counsel, on 25 September 2023 Mr. Thomas Horton agreed to represent the Athlete *pro bono*. However, after the multiple unsuccessful attempts of Mr. Horton to reach the Athlete and get his instructions, on 5 October 2023 Mr. Horton determined that he no longer was in a position to represent the Athlete.
32. On 6 October 2023, the Athlete requested whether an alternative *pro bono* counsel could be found; on 16 October 2023 Mr. Louis Weston agreed to represent the Athlete *pro bono*.
33. On 25 October 2023, a preliminary meeting was convened between the Parties and the Chair of the Panel. The AIU was represented by Ms. Laura Gallo and, while the Athlete was not present himself, Mr. Louis Weston, attended on his behalf.
34. At the preliminary meeting, the AIU confirmed its consent for the Chair to hear and consider the matter sitting alone. Mr. Weston, in the absence of the Athlete's instructions, abstained from offering any comments on the point relating to the composition of the Panel.
35. Following the preliminary meeting, on 26 October 2023, the Chair issued the procedural directions for the determination of the matter (hereinafter, the "*Directions*"). In the *Directions inter alia*, it was established that (i) the Athlete had until 8 November 2023 to state how he responded to the Charge and explain the basis of such response; (ii) the AIU had until 29 November 2023, to submit a brief of arguments; (iii) the Athlete had until 20 December 2023 to submit an answer brief; (iv) the AIU was expected to submit a reply brief by 15 January 2024, and (v) the hearing was to be set for after 29 January 2024.
36. Pursuant to point 4 of the *Directions*, the Athlete was invited by 3 November 2023 to confirm his consent or provide any objections regarding the composition of the Panel and the possibility of the Chair to decide the matter sitting alone. In the absence of any response, the Athlete would be deemed to have given his consent to the Chair sitting alone.

37. On 3 November 2023, Mr. Weston, requested “*an adjournment of the case so that he may obtain forensic testing of the substances [the Athlete] took, and/or of his testosterone levels.*”
38. On 6 November 2023, the Chair gave the Athlete until 13 November 2023 to (i) file his reply to the Charge and (ii) to provide details regarding the adjournment requested. The Chair also noted that the Athlete was deemed to have given his consent for the Chair to consider the matter sitting alone.
39. On 13 November 2023, Mr. Louis Weston determined that, in the absence of proper communication with the Athlete, he no longer was in a position to represent him.
40. On 17 November 2023, the Secretariat to the Tribunal informed the Athlete that the Chair had granted him a final opportunity to respond to the Charge by 22 November 2023 and that, in the absence of any clear answer, it would be deemed that he maintained his request for a hearing.
41. The Athlete failed to file a response to the Charge by 22 November 2023.
42. Following the instructions of the Panel and in accordance with the Directions, the AIU filed the WA Brief on 29 November 2023.
43. The Athlete did not submit his answer brief within the deadline specified in the Directions, i.e. by 5pm (GMT) on Wednesday 20 December 2023. He also did not file a request for an extension of the time limit to submit the answer brief.

#### **IV. HEARING BEFORE THE PANEL**

44. Pursuant to Article 8.11 ADR, on 29 January 2024, a remote hearing took place via a recorded Zoom video conference call.
45. The hearing was attended by Ms. Laura Gallo and Mr. Tony Jackson, on behalf of the AIU; the Athlete, who attended and represented himself; Ms. Xènia Campàs Gené, as Secretariat to the Disciplinary Panel.

## V. POSITION OF THE PARTIES

46. In the course of consideration and resolution of the present matter, the Panel took into account the written and oral submissions of the Parties. In the absence of the written submissions from the Athlete, the Panel has taken into consideration his oral pleading produced during the hearing on 29 January 2024.
47. The following summary of the Parties' positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows:

### **WORLD ATHLETICS**

48. Submissions made in the WA Brief and confirmed during the hearing, on 29 January 2024, can in essence be summarised as follows:
- a. WA submits that it established that the Athlete committed ADRVs pursuant to Rule 2.1 ADR, i.e. Presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's Sample, and Rule 2.2 ADR, i.e. Use of a Prohibited Substance;
  - b. Rules 2.1 and 2.2 ADR establish that the Athlete is strictly liable for the presence of a Prohibited Substance or its Metabolites or Markers in his Sample and the Use of a Prohibited Substance or Prohibited Method; it is not the burden of the AIU to establish the Athlete's intent, Fault or Negligence;
  - c. The Laboratory issued an AAF for the presence of Testosterone and its Metabolites consistent with exogenous origin in the A Sample of the Athlete's urine. The Athlete waived his right to the B Sample analysis and is therefore deemed to have accepted the results of the A Sample;
  - d. WA has determined that no valid Therapeutic Use Exemption (hereinafter, "*TUE*") exists to justify the presence of exogenous Testosterone (or its Metabolites) in the Athlete's Sample. Furthermore, no apparent departures from the International Standard for Testing and Investigations (hereinafter, "*ISTI*") and/or from the International Standard for Laboratories (hereinafter, "*ISL*") have been identified;

- e. The Athlete waived his right to the B Sample analysis, what pursuant to Rules 2.1.2 ADR automatically constitutes sufficient proof of a Rule 2.1 ADRV for the presence of exogenous Testosterone (or its Metabolites);
- f. The presence of exogenous Testosterone (or its Metabolites) in the Sample also supports the commission of Rule 2.2 ADR for the Use of Testosterone (or a Testosterone precursor) by the Athlete;
- g. In accordance with Rule 10.2 ADR, the period of Ineligibility for a violation of Rule 2.1 and Rule 2.2 will be four years, where the ADRV does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the ADRV was not intentional. Testosterone (when administered exogenously) is a non-Specified Prohibited Substance. The Athlete failed to establish on a balance of probabilities that his conduct was not intentional;
- h. Further, the Athlete failed to establish, on a balance of probabilities, the origin of the Testosterone (or its Metabolites) and therefore, should not benefit from a finding of No Significant Fault or Negligence;
- i. Therefore, the Athlete shall serve a period of Ineligibility of four years which shall start from the date of the decision in this matter with credit for the period of the Provisional Suspension served by the Athlete since 4 July 2023, in accordance with Rule 10.13.2(a) ADR;
- j. During the hearing, answering a question posed by the Athlete, the AIU clarified that none of the ingredients of the supplements which the Athlete declared to have taken contained Testosterone. In addition, the AIU submitted that it was the responsibility of the Athlete to have tested the contents of the supplements;
- k. WA's requests for relief set out in the AIU Brief are the following:
  - 81.1. That the Tribunal has jurisdiction over the present matter;*
  - 81.2. That the Athlete has committed ADRVs pursuant to Rule 2.1 (Presence) and Rule 2.2 (Use) ADR;*
  - 81.3. That the Athlete must serve a period of Ineligibility of four (4) years for the ADRVs based on Rule 10.2.1 ADR commencing on the date of the Tribunal's award;*

- 81.4. *That the Athlete be given credit for the period of Provisional Suspension served from 4 July 2023 until the date of the Tribunal's award against the period of Ineligibility imposed for the ADRVs, provided that the Provisional Suspension has been effectively served by the Athlete;*
- 81.5. *That the Athlete's results obtained at the 2023 Seiko Golden Grand Prix and since 21 May 2023 be disqualified pursuant to Rules 9, 10.1 and 10.10 ADR with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money; and*
- 81.6. *World Athletics is granted an order for costs pursuant to Rule 10.12.1 ADR."*

## **ATHLETE**

49. The Athlete did not file any written submissions and provided his position on the matter only verbally, during the hearing on 29 January 2024.
50. At the hearing, the Athlete was not advised or assisted professionally. The Athlete presented his position and answered the questions, posed by the Panel, himself.
51. In essence, the argumentation of the Athlete can be summarised as follows:
- a. The Athlete stated that he never took any Prohibited Substance and, in particular, denied having intentionally taken Testosterone (or its Metabolites) in any form;
  - b. The Athlete stated that he only took the supplements that were specified in the DCF;
  - c. The Athlete submitted that he did not get any information about the supplements he had taken and did not get any guidance and/or medical recommendation with respect to its contents and ingestion;
  - d. All the supplements were given to him by a manager or recommended by the aforementioned friend. However, sometimes the Athlete was advised by a nutritionist since professional medical advice was not available to him;
  - e. The Athlete does not know the origins of the Testosterone (or its Metabolites) found in his urine Sample;
  - f. The Athlete did not check the contents of the supplements he had taken;

- g. The Athlete did not seek any medical, pharmaceutical or other professional advice with respect to the ingestion of the supplements, the recommended dosage and/or the period of consumption;
- h. The Athlete stated that he cooperated with the AIU; however, he considers that his rights were violated, particularly, because of his lack of understanding on how to overturn the Charge;
- i. The Athlete confirmed he had no objections to the jurisdiction of the Disciplinary Tribunal, constitution of the Panel and procedures carried out before the Disciplinary Tribunal.

## **VI. APPLICABLE LAW AND JURISDICTION**

- 52. Pursuant to Rule 1.2 ADR and in accordance with the WA Constitution, WA established the AIU, whose role it is to protect the integrity of Athletics. WA delegated implementation of the ADR to the AIU, including but not limited to the following activities in respect of International-Level Athletes and Athlete Support Personnel: Education, Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
- 53. Pursuant to Rule 1.3 ADR, WA established a Disciplinary Tribunal to hear alleged anti-doping rule violations and other breaches of the ADR.
- 54. Pursuant to Rule 1.4.2 ADR, the ADR shall apply to all athletes preparing for or participating in such capacity in the competitions and/or other activities organised, convened, authorised, sanctioned or recognised by WA.
- 55. The Sample was collected on 21 May 2023, at the 2023 Seiko Golden Grand Prix in Yokohama, Japan, which is a WA Continental Tour Gold competition, organised and authorised by WA. Consequently, in accordance with Rule 1.4.2 ADR, the Athlete is subject to the application of the ADR.
- 56. Within the overall pool of athletes who are bound and required to comply with the ADR, those athletes who shall be considered as an International-Level Athlete are defined in Rule 1.4.4 ADR. In particular, for the purposes of Results Management responsibility, the AIU shall have Results Management responsibility over athletes whenever the asserted

ADRV results from (i) Testing conducted under the Testing authority of WA; (ii) an investigation conducted by the AIU, or (iii) in any of the other circumstances in which WA or the AIU has Results Management responsibility under Rule 7 ADR.

57. Based on the foregoing and in the absence of any objections from the Parties, the Panel has confirmed its jurisdiction to rule in this matter.

## VII. STANDARDS OF PROOF

58. Pursuant to Rule 3.1 ADR, the following burdens and standards of proof are established:

### ***“3.1 Burdens and Standards of Proof***

*The Integrity Unit or other Anti-Doping Organisation will have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof will be whether the Integrity Unit or other Anti-Doping Organisation has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that has been made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Rules 3.2.3 and 3.2.4, the standard of proof will be by a balance of probability.”*

59. Consequently, it is the burden of the AIU (on behalf of the WA) to establish to the comfortable satisfaction of the Panel that the ADRVs were committed by the Athlete.

## VIII. MERITS

60. Given the specifics of the case and the Parties' submissions, in furtherance of the resolution of the matter, the Panel deems necessary to give the answer to the following questions:

- Whether the AIU succeeded to discharge its burden of proof in respect of the establishment of the ADRVs of Rules 2.1 and 2.2 ADR by the Athlete, and
- In the event of an affirmative answer to the foregoing, what consequences shall be applicable?

**1. Has the AIU discharged its burden of proof in respect of the establishment of the ADRVs of Rules 2.1 and 2.2 ADR?**

61. Rule 2.1 ADR reads as follows

***“2.1 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 their 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 to demonstrate intent, Fault, Negligence or knowing Use on the Athlete’s part in order to establish a Rule 2.1 anti-doping rule violation.*

*2.1.2 Sufficient proof of an anti-doping rule violation under Rule 2.1 is established by any of the following: (i) the 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 analysed; (ii) where 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; or (iii) where the Athlete’s A or B Sample is split into two parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample.*

*2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample will constitute an anti-doping rule violation.*

*2.1.4 As an exception to the general rule of Rule 2.1, the Prohibited List, International Standards or Technical Documents may establish special criteria for reporting or the evaluation of certain Prohibited Substances.”*

62. Rule 2.2 ADR in the part relevant for the dispute in question reads as follows:

***“2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method***

*2.2.1 It is the Athlete’s personal duty to ensure that no Prohibited Substance enters their body and that no Prohibited Method is Used. Accordingly, it is not necessary to demonstrate intent, Fault, Negligence or knowing Use on the Athlete’s part in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*

*[Comment to Rule 2.2: It has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Rule 3.2, unlike the proof required to establish an anti-doping rule violation under Rule 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Athlete Biological Passport, or other analytical information that does not otherwise satisfy all the requirements to establish the presence of a Prohibited Substance under Rule 2.1. For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organisation provides a satisfactory explanation for the lack of confirmation in the other Sample.]*

*2.2.2 The success or failure of the Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed.”*

63. As follows from the afore-cited provisions, it is and has at all times been the personal duty of the Athlete to ensure that no Prohibited Substance enters his body.
64. As follows from the ADAMS Test Report submitted by the AIU, the analysis of the Athlete's urine Sample has shown the AAF, namely the presence of Testosterone and at least one of the Adiolis.
65. Pursuant to the WADA 2023 Prohibited List category S1.1 (Anabolic Androgenic Steroids), Testosterone (when administered exogenously) is a Prohibited Substance. It is a Non-Specified Substance prohibited at all times.
66. The Athlete did not have a TUE for Testosterone or its Metabolites found in the Sample. The Athlete did not argue any apparent departure from the ISTI or from the ISL that could reasonably have caused the AAF.
67. The Athlete waived his right to the B Sample analysis, which automatically means that there is sufficient proof of an ADRV under Rule 2.1 ADR.
68. Pursuant to Rule 2.2 ADR, it is not necessary for the AIU to prove the intent, Fault, Negligence or knowing Use on the Athlete's part in order to establish an ADRV for Use of

a Prohibited Substance. Use may be established based upon reliable analytical data from the analysis of an A Sample, and such data was submitted by the AIU in the present case.

69. Consequently, an ADRV under Rule 2.2 ADR is established.

70. Based on the foregoing, the Panel finds itself comfortably satisfied that the Athlete has committed the ADRVs provided for in Rules 2.1 and 2.2 ADR.

**2. In light of an affirmative answer to the foregoing, what consequences shall be applicable?**

**i. Period of Ineligibility**

71. Rule 10.2 ADR is, in part, relevant for the case at hand and reads as follows:

***“10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method***

*The period of Ineligibility for a violation of Rule 2.1, Rule 2.2 or Rule 2.6 will be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.5, 10.6 and/or 10.7:*

*10.2.1 Save where Rule 10.2.4 applies, the period of Ineligibility will be four years where:*

- (a) The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*
- (b) The anti-doping rule violation involves a Specified Substance or a Specified Method and the Integrity Unit can establish that the anti-doping rule violation was intentional.*

*10.2.2 If Rule 10.2.1 does not apply, then (subject to Rule 10.2.4(a)) the period of Ineligibility will be two years.*

*10.2.3 As used in Rule 10.2, the term 'intentional' is meant to identify those Athletes 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. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition will be rebuttably presumed to be not 'intentional' if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was*

*Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition will not be considered 'intentional' if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.*

*[Comment to Rule 10.2.3: Rule 10.2.3 provides a special definition of 'intentional' that is to be applied solely for purposes of Rule 10.2. Beyond Rule 10.2, the term 'intentional' as used in these Rules means that the person intended to commit the act(s) based on which the Anti-Doping Rule Violation is asserted, regardless of whether the person knew that such act(s) constituted an anti-doping rule violation.]*

[...]"

72. Testosterone is a Non-Specified Substance, for which, per the above, the period of Ineligibility should be four years unless the Athlete can establish that the ADRV was not intentional.
73. It is the Athlete's responsibility to establish his lack of intent for the consideration of a reduction of the period of Ineligibility.
74. In the given case, however, the Athlete only repeatedly stated that he did not ingest Testosterone and that he does not know the origins of the substance found in the Sample. The Athlete failed to provide any evidence in corroboration of his statements of innocence.
75. On this account, the Panel finds itself in line with the conclusions made by the Court of Arbitration for Sport (hereinafter, the "CAS") in the award, CAS 2020/A/6978 (Iannone v FIM) & CAS 2020/A/7068 (WADA v FIM and Iannone), whereby in paragraph 134, it was underlined that *"the athlete cannot rely on simple protestations of innocence or mere speculation as to what must have happened but must instead adduce concrete and persuasive evidence establishing, on a balance of probabilities, a lack of intent (cf. CAS 2017/A/5369; CAS 2016/A/4919, CAS 2016/A/4676; CAS 2017/A/5335)."*
76. In the particular circumstances of this case, the Athlete not only failed to adduce any evidence in support of his statement of innocence and his lack of intent to ingest Testosterone, but the Athlete, during the hearing, also expressly pointed out that he did not get any medical or pharmaceutical advice when deciding to take the supplements. According to the Athlete, he took the supplements given to him by a manager and a friend

without taking any precaution in respect of the verification of the contents of the supplements and/or applicable dosage. The Panel also took into consideration both of the above.

77. Pursuant to Rule 10.2.3 ADR, the term “*intentional*” is meant to identify those athletes who knew that there was a significant risk that their conduct might constitute or result in an ADRV and manifestly disregarded that risk. Based on the circumstances of the case, the Panel concludes that the Athlete knew that there was risk of committing an ADRV and nevertheless manifestly disregarded it. Therefore, the Panel finds that the Athlete committed the ADRVs intentionally.
78. In view of the Panel’s finding that the ADRVs were intentional, it is not necessary to examine the Athlete’s degree of Fault and/or Negligence as Rule 10.2.1 ADR does not foresee any possibility of reducing a sanction based on an assessment of Fault where an Athlete does not first establish a lack of intent. In any event, the Panel has also taken into account that the Athlete has not submitted any argumentation with respect to the possible reduction or elimination of the Ineligibility period.
79. For the reasons set out above, the Panel has reached the conclusion that the AIU has proven the Charge to the comfortable satisfaction of the Panel, and the ADRVs are established.
80. Therefore, the Panel concludes that a four-year period of Ineligibility shall be imposed on the Athlete.
81. Pursuant to Rule 10.13.2(a) ADR, the Provisional Suspension served by the Athlete from 4 July 2023 and until the date of this Decision shall be credited against the total period of Ineligibility.

***ii. Disqualification of results***

82. Rule 10.10 ADR reads as follows:

***“10.10 Disqualification of results in Competitions subsequent to Sample collection or commission of an anti-doping rule violation***

*In addition to the automatic Disqualification of the results in the Competition that produced the positive Sample under Rule 9, all other competitive results obtained by the Athlete from the date a positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through the commencement of any Provisional Suspension or Ineligibility period, will, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, titles, points, prize money, and prizes.”*

83. The Sample was collected on 21 May 2023. The AIU requested that all of the Athlete's individual results obtained at the 2023 Seiko Golden Grand Prix should be Disqualified, with all resulting Consequences, including forfeiture of any medals, titles, awards, points and prize and appearance money. Additionally, the AIU requested that the Athlete's competitive results obtained since 21 May 2023 (the date on which the Sample was collected) through to the commencement of the Provisional Suspension on 4 July 2023 should also be Disqualified (unless fairness requires otherwise) with all of the resulting Consequences, including forfeiture of any medals, titles, points, prize money, and prizes.
84. The Athlete did not submit any argumentation in respect to the disqualification of his results. Based on the foregoing and in view of the establishment of the ADRVs committed by the Athlete, the Panel concludes that the Athlete's results obtained at the 2023 Seiko Golden Grand Prix and since 21 May 2023 shall be disqualified in accordance with Rule 10.10 ADR.
85. The Panel determines that the AIU has absolute discretion to establish an instalment plan for repayment of prize money forfeited pursuant to the above. The Panel is content to leave to the AIU the establishment of such an instalment plan.

## **IX. COSTS**

86. The Panel has noted the AIU's request to grant WA an order for costs pursuant to Rule 10.12.1 ADR.
87. Based on the findings developed above, the Athlete is the unsuccessful party.
88. Nevertheless, the Panel rejects the request of the AIU regarding the order for costs, taking into account that the period of Ineligibility of four years and the forfeiture of any titles,

awards, medals, points and prize and appearance money represents a considerable financial burden on the Athlete.

89. In view of the foregoing, the Panel determines that each party shall bear its respective costs.

## **X. DECISION**

90. Based on the aforementioned considerations, the Panel has decided as follows:

- (i) The Panel has jurisdiction over the present matter;
- (ii) The Athlete has committed two ADRVs relating to Rule 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) and Rule 2.2 ADR (Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method);
- (iii) A period of Ineligibility of four years is imposed on the Athlete commencing from the date of this decision;
- (iv) The period of Provisional Suspension served by the Athlete, from 4 July 2023 until the date of this decision, shall be credited against the total period of Ineligibility;
- (v) All of the Athlete's results obtained at the 2023 Seiko Golden Grand Prix and since 21 May 2023 shall be disqualified;
- (vi) Each party shall bear its own costs.

## **XI. RIGHT OF APPEAL**

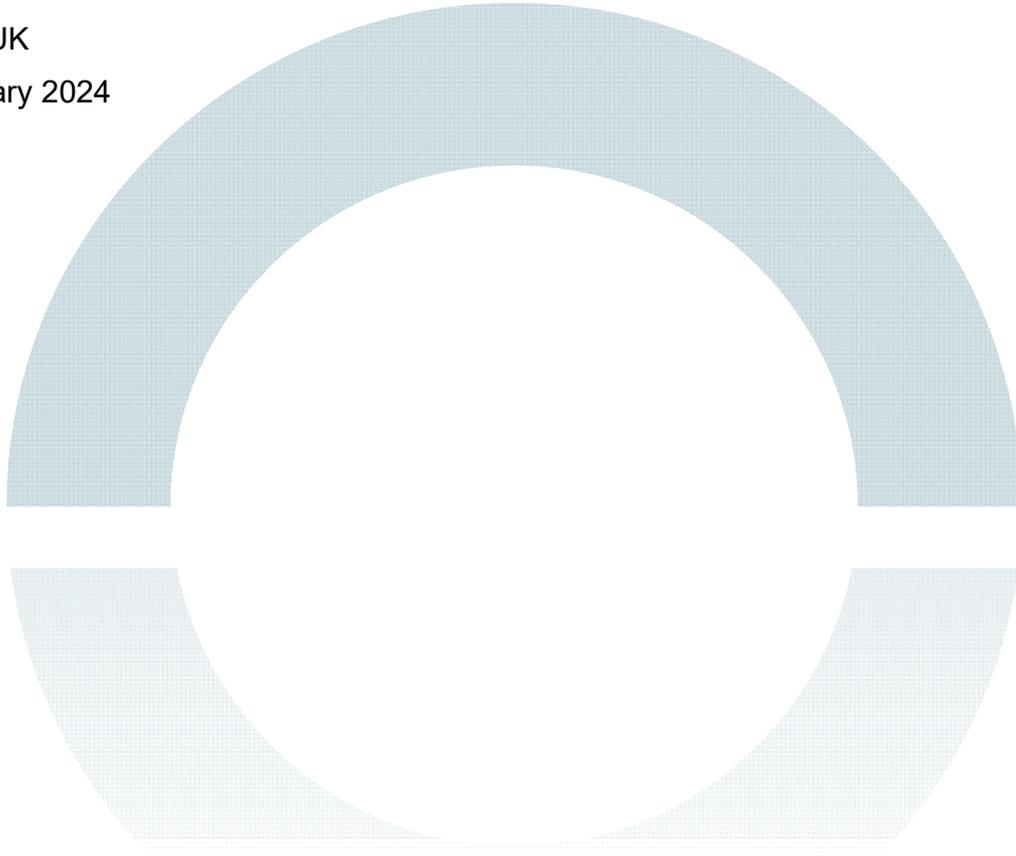
91. This decision may be appealed to the CAS, located at Palais de Beaulieu Avenue Bergières 10, CH-1004 Lausanne, Switzerland ([procedures@tas-case.org](mailto:procedures@tas-case.org)), in accordance with Rule 13 ADR.

92. In accordance with Rule 13.6.1(a) ADR, the deadline for filing an appeal with the CAS is 30 days from the receipt of this decision.

*A. Smirnova*

Anna Smirnova  
Chair of the Panel

London, UK  
12 February 2024



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