

## INDEPENDANT DOPING HEARING PANEL.

In the matter between :

South African Institute for Drug-Free Sport (Saisd)

and

Mr Cole Henning (the Athlete)

on

26 January 2016.02.03

## REASONS FOR DECISION.

The above Athlete was charged of violating Art 2.1 of the anti-doping Rules (the Rules) of Saisd, namely "The Presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's Sample". The said contravention allegedly occurred on 11 July 2015 when he provided a urine sample during an in-competition test. Upon analysis the S.A Doping Control Laboratory reported the presence of a prohibited substance, namely the stimulant Methylhexanamine in the "A" sample of his urine. The substance identified in this sample of his urine is categorised as a Class S 6 Stimulant in the 2015 World Anti-Doping Code List.

At the end of the hearing the Panel announced its decision, but undertook to provide reasons for its decision. These are the reasons :

The Panel consisted of the Chairperson, Retired Judge L.C. Muller and two members, namely Dr Rob Collins and Prof Yoga Coopoo. The Panel was properly constituted and both members declared there are no circumstances that may affect their impartiality to hear this matter. Ms Palesa Motena represented Saisd and also submitted written submissions. We hereby express our gratitude to Ms Motene. The Athlete represented himself.

The Athlete was asked to confirm receipt of all the documentation from Saidis, including the Rules. He confirmed it, as well as his response to Saidis in which he expressly stated that he did not require his "B" sample to be tested. He further confirmed that he admits the merits of the matter, namely that he had committed an anti-doping violation i.t.o the Rules, but that he requires a consideration of the appropriate sanction in the light of his defence that he was unaware that the substance, which is available to be bought over the counter, contained prohibited ingredients.

Ms Motene conceded that the Saidis letter of 21 December 2015 might have been misleading in that it could be understood by the Athlete that he would still be entitled to call witnesses if he avails himself for the hearing. The Panel informed him that he may call witnesses to testify on his behalf, although he failed to inform Saidis thereof in advance.

I.t.o Art 8.2.2 the Panel determines its own procedure. The Athlete and Ms Motene were informed that the Panel will follow the following procedure :

- 1) The Athlete will commence with his own testimony, followed by that of his witnesses;
- 2) No cross-examination will be allowed, but Ms Motene will be entitled to submit questions to the Chairperson, who will then put it to the particular witness;
- 3) After completion of the oral evidence on behalf of the Athlete, the Panel will hear submissions by Ms Motene and then the Athlete .
- 4) The Panel shall then adjourn to consider its verdict and reconvene to announce its decision, if possible to do so. Otherwise it will only be announced later.
- 5) Reasons for the Panel's decision will be given later.

The Athlete testified under oath. His evidence was very brief. He confirmed what he said in his letter to Saidis, namely "...I was completely unaware of any adverse ingredients seeing that it was off the shelf products that one buys at the shop." He was asked questions in clarification by members of the Panel and Ms Motene through the Chair. From his answers it was clear that although he claimed to be ignorant that the supplements that he used did contain any prohibited substance, it gave him an energy boost. The Athlete called only one witness, Ms Magardi, the manager of the gymnasium where he trained and apparently fought for as a fighter in his sport of Combat Fighting. She also claimed that prior to his test she has been unaware of any prohibited substance that might have been contained in any product used by the Athlete . Subsequent to that event she made an effort to research all products used by athletes in her gymnasium and now takes full responsibility for such products. She produced a product that is used in the gymnasium, and apparently used by the Athlete before he was tested. The Athlete intervened during her testimony and said that he stopped using it a day before the fight (the event when he was tested). Ms Madardi confirmed that this product gives more energy. Having scrutinised the product produced to the Panel, it was noticed and put to Ms Magardi that at the bottom of its label it is mentioned that it contains 1.3 dimethylamylamine or DMAA, which is another name for the prohibited substance found in the Athlete's urine.

After hearing arguments, the Panel adjourned to determine what an appropriate sanction would be. The Panel thereafter reconvened and announced its unanimous decision.

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Said, namely that Said succeeded in discharging its onus i.t.o Art 10.2.2 by establishing that the anti-doping violation by the Athlete was intentional and that the inevitable result is a 4 year period of ineligibility. On the evidence of both the Athlete himself and that of Ms Magardi, the product that he used contained the specific prohibited substance, as well as the fact that he was aware it gave him an energy boost. His admission that he stopped using it the day before the fight shows clearly that he hoped to avoid being tested positively. This undoubtedly indicates that the Athlete engaged in conduct which he knew might constitute an anti-doping rule violation. We cannot come to any other conclusion that the Athlete intentionally used the prohibited substance found in his urine. The Athlete had the responsibility to ensure that no prohibited substance enters his body.

Under the circumstances the period of ineligibility cannot be less than 4 years. Furthermore, the Athlete is disqualified of any individual results obtained in the event he participated in, including forfeiture of any medals or prizes (Art 10.1) and a mandatory publication should follow i.t.o Art 14.3.



L.C. Muller.

04/02/2016



Dr R. Collins.

5/02/2016



Prof. Y. Coopoo.

8/02/2016