**CAS 2022/A/9222 Association Russian Anti-Doping Agency (RUSADA) v. World Triathlon & Valentina Riasova**

# ARBITRAL AWARD

**delivered by the**

# COURT OF ARBITRATION FOR SPORT

**sitting in the following composition:**

Sole Arbitrator: Dr Isabelle Fellrath, Attorney-at-Law, Lausanne, Switzerland

**in the arbitration between**

**Association Russian Anti-Doping Agency (RUSADA), Russian Federation**

Represented by Mr Graham Arthur, Attorneys-at-Law, GM Arthur, Liverpool, United Kingdom

**Appellant**

**and**

**World Triathlon, Lausanne, Switzerland**

**First Respondent**

**&**

**Valentina Riasova, Rostov on Don, Russian Federation**

Represented by Messrs Sergei Lisin and Sergei Mishin, Attorneys-at-Law, Lisin & Partners, Moscow, Russian Federation

**Second Respondent**

## Content

## I. PARTIES

1. The Russian Anti-Doping Agency ("RUSADA" or the "Appellant"), headquartered in Moscow, is Russia's national anti-doping organisation tasked of the implementation and the application of the World Anti-Doping Code adopted by WADA ("WADA Code") and the fight against doping at national level. It adhered to WADA Code and WADA International Standards including the Prohibited List ("Prohibited List").

2. World Triathlon (the "First Respondent"), seated in Lausanne, Switzerland, is the world governing body for the sport of Triathlon, Para Triathlon and its Related Multisports. It is an association created under Article 60 of the Swiss Civil Code. Its constitutional mission is to promote the sport of Triathlon throughout the World, and to lead and provide governance of the sport worldwide. It also adhered to WADA Code and International Standards, which it implemented through its World Triathlon Anti-Doping Rules ("ADR") purported to enforce anti-doping rules "*in a global and harmonized manner*" and applying to *i.a.* to all *Athletes* and *Athlete Support Personnel* directly or indirectly subject to subject to the authority of World Triathlon.

3. Valentina Riasova (the "Athlete", "Ms Riasova" or the "Second Respondent") is an elite-level professional athlete from Russia, born in Russia on 24 May 1998 and competing in the sport of Triathlon. She is defined as an International Level Athlete under the ADR by virtue of her being ranked in WT World Rankings.

4. The Appellant and Respondents are also being referred to collectively as the "Parties".

## II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence as presented before and at the hearing. Additional facts and allegations found in the Parties' written submission, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, she refers in this Award only to the submissions and evidence she retains necessary to explain her reasoning.

### A. Facts at the origin of the dispute

6. On 25 September 2021, Ms Riasova participated in the 2021 European Triathlon Championships in Valencia, Spain, in the Elite Women category. She was selected for an in-competition testing control conducted under World Triathlon's authority. When filling out the doping control report, as she only consumed an isotonic drink supplement, she did not mention taking any medication.

7. On 29 September 2021, Ms Riasova's husband, also a Russian professional triathlete at national level, was notified that a sample of his, collected on 28 August 2021 at the Russian Championship in Kazan, had traces of prohibited substances including 5-methylhexane-2-amine.

8. On 11 October 2021, Ms Riasova's legal representatives sent a "*formal notice*" to World Triathlon advising of reasonable concerns that Ms Riasova's sample collected on 25 September 2021 may produce an Adverse Analytical Finding ("AAF") as a result of her inadvertently ingesting her husband's likely contaminated Psycho nutritional supplement ("Psycho Berry"): "*Mrs. Riasova has reasonable concerns that the prohibited substance(s) from that contaminated supplement may have entered her system as well. Mrs. Riasova has a reasonable concern that, if such cross-contamination did occur, any samples collected from her after 14 September 2021 (the latest negative test) [including the sample collected in-competition on 25 September 2021] may reveal the presence of the same prohibited substance(s) that were found in Anton's sample of 28 August 2021*". Ms Riasova denied any intentional wrongdoing and expressed willingness to cooperate.

9. On 25 October 2021, a Spanish WADA-accredited laboratory for doping analysis returned an AAF for a "*4-methylhexan-2-amine (methylhexaneamine)*", a substance prohibited in-competition under the 2021 WADA International Standard Prohibited List effective as of 1 January 2021 ("Prohibited List 2021") classified S6 (b), Specified Stimulants. The Test Report does not specify the estimated concentration.

10. On 4 November 2021, World Triathlon gave Ms Riasova notice of the AAF and of a potential anti-doping rule violation ("ADRV") exposing the consequences thereof and offering the Athlete the opportunity "*to provide an explanation for the AAF*"; no provisional suspension of the Athlete was ordered.

11. On 5 November 2021, Ms Riasova's legal representatives referred to their 11 October 2021 tentative explanation and requested a deferral of the deadline to provide a further explanation until the communication of the outcome of the ongoing parallel analysis of the Psycho Berry by an Austrian WADA-accredited laboratory.

12. On 26 January 2022, Ms Riasova's legal representatives reported the outcome of the Austrian laboratory's analysis on Psycho Berry to World Triathlon (5-Mexthylhexan-2-amine, no 4-methylhexan-2-amine above the limit of detection). This finding was confirmed by the Spanish laboratory, that swiftly reanalysed Ms Riasova's own sample and returned an amended AAF for "*5-metilhexan-2-amine (1,4-dimetilpentilamine)*", also a substance prohibited in-competition under the Prohibited List 2021, classified S6 (b), Specified Stimulants.

13. On 15 July 2022, World Triathlon gave the Athlete an amended notice of a potential anti-doping rule violation substituting for the prior notice and providing her all the same procedural options.

14. On 22 July 2022, the Athlete admitted the ADRV, waived analysis of the B Sample, confirmed her initial explanation of inadvertent ingestion of some Psycho Berry and reiterated her willingness to cooperate with World Triathlon; she submitted that she bears No Fault, alternatively, No Significant Fault or Negligence for the AAF for the following reasons:

> *a. the most likely source of the prohibited substance in the Sample appears to be a contaminated nutritional supplement used by Ms Riasova's husband, Anton Ponomarev*

*b. the Athlete and her husband live together but have always kept separately any medicines and supplements they both used as athletes.*

*c. notwithstanding the above, Ms Riasova most likely mistakenly took her husband's small plastic container containing the contaminated supplement to the competition event in Valencia in September 2021.*

*d. before the competition event in Valencia, Ms Riasova most likely dissolved and drank that contaminated supplement from her husband's container that she believed to be her customary sport drink.*

15. On 28 July 2022, World Triathlon sent the Athlete a Notice of Charge and Assertion of an ADRV under the ADR by virtue of the Athlete's admission and waiver of her B Sample analysis and invited her to supply all supporting evidence that would establish the required standard of proof that the source of the AAF was in fact her husband's supplement and that she bears No Significant Fault for the ADRV.

16. On 12 August 2022, Ms Riasova's legal representative provided the following statement, with supporting pictures of Ms Riasova's kitchen cupboard, Ms Riasova's and Mr Ponomarev's respective supplements and shaker bottles and shaker bottom containers:

*[…] Supplements' storage*

*The Athlete has been using only the nutritional supplements that were given to her by the national team. Mr Ponomarev has been given fewer supplements by the team and occasionally has bought some on his own. The Athlete recalls that when her husband bought the 'Psycho' supplement, she asked him whether he checked it and he told her that the supplement had no prohibited substances. The Athlete and her husband have always stored the supplements on separate shelves in the kitchen cupboard (see Pic 1). The supplements that are being used at a specific moment are also stored separately. The Athlete keeps her supplements on a windowsill in the kitchen (see Pic 2) and her husband keeps them in the sleeping room (see Pic 3). The Athlete and her husband have been using shaker bottles to take small quantities of supplements with them to training events or competitions. The bottles have the names of the Athlete and her husband written on them (see Pic 4). The bottles have cups that are attached to the bottom of the bottles. The cups are not marked. Shaker bottles are normally left in the dish drainer after washing. Bottle cups, if any powder is left, are stored by each of the Athlete and her husband separately on respective kitchen cupboard shelves together with other supplements.*

*Valencia trip*

*Before travelling to Valencia in September 2021, the Athlete took some isotonic powder with her, in the shaker cup, to dissolve before the race. The Athlete recalls that she took the bottle cup from her kitchen shelf and the cup had some powder in it that looked similar to her isotonic drink. She then*

*added some additional electrolyte powder from her package into the cup. Most likely, her husband Anton put his shaker cup with the 'Psycho' leftovers on the Athlete's shelf by mistake. Nothing in this letter should be construed to limit any rights that the Athlete may have under the applicable anti-doping rules in connection with the charge for the commission of the ADRV, including the right to request a hearing of this matter.*

17. On 23 August 2022, World Triathlon, based on the assumption that the Athlete had established, on the balance of probabilities, that the source of the prohibited substance was her inadvertent use of her husband's supplement (considering her anticipated and invariable admission, the detection of the same prohibited product in compatible concentrations in the ingested supplement, the plausibility of her explanation), that it was from a contaminated product (the prohibited substance being not disclosed either on the supplement label or through internet search), accepted that the *ADRV* was "*caused by the contaminated product*" and proposed the following:

- Athlete's level of Fault (emphasis added):

*World Triathlon finds that there are no subjective elements that allow the Athlete to move lower on the spectrum. However, while her shortcomings in respecting her degree of care and utmost caution do not warrant her to fall below the maximum sanction for a finding of light degree of fault, objectively, she does benefit from the fact that her husband's supplement was mislabelled. She should have been more cautious in avoiding the use of his supplements (as was the case in Armstrong and Stein) but the fact her husband's supplement was mislabelled does not justify her elevating her to a normal degree of fault either. On the evidence, she was evidently exercising some caution to avoid using any of his supplements and the small concentration of the Methylhexanamine detected in her sample is consistent with inadvertent use.*

- Consequences (original emphasis):

*[…] keeping mind applicable precedent, and further to its assessment of the evidence in the case file and the considerable delays in the Results Management process (notably the laboratory's amended test report), World Triathlon, without prejudice,* ***is ready to offer as a consequence to her ADRV that the Athlete be sanctioned with a 6-month Period of Ineligibility****. As she has not voluntarily accepted a provisional suspension, the Athlete's results at the event in question and since will need to be disqualified and her period of ineligibility will start on the date she signs the attached Form.*

18. The Athlete's counsel and World Triathlon further exchanged on disqualification period and publication of the sanction, and on 30 August 2022, the Athlete expressly waived the hearing and agreed with the Consequences proposed by World Triathlon returning the signed apposite form, whereby she admitted "*the anti-doping rule violation, waive my right to a hearing and accept all the consequences that are being proposed by World Triathlon as a result of my admission related to a first anti-doping rule violation*

*involving a specified substance, which are a period of ineligibility of 6 months and a disqualification of all results I have earned from 25 September 2021 to 25 March 2022*".

## B. World Triathlon's Decision of 12 September 2022

19. On 12 September 2022, World Triathlon issued the decision formalising the Athlete's acceptance of the Consequences (the "Decision"), which operative part provides:

> *44. As provided in Article 10.6.1.2 of the ADR, World Triathlon hereby imposes a period of ineligibility of six (6) months on Valentina Riasova for an ADRV caused by a contaminated product and involving the inadvertent use and presence of 5-Methylhexaneamine in her urine sample, in contravention to Articles 2.1 and 2.2 of the ADR.*
>
> *45. Pursuant to Article 9 of the ADR, and applying the fairness provisions of Article 10.10 of the ADR, all the Athlete's results and points earned from 25 September 2021 to 25 March 2022 are to be disqualified with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money. The Disqualification of results has not been fully extended from the date of the ADRV through to the date of the commencement of the period of ineligibility as a result of delays and errors that occurred in the course of the results management procedure.*
>
> *46. Pursuant to Article 10.14.1 of the ADR, the Athlete's period of ineligibility of six (6) months extends to any Competition or activity (other than authorized anti-doping Education or rehabilitation programs) authorized or organized by any Signatory to the World Anti-Doping Code […], Signatory's member organization, or a club or other member organization of a Signatory's member organization, or in Competitions authorized or organized by any professional league or any international or national-level Event organization or any elite or national-level sporting activity funded by a governmental agency, competitions convened by other Code Signatories in any sport at any level as well as to competitions in all other organisations promoting Events in the sport of triathlon who have elected to adopt, implement and enforce the World Triathlon ADR.*
>
> *47. World Triathlon now considers this case closed, subject to appeals filed pursuant to Article 13 of the ADR and subject to any substantial assistance the Athlete may wish to provide World Triathlon.*
>
> *48. Pursuant to Article 14.3.2 of the ADR, World Triathlon will proceed with a mandatory public disclosure of the disposition of this matter once the appeal deadlines for all relevant parties have lapsed.*

20. The Decision was notified *i.a.* to the Appellant on 12 September 2022, with indication of a right of appeal under Article 13.2.3 of the ADR.

21. As a consequence, the Athlete's results and points earned from 25 September 2021 to 25 March 2022 were disqualified. The disqualification of the results was not extended

through the date of commencement of the period of ineligibility due to "*delays and errors that occurred in the course of the results management procedure*".

## III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 17 October 2022, in accordance with Articles R47 *et seq.* of the Code of Sports-related Arbitration (the "CAS Code"), the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") requesting that the case be submitted to a Sole Arbitrator.

23. On 1 November 2022, the CAS Court Office communicated the Statement of Appeal to Respondents, inviting the Respondents, *inter alia*, to indicate within five days "*whether they agree to the appointment of a Sole Arbitrator*" failing which "*it will be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide on the number of arbitrators*" respectively to appoint the Sole Arbitrator.

24. On 3 November 2022, World Triathlon advised that "*although a named party to this matter, World Triathlon does not intend to participate in this appeal in any way and declines the opportunity and right to do so. As a result, World Triathlon need not be included in any such procedural communications going forward*".

25. On 9 November 2022, upon the CAS Court Office's invitation, the Appellant confirmed that it "*does wish to maintain its appeal against World Triathlon*".

26. On 10 November 2022, the CAS Court Office signified that "*World Triathlon shall remain a respondent in this procedure. Pursuant to Article R55(2) of the [CAS Code], the fact that a respondent does not participate in the arbitral procedure does not prevent the Panel from proceeding with the arbitration and delivering an award*" and reserved the CAS decision on the composition of the arbitral panel failing any answer from the Second Respondent within the prescribed deadline.

27. On 15 November 2022, the Athlete indicated : "*I choose a panel of three arbitrators*".

28. On 16 November 2022, the CAS Court Office confirmed that the composition of the arbitral panel would be referred to the President of the CAS Appeals Arbitration Division, or her Deputy.

29. On 18 November 2022, following an extension of time (CAS Code Art. R32(2)), the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code); the CAS Court Office communicated it to the other Parties on 21 November 2022.

30. On 22 November 2022, the CAS Court Office informed the Parties that thePresident of the CAS Appeals Arbitration Division, on the basis of Articles R36 and R54 of the CAS Code and after consultation with all parties, had decided to appoint a Sole Arbitrator to conduct this procedure:

    Sole Arbitrator: Dr Isabelle Fellrath, Attorney-at-Law, Lausanne, Switzerland

31. On 23 January 2023, the Sole Arbitrator requested a copy of the World Triathlon case file, in accordance with Article R57 of the CAS Code.

32. On 9 February 2023, World Triathlon supplied a copy of the case file reiterating that "*whilst sharing the case file which led to the offer of consequences to the Athlete (without a full evidentiary disclosure or hearing), World Triathlon reiterates that it waives the right to participate in the appeal and hearing related thereto*".

33. On 19 February 2023, referring to a "*number of references in the Appellant's submissions to the antidoping investigation by RUSADA against the Athlete's husband, Mr Anton Ponomarev*" in the case file submitted by World Triathlon, the Athlete requested a production order of Mr Ponomarev's case file.

34. The Appellant took position on the request; World Triathlon submitted no determination thereon within the imparted deadline.

35. On 27 February 2023, the CAS Court Office notified the Sole Arbitrator's dismissal of the second Respondent's production request, without prejudice to the admissibility of second Respondent's production as evidence in the proceedings of documents pertaining to Mr Ponomarev's file.

36. On 5 March 2023, following mutually agreed time-limit extensions and temporary suspensions, the Second Respondent filed her Answer pursuant to Article R55 of the CAS Code together with a "*witness statement*" from Ms Riasova dated 11 August 2022 and a witness statement from Mr Ponomarev dated 28 February 2022 ; the CAS Court Office communicated the whole submission to the other Parties and invited the Parties to indicate whether they would request a hearing and case management conference.

37. On 10 March 2023, both the Appellant and the Second Respondent indicated their preference for a hearing and case management conference.

38. On 21 March 2023, the First Respondent confirmed it "*not wishing to participate in the case management conference unless requested by the Sole Arbitrator*"; the CAS Court Office informed the other Parties and the Sole Arbitrator accordingly.

39. The case management conference was held by videoconference on 5 April 2023, RUSADA and the Second Respondent being represented by their respective counsels.

40. At the outset, RUSADA's and the Athlete's respective counsels confirmed having no objection to the composition of the panel and that their right to be heard on an equal basis had thus far been fully respected.

41. The Sole Arbitrator compiled a written synthesis of the points discussed at the case management conference and a summary of the agreed course of action and timeline, with appended a tentative hearing schedule, evidentiary hearing attendance list, and witness'/party's declaration (CAS Code Art. R44.2).

42. The tentative hearing schedule also included some non-exhaustive key legal points compiled by the Sole Arbitrator and subject to the Parties' comments/adjustments which the Sole Arbitrator invited the Parties to address at the hearing.

43. On 5 April 2023, the CAS Court Office circulated the written synthesis and annexure to the Parties for comments and *i.a.* hearing dates proposal, expressly drawing the World Triathlon's attention to the hearing venue and dates and to the issue of contribution to Parties' legal fees / expenses. The CAS Court Office further indicated that, "*Subject to World Triathlon's indication to the contrary by return to this letter, it will be assumed*

*that World Triathlon will not be attending, and the hearing scheduled will be adjusted accordingly. Conversely, should World Triathlon intend to attend the hearing within the limits of Article R56 and R57 of the Code of Sports-related Arbitration, it is invited to liaise with Appellant's and Second Respondent's counsels to agree on possible dates and to agree on the meeting schedule (Annexure A to the CMC Minutes)*".

44. On 13 April 2023, World Triathlon confirmed that "*[…] as it has from the outset of the Claimant's appeal against the Respondent, Ms Riasova, that although it is a named party to this matter (as required by all applicable Anti-Doping Regulations), it does not intend to participate in any capacity in this Appeal, including the hearing*". World Triathlon also took position on costs allocation.

45. On 15 April 2023, counsel to the Appellant reported that "*I have conferred with Mr Mishin and we propose the dates of 10, 11 or 12 May as potential hearing dates. For my part I have no comments on the Minutes of the CMC and the draft Annex A, other than to record that they are commensurate with our discussions*".

46. On 17 April 2023, the CAS Court Office *i.a.* advised the Second Respondent that "*neither the DHL courier service nor the Swiss postal service are able to guarantee that correspondence may be delivered to Russia for the time being. Accordingly, the present letter is sent to the second Respondent by email only*" and confirmed the date (10 May 2023, 9:30 CEST) and venue (virtual) of the hearing inviting the Parties to revert with the completed hearing attendance list.

47. On 19 April 2023, the CAS Court Office invited the Appellant and Second Respondent to file simultaneous written submissions limited to legal costs and expenses specifying that said issue would not be addressed at the hearing and that a similar deadline would be given for World Triathlon to respond.

48. On 24 and 25 April 2023, the Second Respondent respectively the Appellant reverted with the completed hearing attendance list and the Second Respondent with a Russian translation of the witness declaration (Annexure C to the CMC Minutes).

49. On 26 April 2023, the CAS Court Office notified the Parties a procedural order for their signature. The same day, the Appellant filed a brief submission limited to costs. The second Respondent filed no submission limited to costs within the prescribed deadline.

50. On 27 April 2023, the CAS Court Office invited the First Respondent to comment on the Appellant's costs submission.

51. On 5 May 2023, within the extended deadline, the First Respondent file its submission limited to Appellant's costs submission.

52. On 2, 4 and 8 May 2023, the Appellant, the First and Second Respondents returned the signed Order of Procedure, confirming inter alia that their right to be heard had been respected.

53. On 9 May 2023, the CAS Court Office confirmed the details and schedule of the hearing.

54. On 10 May 2023, the Parties and the witness, to the extent set out below, participated at the hearing which was held by videoconference. The Sole Arbitrator was assisted by Ms Delphine Deschenaux-Rochat, CAS Counsel, and joined by the following:

For the Appellant:

- Mr Graham Arthur, Counsel

For the Second Respondent:

- Ms Valentina Riasova
- Mr Sergei Lisin, Counsel
- Mr Sergei Mishin, Counsel

55. The First Respondent did not attend and was not represented at the hearing.

56. After the opening of the hearing by the Sole Arbitrator and the establishment of the attendance, it was agreed with counsels that the witnesses and Ms Riasova would not be in the virtual court room until they were called to give their testimony.

57. After the counsels' brief opening statements consistent with the directions given at the CMC, the following person's testimony of was heard, after his having been invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss Law:

- Mr Anton Ponomarev (called by the Second Respondent).

58. Mr Ponomarev confirmed his statement and the circumstances of his acquisition of the Psycho Berry supplement.

59. The Athlete, also invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss Law, confirmed her statement and the circumstances of her ingesting the Psycho Berry supplement.

60. The Parties had a full and fair opportunity to examine and cross-examine, direct and redirect Mr Ponomarev and Ms Riasova, to present their case, to submit their arguments and to answer the questions raised by the Sole Arbitrator in their closing statements.

61. Before the hearing was concluded, the Parties confirmed that they were satisfied with the hearing, reiterated that they did not have any objection with the procedure adopted and that their right to be heard had been respected.

62. The Sole Arbitrator indicated that a written reasoned award would be rendered in due time and closed the hearing.

63. The same day, the CAS Court Office relayed CAS case-law submitted by the Appellant on 9 May 2023 as being "*referred to in submissions/may be referred to by the parties*".

64. On 15 May 2023, as instructed by the Sole Arbitrator at the end of the hearing, the Second Respondent filed a submission limited to costs; the Appellant and the First Respondent confirmed having no further comments thereon.

65. On 17 May 2023, the CAS Court Office advised the Parties of the closing of the evidentiary proceedings pursuant to Article R59 of the CAS Code.

66. The Sole Arbitrator confirms that she carefully heard and considered in her decision all the submissions, evidence, and arguments presented by the Parties, even if these have not been specifically summarised or referred to in this Award.

## IV. PARTIES' SUBMISSIONS

### A. The Appellant

67. The Appellant's Statement of Appeal contained the following prayer for relief, that is not expressly restated in the Appeal Brief :

> *RUSADA respectfully requests the Panel to:*
>
> *a) Set aside those parts of the Decision relating to the period of Ineligibility imposed upon Ms Riasova.*
>
> *b) Affirm that Ms Riasova has committed an Anti-Doping Rule Violation contrary to the ADR.*
>
> *c) Impose a period of Ineligibility in respect of such Anti-Doping Rule Violation pursuant to the ADR.*
>
> *d) Order World Triathlon to reimburse RUSADA its legal costs and other expenses pursuant to CAS Rue [sic!] 65.3.*
>
> *e) Order World Triathlon to bear the costs of the arbitration should any be payable notwithstanding the provisions of CAS Rule 65.1 and 65.2.*

68. The Appellant submits that (i) Ms Riasova failed to establish on a balance of probabilities how the Prohibited Substance entered her system and that she acted with No Significant Fault hence that the mandatory sanction should be reduced, and that (ii) World Triathlon erred in its application of the provisions in the ADR relating to the reduction of the mandatory period of ineligibility in the light of Ms Riasova's level of Fault resulting in an agreement of a period of ineligibility not commensurate with Ms Riasova's level of Fault.

69. No Significant Fault: Whilst prepared to accept that Ms Riasova has established on the balance of probabilities, that the presence of prohibited substance is attributable to the ingestion Psycho Berry, RUSADA refutes the Athlete having established on the balance of probabilities, and World Triathlon properly investigated the circumstances of Ms Riasova's Psycho Berry ingestion hence the lack of No Significant Fault that would justify a reduction of the applicable sanction on that account.

70. Circumstances of Ms Riasova's Psycho Berry ingestion: The Athlete's own account is insufficient to discharge her burden of proof on the balance of probabilities. The Appellant notes for instance the lack of corroborating evidence and further investigation regarding:

- Mr Ponomarev's purchase of the Psycho Berry supplement and his alleged verification and express confirmation to Ms Riasova that said supplement contained no prohibited substance notwithstanding two easily identifiable Prohibited Substances being reported on the Psycho Berry content label (phenethylamine, a stimulant prohibited in-competition included within S6 of the Prohibited List 2021, and higenamine, a substance prohibited at all time included within S3 of the

Prohibited List 2021, but admittedly not the methylhexanamine ("MHA")), thus technically excluding the qualification of Psycho Berry as "Contaminated Product";

- Mr Ponomarev's use of the Psycho Berry on the day that Ms Riasova pretends having inadvertently ingested it;
- The alleged shakers bottom containers mix-up theory being, unexplainedly, not alluded to in the Athlete's 10 October 2021 advanced notification.

71. Level of Fault:

- As regards the relevant division of Fault generally: World Triathlon "appears to have erroneously applied the Cilic divisions of Fault, rather than the Errani divisions of Fault. In justifying a sanction of six months' Ineligibility, World Triathlon should have determined that as per Errani, Ms Riasova's level of fault was light, and explained why in that context six months' Ineligibility was an appropriate sanction. It did not do so and in that regard RUSADA says erred in the correct application of ADR Article 10.6.1.1".
- Applied to Ms Riasova's level of Fault in the instant case, Ms Riasova displayed a normal level of Fault based on the assessment of objective and subjective factors advocated in the *Cilic* and *Errani* CAS cases. Ms Riasova infringed some of her objective duties and responsibilities as an Athlete under the ADR, including that of taking obvious and objectively adequate steps to mitigate the risk of a doping violation under the ADR, *in casu* disposing of unknown powder in her shaker bottom container before using it for her own supplement, taking appropriate measures to avoid accidental ingestion including taking the "*simple and expedient step*" of conducting her own enquiry as regards the content and 'safety' of supplements in her own home – Mr Ponomarev's assurance (based on manifestly negligent verification) constituting no mitigating factor in this respect –, and removing them from their home if they present a risk, a mere segregation being insufficient. None of the subjective elements of Fault listed in the *Errani* decision have a bearing on the assessment of Ms Riasova's level of Fault, Ms Riasova being an experienced Athlete. Ms Riasova's awareness is not mitigated by a "*careless but understandable mistake*", her mistake being "*careless, but not at all understandable*".

72. Sanction:

- The application of Article 10.6.1.1 of the ADR is contingent on the finding that Ms Riasova acted with No Significant Fault and the reduced sanction further calibrated depending on her level of Fault;
- Notwithstanding its mislabelling for MHA, Psycho Berry supplement cannot be qualified as "*Contaminated Product*" on account of other two easily identifiable Prohibited Substances reported on its content label (phenethylamine and higenamine), thus excluding the application of Article 10.6.1.2 of the ADR, and that the Athlete receive any 'credit' in respect of Psycho Berry's mislabelling for MHA;
- If Ms Riasova were to be found to have acted without Significant Fault, the correct application of the ADR would result in a period of ineligibility imposed pursuant to Article 10.2.2 of the ADR (twenty-four-month period of Ineligibility) subject to any

reduction commensurate to her level of Fault pursuant to Article 10.6.1.1 of the ADR (between twelve and twenty-four months).

## B. The Respondents

73. The First Respondent stated from the outset that it did not intend to participate in the proceeding and, save for the legal costs and expenses (below paras 133 ff), did not file any submissions on the merits.

74. The Second Respondent's Answer contained the following prayer for relief:

> *The Athlete respectfully requests the Sole Arbitrator to:*
>
> *(a) dismiss the Appeal brought by RUSADA;*
>
> *(b) uphold the WT Decision,*
>
> *(c) order RUSADA to bear the costs of the arbitration in these appeal proceedings,*
>
> *(d) order any other relief that the Sole Arbitrator deems just and appropriate.*

75. No Significant Fault: The Second Respondent submits having established on a balance of probabilities how the Prohibited Substance entered her system, that she acted with no Fault or at least No Significant Fault, and that consequently the mandatory sanction should be reduced, the agreed period of ineligibility being commensurate with Ms Riasova's level of Fault.

76. Level of Fault: The Athlete confirms the circumstances of her ingesting the Psycho Berry (below par. 77) hence her level of Fault (below par. 78).

77. As for the circumstances of her Psycho Berry ingestion, the Athlete exposes that:

- Mr Ponomarev himself purchased the Psycho Berry supplement from a sport nutrition shop "*Body-Pit*" in Rostov-on-Don on 4 August 2021 (together with other supplements) as supplement for beta-alanine, citrulline malate and arginine which he had routinely been supplied free of charge by the national team doctor to help him tolerate intense training more easily by improving blood flow. As there was no pure (raw) beta-alanine available, the salesman suggested the Psycho Berry containing all these substances. Mr Ponomarev's verification of the Psycho Berry ingredients through RUSADA's online search tool both in English and Russian did not produce "*any alarming results*". The Athlete was not present either on the purchase or on the internet verification, and Mr Ponomarev reassured her when she subsequently enquired about it. This is corroborated by Mr Ponomarev's statement. Contrary to Mr Ponomarev, Ms Riasova never bought any supplement and would only ingest those supplied by the national team doctor. This is corroborated by the Athlete's statement.
- Both athletes' respective dietary supplements would be stored separately, and their similar but individualised shakers with separated screwable bottom containers used to carry small amounts of powder supplements to training events or competitions

would be cautiously cleaned after use and left drying on common drying rack. The separated screwable bottom containers are not individualised so "*can, in theory, be mixed up*". In the seldom occurrence that powder in the container would not be used entirely, the powder would be disposed of in the proper storage and the container washed. This is corroborated by the Athlete's statement and supporting pictures. A confusion might have occurred when the Athlete used a container she thought to be hers to prepare her own drink ahead of the Valencia competition without previously disposing of the leftover powder therein "*that was identical in colour to her own isotonic*" hence which she assumed was hers but in effect is now presumed to having been her husband's Psycho Berry supplement ("*Most likely, there was a mix-up and Anton put his container on my shelf in the closet*"). This is corroborated by the Athlete's statement. Mr Ponomarev confirmed having taken some Psycho Berry supplement prior to the Russian Championship in Kazan on 28 August 2021.

- The Psycho Berry supplement qualifies as a Contaminated Product in the meaning of the ADR because Spanish and Austrian laboratories' testing confirm that, whilst no trace was identified of "*Higenamine*" or "*Phetetylamine*" (mentioned on the Psycho supplement's content label), MHA was detected, which is not disclosed on the Psycho supplement's content label.

78. As for her level of Fault, the Athlete submits that, generally speaking:

- The ADR's (Appendix 1, definitions) and 2021 WADA Code's (Appendix 1, definitions) definitions of Fault, No Fault or Negligence and No Significant Fault or Negligence are identical, no separate definition of Negligence being provided in either but being arguably intended as "*lack of care that is included in the definition of Fault*" and the "*significance*" concept having been "*introduced to differentiate between the degrees of Fault and therefore provide for discretion in assigning different periods of Ineligibility*".

- The degrees of Fault in cases involving the inadvertent ingestion of a substance have been refined in practice, first with 2005 WADA Code based Cilic "three-tier" approach of degrees of Fault (significant, normal and light), then with 2015 WADA Code based Errani case, with two categories of Fault within the context of No Significant Fault or Negligence definition (normal and light).

- In contrast with the concept of Fault in criminal law, Fault in anti-doping rules is prevalently based on subjective criteria; the general definition of Fault in the ADR is based entirely on subjective criteria (breach of duty or any lack of care appropriate to a particular situation, athlete's experience, special considerations such as impairment, the level of risk that should have been perceived by an athlete), the objective criterion of reasonableness appearing only in the definition of No Fault (but preceded by a subjective one: "*The establishment by an Athlete or other Person that he or she did not know or suspect and could not reasonably have known or suspected*") and by reference in the definition of No Significant Fault ("*take into account the criteria for No Fault or Negligence*") which is otherwise construed based on the subjective criteria ("*totality of circumstances*"). The reason for the prime emphasis on objective criteria in *Cilic* case is thus not clear.

79. In the instant case:

- When examining whether Ms Riasova infringed some of her objective duties and responsibilities as an Athlete under the ADR, reliance should not exclusively be on the objective criterion of reasonableness with reference to what would a "*reasonable athlete*" be personally required to do to avoid an inadvertent ingestion of the Prohibited Substance (that would be artificially burdensome and unreasonable) but also whether a delegation of some elements of his/her anti-doping obligations to a third party is reasonable the Fault then assessed being not that which is made by the delegate, but the Fault made by the Athlete in his/her choice. In the instant case, the Athlete could delegate part of her anti-doping duties to her husband and still meet that standard of a "*reasonable athlete*" without being imputed her husband's Fault.
- As for the subjective elements, the specific circumstances that are relevant for this case relate in particular to the perception of risk by the Athlete, a "*Low perception of risk (or careless attitude towards the obvious risk) may become a subjective factor, under specific circumstances of a case, that may reduce or increase an athlete's Fault*". In the instant case, the Athlete's low perception of risk, as a subjective factor, decreases her Fault "*because she did not act carelessly which would increase her chances of inadvertent doping and exercised such care that was (subjectively) appropriate in her situation*".

## V. JURISDICTION

80. Article R47 of the CAS Code provides :

> *An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*

81. Decisions made under the ADR imposing Consequences for an anti-doping rule violation (ADR Art. 13.2) may be appealed; decisions involving International-Level Athletes may be appealed exclusively to CAS (ADR Art. 13.2.1); the National Anti-Doping Organization of the country of residence or countries where the Person is a national or license holder has the right to appeal (ADR Art. 13.2.3.1). Appealed decisions remain in effect while under appeal unless the appellate body orders otherwise (ADR Art. 13.1).

82. In the instant case, it is not disputed that, at the relevant time, as a result of her membership, accreditation, and participation in World Triathlon's and the Russian Triathlon Federation's events, the Russia-residing and Russian national Athlete was subject to ADR as an *International Level Athlete* on account of her World Triathlon World Rankings.

83. Consequently, RUSADA has the right to appeal the Decision.

84. The Parties accept that CAS has jurisdiction under the ADR. The Parties confirmed CAS jurisdiction by signing and returning the Order of Procedure.

85. The Sole Arbitrator is satisfied that CAS has jurisdiction to hear this appeal.

## VI. ADMISSIBILITY

86. Article R49 of the CAS Code provides, in relevant parts, that "In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against"; the full appeal brief must be filed within ten days following the expiry of the time-limit for the appeal (Article R51 of the CAS Code).

87. Decisions made under the ADR imposing Consequences for an ADRV (ADR Art. 13.2) involving International-Level Athletes may be appealed within 21 days from the date of receipt of the decision or, if the appellant was not a party to the proceedings that led to the decision being appealed and requested a copy of the full case file pertaining to the decision within 15 days from the notice of the decision, within 21 days from receipt of the full case file (ADR Art. 13.6.1 *cum* 14.2.2). The decision remains in effect while under appeal subject to contrary decision (ADR Art. 13.1).

88. In the instant case, the admissibility of the appeal was not challenged by the Parties, and it proceeds from the documents on file that the Decision was notified to the Appellant on 12 September 2022, the Appellant required the case file on 23 September 2022 and received it on 28 September 2022. The Statement of Appeal was filed on 17 October 2022, within 21 days from receipt of the full case file and complied with the requirements of Article R48 of the CAS Code; the Appeal Brief was filed within the extended deadline granted by the President of the CAS Appeals Arbitration Division.

89. The appeal is admissible.

## VII. INTERIM DECISION ON THE PRODUCTION OF MR PONOMAREV'S WORLD TRIATHLON CASE FILE

### A. <u>The Request</u>

90. The Athlete, mentioning a "number of references in the Appellant's submissions to the antidoping investigation by RUSADA against the Athlete's husband, Mr Anton Ponomarev", requested the production of Mr Ponomarev's case file and an extension of the time-limit to file her Answer until a decision has been made on the production request.

> *1. order RUSADA to produce its case file in the matter of the anti-doping rule violation by Anton Ponomarev; specifically, the Athlete wishes to adduce in these proceedings witness statements, laboratory reports and other evidence presented by Anton Ponomarev to RUSADA and the Disciplinary Anti-Doping Committee.*
>
> *This information is relevant for this matter because, among other things, it will support the Athlete's submissions regarding the purchase and checking by her husband of the contaminated supplement.*

*2. grant a further extension of time to the Athlete to present her Response until the above production request is granted or denied by the Tribunal.*

## B. The other Parties' position

91. The Appellant commented as follows:

*It is not clear to RUSADA which documents are required from the case file, and in particular why they are being requested from RUSADA given that they pertain to disciplinary proceedings involving Mr Ponomarev, who is the Second Respondent's husband. It would appear far simpler for the Second Respondent to obtain any documents relating to Mr Ponomarev herself rather than requesting them from RUSADA vis the appeal proceedings. b) Alternatively, if Mr Ponomarev requires documents from his case file, he is able to request the same from RUSADA, either directly or through his representatives.*

*Rule 44.3 requires the Second Respondent to 'demonstrate that such documents are likely to exist and to be relevant'. In that regard RUSADA does not believe that the request fully complies with Rule 44.3. A general request for a 'case file' is insufficient to identify the actual documents that are required - and why they are required in the context of the appeal.*

*d) Notwithstanding all of the above, the documents within the case file relating to Mr Ponomarev encompass personal information relating to Mr Ponomarev. RUSADA is constrained from providing any personal information relating to Mr Ponomarev without Mr Ponomarev's express and unequivocal consent. This includes the restrictions encompassed with Article 8.3 of the International Standard for the Protection of Privacy and Personal Information.*

92. World Triathlon submitted no determination within the imparted deadline.

## C. The Sole Arbitrator's decision

93. The Sole Arbitrator, having considered the Parties' allegations and arguments as well as the relevant applicable rules, dismissed the Second Respondent's production request without prejudice to the admissibility of Second Respondent's production as evidence in these proceedings of documents pertaining to Anton Ponomarev's file, and by ways of consequence, dismissed deadline-deferral request.

94. The reasons that led the Sole Arbitrator to deny the production of Mr Ponomarev's World Triathlon case file are the following.

95. Production of document request in appeal proceedings are subject to Article R44.3 of the CAS Code (applicable through Article R57 of the CAS Code), whereunder which "*A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant*".

96. The IBA Rules on the Taking of Evidence in International Arbitration, whilst not directly applicable save for the Parties' consent, could serve as guidance given their international acceptance (*e.g.* CAS 2013/A/3061 §136; CAS 2016/A/4501 §99; CAS 2016/O/4504 §86). Thereunder, if the party who seeks the document "*cannot obtain the document on its own*", it may ask the arbitrators to "*take whatever steps are legally available to obtain the requested documents or seek leave from the Arbitral Tribunal to take such steps itself*" (IBA Rules Art. 3.3(c)). The arbitrators will then consider whether (i) the requested document is relevant to the case and material to its outcome, (ii) applicable requirements of Article 3.3 of the IBA Rules have been satisfied and (iii) any reasons for objection listed in Article 9.2 of the IBA Rules are present. Based on this determination, the arbitrators may order any party to the arbitration to take such steps as the arbitrators considers appropriate. In making such determinations, a tribunal should be guided by the principles of equality and good faith as well as considerations of procedural economy, proportionality, fairness, and commercial or technical confidentiality or legal privilege (*cf.* Swiss Private International Law Statute, Art. 182(3)).

97. The Sole Arbitrator observes firstly that should the Second Respondent be minded using part of her husband's case file, she should be requesting it from her husband as well as his clearance for the filing of those documents she retains material in the current proceeding. Secondly, it is questionable whether the general allegation that "*among other things, it will support the Athlete's submissions regarding the purchase and checking by her husband of the contaminated supplement*" satisfy the relevancy requirement of Article R44.3 of the CAS Code. Thirdly, the production of another athlete's case file, who is not a party to the procedure, is hardly consistent with the principles of confidentiality (ADR Art. 18) and the personal data protection fundamental requisite.

98. The Appellant's request for production was dismissed considering its non-compliance with the prerequisites set forth under Article R44.3 of the CAS Code construed under the guidance of the fundamental principles derived from the IBA Rules.

## VIII. APPLICABLE LAW

99. According to Article R58 of the CAS Code, "The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

100. ADR applies to "all Code related Events over which the World Triathlon and its National Federations or any member or affiliate organization of any National Federation (including any clubs, Teams, associations, or leagues) have jurisdiction" (ADR, Introduction) and is to be construed "as an independent and autonomous text and not by reference to existing law or statutes" (ADR Art. 24.2), "in a manner that is consistent with applicable provisions of the [World Anti-Doping] Code and the International Standards. The Code and the International Standards shall be considered integral parts of these Anti-Doping Rules and shall prevail in case of conflict" (ADR Art. 24.3). ADR makes no reference to any supplementary laws or rules of law.

101. The Parties do not instruct the Sole Arbitrator to subsidiarily apply any specific set of domestic law ; consequently, the Sole Arbitrator shall be applying first and foremost the ADR in force as of 1 January 2021 as including WADA Code effective as of 1 January 2021 and the International Standards as 1 January 2021 and construed in light of the commentaries and case-law related to the WADA Code, subsidiarily according to Swiss law.

## IX. MERITS

### A. Regulatory framework

102. For the purpose of defining the scope of review of the current appeal and define the apposite onus and level of proof, the Sole Arbitrator retains it opportune to outline the regulatory framework. The presence of any Prohibited Substances listed in WADA Prohibited List 2021 in an athlete's Sample constitutes an ADRV (ADR Art. 2 and Appendix 1). 5-Methylhexan-2-amine is listed as a class S6B Specified Substance prohibited in-competition, but not identified as Substance of Abuse (Prohibited List 2021; ADR Art. 4.2.3).

103. The *Consequences* of an ADRV includes the athlete's ineligibility.

104. For ADRV related to the Presence, Use or Attempted Use, or Possession of a Specified Substance, the period for ineligibility for is defined as follows (ADR Art. 10.2.2):

> *If Article 10.2.1 does not apply [ADRV not involving Specified Substance and Intentional ADRV involving Specified Substance subject to four-year Ineligibility], subject to Article 10.2.4.1, the period of Ineligibility shall be two (2) years.*

105. Under certain circumstances, the period of ineligibility may be abandoned (ADR Art. 10.5 and Appendix 1), aggravated (ADR Art. 10.4) or reduced (below IX.C).

106. Under the Article 3 of the ADR, the burden of proof lies upon:

- World Triathlon to establish that an ADRV has occurred; facts related to ADRV "*[…] may be established by any reliable means, including admissions*" (ADR Art. 3.2). Sufficient proof of an ADRV is further established *i.a.* "*by 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*" (ADR Art. 2.1.2). Subject to a Decision Limit being specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity shall constitute an ADRV (ADR Art. 2.1.3).
- The Athlete to establish "*specified facts or circumstances*", such as No Significant Fault or Negligence (ADR Art. 10.6.1.1 and 10.6.1.2), that the detected Prohibited Substance (other than a Substance of Abuse) came from a Contaminated Product (ADR Art. 10.6.1.2) to justify the reduction of the Period of Ineligibility, and the relevant facts and circumstances to assess the level of Fault to quantify reduction of the Period of Ineligibility (ADR Art. 10.6.1.1 and 10.6.1.2).

107. As for the standard of proof applicable:

1. where the ADR place the burden of proof upon the World Triathlon:

> *[…] The standard of proof shall be whether World Triathlon has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt […]*

2. where the ADR place the burden of proof upon the Athlete to rebut a presumption or establish specified facts or circumstances:

> *[…] the standard of proof shall be by a balance of probability*

108. With reference to CAS established jurisprudence (*e.g.* CAS 2019/A/6541 §80 and ref.), the balance of probability standard requires from the athlete to prove that her hypothesis is more probable than other explanations, and/or at least 51% likely to have occurred. The athlete must establish that the alleged chain of events is more likely than not to have happened, by submitting actual and/or scientific evidence, not just possible *scenarii* and mere speculation (*e.g.* CAS 2021/A/7768 §218; CAS 2007/A/1370 §58; CAS 2011/A/2384 & 2386 §6).

## B. Scope of review

109. As a matter of principle, under Article R57 of the CAS Code and the related CAS jurisprudence, a CAS appeal panel has full power to review *de novo* the facts and the law of the case and it may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance (*e.g.* CAS 2015/A/3874 §255; CAS 2009/A/1948 §54). The extensive nature of the powers conferred on a CAS appeal panel include that to confirm the decision on substitute grounds.

110. These powers are, however, strictly limited to the matter in dispute before it and cannot go further than what was at dispute before the previous instance (*e.g.* CAS 2006/A/1206 §25; CAS 2010/A/2090 §7.22; CAS 2021/A/8413 par. 78); they do not authorize the Sole Arbitrator to render a decision beyond the disputed issues submitted to arbitration and the petitions lodged by the parties (*e.g.* CAS 2021/A/8056 §74).

111. In the instant case, the Appellant and the second Respondent are in common ground, as expressly confirmed by their respective counsel in their opening statements at the hearing, that:

- The Athlete was at all material times subject to the jurisdiction of the World Triathlon hence to its ADR as an International Level Athlete;
- World Triathlon has established to the comfortable satisfaction a first ADRV involving a class S6B Specified Substance prohibited in-competition;

- A two-year ineligibility period would apply (ADR Art. 10.2.2) as the ADRV was neither intentional (ADR Art. 10.2.1 and 10.2.3) not did it involve Substance of Abuse (ADR Art. 10.2.4);

3. The elimination of the period of ineligibility (ADR Art. 10.5 and Appendix 1) is ruled out as the existence of the Athlete's Fault or Negligence, discussed in the process leading to the Decision but seemingly no longer controversial on appeal (although the level of Fault as a calibrating factor is disputed), and no aggravating circumstances applying (ADR Art. 10.4);
4. The Athlete has established by a balance of probability that the presence of MHA in her sample is attributable to her in-competition ingestion of Psycho Berry (although the circumstances of such ingestion are disputed).

112. Consequently, the disputed issues to be examined by the Sole Arbitrator are whether the two-year period for ineligibility is subject to any reduction an account of No-Significant Fault or Negligence (ADR Art. 10.6) (below C), and if so the scope of reduction on this account or any other account considering the Athlete's level of Fault (ADR Art. 10.6.1.1 and 10.6.1.2) (below D).

113. By ways of premises, the Sole Arbitrator notes a certain degree of confusion in the Decision and in the Second Respondent's submission and pleading between the interpretation of the No-Significant Fault or Negligence concept as sanction-reduction condition under Article 10.6 of the ADR, and the Athlete's level of Fault as a calibration parameter in the sanction reduction process, possibly generated by the undissociated reasoning in CAS 2017/A/5301 (*Errani*). For the sake of clarity, the Sole Arbitrator proceeds here on a two-phase determination basis, dissociating clearly the Athlete's No-Significant Fault or Negligence for the purpose of ascertaining whether the period for ineligibility is subject to reduction, from the Athlete's level of Fault as a calibration parameter in the sanction reduction process (below par. 126 *et seq*.).

## C. <u>Is the two-year period for ineligibility subject to reduction?</u>

114. As a matter of principle, the period of ineligibility for ADRV involving the presence of Prohibited Substances is subject to reduction in two mutually exclusive instances (ADR Art. 10.6.1) of relevance here, both subject to the demonstration of Not Significant Fault or Negligence (ADR Art. 10.6):

- where the ADRV involves a Specified Substance (ADR Art. 10.6.1.1; id. WADA Code Art.10.6.1.1), and
- where the Athlete can establish that the detected Prohibited Substance (other than a Substance of Abuse) came from a Contaminated Product (ADR Art. 10.6.1.2; *id.* WADA Code Art. 10.6.1.2).

115. There is **Not Significant Fault or Negligence** for the purpose of these provisions where the Athlete establishes that "[…] any 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 […] the Athlete must also establish how the Prohibited Substance entered the Athlete's system" (ADR Appendix 1; id. WADA Code Appendix 1).

- **Fault or Negligence** is defined as "*[…] any breach of duty or any lack of care appropriate to a particular situation*" (ADR Appendix 1). Considering consistent CAS practice from which the Sole Arbitrator does not perceive any reason to depart, the Athlete's Fault is to be determined based on objective factors ("*expected standard of behavior*", ADR Appendix 1; *e.g.* CAS 2013/A/3327 & 3335 §§71-72; CAS 2021/A/8056 §103) and considering more subjective factors specific to the Athlete such as "*the Athlete's […] experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk*" (ADR Appendix 1; *e.g.* CAS 2013/A/3327 & 3335 §§71, 73 and 76 ; CAS 2021/A/8056 §103).
- The **No Fault or Negligence** criterion requires the Athlete to establish that "she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that […] she had used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule" (ADR Appendix 1; id. WADA Code Appendix 1) hence she fully complied with the duty of care (e.g. CAS 2005/C/976 & 986 §§73-74). What is determinative is thus not only what the Athlete actually knew or expected but also what she could have suspected with the exercise of utmost caution.
- The **standard of "*utmost caution*"** is more rigorous to that applying to any ordinary person, athletes having, "*in the interest of all other competitors in a fair competition*" (*e.g.* CAS 2005/C/976 & 986 §§73-74), a correlated strict personal duty "*to ensure that no Prohibited Substance enters their bodies*" and personal responsibility "*for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples*" (ADR Art. 2.1.1). It typically includes "*to be aware of the actual list of prohibited substances, to closely follow the guidelines and instructions with respect to health care and nutrition of the national and international sports federations, the NOC's and the national anti-doping organisation, not to take any drugs, not to take any medication or nutritional supplements without consulting with a competent medical professional, not to accept any medication or even food from unreliable sources (including on-line orders by internet)*" (*e.g.* CAS 2005/C/976 & 986 §§73-74). The standard of "*utmost caution*", however, should remain within the realistic limit of appropriate care standard, considering the nature of the prohibited substance (prohibited at all times; prohibited in-competition; prohibited out-of-competition) and the time of ingestion (in-competition ingestion, out-of-competition ingestion). Typically, and as quite cogently suggested in CAS 2013/A/3327 & 3335 §75, full scale enhanced duty of care should be expected both for any ingestion at any time of at-all-times prohibited substance and for in-competition ingestion of in-competition prohibited substances, whilst normal duty of care can apply for out-of-competition ingestion of in-competition prohibited substances save when objective factors should have triggered full scale, higher duty of care (*e.g.* therapeutic medicine, product sold as performance enhancing).

116. The "Not Significant" threshold is not defined in ADR. Considering consistent CAS practice, from which the Sole Arbitrator does not perceive any reason to depart and

considering also the similar wording contained in WADA Code 10.6.1.1, 10.6.1.2 and Appendix 1 which ADR replicates and can therefore be considered for assistance:

- The "*Not Significant Fault or Negligence*" exception is subject to restrictive application in "*exceptional circumstances*" assessed based on the unique facts of a particular case (*e.g.* CAS 2004/A/690 §43). Such exceptional circumstances include for instance (WADA Code explanatory footnote 65; *e.g.* CAS 2004/A/690 §§35 and 38; CAS 2021/A/8056 §98) mislabelled or contaminated vitamin or nutritional supplement, or sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates. They would also include the administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete, with the specification that, whilst the Athlete should reasonably be admitted "*to delegate some regulatory aspects to doctors or nutritionists*" (*e.g.* CAS 2005/A/847 §§16-17; CAS 2016/A/4416 §66; CAS 2008/A/1489 §13; CAS 2016/A/4643 §85), an athlete's reliance on his team doctors would generally not be sufficient to claim a reduction of a sanction (*e.g.* CAS 2021/A/7768 §244; CAS 2019/A/6249 §66; CAS 2012/A/2959 §8.19).
- The "*Not Significant Fault or Negligence*" threshold implies the existence of some (albeit minimum) level of Fault hence should not be excessively construed so as not to devoid the exception of any purpose (*e.g.* CAS 2021/A/8056 §§98-99).

117. **Specified Substances** are all Prohibited Substances except as identified on the Prohibited List (ADR Art. 4.2.2).

118. **Contaminated Product** is "A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search" (ADR Appendix 1; id. WADA Code 10.6.1.2). The Prohibited Substance can be either a Specified or a Non-Specified Substance (P. David, A Guide to the World Anti-Doping Code, 3rd edn 2017, p. 399). Whilst neither the ADR nor the WADA Code specify that the Contaminated Product exception would also apply where the product label or in information available in a reasonable Internet search, whilst not disclosing Prohibited Substance at the source of the AAF, disclose the presence of other Prohibited Substances (which subsequent testing of the product would not detect), the ratio legis and indeed the underlying good faith requisite would tend to infirm it.

119. Based on the general principles exposed above (par. 106 and 107), the **onus** lies on upon the Athlete to establish, by a balance of probability, that she committed Not Significant Fault or Negligence, and that the detected Prohibited Substance (other than a Substance of Abuse) came from a Contaminated Product.

120. In the instant case, it is common ground that the ADRV involves a **Specified Substance** prohibited in-competition that was ingested in-competition (above par. 111 second point); the question may thus remain open whether Psycho Berry would qualify as **Contaminated Product** notwithstanding the reported labelling discrepancy considering the mutually exclusive nature of Articles 10.6.1 and 10.6.2 of the ADR and their otherwise common conditions of Not Significant Fault or Negligence.

121. As for the demonstration of Not Significant Fault or Negligence:

122. Source of contamination: It is accepted the Athlete has established by a balance of probability **how the Prohibited Substance** entered her system.

123. Circumstances of ingestion: Based on the written and oral evidence provided and considering also the Parties' submissions, the Sole Arbitrator accepts that the Athlete has established the circumstances of her inadvertently ingesting the Prohibited Substance, the concentration of Methylhexanamine found in the Athlete's samples being, as acknowledged by the Appellant at the hearing, consistent with the estimated amount thereof left over in the shaker bottom container but not necessarily with other form of cross-contamination. Consequently, the Sole Arbitrator's reasoning is based on the assumption of the inadvertent ingestion of Psycho Berry supplement left over in the Athlete's shaker bottom container.

124. Standard of "utmost caution": As a professional Athlete, Ms Riasova must be considered to be highly sensitive and alert to issues of doping and is obliged to ensure that no prohibited substance enter her body and is therefore supposed to know whether or not a substance she ingests is a prohibited substance. Ms Riasova confirmed such awareness at the hearing and in her statement, and illustrated it with the organisational measures in place at their home to ensure clear segregation of her and her husband's products and material. She also confirmed her awareness of the risks of commercialised supplements, indicating that she would only use products supplied by her team medical staff, contrary to her husband. Whilst the Athlete cannot be imputed her husband's own fault and shortcomings (purchase and use the Psycho Berry supplement; disposal of his shaker bottom container with residual supplement on his wife's shelf), she is responsible for her own unexplained shortcomings which, taken in combination, led to the inadvertent ingestion:

- Whilst aware of general risk of commercialised supplements and of the original of her husband's Psycho Berry supplement, and cognisant of and concerned by the associated risk – then triggering her enquiring with her husband –, she simply relied on her husband's unverified (and inaccurate) assurance without any further verification even through the basic precaution of reading the content label. Whilst admittedly said content label did not report the presence of MHA, it did report other prohibited substances (*i.e.* phenethylamine, a stimulant prohibited in-competition included within S6 of the Prohibited List 2021, and higenamine, a substance prohibited at all time included within S3 of the Prohibited List 2021). Notwithstanding the facts that testing of the Psycho Berry supplement conducted subsequently showed no detectable trace of phenethylamine and higenamine, references thereto on the product label should have alarmed her. The Athlete knowingly accepted the risk of inadvertent ingestion herself not least considering the physical identity of her husband's and her own product (odourless, pinkish powder).
- She refrained from taking straightforward additional elementary steps to ensure the efficiency of a strict product and material segregation policy in place and curtail the risk of confusion and/or cross-contamination, such as clear individualisation of separate screwable shaker bottom container (although shaker bottles would be individualised) and systematic leftover disposal and shaker bottom container cleaning prior to use (although she admitted she usually would).

- She eventually used a shaker bottom container to prepare her in-competition drink with an unidentified left-over substance which she could not positively ascertain was hers considering the physical similitudes (odour, colour) – notwithstanding her practice of emptying and cleaning her shaker bottom container after use – without previously emptying and cleaning it.
- In effect, the Athlete was aware and had concerns of the shortcomings of the measures in place as she herself spontaneously notified, ahead of any AAF, her "*reasonable concerns*" of inadvertent ingestion of her husband's contaminated supplements. Under examination from the Sole Arbitrator at the hearing, the Athlete could not supply a reasonable explanation as to why such "reasonable concern" of inadvertent ingestion notwithstanding the organisational measures occurred to her after the in-competition sampling and her husband's own AAF, but not beforehand. She in fact conceded that cross-contamination could have occurred regardless of the organisational measures in place, as a result of mere physical contact.

125. In conclusion, whilst fully cognisant that as a general principle even duty of utmost caution expected from professional athlete is not devoid of any limits, the Sole Arbitrator finds that, in the case at hand, the Athlete has not established having exercised the utmost caution expected from a top-level athlete in this very situation and accepts that the Athlete's shortcomings, taken in combination, are tantamount to a Fault or Negligence that was Significant in relation to her doping offence.

## D. Scope of the reduction of the two-year period for ineligibility

126. As a matter of principle, the sanction set in the ADR in relation to Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method (ADR Art. 10.2) is fixed and binding and subject to no discretion (above par. 104). It is subject *i.a*. to reduction only in exhaustively listed circumstances (ADR Art. 10.2.2), the Athlete's level of Fault acting as a calibrating factor to determine the reduction within set *minima* and *maxima.* For such ADRV, there would be no room for a self-standing level-of-Fault-based-adjustment of the sanction outside the ambit of those exhaustively listed circumstances warranting reduction of the set period of ineligibility, by contrast for instance to the express reservation made of such adjustment for Ineligibility for Other ADRV (*cf.* ADR Art. 10.3 referring to period of *Ineligibility* range depending on the *Athlete* or other *Person's* level of *Fault*).

127. In the instant case and considering the Sole Arbitrator's finding that the Athlete has not established that she bears a Not Significant Fault or Negligence, there is no ground to reduce the two-year Ineligibility sanction (ADR Art. 10.2.2) whether under Articles 10.6.1.1 or 10.6.1.2 of the ADR.

128. It further proceeds from file that other instance justifying reduction would not apply, and indeed neither Parties argued so. In particular, the Athlete is not a Protected Person or Recreational Athlete (ADR Art. 10.6.1.3). Other instances of reduction for Reasons other than Fault (exclusive of any other reduction) are not relevant, *i.a.* the Athlete having made no voluntary ADRV admission before having received notice of a Sample collection (ADR Art. 10.7.2), the ADRV carrying an asserted period of Ineligibility

inferior to the four-year minimum threshold (ADR Art. 10.8.1), and WADA being not involved in any Case Resolution Agreement (ADR Art. 10.8.2).

129. Furthermore, neither Party argues, quite rightly (above par. 113) that, outside the circumstances justifying it being reduced (ADR Art. 10.2.2), the period of ineligibility should be subject to any stand-alone calibration based on the Athlete's level of Fault. Quite the contrary, the Parties' Fault-based-calibration arguments are conducted exclusively from the perspective of No-Significant-Fault-or-Negligence-based reduction (ADR Art. 10.6). Considering the Sole Arbitrator's finding that the Athlete has not established that she bears Not Significant Fault or Negligence whether under Articles 10.6.1.1 or 10.6.1.2 of the ADR, it is therefore not necessary to examine any further the Parties' Fault-based-calibration arguments.

130. It follows that the standard two-year ineligibility period of must be applied, without any reduction or indeed calibration.

### E. Conclusions

131. After carefully reviewing the Parties' submissions and evidence, the Sole Arbitrator concludes that there is no ground to reduce the standard two-year ineligibility sanction.

132. All competitive results and points obtained by the Athlete from 25 September 2021 to 25 March 2022 inclusive shall be disqualified with all the resulting consequences including forfeiture of any medals, points and prizes (ADR Art. 9 and 10.10). In line with the Decision, which is not challenged on this point by RUSADA, fairness requires that the disqualification of results do not extend from the date of the ADRV through to the date of the commencement of the period of ineligibility on 12 September 2022, considering that the delays and errors that occurred in the course of the results management procedure are not imputable to the Athlete (Art. 10.10 of the ADR).

## X. COSTS

(…).

# ON THESE GROUNDS

**The Court of Arbitration for Sport rules:**

1. The appeal filed by the Russian Anti-Doping Agency against the decision rendered by World Triathlon of 12 September 2022 is upheld.
2. The decision rendered by World Triathlon on 12 September 2022 is set aside.
3. Valentina Riasova is sanctioned with a period of ineligibility of two years starting from the date of this Award. Any period of ineligibility, whether imposed on, or voluntarily accepted by Valentina Riasova before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.
4. All competitive results obtained by Valentina Riasova from 25 September 2021 to 25 March 2022 inclusive shall be disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.
5. (…).
6. (…).
7. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 15 September 2023

# THE COURT OF ARBITRATION FOR SPORT

Dr Isabelle Fellrath
Sole Arbitrator