

IN THE MATTER OF PROCEEDINGS BROUGHT BY THE INTERNATIONAL TENNIS INTEGRITY AGENCY UNDER THE 2024 TENNIS ANTI-DOPING PROGRAMME

Before:
Dr David Sharpe KC (Chair)
Tamara Gaw
Benoit Girardin

BETWEEN:

International Tennis Integrity Agency (ITIA)

Anti-Doping Organisation

and

Jannik Sinner

Respondent

DECISION OF THE INDEPENDENT TRIBUNAL

A. INTRODUCTION

1. The International Tennis Integrity Agency ('ITIA') was established as a delegated third party under the World Anti-Doping Code, by the International Tennis Federation ('ITF'), the international governing body for the sport of tennis and a signatory of the Code. As the delegated third party of the ITF, the ITIA is responsible for the management and administration of the Tennis Anti-Doping Programme (the 'TADP') which establishes Code-compliant anti-doping rules applicable to players competing in 'Covered Events'.

2. The Independent Tribunal (the 'Tribunal') has been established in accordance with Article 8.1 of the TADP, which provides that the Tribunal shall determine Anti-Doping Rule Violations ('ADRVs') committed under the TADP.
3. Mr Jannik Sinner (the 'Player') is a 23-year-old professional tennis player from Innichen, South Tyrol, Italy. He is the current ranked Number 1 ATP singles player and as such he is bound by the TADP.
4. The Player does not dispute that he is bound by the TADP or that he is subject to the jurisdiction of the Independent Tribunal to resolve this matter.
5. The Player has been charged with ADRVs under Articles 2.1 and/or 2.2 of the TADP, as a result of the presence of metabolites of Clostebol found in two urine samples collected on 10 March 2024, during his participation at the BNP Paribas Open in Indian Wells, California, USA (the 'Event') (the 'First Sample') and a further urine sample collected on 18 March 2024, prior to his participation at the Miami Open (the 'Second Sample').
6. Clostebol is a S1 anabolic androgenic steroid and a Prohibited Substance. As such, its presence (or that of its metabolites) in the Player's Sample, or its Use by the Player, are so-called "*strict liability*" ADRVs under TADP Articles 2.1 and 2.2 respectively (set out in Section B, below).
7. The Player does not dispute that Clostebol metabolites were in his urine and thus does not dispute that he committed the ADRVs. However, he has provided an explanation for the presence of the Clostebol metabolites in his system, for which he contends there is No Fault or Negligence on his part. As a result, the Player seeks no period of Ineligibility in accordance with Article 10.5 of the TADP. Alternatively, the Player seeks a reduction in the period of Ineligibility in accordance with Article 10.6 of the TADP, on the basis that he bore No Significant Fault or Negligence. A summary of the Player's explanation is set out within Section C, below.
8. The Player was provisionally suspended from 4 April until 5 April 2024 and from 17 April until 20 April 2024, when the suspension was lifted on each occasion following an urgent application before Mr Mark Hovell (the 'Chair') on the papers.

9. On 1 August 2024, the Chair of the Independent Panel appointed Dr David Sharpe KC as Chair of the Independent Tribunal. On the same day, Mr Benoit Girardin and Ms Tamara Gaw were appointed to form the Independent Tribunal (the 'Tribunal') that would hear and determine the dispute.
10. The Tribunal conducted a hybrid oral hearing (with the arbitrators and legal representatives attending in-person and with witnesses giving evidence by videolink) on 15 August 2024. Ms Louise Reilly (in-person) and Messrs Nicolas Zbinden (remote) and Robert Kerlake (remote), attorneys-at-law at Kellerhals Carrard represented the ITIA. Ms Kendrah Potts, Barrister, together with Messrs Jamie Singer and George Cottle, Solicitors at Onside Law represented the Player. (Together, the 'Parties'.)
11. The Tribunal is grateful to both Parties and their Counsel for their helpful written and oral submissions, for their collaboration in substantially agreeing the relevant facts and in the management of this proceeding. The Tribunal also acknowledges the assistance provided by Ms Lara Fasoli, who interpreted in English and Italian and Sport Resolutions, in its capacity as the independent Secretariat, pursuant to Rule 1.1 of the Procedural Rules Governing TADP Proceedings Before An Independent Tribunal.

B. LEGAL FRAMEWORK

12. The ITIA has charged the Player with a violation of TADP Article 2.1, which states that the following is an ADRV: *"The presence of a Prohibited Substance or any of its Metabolites or Markers in a Player's Sample, unless the Player establishes that such presence is consistent with a TUE [Therapeutic Use Exemption] granted in accordance with Article 4.4"*; it being *"each Player's personal duty to ensure that no Prohibited Substance enters their body"*.
13. The ITIA has also charged the Player with a TADP Article 2.2 "Use" violation, involving *"Use or Attempted Use by a Player of a Prohibited Substance or a Prohibited Method, unless the Player establishes that such Use or Attempted Use is consistent with a TUE granted in accordance with Article 4.4"*; it being *"each Player's personal duty to ensure that no Prohibited Substance enters their body"*.

14. ADRVs under both TADP Articles 2.1 and 2.2 require that the Independent Tribunal be comfortably satisfied that the ITIA has established each of the elements of the ADRVs charged. Both are strict liability offences, with no requirement that the ITIA prove the source of the Prohibited Substance. In particular, both articles provide that *“it is not necessary to demonstrate intent, Fault, Negligence or knowing Use on the Player’s part in order to establish an [ADRV...]; nor is the Player’s lack of intent, Fault, Negligence or knowledge a defence to an assertion [or] a charge that an [ADRV...] has been committed”*.
15. Therefore, should the Player establish that the ADRV based on TADP Articles 2.1 or 2.2 was not intentional, then the period of Ineligibility shall be two years. The sanction is subject to potential reduction or suspension where the Player establishes how the Prohibited Substance entered their system, pursuant to TADP Article 10.5 or 10.6. (In the event that the Player is unable to establish that the ADRV was unintentional, the period of Ineligibility is four years.)
16. TADP Article 2.1.1 states that:

“It is each Player’s personal duty to ensure that no Prohibited Substance enters their body. Players are responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in their Samples.”
17. Therefore, in accordance with TADP Article 2.1.1 and the jurisprudence established in the Court of Arbitration for Sport (‘CAS’) case law (such as in *CAS 2017/A/5301, Errani v. ITF* and *CAS OG AD 18/004, IIHF v. Ziga Jeglic*) the Player is responsible for the actions of those around them as well as their own. In particular, for the purposes of objectively assessing whether a player complied with their duty of *“utmost caution”* as is required by the TADP (and the World Anti-Doping Code (‘WADC’)), the Tribunal will assess the actions of the Player and the Player’s friends, coaches, relatives, doctors or other members of their team to whom they’ve entrusted any part of the anti-doping responsibilities.
18. TADP Articles 10.2.1 and 10.2.2 provide that:

“10.2 [...]

The period of Ineligibility imposed for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Player's [...] first doping offence will be as follows, subject to potential elimination, reduction, or suspension pursuant to Articles 10.5, 10.6, or 10.7.

10.2.1 [...]he period of Ineligibility will be four years:

10.2.1.1 where the Anti-Doping Rule Violation does not involve a Specified Substance or a Specified Method, unless the Player [...] establishes that the Anti-Doping Rule Violation was not intentional [...]

10.2.2 If Article 10.2.1 does not apply, then [...] the period of Ineligibility will be two years."

Thus, the benchmark sanction is four years of Ineligibility, unless the Player rebuts the presumption of intentionality, in which case the sanction is reduced to two years.

19. TADP Article 10.2.3 provides that:

"As used in Article 10.2, the term 'intentional' is meant to identify those Players [...] 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".

20. TADP Article 10.5 provides for the elimination of the period of Ineligibility on the grounds of No Fault or Negligence. TADP Article 10.6 provides for the reduction of the period of Ineligibility on the grounds of No Significant Fault or Negligence.

21. The terms "*No Fault or Negligence*" and "*No Significant Fault or Negligence*" are defined in TADP Appendix One as follows:

"No Fault or Negligence. The Player [...] establishing that they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. [...] for any violation of Article 2.1 the Player must also establish how the Prohibited Substance entered their system."

“No Significant Fault or Negligence. The Player [...] establishing that their Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relation to the Anti-Doping Rule Violation. [...] for any violation of Article 2.1 the Player must also establish how the Prohibited Substance entered their system.”

22. To sustain a plea of No (Significant) Fault or Negligence, the Player is required to prove the origin of the Prohibited Substance on the “*balance of probability*”. This burden lies solely on the Player - see CAS 2012/A/2759 *Rybka v. UEFA*, paragraphs 11.31 – 11.32 and CAS 2014/A/3820 *WADA v. Damar Robinson & JADCO*, paragraph 16. It is not sufficient for an athlete to simply identify a potential source; they must demonstrate that the source could have caused the actual adverse finding. To satisfy the burden, a Player has to prove not only “*the route of administration*” of the substance (e.g. transdermal ingestion) but also “*the factual circumstances in which administration occurred*”, i.e., when and how the substance got into his system – see CAS 2010/A/2277 *La Barbera v. IWAS*.
23. The duty of “*utmost caution*” is found in the WADC definition and the TADP definition of “*No Fault or Negligence*”, which states there is “*No Fault or Negligence*” where the athlete “*did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule*”. In CAS 2011/A/2518 *Kendrick v ITF*, paragraph 10.14, this was held to mean that the athlete should do everything in his power to avoid ingesting any Prohibited Substance.
24. To sustain a No Fault or Negligence plea, the athlete must prove that he has fully complied with that duty, i.e., that he has made every conceivable effort to avoid taking a prohibited substance and that the substance got into his system despite all due care on his part.
25. “*Administration*” is defined in TADP Appendix One as “[p]roviding, supplying, supervising, facilitating, or otherwise participating in the Use or Attempted Use by another Person of a Prohibited Substance or Prohibited Method. However, this definition does not include the actions of bona fide medical personnel involving a Prohibited Substance or Prohibited Method Used for genuine and legal therapeutic purposes or other acceptable justification, and does not include actions involving Prohibited Substances that are not prohibited in Out-of-Competition Testing unless the circumstances as a whole demonstrate that such

Prohibited Substances are not intended for genuine and legal therapeutic purposes or are intended to enhance sport performance.”

26. *“Use” is defined in TADP Appendix One as “[t]he utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method.”*
27. *The Comment to Article 10.5 in the WADC states that “No Fault or Negligence would not apply in the following circumstances . . . (b) the Administration of a Prohibited Substance by the Athlete’s personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance)...”.*
28. *When a sanction is imposed, the period of Ineligibility starts on the date that the decision is issued, provided that any period of Provisional Suspension served by the Player must be credited against the total period of Ineligibility to be served, pursuant to TADP Article 10.13.*
29. *Further, TADP Article 9.1 provides that an ADRV “committed by a Player in connection with or arising out of an In-Competition test automatically leads to Disqualification of the results obtained by the Player in the Competition in question, with all resulting consequences, including forfeiture of any medals, titles, ranking points and Prize Money obtained by the Player in that Competition.”*
30. *TADP Article 10.10 provides that “[u]nless fairness requires otherwise, in addition to the Disqualification of results under Articles 9.1 and 10.1, any other results obtained by the Player in Competitions taking place in the period starting on the date the Sample in question was collected or other Anti-Doping Rule Violation occurred and ending on the commencement of any Provisional Suspension or Ineligibility period, will be Disqualified, with all of the resulting consequences, including forfeiture of any medals, titles, ranking points and Prize Money.”*
31. *TADP Article 19.2 states that “[t]he comments annotating various provisions of the Code will be used to interpret the Code” and TADP 19.6 provides that “[t]he Purpose, Scope,*

and Organisation of the World Anti-Doping Program and the Code and Appendix 1, Definitions, are integral parts of the Code.”

C. SUMMARY OF FACTS

32. The Parties have agreed the following summary of facts.
33. On 12 or 13 February 2024, Mr Umberto Ferrara, the Player's fitness coach, purchased a medical spray with the brand name "*Trofodermin*" which is used to heal cuts (the 'Spray'). Trofodermin is available over the counter in Italy and does not require a prescription (unlike most other countries). Mr Ferrara has provided a bank record confirming he made a purchase at the Farmacia SS Trinità in Bologna, Italy, dated 13 February 2024 (but suggesting the purchase was made on 12 February 2024). Trofodermin contains the Prohibited Substance known as Clostebol.
34. In early March 2024, the Player was competing at the Event in Indian Wells, USA. Mr Ferrara and Mr Giacomo Naldi, the Player's physiotherapist, were also present in Indian Wells, together with other members of the Player's entourage who were all staying in the same villa.
35. Mr Ferrara and Mr Naldi confirmed that during the Event, Mr Ferrara had the Trofodermin Spray amongst his personal possessions, in his own washbag located in his ensuite bathroom at the villa.
36. On the morning of 3 March 2024, Mr Naldi reached into his treatment bag and cut the little finger on his left hand with a scalpel (used to treat callouses on the Player's feet). The cut was bleeding, so Mr Naldi put a bandage on his finger, which he kept on the finger for two days until 5 March 2024. Although there are some discrepancies in relation to precisely where and when the cut occurred, all of those witnesses who observed the incident agree as to how the cut took place (i.e., via a scalpel in Mr Naldi's treatment bag) and that this was on 3 March 2024.
37. The Player states he was not aware of Mr Naldi's injury until the evening of 3 March 2024, when he had a session with Mr Naldi and saw his finger was bandaged. Mr Naldi told the

Player that he had cut himself. At the time the Player asked if Mr Naldi had used anything to treat the injury, to which Mr Naldi replied “no”.

38. On 5 March 2024, when the bandage had been removed, Mr Ferrara recommended that Mr Naldi use the Trofodermin on his cut for its healing and antiseptic qualities. There is a discrepancy between Mr Ferrara and Mr Naldi in relation to whether Mr Ferrara gave an anti-doping warning to Mr Naldi at the time Mr Ferrara recommended the product. The Player was not aware that Mr Ferrara had the Spray or that Mr Naldi used it.
39. The canister of Spray had previously been removed from its packaging. Mr Naldi admits that he did not check the contents of the Spray or see that present on the label of the canister was “*Clostebol*”. Mr Naldi states that he had no knowledge that the Spray contained Clostebol.
40. Mr Naldi confirmed he used the Trofodermin Spray every morning from 5 March 2024 until 13 March 2024. Mr Naldi and Mr Ferrara both confirmed the Spray was only used in Mr Ferrara’s ensuite bathroom.
41. Between 5 and 13 March 2024, Mr Naldi gave full-body massages to the Player and applied colloid bandages to his feet. Mr Naldi carried out both of these treatments on a daily basis during this period. He confirmed that he did not use gloves whilst carrying out the treatments.
42. The Player suffers from a skin condition called Psoriasiform Dermatitis on his feet and back and as a result his skin is very itchy, which often leads to scratching and can cause small cuts and sores to be present on his back and feet. This was the case in Indian Wells.
43. On the evening of 9 March 2024, Mr Naldi gave the Player a full-body massage using oils for an hour to an hour and a half. Mr Naldi also performed foot mobilisation exercises due to a problem with the Player’s ankle.
44. On the morning of 10 March 2024, Mr Naldi treated the Player’s feet and ankle. Mr Naldi states that he would have applied two sprays of the Trofodermin Spray to his finger that morning and he cannot remember washing his hands between spraying his finger and treating the Player’s feet.

45. Having interviewed the Player twice, the ITIA accepts the Player had no knowledge that:
 - a. Mr Ferrara had the Trofodermin Spray in his possession at the villa;
 - b. The Trofodermin Spray contained a Prohibited Substance; or
 - c. Mr Naldi used the Trofodermin Spray to treat his cut finger.
46. On the evening of 10 March 2024, the First Sample was collected In-Competition from the Player following his match at the Event. The First Sample returned an Adverse Analytical Finding ('AAF') for the Clostebol metabolite (commonly referred to as the M1 metabolite) in a concentration of 121pg/mL (adjusted to 86pg/mL when a normal specific gravity was applied).
47. Early in the morning of 18 March 2024, the Second Sample, a urine sample was collected Out-of-Competition from the Player. The Second Sample returned an AAF for the Clostebol metabolite in a concentration of 122pg/mL (adjusted to 76pg/mL when a normal specific gravity was applied).
48. Three scientific experts, Professor Jean-François Naud, Dr Xavier de la Torre, and Professor David Cowan have confirmed inadvertent contamination from Mr Naldi's treatment in the period between 5 March and 13 March 2024 in the manner described could explain the presence of Clostebol metabolites in the Player's system.

D. THE PLAYER'S EXPLANATION

49. The Player's explanation is set out above in the summary of facts. The Player maintains that he bears No Fault or Negligence as he did not know or suspect (and could not reasonably have known or suspected even with the exercise of utmost caution) that he had used or been contaminated by a Prohibited Substance as a result of being massaged by Mr Naldi.
50. The ITIA accepts on a balance of probability the veracity of the Player's account on source, based on (i) the documentary and testamentary evidence provided by the Player,

(ii) the transcripts of ten interviews carried out by ITIA investigators with the Player and members of his team, and (iii) the opinions from three anti-doping experts.

51. Pursuant to the agreed Summary of Facts, the ITIA has therefore accepted, on the appropriate standard (set out in paragraph 22, above), that the Player has discharged his burden of proof relating to the origin of the Prohibited Substance.

E. PROCEDURAL BACKGROUND

52. By a pre-charge notice letter of the ITIA, dated 4 April 2024 (the 'First Notice of the ITIA'), the ITIA informed the Player that an AAF had been reported in relation to the First Sample. The Player was provisionally suspended by the ITIA with effect from 4 April 2024 pursuant to Article 7.12.1 of the 2024 TADP.

53. On the same day, the Player filed an urgent application for the provisional suspension to be lifted. The application was upheld by the Chair who confirmed that, on the balance of probabilities, he was comfortably satisfied by the uncontested evidence of the Player, the statement of the laboratory, and the written submissions of the parties that the provisional suspension should be lifted.

54. The Player subsequently tested positive for Clostebol and/or its metabolites, following the Second Sample on 18 March 2024.

55. By a pre-charge notice letter of the ITIA, dated 17 April 2024 (the 'Second Notice of ITIA'), the ITIA informed the Player that a AAF had been reported in relation to the Second Sample. The Player was provisionally suspended by the ITIA with effect from 17 April 2024 pursuant to TADP Article 7.12.1.

56. On the same day, the Player filed a second urgent application for the provisional suspension to be lifted. The application was upheld by the Chair on 24 April 2024. The Chair confirmed that, on the balance of probabilities, he was comfortably satisfied by the uncontested evidence of the Player, the statement of the laboratory supplied by the ITIA, the academic research article provided by the laboratory, and the written submissions of the parties that any period of Ineligibility that might otherwise be imposed on the Player

for the ADRV asserted is likely to be completely eliminated by application of TADP Article 10.5.

57. The ITIA arranged and conducted interviews with the Player and his support team in Italy and online during the intervening period and also sought scientific advice from two well-recognised experts prior to the Notice of Charge being issued.
58. On 29 May 2024, the Player provided a response to the Pre-Charge Letters sent on 4 April 2024 and 17 April 2024.
59. Having considered the response, the ITIA issued a Notice of Charge dated 30 May 2024, charging the Player with ADRVs pursuant to TADP Article 2.1 and/or 2.2 for the AAFs in the First Sample and Second Sample.
60. On 19 June 2024, the Player responded to the Notice of Charge by providing the ITIA with detailed submissions explaining the circumstances of the AAF and seeking a resolution to the proceedings on the basis of No Fault or Negligence, or in the alternative, No Significant Fault or Negligence. The Player provided documents to corroborate the explanations contained therein.
61. In addition to agreeing the summary of facts, the Parties also agreed to an expedited carriage of the matter as well as a procedural timetable.

F. EXPERT EVIDENCE

62. The Tribunal has the benefit of expert opinions from three independent experts – Professor Jean-François Naud, the director of the WADA-accredited laboratory in Montreal, Canada; Dr Xavier de la Torre, Deputy Director and Laboratory Manager (Scientific Vice-Director) of the WADA accredited laboratory in Rome, Italy; and Professor David Cowan, the Professor Emeritus in the Department of Environmental, Analytical and Forensic Science at King's College London ('KCL') and the former head of the WADA-accredited Laboratory at KCL in London, United Kingdom. The Player's identity was not known by two of the experts.

63. Professor Naud concluded that based on the First Sample, the likelihood that the Player's explanation is plausible is *“really high. The roughly estimated concentration of 100 pg/mL is a small concentration and could be obtained by cross-contamination as published in the scientific literature.”* Considering, also, the Second Sample and specifically its specific gravity (1.032) and the low Clostebol concentration detected that is similar to the previous AAF, Professor Naud stated that *“it is possible that the second AAF result comes from the same administration/contamination as the first AAF reported.”*
64. Dr Xavier de la Torre, based on the data reported in the literature and on the data obtained in experiments conducted in his laboratory, considers it is plausible that the findings in the First Sample and Second Sample of the Player are *“the result of a contamination provoked by the activities of the physiotherapist”*, who was treating the Player at the time the Samples were collected.
65. Professor David Cowan concludes that the Player's explanation for the finding of Clostebol metabolites in the First Sample and the Second Sample as having arisen from him unknowingly being contaminated by his physiotherapist who was using Trofodermin Spray containing 5mg/mL Clostebol Acetate to be *“entirely plausible based on the explanation given and the concentrations identified by the Laboratory. Even if the administration had been intentional, the minute amounts likely to have been administered would not have had [...] any relevant doping, or performance enhancing, effect upon the Player.”* Further, he can find *“no evidence to support any other scenario.”*
66. The Expert evidence is generally in alignment and the Parties have agreed that the reports can be entered into evidence and considered by the Tribunal without formal proof by the authors.

G. THE PARTIES' SUBMISSIONS

67. In advance of the hearing, the Parties provided us with very substantial quantities of documentation, including witness evidence (factual and expert) and case law.
68. This section summarises the main relevant facts, allegations and legal argument based on the Parties' written submissions, oral pleadings and evidence adduced during these

proceedings. Although the Tribunal has considered the entirety of the Parties' submissions, it refers here only to matters it considers necessary to explain its reasoning.

(a) *The ITIA*

69. The ITIA accepts that it has been unable to refute the Player's suggested source of the Clostebol following its investigations and the independent scientific opinions provided and has agreed a summary of facts with the Player's legal representatives. The ITIA submits that for the Player to avoid the otherwise applicable period of Ineligibility of four years, the Tribunal must be comfortably satisfied that the Player has established that the above route of administration of Clostebol is "*more likely than not*". The ITIA accepts that to be the case.
70. If the Tribunal accepts that source has been proven on the balance of probabilities, the primary issue for consideration by the Tribunal is whether the Player is entitled to rely on the provisions of Article 10.5 on the basis that the actions of his physiotherapist and/or fitness coach cannot be attributed to him. The ITIA asserts that the starting point for this analysis is to assess whether the Comment to Article 10.5 (the 'Comment') applies in this case. The Tribunal notes that the Comment appears only in the WADC (not in the TADP), and, that it is only meant to apply in exceptional circumstances. If the Tribunal considers that the Comment does not apply, a No Fault or Negligence outcome remains open to further consideration by the Tribunal to determine whether the Player bore No Fault or Negligence in its analysis of the facts and in light of the jurisprudence. However, if the Tribunal considers that the Comment applies to these factual circumstances, the Player could not then successfully establish No Fault or Negligence. In such a case, the Tribunal would then only have to assess the appropriate period of Ineligibility.
71. The ITIA submits that the first issue in respect of the application of the Comment to Article 10.5 is whether the actions of Mr Naldi fall within the remit of the Comment, as the Comment expressly applies to the Player's "*personal physician or trainer*". Whilst it is acknowledged that Mr Naldi is a physiotherapist (and not a medical doctor, per se), the treatment provided by Mr Naldi to the Player may in certain circumstances be considered akin to that which would be provided by a personal physician or trainer. Further, the Player would be equally selective and careful of the relevant expertise and professionalism of his

physiotherapist as he would be with a treating physician or member of his medical staff. In that regard, the Tribunal may consider on balance that Mr Naldi ought to be treated equivalently to a personal physician or trainer for the purposes of the application of the Comment. Finally, in respect of this issue, the Comment states that “*Athletes are responsible for their choice of medical personnel...*”, thus the Comment envisages that it will apply beyond doctors and physicians exclusively, extending to other medical personnel.

72. The second issue in respect of the application of the Comment to Article 10.5 is whether the Player can be said to have been “*administered*” the Prohibited Substance. The Player asserts (and the ITIA has accepted, following two interviews) that he had no knowledge that the Trofodermin Spray was involved at any stage of his massage (or other treatment). Unlike other cases where the athlete knew or ought to have known of the administration of a product which may contain a Prohibited Substance, the Player has stated that neither he nor Mr Naldi were aware that a Prohibited Substance was being applied to the Player.
73. The definition of “*Administration*” includes: “*Providing, supplying, supervising, facilitating, or otherwise participating in the Use or Attempted Use by another Person of a Prohibited Substance or Prohibited Method*”. The Tribunal considers that this is clearly a wide-encompassing definition. It is also noted that Use is defined as “*utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method*”, i.e. it does not include a subjective element and Use has been accepted in this case by the Player. Therefore, the key question for the Tribunal on the application (or not) of the second limb of the Comment is whether Mr Naldi inadvertently contaminated the Player during a massage and/or other treatment amounts to “*Administration*”.
74. The ITIA set out the relevant jurisprudence to be considered in relation to the application of TADP Article 10.5. Ultimately, however, the ITIA accepts that it is a matter for the Tribunal to determine whether the Player has established No Fault or Negligence. Should the Tribunal so find, pursuant to TADP Article 10.5, the otherwise applicable period of Ineligibility would be eliminated.

75. The ITIA submits that if the Tribunal determines that the Player has not established No Fault or Negligence, it would then fall to the Tribunal to determine the Player's degree of Fault and whether it is "*Significant*". It is open to the Tribunal, pursuant to TADP Article 10.6, to reduce the Player's sanction on the basis of No Significant Fault or Negligence to "*at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility.*"
76. The ITIA asserts that the following factors are relevant for the assessment of the degree of Fault attributable to the Player in this case:
- a. The steps taken by the Player to recruit appropriate, experienced personnel to his team (as set out in his Witness Statements).
 - b. The Player's efforts to ensure his entourage was educated about anti-doping, including not to Use Prohibited Substances when treating him.
 - c. The Player asking Mr Naldi on 3 March 2024, if he was using anything to treat his cut when he first saw it but (on balance) not checking again if that remained the position (albeit he stated in his Witness Statements that he believed the cut had healed).
 - d. Mr Ferrara purchased the Trofodermin Spray, and then provided the Spray to Mr Naldi when Mr Ferrara knew that the Spray contained a Prohibited Substance and that Mr Naldi would be treating the Player with his bare hands. Mr Ferrara is a fitness coach (and a qualified pharmacist) specifically chosen by the Player to advise him and the team on anti-doping matters, yet he failed to ensure that his Trofodermin Spray did not come into contact with the Player.
77. Mr Ferrara knew that Mr Naldi would be applying the Trofodermin Spray to his bare hands and knew or ought to have known that Mr Naldi would be subsequently touching the Player. Therefore, whether or not Mr Ferrara notified Mr Naldi of the presence of a Prohibited Substance in the Spray, it must have been apparent (to him, at least) that the Player risked coming into contact with a Prohibited Substance and could subsequently test positive.

78. The ITIA points out that Mr Naldi did not wash his hands after using a medical spray to treat his own wounds prior to making direct contact with the Player's skin (whether warned of the presence of a Prohibited Substance or otherwise) and that Mr Naldi was aware that the Player had cuts and sites of exposure on his skin which Mr Naldi would be treating. Thus, the Player was (albeit unknown to him) more exposed to potential contamination via skin-to-skin contact than others might be.
79. The ITIA asserts that Mr Naldi did not read the label of the product or seek information when he knew or ought to have known of the Player's anti-doping responsibilities and raises the issue of whether the negligence of Mr Ferrara and Mr Naldi ought to be directly attributed to the Player.
80. The ITIA referenced a substantial number of relevant authorities from the CAS which are not listed but have been provided in submissions and considered by the Tribunal in reaching its findings.

(b) The Player

81. The Player submits that he has never intentionally taken any Prohibited Substance and would never do so. He is the subject of regular In-Competition and Out-of-Competition anti-doping tests and takes his anti-doping responsibilities very seriously, as does his team.
82. As regards the Notice of Charge, the Player's position is as follows:
- a. He accepts that metabolites of Clostebol were in his system at the time of the two positive tests giving rise to the AAFs.
 - b. He admits that the presence of the metabolites of Clostebol on each occasion means that he is in breach of TADP Article 2.1.
 - c. He admits that he Used, as that term is defined in the TADP, Clostebol in breach of TADP Article 2.2 on each occasion.
 - d. The only issue before the Tribunal is if the Player bore any Fault or Negligence, and accordingly, what Consequences, if any, should be imposed upon the Player.

83. The Trofodermin Spray is focussed on the Italian consumer market and over 50% of anti-doping proceedings relating to Clostebol involve its detection in Italy. It appears there is now a recognised issue for Clostebol cases involving Italian athletes. The Player submits that it cannot be the intention of the TADP or the WADC to disadvantage athletes from certain jurisdictions, yet that is the impact upon the Player. It is notable that the Player's attention has never been drawn specifically to the risk to him of Clostebol.
84. The administration of Clostebol must have happened around the time of the Event since the Player has been tested, on average, once a month over the 12-month period between April 2023 and March 2024, and none of the previous tests gave rise to any AAF for Clostebol (or any other Prohibited Substance).
85. The Player asserts that he takes great care and pride in being a clean athlete. He has adopted caution (fully detailed in his witness statements) when it comes to anti-doping matters to ensure that any medication or supplement that he might ingest or have administered runs as limited a risk as possible of inadvertently giving rise to an anti-doping issue.
86. The Player submits that he took exceptional care to select and hire team members of the highest experience and calibre. The ITIA has had the opportunity to interview those team members and is aware of their experience and expertise. Unlike many in professional sport, the Player also took care to ensure that not only were team members selected for their professionalism and expertise, but also, they were formally contracted on professional contracts. Those contracts in turn required them to perform their obligations to the highest level, which the Player argues included compliance with relevant rules. The Player asserts that he took his responsibility for his team members exceptionally seriously and took appropriate steps to ensure high standards were maintained. The two individuals with principal responsibility for ensuring that the Player did not inadvertently breach the TADP are Mr Ferrara and Mr Vittur, the Player's manager, who have responsibility for differing aspects of the anti-doping framework.
87. The Player submits that in the specific circumstances relevant to the two AAFs there was nothing else he could have realistically done, or that the TADP required him to do. He had asked Mr Naldi how he was treating the cut, received a response which was true at that

time, and therefore raised no concerns. He quite reasonably understood that the matter was concluded, and that there was no risk to him personally.

88. Clostebol entered the Player's system inadvertently when, unbeknown to the Player and his physiotherapist, it transferred from his physiotherapist (who used a spray containing clostebol to treat a cut on his own finger) to the Player whilst the physiotherapist treated him.
89. The issue is that Mr Ferrara and Mr Naldi unfortunately failed to appreciate their own personal anti-doping responsibilities as an individual subject to the TADP. It appears that there was a miscommunication between Mr Naldi and Mr Ferrara as a result of which Mr Naldi did not appreciate that the Spray contained a Prohibited Substance. The Player acknowledges that he has an obligation to be responsible for his team's actions, but he has discharged that responsibility by all of the measures he has taken in carefully selecting his team members, imposing professional obligations upon them, impressing upon them the importance of complying with the TADP and ensuring that they have all relevant information to carry out their role. Having taken those precautions, the Player should not be held responsible for the mistake of Mr Ferrara and/or Mr Naldi.
90. The Player submits that this view is supported from the well-known CAS case of Maria Sharapova, CAS 2016/A/4643, *Maria Sharapova v ITF* which, in turn, followed another CAS decision CAS 2014/A/3591, *Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI*, which stated that athletes were not to be considered at Fault for the mistakes of members of their team, provided they took due care. The CAS panel, in the Sharapova matter, stated that, at paragraph 85:

"If, however, an anti-doping rule violation is committed, the objective fact of the third party's misdeed is imputed to the athlete, but the sanction remains commensurate with the athlete's personal fault or negligence in his/her selection and oversight of such third party or, alternatively, for his/her own negligence in not having checked or controlled the ingestion of the prohibited substance. In other words, the fault to be assessed is not that which is made by the delegate, but the fault made by the athlete in his/her choice. As a result, as the Respondent put it, a player who delegates his/her anti-doping responsibilities to another is at fault if he/she chooses an unqualified person as her delegate, if he/she fails to instruct him properly or set out clear procedures he/she must

follow in carrying out his task, and/or if he/she fails to exercise supervision and control over him/her in the carrying out of the task. The Panel also concurs with such approach”.

91. The Player’s argument is that with respect to the first limb his selection and oversight of a third party, Mr Ferrara, who had the requisite expertise and experience is not something for which he can be at Fault. Mr Ferrara, who holds a degree in pharmaceutical technology/pharmacology, is a leading fitness coach, contracted professionally, whose duties and responsibilities towards the Player were made clear to him. It is argued that the second limb is not relevant given that the Player had no knowledge a Prohibited Substance was even in his vicinity. It is not the gravity of Mr Ferrara’s mistake that the Player is responsible for but his choice in appointing Mr Ferrara in the first place and his supervision of him. In that regard, it is submitted that the Player has clearly acted appropriately.
92. While the mistake of Mr Ferrara in bringing the Trofodermin Spray into the Player’s vicinity, was unknown to the Player, it remains the case that he delegated authority to Mr Ferrara to ensure that such a product did not contain a Prohibited Substance. The Player suggests that such a delegation is entirely reasonable in professional sport and again explained in the CAS reasoning within the Sharapova case.
93. The Player submits that he delegated his anti-doping responsibilities to individuals who were qualified for that role with the appropriate information required to discharge it, such as Mr Ferrara and Mr Vittur. Having acted appropriately, and in accordance with the Sharapova decision, it is submitted that the Player should not then be responsible for Mr Ferrara’s actions in the assessment of his Fault. He should not be liable for an inexplicable and out of character mistake by Mr Ferrara.
94. There can be no suggestion that the Player deliberately sought to ingest Clostebol or receive any performance enhancement from doing so. It is submitted that he has discharged his burden, on the balance of probabilities standard, to prove that he did not act with any intention to have Clostebol inadvertently administered to him. That means that the starting point for any period of Ineligibility should now be considered to be two years.

95. The Player can have any applicable period of Ineligibility eliminated entirely if he can demonstrate that he bears No Fault or Negligence for the ADRVs. He accepts that TADP Article 10.5 sets out an exceptional remedy but asserts that his circumstances are clearly exceptional and more than justify a No Fault or Negligence outcome.
96. The Player has explained how the Clostebol entered his system. He submits that on the agreed facts he did not know or suspect that he had Used or had been administered with Clostebol. It is further submitted that there is simply no basis to assert that he should have known or suspected, even with the exercise of utmost caution, that he had Used or had been administered with Clostebol. There was no reason for the Player to have perceived any risk in Mr Naldi's continued regular treatment of him. Further, the Player's situation is a unique, or at least a very rare, example of a situation where the athlete in question did not consent to the act that ultimately led to their AAFs.
97. The Player relies upon a series of CAS decisions relating to No Fault or Negligence including:
- a. *CAS 2005/A/847 Hans Knauss v FIS*.
 - b. *CAS 2009/A/1926 and 1930 ITF v Richard Gasquet*. Mr Gasquet is a professional tennis player and the Prohibited Substance in question was cocaine.
 - c. *CAS 2019/A/6482 Gabriel da Silva Santos v Fédération Internationale de Natation*. Mr Santos was a professional swimmer and the Prohibited Substance in question was Clostebol.
 - d. *ITIA v Marco Bortolotti*. Mr Bortolotti is a professional tennis player and the Prohibited Substance in question was again Clostebol.
 - e. *United States Anti-Doping Authority v Katerina Nash* – Ms Nash is a professional cyclist, and the Prohibited Substance was Capromorelin.
98. The provision of TADP Article 10.5 is of no relevance to the Player as it clearly implies that “*the personal physician or trainer*” (meaning, in this context, Mr Naldi) is aware that they are administering a Prohibited Substance.

99. The Comment to Article 10.5 should be strictly limited to physicians, i.e. medically qualified doctors, and trainers. Where there is any doubt, it should be construed 'contra proferentum' against the ITIA. The Clostebol was inadvertently entered into the Player's system as a result of a treatment and bandaging provided by a physiotherapist and the Comment does not apply in such circumstances. Administration cannot include inadvertent and unrecognised contamination of the Player by Clostebol during a massage and/or bandaging. Consequently, the Comment should not be used to bar the Player from relying upon Article 10.5.
100. The Player also identifies the discrepancy with the "A" versus "a" between the wording of the WADC Comment ("*Administration*") and the wording of the TADP definition of "*No Fault and Negligence*" ("*administration*"). This is important as upper-case "*Administration*" falls within the extended definition set out in both the WADC and TADP whereas lower-case "*a*" is the normal everyday meaning. The Player argues that when considering "*No Fault*", it is necessary to apply the everyday meaning (and not the defined term of "*Administration*").

H. THE HEARING

101. The hearing took place as a hybrid event with the Tribunal members, the Parties' representatives, and the secretariat to the Independent Tribunal present within the hearing room. The witnesses, the translator, and additional Party representatives attended virtually. Several observers attended in person and remotely.
102. The Parties agreed that the scientific experts' reports should be admitted into evidence without formal proof and that their attendance was not required.
103. The Tribunal heard oral evidence from the Player, Messrs Ferrara and Naldi. The ITIA did not require the Independent Tribunal to hear from any of the other previously tendered witnesses. Counsel for each Party were given the opportunity to make oral submissions to supplement their detailed written submissions together with a short reply.

I. DISCUSSION

(a) Factual Issues

104. Whilst the Parties have agreed many of the relevant facts pertaining to the circumstances surrounding the AAFs, there are a number of factual issues which the Tribunal has been asked to consider: some requested by the Parties and others essential for the correct determination of the anti-doping charges against the Player.
105. The first of the issues raised by the Parties was the date upon which Mr Ferrara had purchased the Trofodermin. It was either 12 or 13 February 2024 and there was a discrepancy between the accounts given by Mr Ferrara and the available bank statements. However, the Tribunal considers that given that there is no dispute in relation to the actual presence of the Trofodermin at the Event, then it is not necessary to resolve the apparent date discrepancy.
106. The second issue raised by the Parties relates to the location of where Mr Naldi was when he cut his finger. The Tribunal heard evidence from the Player, Mr Naldi, and Mr Ferrara. All of them gave evidence that the injury took place within the small room used for physiotherapy treatment and “*warm-ups*” in the villa, which was occupied by the Player and his entourage during the Event. The only contrary evidence provided, was that of Mr Gius, a friend of the Player who travelled with the team to the Event, and who indicated that the injury took place at an entirely different location. The Tribunal, having had the benefit of hearing oral evidence, considers that each of the witnesses was truthful, remained consistent with the written statements, and did not present any discrepancies between their version of events. In light of these circumstances, the Tribunal favours their testimony over that of Mr Gius, who was not called to give oral evidence, and determines that Mr Naldi cut his finger in the location described by the Player, and Messrs Ferrara and Naldi.
107. The third factual dispute identified by the Parties relates to the alleged warning given by Mr Ferrara to Mr Naldi, in relation to the Trofodermin Spray, the fact that it contained Clostebol (a Prohibited Substance), and that it should not be applied anywhere near the Player. Mr Ferrara, in his evidence, was clear that this warning was given to Mr Naldi, whereas Mr Naldi stated whilst being cross-examined that he could not remember any

such warning being given. Mr Naldi could also not recollect a request being made to him that he should only use the Spray in Mr Ferrara's bathroom, but he did accept that this was the only location in which he ever did actually apply the Spray. The Tribunal considers that, on balance, Mr Ferrara's version of events is more compelling given that he had a clear recollection of the instructions he communicated versus Mr Naldi's broad non-recollection, the fact that Mr Ferrara was extremely experienced in matters of anti-doping, that he himself had pharmaceutical training, and that the accepted use of the Spray solely in Mr Ferrara's bathroom was in keeping with the warning provided to Mr Naldi. In addition, as it was suggested by the Parties, Mr Naldi's appreciation of what Mr Ferrara said to him about the Spray may have been adversely affected by the fact that he had arrived later than the others, may have been jetlagged, and was under some family pressure at that time. In consequence, the Tribunal determines that Mr Ferrara did provide a warning to Mr Naldi. The Tribunal also determines that the reason for Mr Ferrara's warning was out of concern that the Player might come into direct contact with Trofodermin rather than any possibility of cross-contamination, which he believed could be well avoided.

108. The Tribunal has considered the Player's attitude and practice in relation to anti-doping matters. The Tribunal heard evidence from the Player himself, Mr Ferrara and Mr Naldi on this issue, together with reviewing the various witness statements and documents provided by the Parties. The Tribunal has noted in particular that the Player gave evidence that he took "*an extremely cautious approach*" to anti-doping matters and that he often sought advice and confirmation from the members of his support team who were both experienced and had an understanding of anti-doping issues. The Tribunal notes the numerous references to the Player's anti-doping awareness and good practice within the evidence presented and in the written submissions provided by the Player's counsel. In particular, the Player indicated that he had employed Mr Ferrara because of his anti-doping experience, including the fact that he had a background in pharmacology. The Player gave an example of an incident that arose at a recent tournament, in Madrid, Spain, when he had to reprimand Mr Naldi for failing to "*watch the water bottles properly*" as he had been concerned about the risk of interference and that he was sure that Mr Naldi would not allow this to happen again. Mr Ferrara, in his evidence, confirmed that he had a degree in pharmaceutical technology. He stated that any time the Player had to take a new medication or product, he would ask what it was for and queried whether it complied

with anti-doping requirements. Mr Naldi, in his evidence, indicated that prior to his employment by the Player, he had worked as a physiotherapist for a professional basketball team for six and a half years, prior to that he had worked with a non-professional basketball team and in his own physiotherapy clinic. The Tribunal determines that the Player had a high level of awareness about anti-doping matters, applied a cautious approach, and that in his hiring practices, engaged appropriately experienced individuals. The Tribunal also finds that Messrs Ferrara and Naldi regularly discussed anti-doping issues that arose in respect of their individual roles, that they each knew their responsibilities and obligations and knew about the World Anti-Doping Agency's Prohibited List. The Tribunal also determines that the Player was right to assume his team to be aware of the anti-doping arrangements.

109. The Tribunal heard evidence from the Player that he questioned Mr Naldi shortly after Mr Naldi sustained the cut to his finger and the fact he was wearing a bandage. The Player also asked him whether Mr Naldi was using "*anything else*", which was correctly answered in the negative at that time. Given that Mr Naldi only commenced using the Trofodermin Spray after this inquiry took place and taking into account all of the relevant documentary evidence, the Tribunal finds as fact that the Player was **unaware** that: (a) Mr Ferrara was in possession of the Trofodermin Spray; (b) Mr Naldi was using the Trofodermin Spray; and (c) there was any anti-doping risk arising from the treatment (i.e. the massage and/or the bandaging of his feet) he received from Mr Naldi. The Tribunal also finds as fact that: (a) the Player had **no reason to suspect** Mr Ferrara was in possession of the Trofodermin Spray, (b) Mr Naldi was using the Trofodermin Spray, or (c) there was any anti-doping risk arising from the treatment he received from Mr Naldi.

(b) Expert Evidence

110. The Tribunal notes that three independent experts have been consulted to test the plausibility of the Player's explanation. Two were instructed by the ITIA and one by the Player. The Tribunal concludes that none of them has suggested that the Player's explanation is not consistent with the scientific analysis. Similarly, there is no suggestion that the tiny concentration in his system would have had any performance enhancing effect.

(c) *Lex Sportiva Issues*

111. The Tribunal must consider a number of key legal issues arising from the TADP and CAS case law in order to finalise its determination of this matter. It is appropriate to list these as sub-headings and deal with them individually:

- a. Was a Prohibited Substance or any of its metabolites or markers found in either the Player's First Sample or Second Sample?

The answer to this question is yes and as such constitutes a violation of TADP Articles 2.1 and 2.2, given that both of these offences are strict liability matters.

- b. What is the sanction for breaches of TADP Articles 2.1 and 2.2?

As set out within TADP Articles 10.2.1 and 10.2.2, the benchmark sanction is four years of Ineligibility unless the Player rebuts the presumption of intentionality. In such cases, the sanction is reduced to two years of Ineligibility.

- c. Was the presence or Use of a Prohibited Substance intentional?

A definition of "*intentional*" is set out in TADP Article 10.2.3. However, the ITIA have accepted that the presence or Use of the Prohibited Substance was not intentional in this case. The starting point for the sanction to be applied is a period of Ineligibility of two years.

- d. Is the period of ineligibility to be eliminated or further reduced?

This issue, to be determined by the Tribunal, is less straightforward: TADP Article 10.5 provides for the elimination of the period of Ineligibility on the grounds of No Fault or Negligence. TADP Article 10.6 provides for the reduction of the period of Ineligibility on the grounds of No Significant Fault or Negligence (this is not analysed further given the conclusions in respect of TADP Article 10.5, cited above). The term "*No Fault or Negligence*" is defined in the TADP Appendix One. It is crucial that the wording is considered with great care. The key terms of the definition are that the Player must not "*know or suspect*" and "*could not reasonably have known or suspected even with the exercise of utmost caution*" that they had "*Used or been administered the*

Prohibited Substance". The Player is also required to prove the origin of the Prohibited Substance on the balance of probabilities, and in this case the ITIA have accepted the Player's explanation i.e. that the Clostebol was transmitted to him from the hands of Mr Naldi during the massage therapy and the bandaging of his feet following the administration of Clostebol to Mr Naldi's finger which had previously been cut in an accident with a scalpel.

112. The Comment to Article 10.5 in the WADC provides at sub-section (b) "*the Administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance)*". The Tribunal forms the view that the comment is part of the WADC and that it should be given a purposive interpretation so as to ensure that Article 10.5 is compliant with the overall aims and objectives of the WADC, as intended by TADP Article 19.2. This results in the Tribunal considering that the application of the Comment should not be limited to "*physician*" or "*trainer*" but rather than the Comment should be interpreted in a way so as to include any licensed/qualified healthcare or sports professional person providing medication or supplements to an athlete. The clear intent of the comment is to ensure that an athlete cannot evade responsibility simply because a Prohibited Substance has been provided by a trusted medical practitioner or a person in a similar position which may in the Tribunal's interpretation include but is not limited to physiotherapists, chiropractors, pharmacists, and/or nurses. In reaching its conclusions on the analysis of the Comment, the Tribunal has taken into account the French version of the WADC, which appears to provide for a wider interpretation of "*trainer*" than would be the case in English. The Tribunal would point out that it may be prudent for the anti-doping authorities to review the language used within the Comment in order to ensure that the issues raised by the Parties are clarified, if necessary.

113. The Tribunal considers that the effect of the Comment to Article 10.5 on its operation does not otherwise interfere with the clear provisions of TADP Article 10.5 and the mandatory requirements which an athlete must satisfy in order to avail him- or herself of the relief from sanction. The reference with the Comment to "*Administration*" cannot in the view of the Tribunal encompass the scenario which arose in this case; i.e., the Player was

inadvertently cross-contaminated by the Prohibited Substance during a massage by a physiotherapist who had used a spray containing Clostebol to treat his own wound of which the Player was not aware and could not have been aware within the factual matrix presented in evidence.

114. The Tribunal in its review of the substantial CAS (and other) case law provided by the Parties makes the general comment that almost all these cases turn upon their own facts and the relevant tribunals' assessment of the evidence and analysis in those cases. What is important, therefore, is not so much whether there are factual similarities or differences between those cases and this one, but to find common points of principle and see how those principles may have been applied in a particular case. To this end the Tribunal considers the relevant principles in the following cases:

- a. In CAS 2017/A/5015 *FIS v Johaug*, the CAS considered, inter alia, whether the Appellant could rely upon WADC Article 10.5 in the circumstances of her case to obtain full relief from sanction. The relevant facts in that case were that the Appellant, a successful and experienced cross-country skier, suffered a sunburn and as a result obtained medication from her doctor, who was an extremely experienced sports medicine practitioner. Unfortunately, the athlete administered Trofodermin cream, which contains Clostebol. She sought assurances from the doctor that it did not contain a Prohibited Substance and was advised that it did not. However, she did throw away the packaging which displayed a clear anti-doping warning albeit in Italian and did not read the relevant drug data sheet. The athlete was, therefore, unable to rely upon WADC Article 10.5. In reaching its conclusion, the CAS found against the Appellant, ruling that a finding of No Fault applies only in truly exceptional cases and that to avail of this relief, it is necessary to exercise the "*utmost caution*" in avoiding doping. An athlete must always take very rigorous measures to discharge their obligations, given that they always bear personal responsibility, and the failure of a doctor does not exempt the athlete from their personal responsibility. The CAS also considered that it was necessary for athletes to cross-check assurances given by a doctor, even where such a doctor is a sports specialist.

The current case can be distinguished from *Johaug* given that the substance entered the Player's system not by a medication prescribed or provided by a doctor but by way of cross-contamination during a physiotherapy session.

- b. In CAS 2017/A/5301 *Errani v ITF*, the Appellant was notified that a sample they provided contained a Prohibited Substance, which was determined to have been caused by ingesting medication prescribed to the athlete's mother, through a meal eaten with her family. It transpired that the medication was kept in a box in the kitchen near the place where the athlete's mother cooked and that she took a pill every day. The CAS rejected the appeal. Their decision was based clearly on the relevant facts which included that there had been a previous occasion when a pill had fallen out of the box, the day-to-day routine of the athlete's mother taking her medication, and the storage of the medication box in the immediate proximity to the place where meals were prepared.

It is clear to the Tribunal that the current case is completely different on the facts and as indicated above the Tribunal has found that the Player was unaware that his physiotherapist had access to the Clostebol, that he had administered it to his finger, and that there was a risk of cross-contamination.

- c. In CAS 2009/A/1926 and 1930 *ITF –v- Richard Gasquet*, the Appellant inadvertently ingested cocaine through kissing a woman he had met for the first time in an Italian restaurant. It appears that the woman had been taking cocaine without the Appellant being aware and that the cocaine passed to him whilst they were kissing through the intermingling of saliva. The Appellant was successful at the CAS, with the panel determining that he did not fail the “*utmost caution*” test. He could not have known the risk of ingesting cocaine from kissing someone. The CAS observed that given the parties' experts took some time to conclude that risk for themselves, the Appellant could not have known of the risk of ingesting cocaine, even whilst exercising the utmost caution, from the woman, specifically given that he did not see her taking cocaine, see her under the influence of cocaine, or know anything about her personal circumstances. At paragraph 5.32 of the decision, the CAS panel considered whether it could have been the intention of the WADC or the relevant version of the TADP to seek to sanction an athlete in circumstances where it was impossible for an athlete to have perceived an anti-doping risk.

It seems to the Tribunal that this decision is similar to the Player's case at hand.

- d. In CAS 2019/A/6489 *Gabriel Silva Santos v FINA*, the Appellant was a professional swimmer and the Prohibited Substance in question was Clostebol. The Appellant was exposed to Clostebol through the use of a product containing Clostebol by a third party without his knowledge. There was no reason why the Appellant ought to have known that the product contained the Prohibited Substance, given that the product was not used in his presence nor stored in a location that he had access to. However, in that appeal, it was not possible to ascertain the route by which the athlete came into contact with Clostebol, other than perhaps through the use of common household items. The CAS panel in this case endorsed the findings in the Gasquet case. It concluded that there was no reason why the Appellant, even in exercising the utmost care, should have discovered that there was Clostebol in his vicinity or that there was a possible risk of him being exposed to it. The CAS panel considered that it was “*an unreasonable and impracticable expectation*” to require the Appellant to ask questions of individuals he was around when he was exposed to Clostebol to assess any anti-doping risk.

The Tribunal notes the similarities of this case and the approach taken by the CAS panel. It appears that the foundation of this case is the fact that the Appellant did not know and could not have known about the possibility of exposure within the facts of the case.

- e. In CAS 2013/A/3313 *Stroman v FEI*, the CAS panel noted that the Appellant could not seek to avoid their duty of utmost caution by delegating anti-doping responsibilities elsewhere. The panel referred to a consistent theme in CAS jurisprudence on anti-doping; that the duty of utmost caution or due diligence is a non-delegable duty. In this case, the Appellant was a professional equestrian competitor in show jumping and the matter pertained to the veterinary treatment received by the athlete’s horse. The Appellant sought to establish that she bore No Significant Fault or Negligence for the anti-doping violation and that the athlete had in effect delegated her anti-doping function to the veterinarian. However, some additional comments of the CAS panel in *Stroman* are also incisive in the context of the overall review of the substantial case law referenced in this case, namely at paragraph 82: “[t]he Panel repeats that in any event it is generally *an unproductive exercise to seek to compare different cases decided at different times and/or under different rules and/or by different bodies, whose facts are not exactly*

comparable to the case under appeal and which do not lay down rules of general application (CF CAS 2013/A/3124 para 12.23)."

- f. In CAS 2007/A/1395 *WADA v NSAM & Cheah & Ng & Masitah*, the panel held that athletes are responsible for the actions of their entourages in respect of providing them with substances and it is no excuse for an athlete to contend that another person was responsible for the presence of a Prohibited Substance in the athlete's Sample. However, the facts in this case relate to the Appellant's eating unwrapped chocolates given to them by another coach during a shooting competition and the panel concluded that they did not exercise the greatest vigilance or utmost caution, which is to be expected of athletes ingesting unwrapped chocolates.

This is clearly distinguished on the facts from the current case and it is useful to note the contents of paragraph 80 of the decision which restates the law eloquently "*[i]n general, the elimination of the period of suspension is only possible in the case where the athlete can establish that he/she was unaware, that he/she did not doubt or could not have reasonably known or presumed, even with the greatest vigilance or utmost caution, that he/she was given a prohibited substance or prohibited method. The burden is therefore shifted to the athlete to establish that he/she has done all that is possible to avoid a positive testing result (see CAS 2006/A/1133 WADA v/S & Swiss Olympic).*"

115. As stated above, it is clear from the analysis of the relevant case law that caution must be taken in respect to reliance upon previous cases and that only the principles can be taken from them, which can then be applied to the specific facts of an individual case. The Tribunal has already determined that the Player in this case did not know or suspect and could not reasonably have so known or suspected even with the utmost caution that Clostebol was present within the premises in which he was staying, that the Player did not know or suspect that Mr Naldi had used the Clostebol on his finger, and the Player did not know or suspect that it was possible for a Prohibited Substance to be inadvertently transferred to him during massage therapy and/or during the bandaging of his feet. Given that the Tribunal has also concluded that the Player is an individual who exercises considerable caution in respect of anti-doping matters and that he has taken care in choosing his support team and ensuring that they understand and respect the various anti-doping responsibilities, the Tribunal considers that the Player has exercised "*utmost*

caution” and has done all that is possible to avoid a positive test result. The Tribunal has no hesitation in overall concluding that the Player can avail himself of the full relief provided within TADP Article 10.5.

J. CONCLUSIONS

116. The Player has committed two ADRVs, pursuant to TADP Articles 2.1 and 2.2.
117. Based on the specific circumstances and facts relating to this matter, the Tribunal concludes that the Player bears No Fault or Negligence in relation to the commitment of the two ADRVs, pursuant to TADP Article 10.5. Consequently, any period of Ineligibility shall be eliminated.
118. That being determined, as per TADP Article 9.1, given that the Player committed an ADRV deriving from an In-Competition sample collection, any medals, titles, ranking points and Prize Money obtained during the Event, i.e. the BNP Paribas Open, in Indian Wells, shall be forfeited.
119. Consequently, given that any period of Ineligibility shall be eliminated, any medals, titles, ranking points and Prize Money obtained in the events in which the Player competed after the Event and before the date of this award shall not be Disqualified. These events include:
 - a. Miami Open presented by Itaú, from 19 to 31 March 2024
 - b. Rolex Monte-Carlo Masters, from 7 to 14 April 2024
 - c. Mutua Madrid Open, from 23 April to 5 May 2024
 - d. Roland Garros, from 26 May to 9 June 2024
 - e. Terra Wortmann Open, from 17 to 23 June 2024
 - f. The Championships at Wimbledon, from 1 to 14 July 2024
 - g. Omnium Banque National présenté par Rogers, from 6 to 12 August 2024

h. Cincinnati Open, from 12 to 19 August 2024.

K. COSTS

120. TADP Article 8.5.4 establishes that this “*Independent Tribunal has the power to make a costs order against any party, where it is proportionate to do so. If it does not exercise that power, each party will bear its own costs, legal, expert, hearing, and otherwise.*” Given the outcome of this case, the Tribunal makes no costs order and each party will bear its own costs.

L. RIGHT OF APPEAL

This decision may be appealed to the Court of Arbitration for Sport (“CAS”), located at Palais de Beaulieu, Avenue des Bergières 10, CH-1004 Lausanne, Switzerland (procedures@tas-cas.org), in accordance with TADP Article 13.2.1. TADP Article 13.8.1.1 sets the deadline to file an appeal to the CAS, which is 21 days from the date of receipt of this final decision.



Ms Tamara Gaw



Mr Benoit Girardin



Dr David Sharpe KC
Chair

London, UK

19 August 2024

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