

INTERNATIONAL SKATING UNION

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Case No. 08/2012

August 31, 2012

DECISION of the ISU Disciplinary Commission

Panel: Volker Waldeck, Chair
Fred Benjamin
Dr. Allan Böhm

In the matter of

International Skating Union, Chemin de Primrose 2, 1007 Lausanne, Switzerland,
represented by its Legal Advisor, Dr. Béatrice Pfister,

- Complainant -

against

Mr. Pavel Kulizhnikov, Russia,

- Alleged Offender -

and

The Russian Skating Union,
Ms. Olga Chupina, General Secretary, Office 230,
Luzhnetskaya nab. 8, Moscow 119991, Russia,

- Interested Member -

Concerning the alleged violation of the ISU Anti-Doping Rules

I. History of the procedure

On May 11, 2012, the ISU filed a complaint against the Alleged Offender, together with 10 exhibits. On May 16, 2012 the Alleged Offender and the Interested Member were invited by the ISU Disciplinary Commission to file a statement of reply within 21 days upon receipt of the complaint. The Interested Member filed a statement of reply on June 5, 2012.

II. Procedural Matters

According to Article 24, Paragraph 10 of the ISU Constitution 2010 and Article 8.1.1 of the ISU Anti-Doping Rules 2010 the Disciplinary Commission has jurisdiction in anti-doping cases arising out of ISU Testing or Testing at International Events or Competitions. The present case arises out of testing at the ISU World Junior Speed Skating Championships in Obihiro City, Japan, 2012, i.e. of testing at an ISU International Competition. Therefore the ISU Disciplinary Commission has jurisdiction to hear and decide this case.

III. Facts

1. The Alleged Offender is an 18 year old Member of the Russian Skating Union who participated at the 2012 ISU World Junior Speed Skating Championships in Obihiro, Japan.

2. Following an in-competition Anti-Doping test carried out on March 4, 2012, the ISU received an adverse analytical finding for sample 3379905 from the Alleged Offender. Said sample was found to contain Methylhexanamine, which belongs to class S6b (Stimulants/Specified Stimulants) of the 2012 WADA List of Prohibited Substances and Methods. On his doping control form the Alleged Offender had listed the following medications taken in the last 7 days: Polivitamin, Adaptogen.

Evidence:

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| - Doping Control Form for Sample 3379905, taken on March 4, 2012, | Exhibit 1 |
| - Laboratory result for A Sample 3379905 | Exhibit 2 |
| - Class S6b (Stimulants/Specified Stimulants)
of 2012 WADA List of Prohibited Substances and Methods | Exhibit 3 |

3. By letter of April 4, 2012, the Interested ISU Member and the Alleged Offender were informed of the positive finding and requested to submit their written explanations within 15 days of notification. Further they were reminded of the Alleged Offender's right to request that the B sample be analyzed.

Evidence:

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| - Letter from ISU to the Russian Skating Union dated April 4, 2012 | Exhibit 4 |
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4. On April 18, 2012, the Interested ISU Member forwarded to the ISU a letter of explanation of the Alleged Offender dated April 12, 2012, including an English translation thereof, in which he explained to have taken "Umkalor" against a cold with fever and running nose upon advice of his cousin, after having checked the composition of Umkalor in view of the WADA prohibited list and having not found any Prohibited Substance. The Alleged Offender stopped using Umkalor a few

days before arriving in Japan on February 21, 2012 and further he stated that among the nutritional supplements and drugs he had used from February 21 to March 4, according to the team physician, there were no substances from the Prohibited List. The Alleged Offender expressed his conviction that the adverse analytical finding could have been caused only by Umkalor in whose ingredients list he had found "pelargonium sidoides", the Latin name for geranium, which he claims is listed in the Prohibited List as Methylhexaneamine (metilgeksanamin dimetilpentilamin). Finally, the Alleged Offender waived his right to have the B-sample analyzed.

In its letter addressed to the Complainant on April 17, 2012, the Interested ISU Federation pointed out that this was the Alleged Offender's first Anti-Doping Rule violation, that his youth may justify the lack of experience and that any intent to enhance his sport performance or mask the use of a performance enhancing substance was absent.

Evidence:

- Letter Alleged Offender/Interested ISU Member, dated April 12, 2012, including translation Exhibit 5
- Letter Interested ISU Member / ISU, dated April 17.2012 Exhibit 6

5. Further inquiries of the Complainant brought about the following results:

Dr. Christiane Ayotte of the INRS Institute Armand-Frappier in Montreal wrote that "pelargonium sidoides" as contained in Umkalor is not known to contain Methylhexaneamine. She further pointed out that given the halftime life of Methylhexaneamine not µg/ml, but only ng/ml would still be present in human urine 10 days after its intake. The Tokyo laboratory in charge of analyzing the sample in question gave a rough estimate of the concentration in the Alleged Offender's urine with 16 µg/ml. Thus, the presence of a Methylhexaneamine in the Alleged Offender's bodily specimen cannot be explained by his taking of Umkalor.

Since Dr. Ayotte had explained that Methylhexaneamine can be found in energy supplements and because the Alleged Offender had mentioned to have taken nutritional supplements and drugs given to him by his team physician from February 21 to March 4, 2012, the Complainant requested the Interested ISU Member to ask the team physician for a detailed list of the nutritional supplements and drugs which he had given to the skater from February 21 to March 4, 2012. The Interested ISU Member furnished this list on May 4, 2012.

Evidence:

- E-mails Dr. Jane Moran and Dr. Christiane Ayotte, dated April 24 and 29, 2012 Exhibit 7
- E-mails Tokyo laboratory dated April 25 and 26, 2012 Exhibit 8
- Letter ISU/Interested ISU Member dated April 27. 2012 Exhibit 9

- Explanatory Letter of team physician Mr. Vladimir Pustovoy of May 4, 2012, with list "supporting pharmacological program" including English Translation Exhibit 10

As to the knowledge of the Complainant none of the products contained in the list can explain the presence of Methylhexaneamine in the Alleged Offender's bodily specimen. The question of how this substance entered his body thus reminds unanswered to date.

IV. Law

1. Methylhexaneamine, as uncontestedly found present in the Alleged Offender's bodily specimen, is contained in the 2012 Prohibited List of the World Anti-Doping Agency (WADA) under class "S6. Stimulants / b: Specified Stimulants".

2. According to Article 2.1 of the ISU Anti-Doping Rules, the presence of a prohibited substance in a Skater's bodily specimen constitutes an Anti-Doping Rule violation, unless a Therapeutic Use Exemption (TUE) for the otherwise prohibited substance has been granted in accordance with letter D of the ISU Anti-Doping procedures. The Alleged Offender had neither requested a Therapeutic Use Exemption for Methylhexaneamine nor had he declared having taken this medication on his doping control form.

3. According to Article 2 of the ISU Anti-Doping Rules Skaters are responsible for knowing what constitutes an Anti-Doping Rule violation and the substances and methods which have been included in the prohibited list. Article 2 Para 2.1.1 says that it is each Skater's personal duty to ensure that no prohibited substance enters his or her body and that Skaters are responsible for any prohibited substance or its metabolites or markers found to be present in their samples.

The Alleged Offender purports that he has taken the herbal medicine "Umkalor" for the treatment of his respiratory disease, not knowing that it contains a prohibited substance. The substance which was found present in the Alleged Offender's bodily specimen is Methylhexaneamine. According to Dr. Christiane Ayotte of the INRS Institute Armand-Frappier in Montreal "pelargonium sidoides" as contained in Umkalor is not known to contain Methylhexaneamine.

Dr. Ayotte further pointed out that given the halftime life of Methylhexaneamine not $\mu\text{g/ml}$, but only ng/ml would still be present in human urine 10 days after its intake. The Tokyo laboratory in charge of analyzing the sample in question gave a rough estimate of the concentration in the Alleged Offender's urine with $16 \mu\text{g/ml}$. Thus, the presence of a Methylhexaneamine in the Alleged Offender's bodily specimen cannot be explained by his taking of Umkalor.

Another explanation for the finding of Methylhexaneamine might have been the nutritional supplements and drugs given to the skater by the team physician prior to the event in Japan. In his letter of May 4, 2012 (Exhibit 10) the team physician Vladimir Pustovoy explained which medications and drugs he has given to the Russian skaters, including the Alleged Offender, during the training camp prior to the World Junior Speed Skating Championships in Japan. The team physician has added a list called "Supporting pharmacological program" containing the products he has given to the skaters. None of the products of this list could explain the finding of Methylhexaneamine. Some of the products are simple harmless vitamins. Most of the supplements are only brand names without any content and not specific enough to explain the finding or the absence of Methylhexaneamine.

4. It is undisputed that Kulishnikov committed an anti-doping rule violation within the meaning of Article 2 of the ISU Rules. According to Article 10.2 of the ISU Rules, such a violation is sanctioned with a two-year period of ineligibility, unless the conditions for eliminating or reducing this period, as provided in Articles 10.4. and 10.5, are met.

5. As stated above, Methylhexaneamine is a Specified Substance which appears in category S6b (Specified Stimulants) on the 2012 Prohibited List of the WADA Code. According to Article 10.4 of the ISU Anti-Doping Rules 2010 an elimination or reduction of the period of ineligibility in cases of

specified substances under specific circumstances may be conceded. Article 10.4 has two requirements:

1. The skater must establish how the Specified Substance entered his body.
2. Such Specified Substance was not intended to enhance the skater's sport performance or mask the use of a performance-enhancing substance.

Regarding the first condition, the commentary to Article 10.4 of the ISU Rules provides that "*the skater may establish how the Specified Substance entered the body by a balance of probability*". In other words, a panel should simply find the explanation of a skater concerning the presence of a Specified Substance more probable than not.

At first the skater explained the finding of the specified substance by having taken the herbal medicine "Umkalor". According to Dr. Christiane Ayotte of the INRS Institute Armand-Frappier in Montreal "pelargonium sidoides" as contained in "Umkalor" is not known to contain Methylhexaneamine. Therefore "Umkalor" cannot explain the finding of Methylhexaneamine.

But also the nutritional supplements and drugs given to the skater by the team physician prior to the event in Japan cannot explain the finding of the specified substance. Some of the products are simple harmless vitamins. Most of the supplements listed by the team physician are general brand names without any declaration of ingredients. Therefore the panel is neither convinced by the explanation of the skater nor by the list of medication of the team physician how the specified substance entered the body of the skater.

As the skater could not explain how the specified substance entered his body, the first requirement of Article 10.4. is not met. The period of ineligibility cannot be reduced according to Article 10.4 of the ISU Anti-Doping Rules.

6. Article 10.5 admits an elimination or reduction of the period of ineligibility based on exceptional circumstances. Article 10.5.1 is applicable when the skater bears no fault or negligence; Article 10.5.2 is applicable in cases when there is no significant fault or negligence of the skater. But the requirement for both paragraphs is a comprehensible explanation how the prohibited substance entered the body of the skater. The taking of "Umkalor" could not explain the adverse analytical finding. The medication given by the team physician might have contained the substance Methylhexaneamine. But in order to be able to invoke the physician's error, the skater or the team doctor must produce a medical file that justifies the drug prescription containing the detected substance, its dosage and duration. The list of medications provided by the team physician is not specified enough to explain how Methylhexaneamine entered the system of the skater.

The Comment to Article 10.5.1 and 10.5.2 gives some examples of fault and negligence which cannot lead to a reduction of the period of ineligibility:

"a) a positive test resulting from mislabeled or contaminated vitamin or nutritional supplement (Skaters are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination);

b) the administration of a Prohibited Substance by the Skater's personal physician or trainer without disclosure to the Skater (Skaters are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance)."

Therefore a reduction of the period of ineligibility according to Article 10.5 is also not applicable.

7. As the conditions for eliminating or reducing the period of ineligibility, as provided in Article 10.4 and 10.5 of the ISU Anti-Doping Rules 2010, are not met, a two years period of ineligibility for the first violation is imposed on the skater.

8. The ineligibility starts according to Article 10.9 of the ISU Anti-Doping Rules 2010. In his letter of April 12, 2012 the skater tried to explain how the prohibited substance entered his system after he has been confronted with the alleged Anti-Doping Rule violation. According to Article 10.9.2 ISU Anti

Doping Rules the period of ineligibility may start as early as the date of sample collection, i.e. in this case March 4, 2012. The period of ineligibility will end on March 3, 2014.

9. According to Article 9 the violation of the ISU Anti-Doping Rules in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that competition with all resulting consequences, including forfeiture of any medals, points and prizes.

Article 11.1 states, that a team shall be disqualified from that competition, if a competing member of the team is found to have committed a violation of the ISU Anti-Doping Rules.

Therefore the competitive results of Pavel Kulizhnikov obtained from March 2 to 4, 2012, and the results of the Russian Men Team pursuit (8laps) Qualification on March 4, 2012, at the 2012 ISU World Junior Speed Skating Championships in Obihiro, Japan, are disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.

V. Costs

According to Article 12.2 of the ISU Anti-Doping Rules 2010 the ISU Member shall be obligated to reimburse the ISU for all costs (including but not limited to laboratory fees, hearing and travel expenses) related to a violation of these Anti-Doping Rules committed by a skater affiliated with that member. Therefore the costs of these proceedings, including the laboratory fees of the Anti-Doping testing, have to be borne by the Russian Skating Union.

The skater has to bear his own costs.

Based on the above considerations the ISU Disciplinary Commission rules as follows:

Decision

1. Pavel Kulizhnikov is declared responsible for an Anti-Doping violation, committed on March 4, 2012 at the 2012 ISU World Junior Speed Skating Championships.
2. A period of ineligibility of two years, beginning on March 4, 2012 and ending on March 3, 2014, is imposed on Pavel Kulizhnikov.
3. Pavel Kulizhnikov's competitive results obtained from March 2 to 4, 2012, and the results of the Russian Men Team pursuit (8laps) Qualification on March 4, 2012, at the 2012 ISU World Junior Speed Skating Championships in Obihiro, Japan, are disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.
4. The Russian Skating Union has to reimburse the ISU for the costs of these proceedings and the laboratory fees of the Anti-Doping testing.
5. The skater bears his own costs.

August 31, 2012



Volker Waldeck



Fred Benjamin



Dr. Allan Böhm

The decision is sent to Pavel Kulizhnikov, Leninastr. 30, 39 Kolomna 140410, Russia, by registered mail against return receipt and to the Interested Member and to the ISU by email.

The present decision is subject to appeal to the Court of Arbitration for Sport, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland, within 21 days upon receipt of the decision, in accordance with Article 24 Paragraph 12 and Article 25 of the ISU Constitution 2010.