

## Case 9 – Presence of Prohibited Substance

### Key Words

*Contamination; Oxilofrine; Article 10.4; No Fault or Negligence; No Significant Fault or Negligence; UCI; Article 295; Dorian Yates Nox Pump; Presence; [Doping](#)*

### Summary

Athlete S was charged with an Article 21.1 and 21.2 Anti-Doping Rule Violation (ADRV) of the Union Cycliste Internationale's (UCI) Anti-Doping Rules following an Adverse Analytical Finding (AAF) for the presence of Oxilofrine. The case was referred to the National Anti-Doping Panel for resolution under the Anti-Doping Rules of the UCI. The Tribunal found that the athlete could rely, in mitigation, on Article 295 (the equivalent of Article 10.4 of the World Anti-Doping Code), and a sanction of six months ineligibility was imposed.

### Background Facts

Athlete S, a cyclist, was charged with an Article 21.1 and 21.2 ADRV following an AAF for the presence of Oxilofrine, a Specified Substance. He admitted the charge, but sought a reduction from the standard sanction under Article 295 (the equivalent of Article 10.4 of the World Anti-Doping Code).

### Reasoning and Decision of Tribunal

Athlete S denied intentionally taking the Specified Substance, and was able to prove to the comfortable satisfaction of the panel that the Specified Substance entered his body through his ingestion of a contaminated batch of 'Dorian Yates Nox Pump', an energy drink that he had been using for around 4 years. He had

obtained independent analysis of another sachet in the same batch which confirmed the presence of Oxilofrine. Athlete S declared that he had taken 'Dorian Yates Nox Pump' on the Doping Control Form (DCF) and he had twice been tested with negative results when using Dorian Yates Nox Pump. He sought an elimination of the period of ineligibility.

UKAD accepted that Athlete S had established how the Specified Substance entered his body, and that Athlete S had established his use of Oxilofrine was not intended to enhance his sport performance, and so applied Article 295.

The Tribunal recognised that he did not have access to the same level of anti-doping advice and education as a full-time professional athlete but found that he could and should have done much more to investigate the product he was taking than he did.

When considering Athlete S's degree of fault for the purposes of sanction under Article 295, the Tribunal took into account that Athlete S; i) did not seek medical advice or carry out his own testing in relation to the Dorian Yates Nox Pump supplement; ii) only carried out very basic enquiries in relation to the product; iii) did not ask fellow cyclists or cycling bodies about the product; and iv) purchased the product from different, unregulated suppliers of unknown reputation.

However the Tribunal also noted that Athlete S; i) declared the use of the supplement openly; ii) tested negative twice before; iii) admitted his guilt promptly following the positive test; iv) accepted his suspension; and v) cooperated with the regulatory authority.

For these reasons the Tribunal imposed a sanction of six months ineligibility and disqualified him from competitions in which he participated before he agreed to a voluntary suspension.

## **Learning Points**

- Where an Athlete seeks to rely upon Article 10.4 (Article 295 UCI), the period of ineligibility will be eliminated entirely in only the most exceptional cases and sanction will be determined by assessing the facts and the fault of the athlete.
- Athletes should be careful about the source of products that they are taking as well as the stated ingredients; as this may well be relevant to issues of fault. Purchases from websites that are unregulated and have no reputation are unwise. All Athletes should be vigilant in informing themselves as to the nature (and legality) of the supplements that they are taking. This might include the need to have independent testing done on the products they use.