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Decision

by

the FIBA Disciplinary Panel established in accordance with
Article 8.1 of the
FIBA Internal Regulations governing Anti-Doping
in the matter

Anthony Weeden
(born 25 July 1983)

hereafter:
(“the Player”)

(Nationality: U.S.A)

Whereas, the Player underwent a doping test organised by the Hellenic NADO on 2 December 2010 in Athens, Greece;

Whereas, the analysis of the Player's sample (No. 1922626A) was conducted at the WADA-accredited Doping Control Laboratory of Athens, Greece (“Laboratory”), and on 17 December 2010 the analysis showed the presence of the prohibited substance Methylhexanamine in the Player’s sample;

Whereas, on 5 January 2011 the One-Member Judicial Panel of the Hellenic Basketball League (“HEBA Judge”) imposed on the Player a suspension of 3 months starting from 2 December 2010;

Whereas, by letter dated 5 February 2011 the Player’s counsel contacted FIBA, explained his position regarding the adverse analytical finding and requested the FIBA Disciplinary Panel to convene a hearing and decide the issue of the Player’s sanction, imposing a sanction shorter than that imposed by the HEBA Judge;

Whereas, by letter dated 2 March 2011 FIBA informed the Player that, in accordance with article 13.7 of the FIBA Internal Regulations governing Anti-Doping (“FIBA ADR”), the FIBA Disciplinary Panel would decide whether and to what extent a sanction should be imposed upon the Player for the purposes of FIBA competitions. In the same letter, the Player was informed about his right to be heard either in person or by telephone conference on 10 March 2011;

Whereas, by mail dated 2 March 2011 the Player informed FIBA that he opted to be heard by telephone conference;

Whereas, on 10 March 2011 the Player – assisted by his counsel Mr. William W. McCandless – was heard via telephone conference by a FIBA Disciplinary Panel composed of Dr. Wolfgang Hilgert, member of FIBA's Legal Commission and of Dr. Heinz Günter, President of FIBA's Medical Commission. Ms. Virginie Alberto, FIBA Anti-Doping Officer, Mr. Amir Ibrahim, FIBA Anti-Doping Assistant as well as Dr. Dirk-Reiner Martens and Mr. Andreas Zagklis, FIBA Legal Advisors, were also in attendance;

Whereas, in his written statement and at the hearing the Player:

- submitted that prior to the doping control he had consumed the supplements GNC Mega Men Dally Multi-Vitamins and Jack 3D Energy. In addition, a few weeks after arriving to Athens he caught a cold and took Vicks NyQuil against cough, sore throat and nasal congestion;

- submitted that at the time of the control he was not aware that any of the above-mentioned supplements contained a prohibited substance and that he had no intention to enhance his performance;
- stated that he has not received any anti-doping education and that his club in Greece had no specialist who could advise him regarding supplements;
- acknowledged that he is responsible for the anti-doping rule violation, expressed his regret for the positive finding and stated that because of the suspension he has lost his contract with the Greek club Maroussi BC (“Greek club”) and is suffering financial hardship;
- asserted that this was his first anti-doping rule violation;

Now, therefore, the Panel takes the following:

DECISION

A period of 6 (six) months' ineligibility, i.e. from 5 January 2011 to 4 July 2011, is imposed on Mr. Anthony Weeden.

Reasons:

1. The Panel shall first deal with the issue of applicable regulations. In compliance with the World Anti-Doping Code (“WADC”) and the FIBA ADR, FIBA has endorsed the WADA 2011 Prohibited List (the “New List”) which has substituted the WADA 2010 Prohibited List (the “Old List”). The New List entered into force on 1 January 2011.
2. Article 16.6 of the FIBA ADR reads as follows:

“16.6 These Anti-Doping Rules shall come into full force and effect on 1 January 2009 (the “Effective Date”). They shall not apply retrospectively to matters pending before the Effective Date; provided, however, that:

16.6.1 Any case pending prior to the Effective Date, or brought after the Effective Date based on an anti-doping rule violation that occurred prior to the Effective Date, shall be governed by the predecessor to these Anti-Doping Rules in force at the time of the anti-doping rule violation, subject to any application of the principle of lex mitior by the hearing panel determining the case.

(emphasis added by the Panel)

Besides this mention in the FIBA ADR and in Article 25 of the WADC, the application of the principle of *lex mitior* in doping cases has also been established by the Court of Arbitration for Sport (“CAS”):

“This principle applies to anti-doping regulations in view of the penal or at the very least disciplinary nature of the penalties that they allow to be imposed. By virtue of this principle, the body responsible for setting the punishment must enable the athlete convicted of doping to benefit from the new provisions assumed to be less severe, even when the events in question occurred before they came into force.”

[CAS Advisory Opinion 94/128 (UCI and CONI), CAS Digest I, p.509]

3. Article 4.4.2 of the FIBA ADR provides:

“4.2.2 Specified Substances

For purposes of the application of Article 10 (Sanctions on Individuals), all Prohibited Substances shall be “Specified Substances” except (a) substances in the classes of anabolic agents and hormones; and (b) those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Prohibited Methods shall not be Specified Substances.”

4. Further, Article 10.4 of the FIBA ADR provides:

“Where a Player or other Person can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the Player’s sport performance or mask the use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the Player or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the

hearing panel the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The Player or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility."

5. It is evident that, although the FIBA ADR have not been amended in 2011, the classification of stimulants into specified or non-specified (as referred to in Article 4.4.2.b of the FIBA ADR) depends exclusively on the prohibited list, as annually updated by WADA. Further, Article 4.4.2 is linked to Article 10.4, which provides that the applicable period of ineligibility for cases where a specified substance was present in a player's body is different (ranging from a reprimand to two years) than the period of ineligibility for non-specified substances (two years). The Panel thus concludes that the New List, as incorporated by the FIBA ADR, clearly qualifies as *lex mitior* since it allows for a sanction of less than two years to be imposed, without seeking recourse to Article 10.5 [No (significant) Fault or Negligence].
6. In the present case, the Player committed an anti-doping rule violation since the prohibited substance Methylhexanamine was found in his urine sample. This fact remained uncontested.
7. The Player's sample was taken on 2 December 2010, when the Old List was still applicable. Under letter S.6 of the Old List, methylhexanamine was a non-specified stimulant. On the other hand, the New List provides:

"All Prohibited Substances shall be considered as "Specified Substances" except Substances in classes S1, S2.1 to S2.5, S.4.4 and S6.a, and Prohibited Methods M1, M2 and M3. [...]"

S6. Stimulants include [...] b: Specified Stimulants [...] methylhexanamine (dimethylpentylamine) [...]"

Consequently, methylhexanamine is considered a specified substance under the New List.

8. In this respect, in application of the general principle of *lex mitior* and of Article 16.6 of the FIBA ADR *mutatis mutandis*, the Panel is of the opinion that the New List shall apply in the present case and methylhexanamine shall be treated as a specified substance.
9. Furthermore, the Panel notes that the Player openly spoke about the supplements he was using, which he had bought in the US, prior to coming to Europe and playing in Greece, and that he had no idea whatsoever regarding the dangers involved in the use of supplements.
10. On the other hand, the Player has played in Europe for approximately 5 seasons and after such period he should have been acquainted with anti-doping warnings regarding supplements. Simply buying an over-the-counter supplement in the US and using it during the season is not a responsible behaviour, even if the Player had checked with his agents and lacked dietary support in his club. The Panel thus finds that the Player did not exercise utmost caution in taking supplements while not being absolutely confident about its ingredients and without ensuring that it does not contain a prohibited substance. A simple internet research would have revealed that the supplement Jack3D contains dimethylamylamine (<http://www.jack-3d.com/ingredients>) and the latter is another name for the prohibited substance methylhexanamine (<http://en.wikipedia.org/wiki/Methylhexanamine>).
11. With respect to the Player's argument that the Greek club was suffering financial trouble and did not offer him the appropriate support, the Panel refers to its decision dated 11 November 2010 in the matter Kikanovic:

"In evaluating the Player's arguments, the Panel considers that the lack of medical and dietary support for players in a top-level professional club is unacceptable: the Player was obliged to purchase, prepare and consume his supplements on his own. Although this is not a mitigating factor, it proved to be important in this case where the prohibited substance was added on the WADA Prohibited List for the first time on 1 January 2010 (i.e. in the middle of the 2009/2010 season) and is mentioned with a name (methylhexanamine) different than the one

commercially used (geranamine). Thus, comparing the WADA 2010 Prohibited List with the ingredients of VPX did not serve the Player at all. However, the Panel considers that a simple internet research would have revealed immediately the connection between geranamine and methylhexaneamine and would have made the Player avoid the use of VPX.”

12. Although the above-mentioned decision referred to a period (2010) where the same prohibited substance was included in the non-specified substances and consequently a sanction of one year was imposed on Mr. Kikanovic, the Panel finds that a similar approach should be taken in the matter at hand where methylhexaneamine (is treated as a specified substance and it) was mentioned on the Jack3D package with a name different than the two names “methylhexaneamine (dimethylpentylamine)” which appear on the WADA Prohibited List.
13. In view of the circumstances of this case, the Panel’s jurisprudence in similar cases (see decision dated 17 February 2011 in the matter Salenga) and the Player’s degree of fault, the Panel decides that it is appropriate to impose a sanction of six (6) months on him.
14. The Panel deems it appropriate pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start on 5 January 2011, date that the HEBA Judge’s decision was issued, since the Player has not participated in any competitions since that date.
15. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached "Notice about Appeals Procedure".

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Geneva, 31 March 2011

On behalf of the FIBA Disciplinary Panel

Dr. Wolfgang Hilgert
President of the Disciplinary Panel