

Background

1. This is the Tribunal's ninth case arising from Medsafe's *NZ Clenbuterol* investigation. Medsafe passed information from the website's database to Drug Free Sport New Zealand (DFSNZ), which investigated the names to see who were registered as members of New Zealand sports organisations and therefore subject to the Sports Anti-Doping Rules (SADR).
2. DFSNZ confirmed a list of customers who were bound by SADR and details of their internet purchases of clenbuterol and other anabolic steroids from *NZ Clenbuterol*. In October 2017 DFSNZ commenced its first batch of proceedings against those who had purchased prohibited substances online.

Proceedings

3. Zane Hopman, the respondent, is an athlete identified in the Medsafe investigation. DFSNZ filed proceedings against Mr Hopman on 18 September 2018 alleging he had breached 2014 SADR 3.2 and 3.6 by his online purchases of testosterone propionate and trenbolone acetate on 8 September 2014 and a further purchase of tamoxifen on 23 October 2014. At the time of the alleged breaches Mr Hopman was a member of New Zealand Muaythai Federation.
4. Mr Hopman was provisionally suspended without opposition on 25 September 2018. On 5 October he filed his Form 2 admitting the violation. On 12 October counsel filed a joint memorandum proposing an appropriate sanction. A copy of the memorandum is annexed.
5. The Tribunal having considered all available material is satisfied it is able to accept the proposed sanction without the need for a hearing and makes the orders proposed. The circumstances here are similar to those in previous cases determined by the Tribunal.

Order

6. Mr Hopman's suspension will be for a period of two years backdated by 12 months to commence from 25 September 2017.

Dated: 15 October 2018



.....
Sir Bruce Robertson
Chairman

Sports Tribunal of New Zealand

ST 15/18

between

DRUG FREE SPORT NEW ZEALAND

Applicant

and

ZANE HOPMAN

Respondent

JOINT MEMORANDUM ONSANCTION

12 October 2018

LeeSalmonLong

Barristers and Solicitors

LEVEL 16 VERO CENTRE 48 SHORTLAND STREET

PO BOX 2026 SHORTLAND STREET AUCKLAND NEW ZEALAND

TELEPHONE 64 9 912 7100 FACSIMILE 64 9 912 7109

EMAIL: isaac.hikaka@lsl.co.nz SOLICITOR ON RECORD: ISAAC HIKAKA

EMAIL: harriel.bush@lsl.co.nz SOLICITOR ACTING: HARRIET BUSH

JOINT MEMORANDUM ON SANCTION

MAY IT PLEASE THE TRIBUNAL

1. On 18 September 2018 the applicant, DFSNZ, filed the above anti-doping rule violation proceeding alleging that Zane Hopman had breached rr 3.2 and 3.6 of the Sports Anti-Doping Rules 2014 (**SADRs**).
2. Mr Hopman has now filed and served his response to the proceedings admitting the violations. The parties have since conferred and reached an agreed position on sanction to present to the Tribunal.
3. In light of the statements filed in this proceeding and other recent Tribunal cases involving athletes who purchased substances from NZ Clenbuterol, the parties jointly submit that the appropriate sanction for **Mr Hopman** for breach of SADRs 3.2 and 3.6 is a **period of two years ineligibility backdated by 12 months from the date of provisional suspension**, being 25 September 2018.

Background

4. On 12 September 2018, DFSNZ notified Mr Hopman that it intended to bring allegations of ADRV against him in the Sports Tribunal. DFSNZ informed him that it had evidence that he had breached rr 3.2 (use or attempted use of a prohibited substance) and 3.6 (possession of a prohibited substance) of the SADR by:
 - (a) On or about 8 September 2014, purchasing 10ml of testosterone propionate and using or attempting to use it at various times from that date;
 - (b) On or about 8 September 2014 purchasing 10 ml of trenbolone acetate and using it or attempting to use it at various times from that date; and
 - (c) On or about 23 October 2014 purchasing 25 x 20mg capsules of Tamoxifen (brand name nolvadex) and using it or attempting to use it at various times from that date.
5. Mr Hopman admitted purchasing the products later the same day, following which the proceedings were filed. Mr Hopman filed Form 2 admitting the violations on 5 October 2018.
6. Trenbolone acetate and testosterone propionate are prohibited at all times as S1 anabolic agents under the Prohibited List 2014. They are non-specified substances, prohibited both in-competition and out-of-competition. Tamoxifen is prohibited at all times as a metabolic modulator. It is a specified substance.
7. Under r 14.2 of the SADRs, the period of ineligibility for breach of rr 3.2 and 3.6 for a violation involving both a specified or a non-specified substance is two years for a first violation.

Period of ineligibility

8. Rule 14.5 provides for the two year period of ineligibility to be reduced where the athlete establishes no fault or negligence, or no significant fault or negligence. In this case, Mr Hopman has filed a statement saying:
 - (a) He never used the products;
 - (b) He was not aware that he was bound by the SADR's; and
 - (c) He has not received anti-doping education.
9. It follows that there is also no evidence that he took any steps to establish whether purchasing the products would breach his obligations.
10. The athlete's level of fault is to be assessed against what a reasonable person acting in accordance with the strict obligations of the SADR's ought to have done to avoid breaching the rules. The Tribunal has noted that the Code places a heavy responsibility on athletes to ensure that they do not breach it.¹ Athletes who do not consider their obligations are unlikely to meet this threshold.
11. The parties are accordingly agreed that there is no basis to reduce the period of ineligibility under r 14.5.

Backdating

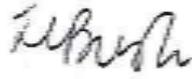
12. The starting point under the SADR's is that the period of ineligibility should start from the date of the final hearing. Any period of provisional suspension shall be credited against the total period of ineligibility served.
13. Under r 14.9.1 the Tribunal may start the period of ineligibility at an earlier date where there have been "substantial delays in the hearing process or other aspects of Doping Control not attributable to the athlete". In decisions involving the Medsafe Clenbuterol investigation, including *DFSNZ v Lachlan Frear* and *DFSNZ v Ware*, the Tribunal has considered that the time it had taken DFSNZ to advance the investigation has resulted in substantial delay for which the athletes were entitled to some allowance.
14. In addition, r 14.9.2 allows the period of ineligibility to be backdated where the athlete promptly admits the violation after being confronted with the violation. As noted, Mr Hopman admitted purchasing the products after being contacted by DFSNZ and subsequently admitted all violations. The parties agree that the Tribunal could properly find that this amounts to a timely admission.
15. In *DFSNZ v Jones*, a recent Sports Tribunal decision involving NZ Clenbuterol, which involved further delay than in *Frear* and *Ware*, the combination of delay and a timely admission led the Sports Tribunal to backdate the period of ineligibility by twelve months.

¹ *Drug Free Sport New Zealand v Frear* ST 07/17 at [34]-[36]. See also *Drug Free Sport v Ware* ST 09/17 at [32].

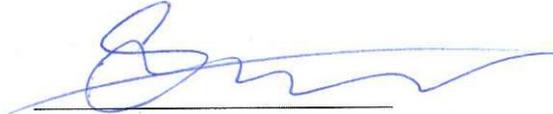
Conclusion

16. For these reasons, the parties respectfully submit that it would be open to, and appropriate for, the Tribunal to impose a period of two years ineligibility backdated by 12 months from the date of preliminary suspension, being 25 September 2018, on Mr Hopman for breaches of rr 3.2 and 3.6 of the SADR.

Dated 12 October 2018



Harriet Bush Counsel for
the Applicant



Sam Fellows Counsel for
the Respondent