TAS / CAS

Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte

ARBITRAL AWARD

Sydney Dorcil, United States of America

v.

International Tennis Integrity Agency (ITIA), United Kingdom

CAS 2023/A/9849 - Lausanne, June 2024

TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2023/A/9849 Sydney Dorcil v. International Tennis Integrity Agency (ITIA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Mario Vigna, Attorney-at-law, Rome, Italy

Arbitrators: Mr. Sofoklis Pilavios, Attorney-at-Law, Athens, Greece
Mr. Anthony Lo Surdo SC, Barrister, Sydney, Australia

in the arbitration between

Sydney Dorcil, United States of America
Represented by Mr. Howard L. Jacobs and Ms. Katlin N. Freeman, Attorneys-at-law, Law Offices of Howard L. Jacob, West Lake Village, California, United States of America

- Appellant -

and

International Tennis Integrity Agency (ITIA), United Kingdom
Represented by Ms. Kendrah Potts, Barrister at 4 New Square Barristers, London, United Kingdom

- Respondent -

TRIBUNAL ARBITRAL DU SPORT
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TRIBUNAL ARBITRAL DEL DEPORTE

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I. THE PARTIES

1. Ms. Sydney Dorcil (the "Athlete" or the "Appellant") is a tennis player from Boca Raton, Florida, United States of America ("USA"), born in 2003. The Athlete has been competing at an elite level since 2019 and her highest Women's Tennis Association ("WTA") ranking is 1255.

2. The International Tennis Integrity Agency (the "ITIA" or the "Respondent") is an independent body established by the international governing bodies of tennis to promote, encourage and safeguard the integrity of professional tennis worldwide. The ITIA oversees the Tennis Anti-Doping Programme ("TADP"), as delegated by the International Tennis Federation ("ITF"), the international sports federation recognised as such by the International Olympic Committee. In accordance with its obligations as a signatory to the World Anti-Doping Code (the "WADC") of the World Anti-Doping Agency ("WADA"), the ITF issued the 2022 TADP.

3. The Appellant and the Respondent are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as submitted by the Parties in their written pleadings and adduced at the hearing. Additional facts and allegations found in the Parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has thoroughly considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 24 October 2022, the Athlete went along with her mother and sister to the '[redacted]' facility in [redacted] USA. On that same date and at the same facility, the Athlete received a single injection of Vitamin B-12 plus lipotropic (amino acids) ("B-12 injection")

6. Between 14 and 20 November 2022, the Athlete participated in the ITF World Tennis Tour W15 event in Lima, Peru.

7. On 15 November 2022, the Athlete was selected for an "In-Competition" testing for which she provided a urine sample, which was then split into an A sample and B sample sealed in tamper-evident bottles and transported to the WADA-accredited laboratory in Montreal, Canada (the "Laboratory") for analysis.

8. On 10 January 2023, the ITIA notified the Athlete that she had potentially committed Anti-Doping Rule Violations ("ADRVs") under Articles 2.1 and/or 2.2 of the 2022 TADP as her A sample reported an Adverse Analytical Finding for Boldenone and its metabolite, which is a prohibited substance in the category of Anabolic Agents (section S1 of the 2022 WADA Prohibited List). Boldenone is a non-Specified non-threshold

substance prohibited at all times. The Laboratory's report confirmed that the results were consistent with the exogenous origin of Boldenone and its metabolite. The estimated concentration of Boldenone and its metabolite in the A sample was 26.8 ng/mL and 2.7 ng/mL, respectively.

9. On the same date, the ITIA provisionally suspended the Athlete, pursuant to Article 7.12.1 of the TADP, with effect from 10 January 2023. She was also notified that her B sample would be tested to confirm the presence of Boldenone.

10. The Athlete did not comply with the provisional suspension and competed at the ITF tournament in Martinique, France on 11 and 12 January 2023.

11. On 24 January 2023, the ITIA notified the Appellant that the B sample (B1118455) was analysed. The Laboratory found that the B sample also contained Boldenone and its metabolite, thereby confirming the results of the A sample.

12. On 30 January 2023, the ITIA notified the Athlete that she was charged with ADRVs under Articles 2.1 and 2.2 of the TADP.

III. THE PROCEEDINGS BEFORE THE ITIA INDEPENDENT TRIBUNAL

13. On 16 June 2023, a remote hearing before the ITIA Independent Tribunal took place.

14. On 6 July 2023, the ITIA Independent Tribunal rendered a Decision (the "Appealed Decision").

15. The operative part of the Appealed Decision reads as follows:

"*116. The Panel orders that:*

a. The Player is suspended for a period of four (4) years. The period of Provisional Suspension, effective from 13 January 2023 is credited against the period of Ineligibility imposed in this decision. Therefore, the Player will be ineligible from 13 January 2023 until 23:59 on 12 January 2027.

b. That her results be disqualified from matches played on 14, 15, 22-23, 25 and 30 November 2022 and 11 and 12 January 2023.

c. While serving a period of Ineligibility, the Player may not participate in any capacity in any covered event, event, competition or activity (other than authorised anti-doping education or rehabilitation programs) authorised, organised, sanctioned by the ITF, the WTA, any National Association or member of a National Association, or any Signatory, Signatory's member organisation, or club or member organisation of that Signatory's member organisation; any event or competition authorised or organised by any professional league or any international or national-level event or competition organisation; or any elite or national-level sporting activity funded by a governmental agency (Article 10.14.1

of the TADP).

d. If the Player breaches the prohibition against participation during Ineligibility, any results she obtains during such participation will be disqualified and a new period of [sic]

e. Ineligibility equal in length up to the original period of Ineligibility will be added to the end of the original period of Ineligibility (Article 10.14.7 of the TADP)".

16. In reaching its conclusion, the ITIA Independent Tribunal held, *inter alia*, as follows:

- On Proof of source:

  - "*Firstly, we find the Player's account of receiving sufficient boldenone through an injection with vitamin B12 on 24 October 2022 to be highly improbable due to the properties of the substance and what is known (even with appropriate caveats as to the extent of that data) as to the mechanism of absorption and metabolization* […]".

  - "*Secondly, even if (which we find highly unlikely) there was such a contamination of the syringe on 24 October 2022, we find it highly unlikely that neither the person administering it, nor Mrs Dorcil would have noticed anything awry. This is because of the amount of boldenone undecylenate which would need have been in that syringe to subsequently produce a concentration of almost 30ng/ml in the Player's urine sample would have needed to have been substantial. Furthermore, the underlying physical and chemical properties of B12 and boldenone undecylenate would have resulted in a two phase solution, in which a visible amount of a yellowish substance would have been combined with a red solution, which would have been highly likely to have been visible* […]".

  - "*Thirdly, the evidence relating to the* [redacted] *and the* [redacted] *facility does not, in our view, come close to surmounting the evidential burden required to demonstrate that it was the source of the boldenone in the injection on 24 October 2022. Mr Jacobs candidly accepted that this evidence could not, by itself, establish this. He asked that we take into account that the evidence presented, is, in his words, as much as can be compiled without subpoena power along with the other factors* […]".

  - "*Fourthly, the evidence relied on as to the source of the injection used by* [redacted] *having come from the* [redacted] *at all rests only on a call between Dr Dorcil and an unnamed person at* [redacted] *who said the pharmacy used them, but not what for. In the same call, Dr Dorcil accepts he did not ask them to check their records for B12 injections being delivered in October 2022, nor to identify in their records the injection given to his daughter. Whilst it is understandable that Dr Dorcil might, following his investigations, have serious doubts as to whether* [redacted] *might tell the truth by telephone, in evidence he identified no basis for having suspicions about*

whether [redacted] *would not tell the truth. Indeed, Mrs Dorcil gave evidence as to why she (and indeed her local Pastor) trusted them*".

- "*Fifthly, the evidence of* [redacted] *does not take us very far. He notably does not say that there is any veterinary product which combines B12 and boldenone, only that he can 'rationalise' that it might be helpful if one exists. Moreover, the evidential burden is on the Player. If she wished to put any further reliance in* [redacted] *she should have called him. Mr Jacobs said that the ITIA did not ask to cross examine him, but that is not necessary if, as is the case here, the ITIA do not contest his evidence so far as it goes. It does not go sufficiently far, even if wholly accepted*".

- "*Sixthly, we do not wholly believe the evidence of the Player to us. In particular (but not exhaustively), we are concerned by the inconsistencies between her evidence orally and in her statement* [...]".

- "*We have additionally taken into account both the polygraph and Ms Dorcil's evidence as to the polygraph in the manner set out at paragraph 51 above. On this issue we found the Player's own evidence on the polygraph somewhat unexpected given the way reliance was placed on it. When asked about the polygraph examination her answer stressed how 'easy' the process had been and that 'it was good... I was calm and relaxed the whole time.' She accepted that had known she would be asked whether she had intentionally taken boldenone. The answer she gave in her oral evidence suggested that she knew the importance, in terms of what that test would record as indicators of truth, of being calm and relaxed and was proud of her performance during the test. Taken together with her other evidence, while we have considered the polygraph on this basis, we do not consider that the test done in this case materially assists her. Even if, however, we were to have found it indicative of her truthful account to the questioner during that test, that would have been outweighed by the other evidence considered above* [...]".

- "*So, turning back to the factors listed by Mr Jacobs:*

  a. *The Player's evidence. We were invited to believe her, but we do not wholly believe her evidence. We did not find her a wholly credible witness.*

  b. *The Player's parents' evidence and that they believed her and also delivered their own truthful evidence. Evidence of another's belief in a persons' truthfulness is not evidence that the person has told the truth.*

  c. *The polygraph test. We have considered this so far as it goes, but this is outbalanced by Ms Dorcil's oral evidence about it and the other factors.*

  d. *That no other potential route canvassed in questions or otherwise (meat contamination, contamination of the ibuprofen taken in Peru, some other*

drug being present in the tub other than ibuprofen, some other supplement) got close to the 51% and was less likely than contamination of the B12. We do not accept that no other route is more likely than not than the B12 injection to have led to the ingestion of boldenone. Looking at the result by itself in isolation, that result is more consistent with oral ingestion in tablet form a small number of days before the event. It is not for us to have to determine what the most likely route of ingestion is. The existence of a more likely route is a factor we can take into account when assessing the Player's evidence as a whole as to whether she has proved the route.

e. *Mr Jacobs invited us to take into account the evidence regarding the* [redacted] *but we do not accept that assists for the reasons set out above.*

f. *Mr Jacobs asked us to conclude that it was inherently unlikely that either Ms Dorcil or her father had brought boldenone to Peru or ventured out in Peru to buy the substance. We make it clear that we do not believe on the evidence presented to us that Dr Dorcil transported or supplied the substance. We do not need to find how it could have entered the Player's system, whether she transported it, whether any of her pro girl mates supplied it or whether she obtained it through other means. The TADP places the burden on the Player to show the source.*

g. *We consider Professor Ayotte to have been truthful and fair as a witness. Any assessment of an Athlete's account of how the substance entered her will necessarily involve the making of assumptions as to how this could have occurred and what conditions, given the known properties, would need to have been present. Professor Ayotte was clear about what in her evidence was assumption and what was primary evidence. Her evidence as to the appearance and miscibility of the boldenone undecylenate and B12 was clearly both based on literature and primary evidence of observation.*

h. *Professor Ayotte entirely correctly did not give evidence about the* [redacted] *as indeed that would fall outside of her expertise. Therefore, the Player's submission (that we should not take into account Professor Ayotte's evidence when weighing the evidence about the* [redacted] *does not assist her".*

➢ *"Therefore, we find that the Player has not proved the source of the boldenone found in her urine on 15 November 2022".*

- <u>On lack of intention without proof of source:</u>

➢ *"The Player also sought to establish lack of intention without proving source, as an alternative submission. Her submissions on this were based mainly on case law (especially the* ***Jack*** *and* ***Schoeman*** *judgments), and the credibility*

of her own evidence. Many of the factors relied on have also been considered above in our reasoning in relation to proof of source [...]".

- "*None of these cases have identical facts to the present and, as in the* ***Schoeman*** *case we have approached the exercise both by looking at the objective factors and the subjective factors, but not conducting an identical analysis to that in the case of CAS 2013/A/3327* ***Cilic****, because that considered a different issue*".

- "*As to the subjective factors, in none of the cases where this defence has succeeded has the Panel disbelieved any aspect of the athlete's evidence. In all cases the athlete gave a favourable impression and they were believed. This factor, by itself, is sufficient to mean that this route of demonstrating lack of intention is not available to the Player*".

- "*The Panel further noted that the Player did not keep the name of the supplements, the brand names and batch numbers, despite being aware of the ITIA's website indicating that this is the most important information to keep on file* [...]".

- "*The Player did not submit to any subsequent urine test or hair analysis after learning of the positive result. It is unclear what the private investigator (who was not called) did for the Player except for his one discussion with an* [redacted] *representative*".

- "*The Panel did not find the submissions on the 2016 Complaint, the FDA Warnings and the 2022 Report particularly helpful because they do not come close to establishing that* [redacted] *compounded boldenone at all or whether there was ever any contamination of injection vials found. The Player also asked the Panel to consider that four people who were previously accused of the illegal sale of steroids and related drugs for non-therapeutic purposes in 2006 and 2007 are now connected to* [redacted] *There is a considerable leap from individuals who pled guilty to a felony count of a controlled substance approximately 15 years ago who now hold various roles within* [redacted] *to* [redacted] *being the source of boldenone in the injection. The Panel relies on Professor Ayotte's testimony, including that mixing boldenone undecylenate with vitamin B12 is "extremely unlikely" and the Player's failure to establish that* [redacted] *had boldenone on its premises*"

- "*The Player's case is further distinguishable from case law cited by the Parties as follows:*

  a. In the ***Jack*** *decision, the prohibited substance in the athlete's system was ligandrol, which is highly communicable, so the athlete could have been exposed in many ways, including a public pool or gym. The hearing panel in* ***Jack*** *took this into account. Boldenone, however, is not highly communicable and is not permitted for human use. Furthermore, in* ***Jack****,*

the athlete had been tested many times, including around the time of sample collection. All of these test results were negative. The urine test at the Event was the first and only urine test that the Player has had.

*b. In the **Schoeman** decision, the hearing panel took the following factors into consideration: the athlete had undertaken tests immediately preceding and after the doping test that led to the AAF, all of which were negative; there was a considerable delay in notifying the athlete of his AAF, which the Panel considered may have hindered his efforts to identify the source; and the athlete made extensive efforts to identify the source, including testing 31 supplements. None of these objective factors are present in the Player's case.*

*c. In the **Ademi** decision, the athlete had a small concentration of the prohibited substance, stanozolol in his system. The hearing panel considered that the supplement, Megamin, that the athlete took could have been the source of the Prohibited Substance. The container of Megamin had four yellow and 17 white capsules. The laboratory found that the none of the yellow capsules had stanozolol whereas stanozolol was detected in the white capsules. The laboratory, however, remarked, that "[t]he test results of the white capsules could not be verified by the analysis of an originally packed and sealed and independently obtained product." The laboratory pulled apart the yellow and white capsules to compare the consistency of the powder in them. Both had the same consistency. Although the laboratory results were inconclusive, the hearing panel considered that it would have been a "complex plan" for the athlete to manipulate the supplements so that they had the same consistency. None of these objective factors are present in the Player's case*".

- As for the polygraph, the ITIA Independent Tribunal referenced the same considerations made before.

- "*Therefore, we find that the Player comes nowhere near close to establishing a lack of intention (without establishing proof of source)*".

17. Also on 6 July 2024, the Appealed Decision with grounds was notified to the Athlete.

IV. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 26 July 2023, the Appellant filed a Statement of Appeal challenging the Appealed Decision before the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 *et seq.* of the CAS Code of Sport-related Arbitration (2023 edition) (the "CAS Code"). In her Statement of Appeal, the Appellant requested that the arbitration be conducted in English and nominated Mr. Sofoklis Pilavios, Attorney-at-Law in Athens, Greece, as arbitrator.

19. On 2 August 2023, the CAS Court Office acknowledged receipt of the Appellant's

Statement of Appeal.

20. On 9 August 2023, the Respondent nominated Mr. Anthony Lo Surdo SC, Barrister in Sydney, Australia, as arbitrator.

21. On 29 August 2023, the CAS Court Office notified the Parties of the appointment of Mr. Mario Vigna, Attorney-at-law in Rome, Italy, as President of the Panel.

22. On 5 October 2023, the Appellant filed her Appeal Brief in accordance with Article R51 of the CAS Code and with extensions granted by the CAS Court Office.

23. On 6 November 2023, the Respondent filed its Answer in accordance with Article R55 of the CAS Code and with an extension granted by the CAS Court Office.

24. On 8 November 2023, the CAS Court Office, on behalf of the President of the CAS Appeal Arbitration Division, and pursuant to Article R54 of the CAS Code confirmed that the Panel appointed to decide the appeal would be constituted as follows:

President:	Mr. Mario Vigna, Attorney-at-law, Rome, Italy
Arbitrators:	Mr. Sofoklis Pilavios, Attorney-at-Law, Athens, Greece
	Mr. Anthony Lo Surdo SC, Barrister, Sydney, Australia

25. On 13 December 2023, on behalf of the President of the Panel, the CAS Court Office issued the Order of Procedure, which the Parties both signed and returned on 29 December 2023.

26. On 15 and 16 February 2024, a hearing was held by videoconference. In attendance at the hearing were:

- the Panel, assisted by Dr. Björn Hessert (Counsel to the CAS);
- on behalf of the Appellant:
  - Ms. Sydney Dorcil, (Appellant - in attendance only on day 2)
  - Mr. Howard Jacobs (Counsel)
  - Dr. Job Dorcil (Witness - in attendance only on day 1)
  - Mrs. Tamaala Dorcil (Witness - in attendance only on day 1)
- for the Respondent:
  - Ms. Kendrah Potts (Counsel)
  - Prof. Cristiane Ayotte (Expert - in attendance only on day 1)
  - Mrs. Katy Stirling (ITIA Legal - Observer)
  - Mr. Ben Rutherford (ITIA Legal - Observer)
  - Dr. Stuart Miller (ITF - Observer).

27. On the first day of the hearing, after opening statements, both counsel were allowed to

conduct the examination and cross-examination of the witnesses for the Appellant (the Athlete's parents) and the expert witness for the Respondent. On the second day of the hearing, the Athlete testified and was cross-examined by the Respondent. The Parties also offered their closing statements.

28. At the end of the hearing, the Parties acknowledged they were satisfied with how the arbitration proceeding had been conducted and confirmed that the Panel had respected their rights to be heard.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. THE APPELLANT

29. The Appellant requests the following in her prayers for relief:

"*8.1.1 Declare that Appellant's Appeal should be upheld;*

8.1.2 Declare that the period of Ineligibility issued by the ITIA Independent Tribunal should be reduced to a period not exceeding two years.

8.1.3 That Respondent shall bear all costs of the proceedings including a contribution toward Appellant's legal costs.".

30. In support of her request for relief, the Appellant, in essence, submits the following arguments:

(a) the Appellant accepts that Boldenone was detected in her system. At issue is not whether she committed an ADRV, but only what is the appropriate sanction;

(b) the possible source of Boldenone found in her system is the contamination of her 24 October 2022 B-12 injection at "[redacted] (the "B-12 Injection"). However, despite her best efforts (through investigations conducted by her father, Dr. Job Dorcil, and several retained private investigators), she has been unable to establish the source. The Appellant therefore accepts source remains unproven and, accordingly, does not claim No Fault or Negligence or No Significant Fault or Negligence to reduce her sanction. Nevertheless, the Appellant requests a reduction in her period of Ineligibility based on Article 10.2.1 of the TADP. The Appellant believes that she has proven a lack of intent without proving source and that, accordingly, her period of Ineligibility should be reduced to 2 years;

(c) the Appellant submits that she took the following steps in attempting to establish source:

- the Appellant excluded meat and supplement contamination because the concentration of Boldenone and its metabolite in the Appellant's sample is inconsistent with meat contamination and the supplements she used prior to the 15 November 2022 sample collection were not "high risk" for contamination (not to mention that she had not taken any of these supplements during the approximately one week she spent in Peru prior to the test);

- the Appellant focused her investigation on the 24 October 2022 B-12 injection;
- the Appellant's father (Dr. Dorcil, who is an orthopaedic surgeon) contacted [redacted] to inquire about the source of their products. An unidentified individual at the lab reportedly referred to the [redacted] ("[redacted] located in Orlando, Florida, USA, as the source;
- Dr. Dorcil then contacted [redacted] who informed him on or about 2 February 2023 that [redacted] "*make supplements for human use and sometimes veterinarians will call us and buy them from us*;"
- the Appellant obtained a statement from [redacted], owner of [redacted], who declared that Boldenone and Vitamin B-12 could be compounded: "*It can be rationalized that the use of the two products* [Boldenone and Vitamin B-12] *combined would be utilized and helpful in assisting with equine patients that struggle with muscle tone and weight gain as both are injectable and combination of the two would help the condition and be easier than administering two injections*";
- following Dr. Dorcil's conversation with [redacted] referred to above, the Appellant retained a private investigator, Mr. Patrick Roberts of Blue Line Investigations, to investigate the matter further. Mr. Roberts reached out by phone to [redacted] in an attempt to verify whether veterinary medications, including Boldenone, are compounded on the premises. [redacted] denied that such compounding occurred;
- the Appellant discovered through research that:
  (i) [redacted] is identified in a Bloomberg profile and a 2016 Florida state civil complaint as "*a pharmacy that engages in compounding medications, including those sold in the animal pharmaceutical industry.*";
  (ii) [redacted] has been subject to several warnings from the Food and Drug Administration ("FDA") for "*serious deficiencies in your practices for producing sterile drug products, which put patients at risk*" and for "*producing drugs that violate the FDCA*". Indeed, as recently as March of 2022, an FDA Investigation Report concluded that the [redacted] had failed to submit accurate reports to the FDA identifying the drugs compounded during the previous six months;
  (iii) certain individuals currently associated with [redacted] were implicated in a widely publicized 2007 steroid distribution scandal. The charges against them included criminal diversion of prescription medications and criminal sale of a controlled substance and insurance fraud;
- the Appellant underwent and passed a polygraph test where she denied the use of "performance enhancers" and Boldenone;
- following the hearing before the ITIA Independent Tribunal, the Appellant

commissioned another private investigator on or about September 2023, Mr. Eric Nathan of Nathan's Investigations, to verify whether veterinary drugs were compounded at [redacted] Mr. Nathan went to [redacted] and spoke with an employee who informed him that [redacted] does not compound veterinary medications;

- The Appellant spent a total of $5,951.64 on her investigation into the source (for the private investigators and the polygraph examination);

(d) under Article 10.2 of the TADP, the default sanction for an ADRV is four years, unless the Appellant can prove – on a balance of probability – that her ADRV was not intentional. In the present case, the Appellant did prove a lack of intentionality. Like the athletes in the CAS cases *Schoeman*, *Jack* and *Ademi*, the Appellant made considerable efforts to identify the source of her positive test and was credible and sincere that she did not intentionally use a banned substance (CAS 2020/A/7579 & 7580 *WADA & SIA v. Shayna Jack & Swimming Australia*, CAS 2020/A/7083*WADA v. Schoeman*, and CAS 2016/A/4676 *Ademi v. UEFA*);

(e) there is no need to establish a source in order to establish a lack of intention. Indeed, according to CAS jurisprudence, an Athlete may prove an unintentional violation of the anti-doping rules without establishing the source of the substance (*Idem*; see also CAS 2016/A/4534*Villanueva v. FINA*);

(f) although the Appellant has admittedly not identified the source of Boldenone, she has established, based on the totality of the facts and circumstance and a polygraph test, a non-intentional violation (see full list *infra* at para. 67);

(g) as the Appellant has shown on a balance of probability that she did not intentionally commit an ADRV, the default or starting sanction (subject to possible further reduction) should be two years; and

(h) alternatively, even if the Panel were to find that the Appellant did not prove a lack of intention to commit the ADRV, the period of Ineligibility should still be reduced on grounds of proportionality. A sanction longer than two years would be disproportionate since it would not be in line with her full cooperation in the adjudicatory process and her efforts in trying to prove the unintentionality of the ADRVs.

B. THE RESPONDENT

31. In its conclusion and relief sought, the ITIA requests the Panel to:

> *"a. Dismiss the Player's appeal and uphold the Decision;*
> *b. Order the Player to pay the costs of the arbitration;*
> *c. Order the Player to pay a contribution to the legal costs of the ITIA".*

32. In support of its request for relief, the Respondent, in essence, submits the following arguments:

(a) it is true that one may establish on the balance of probability that an athlete did not

intentionally commit an ADRV even if he/she is unable to establish the source of the prohibited substance. Nonetheless, this is acceptable only in rare circumstances (see e.g. CAS 2017/A/5016 & 5036 *Abdelrahman v WADA & Egyptian Anti-Doping Agency* and CAS 2020/A/6978 & 7068 *Iannone v FIM*). The present case is not one of the 'rare' or 'exceptional' cases in which the Panel should accept the Athlete's established lack of intent without proving source because *inter alia*:

(i) there is no evidence to support even the "possibility" that the B-12 Injection was the source of the Boldenone in the Athlete's system. Indeed:

- there is no evidence that [redacted] actually prepared the B-12 Injection. Nor is there a good reason why evidence as to where the injection was prepared is not available. As confirmed by Prof. Ayotte, the lot preparation number should be marked on the injection; therefore, as with a supplement, it would be possible to use the serial number to identify where the injection was prepared. However, there is no evidence that the Athlete made any effort to obtain the serial number to assist her investigations with respect to where the injection was, in fact, prepared. The only evidence offered in this regard is the testimony of the Appellant's father, Dr. Dorcil, who claims an unidentified employee from [redacted] affirmed that the lab sources products from [redacted] This employee's testimony is not only hearsay, but also does not confirm that the injection was, in fact, prepared at [redacted] as there is no evidence that [redacted] sources all of its products from [redacted] nor any evidence that this specific injection was sourced there.

- there is no evidence that, even if the B-12 Injection was prepared at [redacted] Boldenone was present at [redacted] premises. It is common ground that Boldenone is not authorized for use in products intended for human use. For this reason, the Appellant has resorted to arguing that [redacted] compounded veterinary medications, including products containing Boldenone. However, the Athlete's evidence does not establish either that Boldenone was present at [redacted] or that veterinary products containing Boldenone were compounded at [redacted] premises. On the contrary, the evidence points to the fact that [redacted] was not compounding any veterinary products (in particular, the private investigators hired by the Athlete, Messrs. Roberts and Nathan, who were each informed directly by [redacted] that [redacted] does not compound veterinary products).

- the evidence from [redacted] regarding the possibility of Boldenone and Vitamin B-12 being mixed is irrelevant since the Appellant has not shown that Boldenone was even present at [redacted] to support the theory of possible contamination.

- as confirmed by Prof. Ayotte, the level of Boldenone in the Athlete's sample is not consistent with contamination but rather with the intake of a full dose;

(ii) the fact that Boldenone is not permitted in food or medicines other than veterinary products is a factor against the Athlete, as it means that the possibility of the Athlete ingesting it unintentionally is very low;

(iii) the Athlete's account that she uses limited supplements and scrutinizes them before use does not assist her in this case given that she made no checks on [redacted] before taking the B-12 Injection. According to the Athlete, there is a real risk that [redacted] which she claims compounds products for [redacted] does not have the best practices in place. If the Athlete had done adequate checks in advance of taking the injection, she would have identified the risks and could easily have avoided them by taking Vitamin B-12 orally.

(iv) the fact that the Athlete tried to identify the source should carry no weight given that all athletes protesting their innocence make some effort to identify the source, and the steps the Athlete took were limited. There is no evidence regarding efforts to trace the lot preparation number for the B-12 Injection and the investigations appear to be limited to a call and visit to [redacted] to ask if they compound veterinary products. Whilst athletes should not be expected to spend money on investigations for the sake of it, the investigation costs in this case (of $5,951.64) are not considerable; and

(v) the polygraph examination does not establish the Athlete's innocence as it is of limited evidentiary value (see e.g. CAS 2016/A/4534 and CAS 99/A/246);

(b) as to the requested reduction of the period of ineligibility on grounds of proportionality, first of all, the CAS has extremely limited scope to reduce a sanction based on proportionality (since the WADC is structured in such a way that it already reflects proportionality and gives the flexibility to consider fault). Secondly, a reduction based on proportionality is only warranted under exceptional circumstances, which do not exist in the present case; and

(c) since the Athlete has failed to establish that the ADRVs were not intentional, she must be sanctioned with four years of Ineligibility and disqualified from tennis matches played on 14, 15, 22-23, 25 and 30 November 2022 and 11 and 12 January 2023, with the consequent loss of ranking points and prize money.

VI. JURISDICTION

33. Pursuant to Article R47 para. 1 of the CAS Code, "[a]*n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body*".

34. Under Article 13.2.1 of the TADP, "*Appeals involving Covered Events or Players who are International-Level Players: In cases arising from participation in a Covered Event*

or in cases involving International-Level Players, the decision may be appealed exclusively to CAS as conferring jurisdiction on the CAS".

35. The ITF World Tennis Tour W15 event in Lima, Peru, falls into the definition of "Covered Event" as provided for in the TADP.

36. Also, the Parties did not dispute the jurisdiction of the CAS and confirmed it by signing the Order of Procedure.

37. It follows that the CAS has jurisdiction to decide the present dispute.

VII. ADMISSIBILITY

38. Article R49 of the CAS Code provides as follows:

"*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against...*".

39. Article 13.8.1 of the TADP provides as follows:

"*Appeals to CAS:*

13.8.1.1
The deadline for filing an appeal to the CAS will be 21 days from the date of receipt of the reasoned decision in question by the appealing party. Where the appellant is a party other than the ITIA, to be a valid filing under this Article 13.8.1 a copy of the appeal must be filed on the same day with the ITIA...".

40. It follows from the above that the grounds of the Appealed Decision were communicated to the Appellant on 6 July 2023. The Appellant filed her Statement of Appeal on 26 July 2023, i.e. within the prescribed deadline of 21 days.

41. However, the Statement of Appeal did not initially comply with all other requirements of Article R48 of the CAS Code, as it did not state the name and full address of the Respondent. For this reason, on 28 July 2023, the CAS Court Office, pursuant to Article 48 para. 3 of the CAS Code, granted the Appellant a short deadline of 3 days to complete her Statement of Appeal.

42. The Appellant completed her Statement of Appeal on 30 July 2023 and therefore within the deadline provided for by the CAS Court Office.

43. Therefore, it follows that the Appellant's Appeal is admissible

VIII. APPLICABLE LAW

44. Article R58 of the CAS Code provides as follows:

> "*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision*".

45. Article 1.2 of the TADP provides as follows:

> "*This Programme applies to:*
> [...] *1.2.6 the following Players, Player Support Personnel, and other Persons:*
> [...]*1.2.6.2 all Players entered in or participating in such capacity in Events, Competitions, and/or other activities organised, convened, authorised or recognised by the ITF or any National Association or any member or affiliate organisation of any National Association, wherever held, and all Player Support Personnel supporting such Players' participation* [...]".

46. According to Article 1.5.1 of the TADP, the 2022 version of it applies to all cases where the alleged ADRV occurred after it entered into force, i.e. 1 January 2022. In the case at hand, the sample collection occurred on 15 November 2022, hence the 2022 version of the TADP applies. Subsidiarily, according to Articles 1.1.4 and 1.1.5 of the TADP, English law will apply should the need arise to fill a lacuna in the TADP.

IX. MERITS

47. In the first instance proceeding before the ITIA Independent Tribunal, the Athlete sought to establish that the source of Boldenone was contamination of the B-12 Injection taken at [redacted] on 24 October 2022 and, alternatively, if source was not deemed established, that she lacked intent to commit the ADRV.

48. In the present proceeding, the Athlete accepted that she cannot establish the source of the Boldenone in her system and, accordingly, does not request a finding of No Fault or Negligence or No Significant Fault or Negligence and a reduction in her sanction below two years on those grounds. The Athlete only asks the Panel to find that she has established lack of intent without proving source and, accordingly, to have her period of Ineligibility reduced from four to two years pursuant to Article 10.2.1.1 of the TADP.

49. The Panel must therefore determine whether the Athlete, despite admittedly being unable to establish the source of the Boldenone in her system, has proven, on a balance of probability, that she did not intentionally commit the alleged ADRVs. The Panel must then determine what is the applicable sanction.

A. THE ANTI-DOPING RULE VIOLATIONS

i. Criteria and Standard and Burden of Proof under Article 10.2.1 the TADP

50. Article 2.1.1 of the TADP stipulates: "*It is each Player's personal duty to ensure that no Prohibited Substances enters their body. Players are responsible for any Prohibited Substance or any of its Metabolites or Markers to be present in their Samples. Accordingly, it is not necessary to demonstrate intent, Fault, Negligence or knowing Use on the Player's part in order to establish an Article 2.1 Anti-Doping Rule Violation; nor is the Player's lack of intent, Fault, Negligence or knowledge a defence to an assertion that an Article 2.1 Anti-Doping Rule Violation has been committed*". In this case, the presence of Boldenone and its metabolite in the Athlete's system was established by analysis of the Athlete's A and B samples.

51. Article 2.2.1 of the TADP provides that "*It is each Player's personal duty to ensure that no Prohibited Substance enters their body and that no Prohibited Method is Used. Accordingly, it is not necessary to demonstrate intent, Fault, Negligence, or knowing Use on the Player's part in order to establish an Anti-Doping Rule Violation for Use of a Prohibited Substance or a Prohibited Method under Article 2.2; nor is the Player's lack of intent, Fault, Negligence or knowledge a defence to a charge that an Anti-Doping Rule Violation of Use has been committed under Article 2.2*".

52. According to Article 10.2.1.1 of the TADP, the period of Ineligibility for a breach of Article 2.1 and 2.2 is four years "*where the Anti-Doping Rule Violation does not involve a Specified Substance or a Specified Method, unless the Player or other Person establishes that the Anti-Doping Rule Violation was not intentional*". The term "intentional", as used in Article 10.2.1.1 of the TADP, is "*meant to identify those Players or other Persons 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*" (see Article 10.2.3 of the TADP).

53. Pursuant to Article 3.1.2 of the TADP, "*[w]here this Programme places the burden of proof on the Player or other Person alleged to have committed an Anti-Doping Rule Violation to rebut a presumption or establish specified facts or circumstances, then except as provided in Articles 3.2.4 and 3.2.5 the standard of proof will be by a balance of probability*".

54. Based on the aforementioned provisions, it is therefore for the Athlete to demonstrate – by a balance of probability pursuant to Article 3.1.2 of the TADP – that the ADRV was not intentional – meaning that she did not engage in conduct that she knew constituted an ADRV or that she knew came with a significant risk that it might constitute an ADRV. If the Athlete is successful in demonstrating a lack of intention, then the period of Ineligibility would be two years, pursuant to 10.2.2 of the TADP, which reads "*[i]f Article 10.2.1 does not apply, then (subject to Article 10.2.4.1) the period of Ineligibility will be two years*".

55. The Panel observes that under the definitions of "No Fault or Negligence" and "No Significant Fault or Negligence", Articles 10.5 and 10.6 of the TADP explicitly require the Athlete to establish the source of the prohibited substance to benefit from an elimination or reduction of the otherwise applicable substance. Indeed, in both the definition of No Fault or Negligence and No Significant Fault or Negligence, it is stated that "*the Player must also establish how the Prohibited Substance entered their system*". As previously mentioned, however, the Athlete accepts that she has not proven and cannot prove the source of the Boldenone in her system to the standard of balance of probabilities and, accordingly, does not request a reduction based on No Fault or Negligence of No Significant Fault or Negligence, as she initially had before the ITIA Independent Tribunal.

56. The Athlete only requests a reduction of ineligibility based on Article 10.2.1 of the TADP. The Panel recognizes that for the Athlete to discharge her burden of lack of intent and obtain a reduction under the said provision, she is not necessarily required to establish the source of the prohibited substance. However, according to well-established CAS jurisprudence, a reduction of the period of Ineligibility based on lack of intent without proving the source of the prohibited substance is available in exceptional circumstances and in "extremely rare" cases where the Athlete passes through the "narrowest of corridors" of discharging the burden of proof weighing upon him or her (see e.g. CAS 2017/A/5016 & CAS 2017/A/5036 and CAS 2016/A/4534).

57. For an athlete to prove lack of intent without proving source, the Panel considers that the Athlete must adduce concrete and persuasive evidence establishing, on the balance of probability, a lack of intent and cannot simply rely on protestations of innocence and mere speculation as to what could have happened (see CAS 2020/A/6978 & CAS 2020/A/7068, CAS 2017/A/5369, CAS 2016/A/4919, CAS 2016/A/4676, and CAS 2017/A/5335). For instance, the CAS panel in CAS 2017/A/5016 & CAS 2017/A/5036 held at para. 125:

> "*In this context, therefore, it is this Panel's opinion that, in order to disprove intent, an athlete may not merely speculate as to the possible existence of a number of conceivable explanations for the AAF (such as sabotage, manipulation, contamination, pollution, accidental use, etc.) and then further speculate as to which appears the most likely of those possibilities to conclude that such possibility excludes intent. There is in fact a wealth of CAS jurisprudence stating that a protestation of innocence, the lack of sporting incentive to dope, or mere speculation by an athlete as to what may have happened does not satisfy the required standard of proof (balance of probability) and that the mere allegation of a possible occurrence of a fact cannot amount to a demonstration that that fact did actually occur (CAS 2010/A/2268; CAS 2014/A/3820): unverified hypotheses are not sufficient (CAS 99/A/234-235). Instead, the CAS has been clear that an athlete has a stringent requirement to offer persuasive evidence that the explanation he offers for an AAF is more likely than not to be correct, by providing specific, objective and persuasive evidence of his submissions. In short, the Panel cannot base its decision on some speculative guess uncorroborated in any manner*".

58. The Panel further observes that the assessment of whether an ADRV is non-intentional is not a binary one: the Panel "*is not confined to a binary choice: intention or non intention. It is sufficient for it to find that the Athlete has not disproved intention. It can itself construct theories which both inculpate and which exculpate the Athlete from intentional use; but its only function as an arbitral body is to make findings based on the evidence and arguments adduced before it*" (CAS 2017/A/5016 & CAS 2017/A/5036 at para. 131).

59. In summary, the Panel finds that to avoid the standard four-year period of ineligibility, the Athlete must provide sufficient concrete and persuasive evidence to establish on a balance of probabilities a lack of intent under Article 10.2.1 of the TADP.

60. With this in mind, the Panel will assess whether the Athlete has proven such a lack of intent to that standard of proof.

61. Preliminarily, however, the Panel must remark – considering the Parties' reliance on previous CAS awards in their assessments of the Athlete's case – that the Panel is not obliged to strictly follow the legal analysis conducted by previous panels since CAS jurisprudence do not carry a *stare decisis* effect or possess precedential value. Specifically, the Panel recognizes that the CAS jurisprudence has previously articulated two separate perspectives on the scenario wherein an athlete can demonstrate a lack of intent to commit an ADRV without providing evidence of how the prohibited substance entered their system.

62. As to its legal analysis, the Panel considers it necessary to pay respectful attention to the previous awards in similar cases (as stated in *Jack*: "*like must be compared with like*"), and, in the event that it chooses to depart from well-established CAS jurisprudence, it must have proper and persuasive reasons for doing so. Furthermore, as eloquently stated in *Iannone*, "*challenging to establish the non-intentional character of an ADRV in the absence of a demonstration of the origin of the prohibited substance, an assessment of the corridor depends on the very specific objective and subjective circumstances of the case, especially as no one case is exactly the same as another and will present its own specific human, factual and scientific particulars*" (see CAS 2020/A/6978 & CAS 2020/A/7068, at para. 136).

63. In summary, the Panel considers that the "narrow corridor" concept must strike a delicate balance: it should be narrow enough to prevent intentionally doped athletes from avoiding appropriate sanctions, yet wide enough to afford unintentionally doped athletes an opportunity to exculpate themselves with compelling and persuasive evidence.

64. For this reason, the Panel must evaluate the evidence and circumstances of the present case independently, considering both objective and subjective factors. Following *Jack*, the Panel is not required to give an exhaustive exposition of how the facts of the present case cohere or conflict with each of the prior cases in the growing body of jurisprudence, as doing so would only result in the body of decisions growing in complexity and understanding especially for athletes (CAS 2021/A/7579 & 7580, at para. 142). In

assessing the facts and circumstances of this case, the Panel will only, where it considers it necessary to expose its reasoning process, make only illustrative references to CAS jurisprudence.

ii. Application

65. For the reasons to follow, the Panel finds that the Athlete has not established on the totality of the evidence and on a balance of probabilities that the ADRVs were not intentional.

66. The Athlete has accepted that she did not and cannot establish the source of the Boldenone in her system. Consequently, this closes off the main avenue available to the Athlete to prove the lack of intent under Article 10.2.1.1 of the TADP to commit an ADRV.

67. The Athlete, submits, however, that there are other avenues to prove her lack of intent. In particular, the Athlete argues that the following facts and circumstances show that the ADRVs were not intentional:

(a) the "possibility" that the Boldenone in her system came from the B-12 Injection, even if this cannot be proven on the balance of probability;

(b) that she had no prior knowledge of Boldenone;

(c) that there is no evidence her performance was enhanced;

(d) that she was with her father virtually all the time on her trip in Peru, making it highly unlikely that she could have purchased and used Boldenone. In this respect, it should be noted that the Athlete's father is a doctor and would not allow her to take Boldenone given the serious health risks associated with steroids;

(e) that Boldenone, while not legally permitted in medications, may be found in contaminated nutritional supplements and, moreover, that the substance is approved for use in veterinary medications;

(f) that the Athlete used very few supplements, none of which she used within 7 days of the doping test and none of which were "obscure" or "suspect", thus showing that she did not manifestly disregard that risk per Art. 10.2.3 of the TADP;

(g) that the Athlete went to a "*great deal of time and expense to identify the source of Boldenone in her sample*" by conducting a thorough investigation including by using private investigators;

(h) that she voluntarily accepted to be submitted to, and passed, a polygraph examination; and

(i) that she could not have intentionally committed an ADRV, since she allegedly did not knowingly ingest Boldenone. According to the Athlete, this is proven not only by her own testimony, but also by the results of the polygraph examination to which she voluntarily submitted. The Athlete submitted to examination by the Panel and the ITIA and believes that her testimony is sincere and credible.

68. The Panel does not believe that the above facts and circumstances, in their totality, establish, on a balance of probabilities, that the ADRVs were not intentional. In reaching its conclusion the Panel considers the following:

(a) the B-12 injection is the only possible source cited by the Athlete since she has discarded the possibility that it was meat or supplement contamination. Consequently, if this source is deemed implausible by the Panel, the burden of proving lack of intent becomes more challenging. As was the case in *Ademi*, in determining whether lack of intent without proving source is established, a Panel may take into account whether the potential source or sources cited by the Athlete are plausible. In the present case, however, unlike *Ademi*, the Panel considers that it is highly implausible the B-12 Injection is the source of the Boldenone in the Athlete's system because:

- there is no evidence that the B-12 Injection was prepared at [redacted] and, in any case, no evidence that Boldenone was present at [redacted]'s premises so as to establish the possibility that the injection might have been contaminated with Boldenone. Dr. Dorcil testified that a representative from [redacted] informed him that the lab sources products from [redacted] However, the Panel considers that this does not prove that *all* products – and more specifically the B-12 injection at issue – was sourced at [redacted] The private investigators hired by the Athlete, Mr. Roberts and Mr. Nathan, provided testimony to the contrary, stating that [redacted] denied compounding veterinary medications. According to the Athlete, [redacted] also called [redacted] and received the same response – that the pharmacy did not compound Boldenone.

- the 2016 Florida state civil complaint, the FDA Warning, the 2022 Report, and the fact that certain individuals currently associated with [redacted] were implicated in a widely publicized 2007 steroid distribution scandal, do not establish that [redacted] compounded Boldenone or that any contamination of injection vials occurred, which is necessary to establish the possibility that the B-12 Injection was contaminated with Boldenone. There is no mention of Boldenone or contamination of vials in the complaints, warning or reports and there is a significant gap between the past legal issues of the individuals associated with the 2007 steroid scandal – which dealt generally with steroid distribution and not Boldenone specifically – and the current claim that [redacted] compounded Boldenone. Without concrete, substantive or persuasive evidence linking [redacted] to Boldenone or contamination, the Athlete's claim of "possible" contamination remains unsubstantiated;

- the color of the vial used for the B-12 Injection administered to the Athlete was red, as testified by the Athlete; however, Prof. Ayotte, convincingly explained that if the vial had been contaminated with Boldenone, it would have resulted in two phases. That is, the Boldenone would have separated from the B-12 and floated to the top since the compounds do not mix well. This would have been readily evident to the administrator and to the Athlete;

- the levels of Boldenone concentration in the Athlete's system, almost 30ng/ml, would have required a significant dose during that period or for the Athlete to have metabolized the Boldenone in a manner not yet demonstrated in any study. Prof. Ayotte provided compelling testimony, stating that a contaminated B-12 injection administered 22 days before the doping test would not have led to Boldenone concentrations as high as reported in the Athlete's results of 26.8 ng/mL, which was 10 times higher than its metabolites. In this regard, Prof. Ayotte explained:

  "*[i]n a 2015 study by Wu et al, 30 mg of boldenone... was administered orally to male and female volunteers, and an excretion study was conducted. The results indicate that the average peak excretion of boldenone and its metabolite occurred after 3 h and 5 h respectively (levels ranging from 104 to 550 ng/mL and 177 to 621 ng/mL respectively). Boldenone itself was detectable for 38 h to 62 h post-administration (GC-MS/MS, LLOQ (limit of quantification of the method): 0.15 ng/mL). During the down phase, the metabolite was often excreted in larger ratio relative to boldenone parent, particularly at the end of the excretion period. In the athlete's sample, the estimated concentration of boldenone parent roughly estimated at 26.8 ng/mL was approximately 10 times higher than the metabolite at 2.7 ng/mL, which differs from the results described by the authors. Of note, such levels are incompatible with a last oral dose taken 22 days earlier*";

- contamination of the B-12 Injection as the source of the Boldenone in the Athlete's Adverse Analytical Finding ("AAF") was "unlikely" according to Prof. Ayotte. The Athlete submits that a finding of unlikeliness does not discard the "possibility" that contamination occurred. The Panel finds that, however, such a possibility does not constitute sufficient evidence to demonstrate that contamination is the most probable scenario.

(b) the fact that the Athlete allegedly did not show an increase in her level of performance during the time of the doping test does not prove that the Athlete lacked intent to commit the ADRV. Performance levels alone are not definitive indicators of doping intent. An athlete's decision to dope may be motivated by factors such as injury management, recovery enhancement, or maintaining competitive consistency rather than solely aiming for performance enhancement. Additionally, unsuccessful doping attempts or the use of substances with delayed or subtle effects could result in a lack of immediate performance improvement despite intent;

(c) the fact that it is unlikely the Athlete could have slipped out and purchased Boldenone and used it, given her father's constant presence and medical knowledge of the negative health effects of steroids, does not support a lack of intent. This is because lack of intent is not solely determined by the feasibility of acquiring a prohibited substance. While the presence of the Athlete's father may serve as a deterrent to illicit activities, it does not preclude the possibility that she

did not lack intent. Dr. Dorcil's admission during his testimony that he is not with his daughter 100% of the time underscores the inherent limitations of supervision. In theory, even if there is no evidence in this regard, it is plausible that the Athlete could have obtained and used Boldenone when her father was not around, such as in the locker room or during other unobserved moments;

(d) the fact that the Athlete did not play for prize money and no girl of 5'5" and 130 pounds playing tennis would use Boldenone cannot displace the conclusion that the Athlete's case is intentional. In the Panel's view, these factors are not sufficient to the extent that there might be other reasons for the use, not necessarily bearing the mark of "common sense". Furthermore, the Panel observes that during the hearing, both the Athlete and Mrs. Dorcil referred to the Athlete's significant fatigue as the justification for her choice to receive the B-12 injection. The Athlete herself expressed that she was experiencing a "run-down" at the time. These circumstances may explain an athlete's use of a prohibited substance;

(e) the fact that the use of Boldenone is permitted in veterinary medications does not assist the Athlete in terms of establishing a lack of intent. While Boldenone may be legally used in veterinary medications, it is not commonly used or readily communicable in the USA. Therefore, the possibility that the Athlete unintentionally ingested it through contamination from veterinary products is highly implausible;

(f) furthermore, it is highly implausible that the Athlete unintentionally ingested Boldenone through communication with a pharmaceutical supplement. The Athlete provided a list of the supplements she takes, none of which are reported to contain Boldenone. Additionally, there is no evidence to suggest that the Athlete took these supplements near the time of the anti-doping test, further diminishing the likelihood of inadvertent ingestion;

(g) the Athlete failed to scrutinize the only source that she has identified as possibly being the source of the Boldenone in her system – the B-12 Injection. Indeed, the record shows that, aside from checking that [redacted] is "state-approved", the Athlete did not, prior to taking the B-12 Injection, conduct any research on the reputability of [redacted] or on the specific Injection that would be administered to her. Only after taking the B-12 Injection and after the positive doping test results, has she conducted some research and found reports questioning the general reputability of [redacted] Therefore, assuming that [redacted] presented a risk as claimed by the Athlete, she manifestly disregarded that risk by not conducting due diligence prior to taking the B-12 Injection;

(h) the Athlete has not made sufficient reasonable efforts to obtain evidence to support her position that the ADRVs were not intentional. As established in *Iannone*, since all athletes protest their innocence by making some kind of effort to identify the source, the Athlete bears the burden to adduce evidence to support her claim of a lack of intent; she cannot remain passive in her attempt to establish the source of the Boldenone in her system. In this case, the Panel is of the firm belief that the

Athlete could have done more to that end without incurring significant expense. Indeed, the steps taken by the Athlete were very limited. The investigations performed by Dr. Dorcil and the private investigators were superficial, incomplete and inconclusive. Indeed:

- Dr. Dorcil, in his calls of 24 January 2023 to [redacted] and on 2 February 2023 to [redacted] did not confirm if *all* the products from [redacted] were sourced from [redacted] nor did he verify if the specific B-12 Injection administered to the Athlete originated from [redacted] Furthermore, he did not request the name of the individuals he spoke to at [redacted] or [redacted] nor did he obtain their job titles. Dr. Dorcil also did not attempt to obtain the B-12 Injection's serial number to trace its compounding location and understand whether there was an inherent likelihood of contamination. This serial number, as testified by Prof. Ayotte, would have permitted the source of the injection, whether [redacted] or elsewhere, and its likely elements to have been identified;

- both private investigators had the most minimal interaction with [redacted] Mr. Patrick Roberts of Blue Line Investigations, simply reached out to [redacted] by telephone in an attempt to verify whether veterinary medications, including Boldenone, were compounded on the premises. Mr. Nathan, went to [redacted] in person on 26 September 2023 and spoke to an employee named "Darlenshi", but only asked a single question – whether [redacted] sold veterinary products. After being told by [redacted] that they did not compound Boldenone, neither of the investigators made any further efforts to find the source of the B-12 Injection and whether contamination was a true possibility. In reviewing the reports and hearing testimony, it is unclear to the Panel exactly what the Athlete paid the private investigators to do. The investigations were notably narrow in scope and lacked depth, primarily revolving around mere calls and visits to [redacted] to inquire about the compounding of veterinary products;

- neither Dr. Dorcil nor the private investigators asked [redacted] whether it had another vial of B-12 (from the same batch) in order to analyse it; and

- no representatives of [redacted] or [redacted] were contacted to testify before the ITIA Independent Tribunal or the CAS.

As did the Panel in *Iannone*, the Panel here finds that the Athlete's failure to pursue with due diligence obvious lines of enquiry to support her case stands in sharp contrast to the cases on which she relies, such as *Jack*, *Schoeman* and *Ademi*. In the present case, the Athlete has not done as much as could be expected of her to prove the source. By contrast:

- in *Jack*, the Athlete proved that the prohibited substance Ligandrol was highly communicable, meaning that the Athlete could have been exposed to it in different ways (e.g. at a gym or a pool). The same is not true of Boldenone

which is not legal for human use in the USA and not commonly used in veterinary products in the USA.

- in *Schoeman,* the Athlete was subject to other tests before or after the doping test that led to the AAF and, moreover, made extensive efforts to identify the source by testing 31 supplements. In the present case, the Athlete's investigations presented the serious shortcomings mentioned in paragraph (h) above.

- in *Ademi*, the Panel found the athlete to have discharged his burden of proof of lack of intent because there was a real possibility that the prohibited substance Stanozolol came from pills he ingested for back pain. In the present case, the Panel considers it highly implausible that the B-12 Injection was the source of the Boldenone in the Athlete's system.

In summary, it is not sufficient to merely assert the abstract "possibility" of one or more scenarios of ingestion to claim a lack of intentionality. It is necessary to concretely demonstrate how such scenario(s) could be the origin of the positive result in terms of "probability". On this point, athletes are not faced with a scenario of *probatio diabolica*, but rather in a position where their reasonable actions and defensive investigations must carry significant weight.

Specifically, to satisfy their burden of proof and counter the presumption of intentionality, athletes must furnish the adjudicatory body with a comprehensive array of evidentiary elements in support of their argument including by demonstrating that they have pursued all reasonable avenues of inquiry as to source.

The Panel considers that the Athlete has failed to demonstrate having done everything reasonably possible to prove the origin of the substance. As a result, it cannot be said that it was effectively impossible for the Athlete to provide additional evidence regarding the origin of the substance found in her body. On the contrary, the Panel considers that the Athlete did not provide evidence that appeared to be within her reach. Furthermore, the Panel notes that the burden of proof pertains to the party who has the obligation to prove something; therefore, the absence of evidence essentially impacts the position of said party.

(i) the evidentiary value of the polygraph examination is very limited. The Panel observes that "*the lex fori (i.e. the law of Switzerland) does not reject as inadmissible in limine the results of a polygraph test voluntarily undergone. It will evaluate it and exclude it only if it is found by application of restrictive criteria to be objectively unsuitable*" (CAS 2016/A/4534 at para. 42). The Panel further observes that polygraph tests have been held admissible before the CAS but not considered dispositive and of "limited value" (*Idem* at paras 43 *et seq.*). With this in mind, the Panel finds that while the Athlete's polygraph test is admissible in the present case, its value is limited, particularly due to (i) the inherent margin of error generally presented with polygraph tests, and (ii) the inadequacy of this specific

polygraph test and its associated report. Regarding the latter point, the Panel notes that the Athlete was only asked a few questions during the examination related to the doping incident, specifically:

- Have you ever knowingly used any performance enhancer in the past?
- Have you ever used Boldenone steroid?
- Are you now lying that on 24 October 2022 you received a Vitamin B12 single injection from [redacted]
- Have you ever knowingly done anything that is against the rules of the ITIA, WTA, and ITF?

The Panel views this line of questioning as insufficient to thoroughly assess the Athlete's involvement or innocence in the doping incident. Furthermore, the Panel considers that the evidentiary value of a polygraph test hinges not only on the questions posed but also on whether all involved parties consented to them and had the chance to participate in the examination. Relying solely on a report generated by the Athlete, without affording all parties the opportunity to agree or attend the examination, significantly diminishes its evidentiary weight.

(j) With regard to the Appellant's protestations of innocence and that she had no prior knowledge of Boldenone, the Panel endorses the view of *Villanueva* that it carries – by itself – insufficient weight to discharge the burden upon her, since "*the currency of such denial is devalued by the fact that it is the common coin of the guilty as well as of the innocent*" CAS 99/A/234 and CAS 99/A/235, para. 10.17 (see also CAS 2016/A/4377, para 52).

69. In light of the foregoing, the Athlete has essentially left the Panel with protestations of innocence and the polygraph test (which as stated above, holds very limited evidentiary value) as the only factors supporting a lack of intent. In the Panel's view, such factors are insufficient to establish, on a balance of probability, that the Athlete's ADRVs were not intentional (see CAS 2020/A/6978 & CAS 2020/A/7068, and CAS 2018/A/5584).

iii. Proportionality

70. The Athlete argues that even though the WADC introduced mechanisms by which sanctions can be reduced or limited, this does not remove the obligation of the Panel to assess the proportionality of a sanction outside of that system (see e.g. CAS 2005/A/830, TAS 2007/A/1252, CAS 2010/A/2268, CAS 2006/A/1025 and CAS A4/2016). The Athlete believes that imposing a sanction longer than two years here would be disproportionate because (i) it would likely end her professional career and (ii) she has been cooperative, honest and taken on thorough investigations at her expense to prove the unintentionality of the Boldenone ingestion.

71. The Panel notes, however, that the principle of proportionality and assessment thereof were accorded greater significance in terms of anti-doping-related sanctions (see CAS 2016/A/4534 at paras 51-52) and considers that proportionality is "built in" the WADC / TADP (see CAS 2021/A/7983; CAS 2021/A/8059 at paras 302-303). Accordingly, as

is well-established CAS jurisprudence, there needs to be a *lacuna* in the doping regulations that would produce an injustice if allowed to stand (see e.g. CAS 2006/A/1025 and CAS 2006/A/1165) or "exceptional circumstances", for reduction of a sanction based on the principle of proportionality (see e.g. CAS 2010/A/2268 where the athlete was 12 years old and thus incapable of understanding the rules).

72. In the present case, the Athlete has not proven that there are exceptional circumstances to warrant a reduction of a sanction based on proportionality. The factors relied on by the Athlete are not unusual. With regard to a four-year Ineligibility sanction potentially ending the Athlete's career, the Panel finds that while the potential jeopardy to the Athlete's career is indeed a serious consequence, it is a foreseeable outcome of violating anti-doping regulations and therefore not an exceptional circumstance meriting a reduction in the sanction. As for the Athlete's protestation of innocence and cooperation in the proceedings and her investigations performed, the Panel considers these efforts as standard within the disciplinary process.

73. In light of the foregoing the Panel holds that the standard four-year Ineligibility sanction is applicable.

B. PERIOD OF INELIGIBILITY AND DISQUALIFICATION OF RESULTS

i. Period of ineligibility

74. According to Article 10.2 of the TADP, the default ineligibility sanction is a four-year period. Since the Athlete has failed to prove that the ADRV was not intentional and no exception on the basis of alleged disproportionality has been found, the applicable sanction shall be four years.

ii. Start date for period of ineligibility

75. Pursuant to Article 10.13.2 of the TADP "*Credit for any Provisional Suspension or period of Ineligibility served*":

> *"10.13.2.1 Any period of Provisional Suspension (whether imposed or voluntarily accepted) that has been respected by the Player or other Person will be credited against the total period of Ineligibility to be served.*
>
> *10.13.2.2 To get credit for any period of voluntary Provisional Suspension, however, the Player or other Person must have given written notice at the beginning of such period to the ITIA, in a form acceptable to the ITIA (and the ITIA will promptly provide a copy of that written notice to each Interested Party) and must have respected the Provisional Suspension in full.*
>
> *10.13.2.3 No credit against a period of Ineligibility will be given for any time period before the effective date of the Provisional Suspension (whether imposed or voluntarily accepted), regardless of whether the Player*

elected not to compete or was suspended by their team.".

76. In accordance with these provisions, the duration of the Provisional Suspension, which commenced on January 13, 2023 (as the Athlete competed on January 11 and 12, 2023, in violation of the provisional suspension imposed on January 10, 2023), is credited against the period of Ineligibility of four years imposed in this decision. Consequently, the Athlete will be ineligible until January 13, 2027.

iii. Disqualification

77. Article 9.1 of the TADP provides: "*An Anti-Doping Rule Violation 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*".

78. Pursuant to Article 10.10 of the TADP: "*Unless 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)*".

79. In accordance with Articles 9.1 and 10.10 of the TADP, all competitive results obtained by the Athlete from the competition in question onwards are disqualified, with all corresponding medals, points and prizes to be considered forfeited. This includes:

- 14 November 2022, ITF World Tennis Tour W15, Lima, Peru (2nd round);
- 15 November 2022, ITF World Tennis Tour W15, Lima, Peru (3rd round);
- 22-23, 25 November 2022, ITF World Tennis Tour W15, Santo Domingo, Dominican Republic;
- 30 November 2022, ITF World Tennis Tour W15, Santo Domingo, Dominican Republic;
- 11 and 12 January 2023 ITF Tour, Martinique, France.

X. COSTS

80. In accordance with Articles R65.1 and 2 of the CAS Code, since the present appeal is against a disciplinary decision of an international sports-body, the proceeding is free of charge for the Parties, except for the Court Office Fee, which the Athlete already paid and shall be retained by the CAS.

81. As for contribution towards legal fees and other expenses, Article 65.3 of the CAS Code

provides as follows: "*Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties*".

82. Having taken all the factors identified in the relevant provision into account, in particular the fact that the Appellant's case has been fully dismissed, the Panel considers it appropriate to order the Appellant to pay a contribution of CHF 3,000 to the Respondent towards its legal fees and other expenses incurred in connection with the present arbitration proceedings.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 26 July 2023 by Sydney Dorcil against the decision of the ITIA Independent Tribunal of 6 July 2023 is dismissed.

2. The decision of the ITIA Independent Tribunal of 6 July 2023 is confirmed.

3. The award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss francs) paid by Sydney Dorcil, which is retained by the CAS.

4. Sydney Dorcil is ordered to pay the International Tennis Integrity Agency (ITIA) an amount of CHF 3,000 (three thousand Swiss francs) as a contribution towards its legal fees and other expenses incurred in connection with the present arbitration proceedings.

5. All other or further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 19 June 2024

THE COURT OF ARBITRATION FOR SPORT

Mario Vigna
President of the Panel

Sofoklis Pilavios
Arbitrator

Anthony Lo Surdo SC
Arbitrator