

DECISION

by

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

Kiefer Isaac Ravena
(born 27 October 1993)

hereafter:
(“Player”)

(Nationality: Philippines)

Whereas, the Player is a Filipino basketball player who plays for the NLEX Road Warriors in the Philippines and for the Philippines national basketball team;

Whereas, on 25 February 2018, FIBA conducted an in-competition doping control on the Player after the game Philippines v. Japan in Manila, Philippines (**the “Game”**), which took place during the second window of the FIBA Basketball World Cup 2019 Qualifiers;

Whereas, the Player did not disclose any supplements on his doping control form (**“DCF”**);

Whereas, the analysis of the Player's sample (sample No: 4058970) was conducted at the WADA-accredited laboratory in Montreal, Canada ("**Laboratory**");

Whereas, on 16 March 2018, the Laboratory issued a Test Report of an Adverse Analytical Finding ("**AAF**") indicating the presence of 4-methylhexan-2-amine (methylhexaneamine), 1,3-dimethylbutylamine (DMBA), and higenamine;

Whereas, 4-methylhexan-2-amine (methylhexaneamine) and 1,3-dimethylbutylamine (DMBA) are specified substances prohibited in-competition under S.6 of the 2018 WADA List of Prohibited Substances and Methods ("**2018 Prohibited List**");

Whereas, higenamine is a specified substance prohibited in-competition under S.3 of the 2018 Prohibited List;

Whereas, by letter dated 19 March 2018, FIBA informed the Player of the AAF for 4-methylhexan-2-amine (methylhexaneamine), 1,3-dimethylbutylamine (DMBA), and higenamine, and of the Player's right to request the analysis of the B Sample.

Whereas, on 29 March 2018, the Player requested the analysis of the B Sample;

Whereas, on 2 April 2018, the president of the Philippines Basketball Federation, Samahang Basketbol ng Pilipinas Inc. ("**SBP**") wrote to inform FIBA that SBP was treating the matter very seriously and had conducted its own investigation as to what the Player had consumed in the two weeks prior to the doping control;

Whereas, on 9 April 2018, the Laboratory reported the results of the B Sample analysis, which confirmed the results of the A Sample;

Whereas, on 17 April 2018, FIBA informed the Player that:

- the B Sample analysis had confirmed the A Sample;

- he was being charged with an anti-doping rule violation, specifically a violation of article 2.1 FIBA Internal Regulations governing Anti-Doping (“FIBA ADR”);
- he was invited to provide his written position to FIBA by 27 April 2018, upon the receipt of which a Disciplinary Panel would be constituted;

Whereas, on 19 April 2018, SBP wrote to FIBA enclosing the following:

- A letter from SBP to FIBA dated 13 April 2018, which sought leniency for the Player due to his exemplary conduct and his candidness when he was interviewed by SBP;
- **An internal SBP communication dated 10 April 2018, which outlined the Player’s demeanour, candidness and honesty, contained a brief summary of the Player’s statement and commented on the necessity to embark on an educational drive regarding anti-doping;**
- A written statement dated 5 April 2018 from the Player, which stated the following:
 - The Player normally takes a pre-workout drink called C4, which can be bought in supplement retailers in Manila. The Player learned about C4 whilst playing in the NBA G-League;
 - Prior to a training camp in Australia, the Player ran out of C4 and found a replacement drink called DUST, which the store representative stated was similar to C4;
 - DUST is mixed with water and is consumed prior to playing, which the Player did prior to the Game;
 - It was an honest mistake to not indicate DUST on the DCF;
 - There was no intention to cheat or unlevel the playing field; and,
 - The Player does not desire a hearing to be held in his case and leaves it to FIBA to determine his sanction.

Whereas, on 23 April 2018, FIBA requested more information from the Player;

Whereas, on 26 April 2018, the Player **answered FIBA's request for further information, stating** that:

- DUST was acquired from a dietary supplement store;
- He did not do any research on DUST and only took it when C4 ran out;
- DUST helped maintain and recover energy, but the Player had no idea it contained banned or illegal substances since it was readily available to the general public;
- The Player had not received any formal anti-doping education but had learned a very valuable lesson through this experience;
- The Player regrets unintentionally violating the FIBA anti-doping rules; and,
- The Player had been tested twice by SBP when taking C4 and had no positive results.

Now, therefore, the Panel takes the following:

DECISION

A period of eighteen (18) **months'** ineligibility, i.e. from 25 February 2018 to 24 August 2019, is imposed on Mr Kiefer Isaac Ravena.

Reasons:

1. Article 2 FIBA ADR provides as follows:

“ARTICLE 2 ANTI-DOPING VIOLATIONS

Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample

2.1.1 It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping violation under Article 2.1. [...]”

2. Pursuant to Article 2.1 of the FIBA ADR, because 4-methylhexan-2-amine (methylhexaneamine), 1,3-dimethylbutylamine (DMBA), and higenamine, all prohibited substances included in the 2018 Prohibited Substance list under S.6 and S.3 were found in his A and B Samples, the Player has committed an anti-doping rule violation (“**ADRV**”).
3. The Panel notes that the Player has not disputed any step of the process and has readily admitted the ADRV.
4. Given the foregoing, the Panel must now determine the appropriate sanction for the Player under the FIBA ADR. Article 10.2 FIBA ADR states:

“10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method.

The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1 The period of ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance and FIBA can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

10.2.3 As used in Articles 10.2 and 10.3, the term “intentional” is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she 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.[...]

5. Given that the ADRV has been established and it involves Specified Substances, article 10.2.1.2 FIBA ADR imposes on FIBA the burden of proving that the ADRV was intentional.
6. **Considering the Player’s explanation, the Panel has no reason to believe that the ingestion of the prohibited substances was intentional within the meaning of article 10.2.3 FIBA ADR.**

7. The Panel therefore determines that, as per article 10.2 FIBA ADR, the starting point for the period of ineligibility shall be two (2) years.
8. The Panel shall next consider whether the Player could benefit from any reduction in sanction pursuant to article 10.4 or 10.5 FIBA ADR.
9. The criteria for No Fault or Negligence is defined as:

“The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.”

10. Since the Player admitted his negligence, the Panel does not consider the Player to have No Fault or Negligence and therefore will not apply article 10.4 FIBA ADR.
11. The Panel then turns to article 10.5.1.1 FIBA ADR, which states:

“Specified Substances

Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.”

12. No Significant Fault or Negligence is defined as:

“The Athlete or other Person's establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.”

13. Fault is defined as follows:

*“Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person’s **degree of Fault** include, for example, the **Athlete’s or other Person’s** experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In **assessing the Athlete’s or other Person’s degree of Fault**, the circumstances considered must be specific and relevant to explain the Athlete’s or other Person’s departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.”*

14. Firstly, to benefit from a reduction of sanction under article 10.5.1.1 FIBA ADR, the Player must establish the source of the prohibited substances. The Player submitted that the source of the prohibited substances was the energy drink, DUST.

15. **The Panel accepts the Player’s assertion that the source of the prohibited substances was the energy drink, DUST.** The substance higenamine was, in fact, on the label of the DUST product. Likewise, an alternative name for methylhexanamine is 1,3 DMAA, which was also on the label. Although not on the label, the Panel reasonably concludes that DUST is also the source of DMBA, **given DMBA’s prevalence in supplements and its chemical proximity to methylhexanamine.**

16. Having established the source of the prohibited substances, the next step for the Panel is to determine whether and how far the Player departed from the expected standards of behaviour.

17. The Panel considers the following circumstances:

- The Player did not usually take DUST, which was recommended by the supplement store as being similar to C4;
- **Both C4 and DUST are labelled as “pre-workout” supplements;**
- The Player did not know that the product contained prohibited substances;
- The Player had been tested by SBP on a few occasions whilst taking C4;
- The Player has never received any anti-doping education; and,
- The SBP considered the Player to be candid and honest and a Player of integrity.

18. The Panel also takes into account the following factors:

- Higenamine is on the label of the product DUST;
- The Player did not indicate on his DCF that he had consumed DUST in the seven days before the sample collection; and,
- The Player did not consult with anyone other than the store clerk before taking DUST.

19. The Panel believes that had the Player performed an internet search of the product prior to taking it, he would have discovered that at least higenamine was an ingredient of DUST and would **therefore not have taken it. However, the Panel recalls that the Player’s conduct must** be viewed in light of the totality of the circumstances.

20. The Panel does not believe that the Player showed a complete disregard for his anti-doping duties but finds that the Player was not well equipped to make the right, informed decision. The Player was informed by the store clerk that DUST was similar to C4, a product that he had regularly consumed and with which he underwent doping controls. C4 and DUST have – on appearance – **the same objective as a “pre-workout supplement” and also is served**

in the same way, i.e. by dissolving powder in water. Consequently, the Player concluded that DUST would also create no issue. The Panel finds that this erroneous assumption results from the Player's lack of anti-doping education, which in no way exonerates him, but, in the Panel's opinion contributes directly to the (low) risk wrongly perceived by the Player when using DUST.

21. As such, the Panel does not believe that the Player's negligence should incur a two-year sanction, but it is certainly greater than the minimum degree of fault failing within the range mandated by article 10.5.1 FIBA ADR.
22. The Panel therefore determines that an eighteen (18) month period of ineligibility is appropriate in the circumstances.
23. The next question for the Panel to answer is when the period of ineligibility commences.

Article 10.11 FIBA ADR states:

"10.11 Commencement of Ineligibility Period

Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

[...]

10.11.3 Credit for Provisional Suspension or Period of Ineligibility Served

10.11.3.1 If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other

Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal.”

24. Pursuant to article 10.11 FIBA ADR, the period of ineligibility shall commence on the date of this decision. However, pursuant to article 10.11.2 FIBA ADR, the period of ineligibility may commence as early as the date of sample collection if the Player admits the ADRV as soon as being confronted with the ADRV.
25. In the present case, the Player promptly accepted that prohibited substances were in his sample, evidenced by his statement of 5 April 2018, before the results of the B Sample were communicated to him.
26. Thus, the period of ineligibility shall commence on the date of sample collection, 25 February 2018, and shall end on 24 August 2019.
27. This decision is subject to an Appeal according to the FIBA Internal Regulations governing **Appeals as per the attached “Notice about Appeals Procedure”**.

Mies, 22 May 2018

On behalf of the FIBA Disciplinary Panel



Eleonora Rangelova

President of the Disciplinary Panel