Arbitration CAS 2008/A/1668 World Anti-Doping Agency (WADA) v. National Olympic Committee & Sports Confederation of Denmark & Dansk Boldspil-Union (DBU) & Jesper Münsberg, award of 16 November 2009

Panel: Mr Quentin Byrne-Sutton (Switzerland), President; Mr Martin Schimke (Germany); Mr Jean-Jacques Bertrand (France)

Football
Doping (salbutamol)
Presumption of an Adverse Analytical Finding
Athlete's standard of proof
Definition of "therapeutic use"
Absence of proof of "therapeutic use"
Conditions of reduction of a sanction
Determination of the athlete's degree of fault

1. **Although with slightly different wording, the definitions of class S3 Prohibited Substances in the successive versions of the WADA Prohibited List all institute a presumption that the presence of salbutamol in urine in excess of 1000 ng/mL is not the result of a therapeutic use of inhaled salbutamol and will be deemed an Adverse Analytical Finding unless the athlete manages to prove the contrary.**

2. **Under the applicable FIFA Anti-Doping Regulations (DCR), the standard of proof for an athlete to rebut a presumption that an anti-doping violation has occurred is a balance of probability.**

3. **Only intake of salbutamol by inhalation, as opposed to for example the use of tablets (systemic intake), may qualify as therapeutic under an Abbreviated Therapeutic Use Exemption (ATUE) and the class S3 Rules. With respect to what represents a therapeutic use/dose of inhaled salbutamol, the rationale of the Class S3 Rules and of the procedure for granting an ATUE imply that it is the therapeutic use as defined in the text of the ATUE itself – together with the corresponding use then defined in the athlete's medical prescriptions – that must be deemed the starting point and yardstick for the definition of a given athlete's therapeutic use of inhaled salbutamol.**

4. **When it is more likely than not that a player inhaled the total dose of salbutamol in excess of 1000 ng/mL, not because taking such dose was *"necessary"* for therapeutic reasons to respond to an asthma attack or as a reasonable precaution before exercising, but rather because he was very anxious to be able to play a game, the concentration of salbutamol cannot be deemed as resulting from the use of a therapeutic dose of inhaled salbutamol. Thus the concentration of salbutamol in excess of 1000 ng/mL found in the**

player's sample must be deemed an adverse analytical finding that constitutes an anti-doping violation under the applicable FIFA DCR.

5. **To benefit from the elimination or reduction of the standard sanction, a player must fulfil two cumulative conditions, i.e. establish how the specified substance entered his body on a balance of probabilities and establish the absence of intent to enhance his sporting performance to the comfortable satisfaction of the hearing panel. In this respect, the sincerity of a player, the absence of obvious inconsistencies between his statements, the fact that he is not a professional, the relative lack of incentive he has to dope himself given his age/competition level and the uncertainties which remain regarding the degree of effect of certain factors (his condition of health, the adverse weather conditions, his apparently unusual resistance to the side effects of large doses of inhaled salbutamol, etc.) on the test results, are factors to be taken into consideration.**

6. **In determining a player's degree of fault in inhaling an exaggerated dose of Ventolin the day of an in-competition test, one shall examines both the factors that tend to demonstrate negligence and those that alleviate the player's fault. While a player has demonstrated a serious lack of diligence (negligence) by not fulfilling his duty to inform himself regarding anti-doping regulations, duty which weighs on an athlete even if the latter benefits from an ATUE, the lack of precision of the words *"as needed"* in a player's ATUE and in particular the corresponding lack of precision of the words *"as required"* in his doctor's prescription is a mitigating factor, especially if the doctor does not appear to have been much clearer in his explanations to the player.**

The Appellant, the World Anti-Doping Agency (WADA) is an independent non-governmental organization created to promote, coordinate and monitor the fight against doping in sport in all its forms.

The first Respondent, the National Olympic Committee & Sports Confederation of Denmark (the "Danish NOC"), is the head of the organization grouping Danish sports federations in Olympic disciplines.

The second Respondent, Dansk Boldspil-Union (DBU), is the Danish national federation for football.

The third Respondent, Mr Jesper Münsberg (the "Player"), is a Danish football player, born in 1977, who at the time of the relevant facts was playing for a Danish second-division team affiliated to the DBU.

Since his childhood the Player has suffered from exercise-induced asthma.

He has been playing for football teams in the 2nd and 3rd Danish football divisions for some 7 years.

He is not a professional football player and works full time as a plumber. However, he receives from his club a monthly pay (in Danish kroner) equivalent to EUR 1,250.

From early on and before applying for a Therapeutic Use Exemption, the Player's doctor had prescribed him salbutamol tablets as a general treatment for his asthma.

In 2004, the Player felt he was having more difficulty with his asthma due to tougher training conditions and therefore consulted his doctor, Dr Morten Lysdahl, a general practitioner. His doctor did not have the means to organize relevant tests and therefore sent him to a specialised respiratory physician, Dr Vibeke Backer.

On the basis of Dr Vibeke Backer's diagnosis, it was decided that the Player would adapt his treatment for asthma and apply for an Abbreviated Therapeutic Use Exemption (ATUE).

The Player declared in front of this Panel that he understood at the time that the use of the salbutamol tablets would not be allowed under an ATUE, and that he therefore threw away his remaining tablets and never bought any again.

On 5 November 2005, Dr Vibeke Backer filed an ATUE application on behalf of the Player, in which it was requested under the heading *"Prohibited substance(s)"* that the ATUE be granted for the following three medicines: Seretide 250/50 (2-4 doses daily by inhalation); Singulair (1 tablet of 10mg daily) and Ventolin (by inhalation in doses of 0.2 mg and *"pn"*, which is an abbreviation for the Latin expression *"pro necessitate"* meaning "when necessary").

On 13 December 2005, Anti-Doping Denmark delivered a certificate granting the Player an ATUE until 13 December 2008.

The ATUE certificate indicates that, *"The athlete has received approval for the use of the prohibited substance(s) listed below under the conditions stipulated in this document"*, and under the heading *"Prohibited substance(s)"* lists the following:

> *"1. Salmeterol/fluticason (Inh. Seretide)*
>
> *2. Salbutamol (Inh. Ventoline)*
>
> *3. [No indication]".*

Under the heading *"Dose and method of administration"*, the following is stipulated:

> *"1. 250/50 mikrogram 2-4 x daglig*
>
> *2. 0,2 mg p.n".*

Under a heading for observations, the ATUE certificate stipulates that: *"The dose, method and frequency of administration as prescribed by your physician have to be followed meticulously".*

According to an extract of the medicine card (dating from 10 October 2007) kept in the records of the Player's doctor and filed by the Respondents in this proceeding, he prescribed the required medicine as follows (free translation from Danish by the Respondents):

"Singulair film-coated tablets10 mg
28 tablets (blister pack) 1 tablet a day
To be given 9 times at 2 weeks intervals against asthma.

Ventolin inhalation powder0.2 mg in Diskus
60 doses in Diskus 2 puffs before physical strain and as required

Seretide inhalation powder, afd 1 puff twice a day
To be given 9 times at 2 weeks intervals against asthma".

In a declaration by Dr Morten Lysdahl of 20 July 2009 submitted as evidence by the Respondents in this arbitration, he states: *"When I prescribed Ventoline to Jesper Münsberg I have instructed him to take 2 puffs before physical strain and as required. My instruction to take Ventoline as required was without any limit of the number of puffs. Jesper Münsberg was instructed to take Ventoline until he felt relief and a more normal breath in case of problems with his asthma because of for example sickness or exhaustion".*

On 10 February 2008, on the occasion of an in-competition test performed on a urine sample provided by the Player at the end of a football game against the club *Brøndby IF*, his sample was found to contain 2400 ng/mL of salbutamol.

Under WADA regulations, this corresponded to a positive test since, according to its 2008 Prohibited List, despite the granting of an ATUE the presence of salbutamol in urine in excess of 1000 ng/mL is considered an Adverse Analytical Finding, unless the Athlete proves that such concentration of salbutamol resulted from the use of a therapeutic dose of inhaled salbutamol. In other words, if the concentration of salbutamol in the urine is above 1000 ng/mL there is a presumption that it is due to a non-therapeutic use.

The analysis of the B-sample confirmed the presence of salbutamol in his urine sample at a concentration of 2460 ng/mL.

According to the Player, he developed a cold during the days leading up to the football match and therefore used the Ventolin inhaler more often than usual due to feeling unwell.

In a letter of 17 March 2008, in response to an enquiry of the Doping Commission of the Danish NOC, the Player explained the circumstances as follows (free translation from Danish by the Respondents):

> *"In the weekend of 9-10 February, when we met BIF in a practice match, I had massive airway problems, both because of the cold weather and because I had a cold/an infection of the airways which aggravated my asthma. I therefore used the Ventoline Inhaler more times than usual in the days leading up to the match, and on the day of the match I took (as always 2 puffs at a time) in the morning when I woke up, before leaving home, on my way to Brøndby, before warming-up, right before kick-off and during intermission, a total of at least 12 puffs, corresponding to 2.4 mg.*

I had previously contacted my general practitioner about aggravated asthma symptoms and he then told me I could use the Ventoline inhaler until I achieved an effect. That is why in connection with the match against BIF I used the Ventoline inhaler to a great extent.

I may add that after the match it took me a while to hand in my urine sample (app. 40 minutes) because I had only taken in a limited amount of liquid during the match".

To this Panel, the Player further explained that although it was a training match of no importance as to the result and despite the fact that he was not feeling well, he very much wanted to play the game because it was against a prestigious first-division team. His trainer and he had discussed the matter the day before upon realizing he was not in the best of condition. Finally, he ended up only playing the second half.

On 16 May 2008, the Doping Commission of the Danish NOC addressed a letter to the Player indicating that in light of his explanations and the evidence he had presented - including a letter from the Player's team doctor including scientific articles stating that the concentration of salbutamol found in athletes' urine could vary significantly - it had decided to give him the benefit of the doubt and not pursue the case before the Danish Doping Tribunal.

WADA received a copy of the letter on 21 May 2008.

On 30 May 2008, WADA wrote to Anti-Doping Denmark to enquire about the appeal procedure against the decision taken by the Danish NOC.

On 3 June 2008, Anti-Doping Denmark replied that WADA was entitled to take the case to the Danish Doping Tribunal.

On 13 June 2008, WADA wrote to the Danish Doping Tribunal, requesting it to initiate a disciplinary proceeding against the Player to sanction him in accordance with the applicable regulations.

On 12 September 2008, WADA enquired with the Danish Doping Tribunal about the status of the proceeding against the Player.

By letter of 16 September 2008, the Danish NOC informed WADA that it had been decided not to take any further action in this case.

On 16 September 2008, WADA wrote back to enquire *"… in which deadline and to which court WADA may appeal the case".*

On 26 September 2008, the Danish NOC Appeal Commission replied that it had decided it was not in a position to assess the case and that, therefore, the *"… national level must be considered exhausted by the decision of the Doping Commission not to prosecute".*

As a result, on 6 October 2008, WADA filed an appeal with the Court of Arbitration for Sport (CAS) against the decision of 16 September 2008 of the Danish NOC. In its Statement of Appeal, WADA

requested that the Player be sanctioned with a two-year period of ineligibility for having committed an anti-doping violation.

In their Answer brief filed on 5 November 2009, the Respondents submitted that the Player was innocent because the concentration of salbutamol found in his sample must be deemed *"… the consequence of therapeutic use of inhaled salbutamol"*.

Thereafter, during the course of the proceedings in front of the CAS and at the request of the Respondents, the parties agreed on a process whereby the Player would be entitled to undergo a controlled pharmacokinetic medical study in order to help verify the origin of the concentration of salbutamol found in his tested sample.

On 16 March 2009, the Danish NOC informed the CAS that the controlled study had been completed.

Upon examining the results of the controlled study, WADA and the Respondents continued to disagree as to whether or not the concentration of salbutamol found in the Player's test sample was the consequence of a therapeutic use of inhaled salbutamol.

On 6 October 2008, WADA filed a Statement of Appeal with the CAS against the decision of 16 September 2008 of the Danish NOC.

On 15 October 2008, WADA filed its Appeal brief, including the following prayers for relief:

"WADA hereby respectfully requests CAS to rule:

1. *The Appeal of WADA is admissible.*
2. *The decision of the Danish NOC in the matter of Mr. Jesper Münsberg is set aside.*
3. *Mr. Jesper Münsberg is sanctioned with a two years period of suspension starting on the date on which the CAS award enters into force.*
4. *WADA is granted an Award for costs".*

On 5 November 2008, the Respondents filed their Answer, including the following prayers for relief:

"The Respondents request the following:

19. *Jesper Münsberg requests to be acquitted of the doping charges brought against him by WADA as bearing "no fault or negligence", having used his Ventolin inhalator in accordance with his TUE and thus obtaining the concentration of 2400 ng/ml in his urine sample of 10th February 2008.*
20. *The Respondents request CAS to accept a delay of the hearing in this case in order for the respondents to have a controlled study made, ref. point 17 above. The results of such study may be presented as evidence before CAS.*
21. *The respondents reserve to present further written and oral evidence, including witnesses and witness statements, before or during the hearing before CAS".*

In their Answer, the Respondents specified that they wished *"… to have a controlled study made by an independent and neutral institution, at the respondents' expense, simulating the particular circumstances of 10th February 2008, taking the necessary number of samples (including an initial "zero sample") and having them analysed at a WADA-accredited laboratory in order to demonstrate the particular metabolism of Münsberg for salbutamol".*

On 10 November 2008, WADA indicated its agreement that the controlled study be performed subject to certain conditions being fulfilled.

On 16 March 2009, the Danish NOC informed the CAS that the controlled study had been completed.
On 27 March 2009, the Danish NOC filed the Oslo University Hospital's report on the controlled study.

On 12 May 2009, the Respondents filed a written pleading relating to the controlled study. In that pleading, the Respondents concluded that, in light of the results of the controlled study, *"JM has fulfilled the requirement that he must prove on the balance of probabilities, cf. WADC article 3.1, that the concentration of salbutamol found in the doping test is a consequence of therapeutic use of inhaled salbutamol. Therefore, JM must be acquitted from the doping charge".*

Furthermore, invoking the entry into force on 1 January 2009 of the WADA Prohibited List 2009, according to which salbutamol is now qualified as a *"Specified Substance"*, and invoking the principle of *"lex mitior"* on the basis that for a Specified Substance the possible sanction is between a reprimand (minimum sanction) and ineligibility for two years (maximum sanction), the Respondents concluded that *"Should the panel against the respondents' expectations find that JM is guilty of a doping offence, the sanction shall only be a warning".*

Between May and June 2009, upon the request of WADA, the CAS ordered the production of certain documents, which were duly filed by the Respondents.

On 8 July 2009, WADA filed a *"Complementary Brief"* commenting on the results of the controlled study. In relation to the requested disciplinary sanction, WADA adapted the content of its prayers for relief in the following manner:

> *"Pursuant to the new FIFA Disciplinary Code (FIFA 2009 DC; Exhibit 26), which has come into force as of January 1st, 2009, "Doping and anti-doping rule violations are defined in the FIFA Anti-Doping Regulations and sanctioned in accordance with the FIFA Anti-Doping Regulations and the FIFA Disciplinary Code" (Article 63 FIFA 2009 DC). With respect to its scope of application in time, article 4 of FIFA 2009 DC states that:*
>
> > *"This code applies to facts that have arisen after it has come into force. It also applies to previous facts if it is equally favourable or more favourable for the perpetrator of the facts and if the judicial bodies of FIFA are deciding on these facts after the code has come into force. By contrast, rules governing procedure apply immediately upon the coming into force of this code".*
>
> *This provision enforces the general principle of "lex mitior", which is compliant with article 25.2 of the 2009 WADC. It means that, for a pending case, the new rules may apply for an anti-doping violation that occurred before such coming into force, if such new rules are more favourable to the athlete.*

According to the new rules in force in 2009, salbutamol is defined as a specified substance (article 16 2009 FIFA DCR; WADA 2009 Prohibited List). Accordingly, the sanction shall be determined with respect to article 45 FIFA 2009 DCR:

> *"Where a player can establish how a specified substance entered his body or came into his possession and that such specified substance was not intended to enhance the player's sporting performance or mask the use of a performance-enhancing substance, the period of ineligibility imposed under art. 45 shall be replaced with the following: at a minimum, a reprimand and no period of ineligibility from future competitions, and at a maximum, two years of ineligibility.*
>
> *To justify any elimination or reduction, the player must produce corroborating evidence in addition to his word that establishes to the comfortable satisfaction of the FIFA Disciplinary Committee the absence of intent to enhance sporting performance or mask the use of a performance-enhancing substance. The player's degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility".*

The new regulation constitutes a lex mitior since salbutamol is now considered as a specified substance. Therefore, Mr Münsberg shall be sanctioned according to FIFA new DCR, even though the anti-doping violation was committed in 2008.

In the view of the above, it was to Mr Münsberg to establish how the prohibited substance entered his body and to prove that he did not intent to enhance his sporting performance by inhaling salbutamol the way he did. It is WADA's submission that such proofs have not been submitted".

On 23 July 2009, the Respondents filed a *"Supplementary Pleading"* in reply. In this pleading, the Respondents repeated their submission that, in light of the results of the controlled study, the Player should be acquitted of any charge of having committed a doping offence, and concluded that:

> *"If the panel finds that JM has committed a doping offence, it should be noted that WADA has acknowledged that the sanction may vary from a warning to a two years ineligibility period, if JM can prove how salbutamol entered his body, and that he did not intent (sic) to enhance his sporting performance. As stated above in section 1, JM has proven that the substance entered his body through inhalation, and as proven above in section 2 the use was solely for therapeutic reasons. Furthermore, as stated in the pleading section 4, 6 and 7 he had no sporting reason to take salbutamol, as the doping test was conducted after a friendly match. He has no fault or negligence, as he could not know that he would exceed the limit of 1,000 ng/ML, cf. also the pleading section 7. In addition he had been instructed by his medical doctor and Vibeke Backer to use Ventolin when needed. Therefore, he has acted without any fault or negligence, cf. section 7 of the pleading, unless the panel finds that you should not as an athlete trust the advice given by WADA's experts. For further elaboration of these arguments, reference is made to the pleading.*
>
> *In conclusion, if the panel should find that JM has committed a doping offence the sanction shall be limited to a warning".*

On 8 September 2009, the CAS confirmed a hearing would take place on 21 October 2009.

LAW

CAS Jurisdiction

1. The jurisdiction of the CAS derives from a combination of art. R47 of the Code of Sports-related Arbitration (the "CAS Code") and of several provisions of the FIFA Statutes, of the DBU Statutes and of the Danish DR.

2. According to art. R47 of the CAS Code:

   "An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide … and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".

3. Article 61§6 of the 2007 FIFA Statutes and 63§6 of the 2008 FIFA Statutes provide that: *"The World Anti-Doping Agency (WADA) is entitled to appeal to CAS against any internally final and binding doping-related decision passed by FIFA, the Confederations, Members or League under the terms of par. 1 and par. 2 above".*

4. Article 5.3 of the DBU Statutes recognizes the authority of the CAS and section 10 of the Danish DR provides for WADA's right of appeal to the CAS.

5. Article 61§1 of the 2007 FIFA Statutes and 63§1 of the 2008 FIFA Statutes also specify that: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question", and article 61§7 of the 2007 FIFA Statutes and 63§7 of the 2008 FIFA Statutes further state that: "any internally final and binding doping-related decision passed by the Confederations, Members or Leagues shall be sent immediately to FIFA and WADA by the body passing that decision. The time allowed for FIFA or WADA to lodge an appeal begins upon receipt by FIFA or WADA, respectively, of the internally final and binding decision in an official FIFA language".*

6. Consequently, the CAS has jurisdiction providing the appeal was filed within the 21-day time limit against a final decision concerning the Player at national level under the regulations applicable to the DBU.

Admissibility

7. In the circumstances of the present case, the confirmation by the Doping Commission of the Danish NOC that it would not prosecute the Player's case in front of the Doping Tribunal must be deemed to have exhausted the available remedies at national level under the regulations applying to the DBU.

8. Therefore, WADA was entitled to appeal to the CAS against the final decision of the Danish NOC not to prosecute the case. Since the Danish NOC communicated that decision to WADA on 16 September 2008 and the latter lodged its appeal to the CAS on 6 October 2008, the prescribed 21-day limit was met.

9. In addition, in their Answer the Respondents declared that they *"… agree to WADA's right to appeal and compliance with the deadline to appeal"*.

10. Furthermore, the jurisdiction of the CAS has been explicitly recognized by the parties in the Order of Procedure which they respectively signed, the Appellant on 15 September 2009 and the Respondents on 17 September 2009.

11. For the above reasons, the CAS has jurisdiction and the appeal is admissible.

Applicable Law

12. Art. R58 of the Code provides that:

"The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

13. In its Appeal brief, under chapter II entitled *"Applicable rules"*, WADA has invoked and relied on the FIFA Statutes, rules and regulations, the DBU Statutes and regulations and on the Danish NOC regulations; and in their Answer the Respondents declared that they *"… agree to the applicable rules as stated in Chapter II of the Appeal Brief"*.

14. Furthermore, in their subsequent briefs the parties agreed that if the Panel considered an anti-doping violation to have occurred, the 2009 version of the FIFA Disciplinary Code, which upholds the principle of *"lex mitior"*, should apply and with it the 2009 version of the FIFA Anti-Doping Regulations.

15. Accordingly, the Panel shall decide this appeal on the basis of the foregoing Statutes and regulations, including the 2009 versions if relevant.

Merits

A. The Anti-Doping Violation

16. According to the 2008 WADA Prohibited List, salbutamol is a Specified Substance that falls within the category of Prohibited Substances defined under class S3 of the List, according to which: *"Despite the granting of any form of Therapeutic Use Exemption, a presence of salbutamol (free plus*

glucuronide) greater than 1000 ng/mL will be considered an Adverse Analytical Finding unless the Athlete proves that the abnormal result was the consequence of the therapeutic use of inhaled salbutamol".

17. In the 2009 WADA Prohibited List, the formulation of same rule has evolved somewhat since a *"controlled pharmacokinetic study"* is specified as the means of proving therapeutic use of inhaled salbutamol, and the word *"therapeutic dose"* is included, however without defining the dose: *"Despite the granting of a Therapeutic Use Exemption, the presence of salbutamol in urine in excess of 1000 ng/mL will be considered as an Adverse Analytical Finding unless the Athlete proves, through a controlled pharmacokinetic study, that the abnormal result was the consequence of the use of a therapeutic dose of inhaled salbutamol".*

18. In the planned 2010 WADA Prohibited List quoted by Dr Olivier Rabin, there is a further evolution in the formulation of the rule, in particular by the introduction of a definition of what is deemed a maximum dose of inhaled salbutamol for therapeutic use: *"The presence of salbutamol in urine in excess of 1000 ng/mL is presumed not to be an intended therapeutic use of the substance and will be considered as an Adverse Analytical Finding unless the Athlete proves, through a controlled pharmacokinetic study, that the abnormal result was the consequence of the use of a therapeutic dose (maximum 1600 micrograms over 24 hours) of inhaled salbutamol".*

19. Although with slightly different wording, the above definitions of class S3 Prohibited Substances in the successive versions of the WADA Prohibited List all institute a presumption that the presence of salbutamol in urine in excess of 1000 ng/mL is not the result of a therapeutic use of inhaled salbutamol and will be deemed an Adverse Analytical Finding unless the athlete manages to prove the contrary.

20. Since in this case the Player is not contesting the presence of salbutamol in excess of 1000 ng/mL in his in-competition urine sample, and furthermore he underwent a controlled pharmacokinetic test with the intent of proving that the concentration of salbutamol in question resulted from the therapeutic use of his Ventolin inhaler, the first issue the Panel must address is whether the Player has met his burden of proof in that respect.

21. If the Player is considered to have met his burden of proof, the results of the in-competition test shall not be deemed an Adverse Analytical Finding constitutive of an anti-doping rule violation under the FIFA DCR.

22. If, on the contrary, the Panel finds that the Player has failed to meet his burden of proof, the results must be deemed an Adverse Analytical Finding constitutive of an anti-doping violation that must be sanctioned on the basis of articles 45 and 47§1 of the 2009 FIFA DCR (in accordance with the principle of *lex mitior*).

23. In making its determination, the Panel shall begin by discussing the origin and rationale of the presumption contained in the above class S3 definitions in the WADA Prohibited Lists (hereinafter referred to collectively as the "Class S3 Rules"). It shall then examine the basis upon which a therapeutic use/dose of inhaled salbutamol can be established. In light thereof and of

the circumstances of this case, the Panel will assess whether the Player has overcome the presumption that his alleged use of Ventolin did not correspond to a therapeutic use.

a) The Origin and Rationale of the Presumption Contained in the Class S3 Rules

24. fact that certain athletes require the use of inhaled salbutamol for therapeutic reasons, while at the same time current scientific studies indicate that various types of use of salbutamol may potentially have performance-enhancing effects as well as be detrimental to an athlete's heath, has led WADA to seek a means of preventing that an ATUE for salbutamol be misused by athletes.

25. WADA has achieved this by providing that the only therapeutic use of salbutamol allowed under an ATUE is by inhalation (as opposed e.g. to systemic intake of tablets) and by fixing a threshold concentration of salbutamol in urine beyond which – in accordance with current scientific knowledge regarding the concentrations of salbutamol found in the urine of persons having inhaled a therapeutic dose – there is a presumption that the salbutamol was not used by inhalation in a therapeutic manner.

26. Consequently, if the athlete does not rebut the presumption by proving that the use of salbutamol was by inhalation for therapeutic purposes, any concentration of salbutamol found beyond the threshold (1000 ng/mL) is deemed an Adverse Analytical Finding.

27. Since the threshold of 1000 ng/mL fixed by WADA is not open to discussion under the Class S3 Rules, but proof that it was exceeded as a result of inhaling salbutamol for therapeutic purposes is possible, the definition of the athlete's standard of proof, of what methods of proof the athlete may employ and of what may be deemed therapeutic use are essential. These are now examined.

b) The Athlete's Standard and Means of Proof and the Definition of Therapeutic Use

28. In keeping with the standards of proof defined in the World Anti-Doping Code, now explicitly confirmed in article 13 of the 2009 FIFA DCR, the standard of proof for an athlete to rebut a presumption that an anti-doping violation has occurred is *"… a balance of probability"*.

29. Therefore, the Panel shall examine on a balance of probability whether the Player has established that the finding of a concentration of 2400 ng/mL in his in-competition urine sample was the consequence of the therapeutic use of Ventolin he is invoking.

30. In that relation, an important question is what may be deemed *"therapeutic use"* in the meaning of the Class S3 Rules, i.e. what is the yardstick by which therapeutic use, as opposed to non-therapeutic use, can be determined.

31. One criterion has remained constant in the definitions contained in the three most recent successive versions of the Class S3 Rules: only intake of salbutamol by inhalation, as opposed to for example the use of tablets (systemic intake), may qualify as therapeutic under an ATUE and the Class S3 Rules.

32. In certain other ways, the definitions have evolved, in the sense of becoming more specific.

33. Whereas the 2008 class S3 definition simply refers to the requirement of proving *"the therapeutic use of inhaled salbutamol"*, i.e. does not mention the word *"dose"* or a pharmacokinetic test as a means of proof, the 2009 class S3 definition introduces the notion of a pharmacokinetic study and refers to *"the use of a therapeutic dose of inhaled salbutamol"*, while the 2010 definition is more precise still, since it specifies that a therapeutic dose represents a *"… maximum* [of] *1600 micrograms over 24 hours"*.

34. Although in this case it is the more general 2008 class S3 definition which is applicable, it is useful to note that given the rationale of the Class S3 Rules as well as general principles on the burden of proof, the introduction of a reference to a pharmacokinetic study as a means to rebut the presumption deriving from the threshold of 1000 ng/mL should not be interpreted as implying that it is a required means or the only means of proof at an athlete's disposal.

35. With respect to what represents a therapeutic use/dose of inhaled salbutamol, the Panel considers that the rationale of the Class S3 Rules and of the procedure for granting an ATUE imply that it is the therapeutic use as defined in the text of the ATUE itself – together with the corresponding use then defined in the athlete's medical prescriptions – that must be deemed the starting point and yardstick for the definition of a given athlete's therapeutic use of inhaled salbutamol.

36. There are several reasons for the foregoing conclusion.

37. Perhaps the most basic reason is that the exact therapy and doses prescribed for a therapeutic use of salbutamol by inhalation depend in part on the type and severity of asthma an athlete suffers from.

38. The application procedure for an ATUE confirms that therapeutic use is condition- specific.

39. An athlete who consults a doctor and is prescribed treatment or medication for therapeutic reasons has the duty to enquire whether the prescription contains prohibited substances and, if so, to request alternative treatment; and, if none exist, to apply for an ATUE. Furthermore, an ATUE will only be granted in cases of clear and compelling clinical need and where the athlete can gain no competitive advantage from the treatment.

40. It stems from the above that the anti-doping authority delivering an ATUE must ensure that the dose of medicine and the mode of ingestion being applied for correspond to a therapeutic use/dose. Otherwise, the ATUE should not be granted.

41. It follows that the athlete has the right to rely on the therapeutic use/dose defined in the ATUE but also the duty to make sure he/she understands it and conforms to it; meaning, among others, that the treatment prescribed by the athlete's doctor must be in keeping with the ATUE and the athlete must ensure that the nature of therapy and the method of ingestion of the prescribed medicine as well as its dosage are clearly understood.

42. Therefore, in order to make the rules and practices relating to ATUEs as predictable as possible and thereby promote diligence and protect good faith, any mandatory methods of ingestion and/or maximum limits of dosage for given therapies fixed in the WADA Prohibited List should ideally be stated also in the ATUE itself. Otherwise, ambiguities or even contradictions could arise from differences of formulation of the therapeutic use/dose in an ATUE and in underlying anti-doping rules such as the WADA Prohibited List.

43. In light of the foregoing principles and considering the 2010 WADA Prohibited List is not yet in force, the Panel shall now examine what must be deemed the therapeutic use/dose which the Player had the duty to respect in accordance with his ATUE and the 2008 WADA Prohibited List; and whether such use/dose was in fact respected during the day of the in-competition test which revealed a concentration of 2400 ng/mL in his urine sample.

c) The Proof of Therapeutic Use Invoked by the Player

44. In the present case, the Player's ATUE application, signed by Dr Vibeke Backer (the specialist in respiratory medicine who diagnosed his asthma in 2004) and the ensuing ATUE certificate both indicate that his therapeutic use includes the use of a Ventolin inhaler with doses of 0.2mg (which corresponds to 200 micrograms) *"per necessitate"*, i.e. as necessary.

45. Consequently, the therapeutic use/dose which is allowed under the ATUE must be determined in light of the most relevant information the Player had available regarding what was meant by the words *"as necessary"*.

46. In that relation, what the Player could and should reasonably have understood about his asthma condition - given the diligence and responsibility required of an athlete when applying for a therapeutic exception in order to be entitled to compete without obtaining a competitive advantage – through consulting his doctor as well as the information contained in his medical prescriptions and in the instructions of use provided with the Ventolin inhaler are all relevant.

47. The Player indicated and Dr Vibeke Backer confirmed that upon undertaking the clinical tests and providing her diagnosis in 2004, she met with the Player to discuss the results and recommended treatment. Furthermore, the Player stated that he subsequently discussed the matter with Dr Morten Lysdahl, the general practitioner who prescribed the Ventolin.

48. During his hearing the Player declared in substance that he understands his asthma to be exercise-induced but that he feels better after a puff of Ventolin in the morning, especially in certain weather conditions, and that he has the habit of taking two puffs on the day of a game.

49. He stated that he had understood from his discussion with Dr Vibeke Backer that the Seretide was for daily use (1 puff twice a day) - as a preventive measure to keep his asthma under control - whereas the Ventolin should be used as required for training and competitions. The Player also declared that with respect to the use of Ventolin he had understood the same from Dr Morten Lysdahl, i.e. that he should use it as needed for training and competitions. The Player added that once before, perhaps six months before the in-competition test, he had felt significantly more constricted than usual due to a bad cold and had called his doctor, who had basically told him he should take as much Ventoline as he felt he needed.

50. Dr Vibeke Backer testified in substance that although the Player's lung capacity was diminished due to his condition, it was not a particularly severe form of diminution; and in his prescription for Ventolin Dr Morten Lysdahl prescribed: *"2 puffs before physical strain and as required"*.

51. In the instructions for use that come with a Ventolin 0,2mg/dose inhaler of the type employed by the Player, the following is stipulated under section 3 (free translation by WADA): *"Always use Ventoline carefully according to the doctor's instructions. If you have any doubts contact the doctor or the pharmacy […]. Sudden upcoming difficulty in breathing or attacks of dyspnoea: 1 inhalation. The dose can be taken again after a few minutes if the symptoms remain. You should at the most take 1 inhalation 4 times a day. […] Exercise induced asthma preventing dyspnoea: 1 inhalation 15-30 minutes before exercise. You should at the most take 4 inhalations per day"*.

52. The Panel finds that on the basis of the information which was thus available to the Player – via the various discussions with his doctors as well as the medical prescriptions he received and the recommendations contained in the Ventolin instructions of use – he should have understood that using Ventolin *"as necessary"* for therapeutic reasons meant taking a maximum of 2 puffs in normal conditions before exercising (training or competitions) and additional puffs as required to feel relieved in case of particular difficulties with breathing.

53. The Panel finds that the Player's description of his use of the medicine allowed under the ATUE tends to confirm that such was his own understanding of the therapeutic use of the Ventolin inhaler, since he normally only took 2 puffs of Ventolin before a game or training and knew that the prescribed daily use of Seretide constituted an underlying preventive measure for treating his asthma.

54. Having determined what *"therapeutic use"* of the Ventolin inhaler reasonably meant in this case, the question remains whether the Player has evidenced on a balance of probabilities that the concentration of 2400 ng/mL of salbutamol found in his in-competition urine sample was the consequence of him inhaling salbutamol in accordance with such therapeutic use allowed under his ATUE.

55. Upon considering all the evidence on record, the Panel finds for a combination of the following reasons that, on balance, the Player has not established that he made a therapeutic use of the Ventolin inhaler on the day of the in-competition test:

- Although he declared having had very serious airway problems on the day of the competition (and the day before), due to being sick and the cold dry weather, there is no clear evidence that he began taking the Ventolin on the morning of the game and/or continued taking additional puffs thereafter in order to deal with a sudden alarming breathing problem, i.e. to deal with an asthma attack.
- Indeed, in his letter of 17 March 2008 to the Doping Commission of the Danish NOC, he stated that *"… on the day of the match I took (as always 2 puffs at a time) in the morning when I woke up, before leaving home, on my way to Brøndby, before warming-up, right before kick-off and during intermission, a total of at least 12 puffs"*. At the hearing, he basically confirmed the same but added that he had felt constricted upon waking up in the morning and that he had only played the second half of the match.
- Thus, his statements do not indicate or give the impression he took the puffs in response to a succession of asthma attacks but rather as a series of doses in preparation for a game that he really wanted to play despite feeling unwell and more constricted than usual.
- Neither can the puffs in their totality be characterised as a reasonable preventive measure, given their number, or be deemed to have been taken in response to exercise-induced asthma, since the 12 puffs he remembers having inhaled were all taken at intervals during the morning before he even began playing the game.
- Even if one accepts the opinion of Professor Ronald Dahl that the particular conditions the Player suffered from on the day of the in-competition test (being sick, the cold dry weather and dehydration) – as well as other possible factors such as deficient uptake of salbutamol (inhaling technique) and his personal metabolism – may explain part of the discrepancy between the concentration of salbutamol found in his sample that day and the concentration found in his samples during the controlled study, it is nonetheless established that the Player took at least 12 puffs (according to his own admission) and it is very possible that he may have taken more (since the Player stated that he could not exclude having taken up to 16 puffs and the concentration of 2400 ng/mL of salbutamol found in his in-competition urine sample tends to correspond to a higher number than 12 puffs according to current medical studies).

56. In other words, on the basis of the evidence submitted and for the above reasons, the Panel finds it is more likely than not that the Player inhaled the total dose of salbutamol leading to a concentration of 2400 ng/mL in his urine sample (whether it be as a result of 12 puffs or more), not because taking such dose was *"necessary"* for therapeutic reasons to respond to an asthma attack or as a reasonable precaution before exercising, but rather because he was very anxious to be able to play the game in question and got carried away with the use of his Ventolin inhaler and perhaps even lost track of (or subsequently forgot) how many puffs he had taken.

57. The Panel having thus found that on a balance of probability the concentration of salbutamol in the Player's in-competition urine sample did not result from the use of a therapeutic dose of inhaled salbutamol, he has not managed to rebut the presumption set out in the class S3 definition of the 2008 WADA Prohibited List. Therefore the concentration of 2400 ng/mL of salbutamol found in his in-competition urine sample must be deemed an Adverse Analytical Finding that constitutes an anti-doping violation under 5§2 of the 2009 FIFA DCR.

58. Consequently, the question remains what sanction should be applied for that doping offense.

B. The Disciplinary Sanction

a) Possible Reduction of the Sanction

59. For the reasons submitted and agreed by the parties during the proceedings, the sanction shall be determined in application of the 2009 FIFA DCR which recognizes the principle of *lex mitior*.

60. Under article 45 of the 2009 FIFA DCR: *"The period of ineligibility imposed for a violation of art. 5,6 or 10 shall be two years unless the conditions for eliminating or reducing the period of ineligibility, as provided under art. 47 to 50, or the conditions for increasing the period of ineligibility, as provided under art. 51 are met"*.

61. Accordingly, the sanction shall be a period of ineligibility of two years unless the Panel considers the conditions for eliminating or reducing the sanction are met under articles 47 - 50 of the 2009 FIFA DCR.

62. Article 47§1 of the 2009 FIFA DCR provides that:

"Where a player can establish how a specified substance entered his body or came into his possession and that such specified substance was not intended to enhance the player's sporting performance or mask the use of a performance-enhancing substance, the period of ineligibility imposed under art. 45 shall be replaced with the following: at a minimum, a reprimand and no period of ineligibility from future competitions, and at a maximum, two years of ineligibility.

To justify any elimination or reduction, the player must produce corroborating evidence in addition to his word that establishes to the comfortable satisfaction of the FIFA Disciplinary Committee the absence of intent to enhance sporting performance or mask the use of a performance-enhancing substance. The player's degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility".

63. Thus, in order to benefit from the elimination or reduction of the sanction, the Player must fulfil two cumulative conditions, i.e. establish how the specified substance (in this case salbutamol) entered his body and establish the absence of intent to enhance his sporting performance.

64. Each of the two foregoing conditions is subject to a different standard of proof.

65. The 2009 FIFA DCR does not specify what standard of proof applies to the requirement that a player establish how the specified substance entered his body. However, the comment to article 10.4 of the 2009 World Anti-Doping Code, which is the provision that article 47§1 of the 2009 FIFA DCR derives from and implements, states that: *"While the absence of intent to enhance sport performance must be established to the comfortable satisfaction of the hearing panel, the Athlete may establish how the Specified Substance entered the body by a balance of probability"*.

66. Consequently, the Panel will examine on a balance of probability whether the Player has established how the salbutamol entered his body.

67. With respect to the proof of a player's intent not to gain a competitive advantage, article 47§1 of the 2009 FIFA DCR specifically provides (in keeping with article 10.4 of the 2009 World Anti-Doping Code) that it must be *"… established to the comfortable satisfaction of the hearing panel"*. Therefore, the Panel shall apply that standard.

b) Proof of how the Specified Substance Entered the Player's Body

68. The Player has submitted that the concentration of 2400 ng/mL of salbutamol found in his in-competition urine sample entered his body solely by inhalation of salbutamol by means of his Ventolin inhaler. During his examination at the hearing, the Player confirmed this position on several occasions.

69. The question is therefore whether this declaration by the Player combined with other elements of evidence adduced is sufficient to consider, on a balance of probability, that the salbutamol was ingested as stated by the Player.

70. In the particular circumstances of this case and in light of the evidence on record, the Panel finds on a balance of probability that the Player has established that the salbutamol entered his body by the inhalation of Ventolin. The Panel's finding is based on a combination of the following elements:

- Upon his examination at the hearing, the Player struck the Panel as being sincere when explaining he had thrown away all his salbutamol tablets upon obtaining the ATUE and receiving confirmation that the tablets could not be used as treatment under the exemption.
- That impression was comforted by the fact that there were no obvious inconsistencies between his statements at the hearing and his prior submissions and statements.
- That impression was also comforted by the fact that his recollection that Mr Jens Ehlers had intervened at the time of the ATUE application to state that a prescription of salbutamol tablets would not be authorized was confirmed by Mr Ehlers when called by the Panel during the hearing.
- It is not contested that before obtaining the ATUE, i.e. before 2005, the Player had been taking salbutamol tablets regularly to treat his asthma (which he had suffered from since a young age) and that one of the main reasons he decided to consult Dr Vibeke Backer was that with the more intense training he was doing he felt that the therapy (i.e. the tablets prescribed by his doctor) was insufficient; it was confirmed in a credible manner by Professor Ronald Dahl when giving expert testimony that taking salbutamol by inhalation is a more effective treatment than salbutamol tablets to meet the Player's needs at or before training/games with respect to his exercise-induced asthma.

- Therefore, at least for therapeutic reasons, it would seem illogical and improbable that the Player would have resumed taking salbutamol tablets in addition to, or instead of, the forms of medication (Ventolin and Seretide) allowed under the ATUE and prescribed by his doctor on that basis.
- Although he receives a small monthly compensation from his club, the Player is not a professional, he works full time as a plumber and at the age of 32 has only ever played in second and third division.
- His incentive for trying to obtain a competitive advantage by a systemic use salbutamol is therefore not high.
- Even if, in light of the most reliable medical studies and statistics deriving from broad experience with tests on athletes at various Olympic games, the concentration of salbutamol found in the Player's sample was much higher than what would be expected for the dose of Ventolin he contended to have taken, it was not considered impossible by the experts that the concentration could derive from inhalation if the Player had taken a significantly higher dose than admitted or remembered.
- Furthermore, both the Player and Professor Ronald Dahl pointed out that the conditions were significantly different during the controlled test because he was not sick, was not exercising in cold dry conditions and was continually rehydrating to be in a position to provide so many urine samples.
- The Panel found that the testimony of the experts on the possible effects of the foregoing factors was not particularly clear. The opinions were partly contradictory and there did not seem to be a solid empirical basis for them. The Panel's feeling was that the state of knowledge on the topic was somewhat thin. This impression was increased by the fact that according to two of the experts a person would normally be showing serious clinical signs of intoxication at the level of intake required for the concentrations reached, while in fact the controlled test on the Player tends to indicate the contrary as far as he is concerned since he inhaled huge doses of Ventolin for two days in a row without apparently feeling any side effects. Presumably, this could mean that the Player had become accustomed to salbutamol after taking it for so many years, or that some other unknown factor might be having an influence.

71. In considering the above elements, the Panel finds that although the medical studies and the controlled test would tend to demonstrate that it is unlikely that the amount of concentration found in his test sample could derive from the dose of inhaled Ventolin the Players contends to have taken, there are also reasons for which it appears improbable that the Player continued or resumed taking salbutamol tablets; while at the same time it is possible that the Player actually took more puffs of Ventolin than he remembered or more than he has admitted to and scientific knowledge of the degree to which the particular factors that were absent during the controlled study (compared to the day of the in-competition test) could be of significance for the result seemed to be lacking, i.e. all three experts appeared to be partially speculating on the possible influence.

72. The Panel therefore considers that on a balance of probability it is more likely than not that the Player did not take any salbutamol tablets but took quite a massive dose of inhaled salbutamol in successive series of puffs, perhaps more than he remembers or admitted to (since the controlled test indicate that he is capable of taking high doses without any side effects), due to feeling unwell (as a result of a bad cold and the cold dry weather) and intensely wanting to play the game against the first division club of Brøndby IF. Accordingly, on the basis of the applicable standard of proof, it must be deemed established that the salbutamol entered the Player's body by inhalation of Ventolin.

c) The Player's Absence of Intention to Enhance his Sport Performance

73. For a number of reasons already stated above – notably the impression the Player gave, the relative lack of incentive he has to dope himself given his age/competition level and the uncertainties which remain in this case regarding the degree of effect of certain factors (his condition of health, the adverse weather conditions, his apparently unusual resistance to the side effects of large doses of inhaled salbutamol, etc.) on the test results – the Panel is comfortably satisfied that the Player did not have the intention to enhance his sport performance.

74. The Panel finds it probable that for a combination of reasons – the adverse conditions (feeling sick, cold dry weather), the strong desire to play nevertheless and perhaps his good resistance to salbutamol and the subjective impression that it would help him breath better during the game – the player decided he would have a better chance of playing and managing to perform that day if he took much more Ventolin than usual. The fact that, according to his testimony, he is rarely sick, could further explain the behaviour.

75. The Player having fulfilled the two conditions required to benefit from the elimination or reduction of the sanction, the Panel shall now examine what sanction to apply.

d) The Player's Degree of Fault and the Corresponding Reduced Sanction

76. In determining the Player's degree of fault in inhaling an exaggerated dose of Ventolin the day of the in-competition test, the Panel shall examines both the factors that tend to demonstrate negligence and those that alleviate his fault.

77. Among the factors of negligence the following are noteworthy:

- It is the duty of an athlete to inform him/herself regarding anti-doping regulations, not least when the athlete benefits from an ATUE since respecting the requirements of an ATUE implies knowing and understanding the content of the WADA Prohibited List and the notion of therapeutic use.
- Contrary to that requirement, the Player seems not to have had in mind the threshold in concentration of salbutamol stipulated in the definition of class 3 Specified Substances in the WADA Prohibited List.

- Furthermore, an athlete must understand and pay attention to all information available regarding the therapeutic use in question and the prescribed therapy.
- In this case on the day of the match the Player appears to have paid little attention to the function the Ventolin was meant to have – compared to the Seretide also prescribed for his asthma, i.e. to the fact that it was only for exceptional use as rescue medicine, i.e. in case of an asthma attack, beyond the 2 puffs prescribed for preventive use before exercise.
- Yet both the prescription made out by the Player's doctor and the instructions of use provided with the Ventolin inhaler indicated that the dose to be taken as a preventive measure against exercise-induced asthma was very limited (2 puffs in the prescription and *"1 inhalation 15-30 minutes before exercise"* according to the instructions of use).
- Despite the foregoing and according to his own admission the Player took a dose that was at least six times larger, and he may in fact have taken an even more massive dose.
- Those factors combined demonstrate a serious lack of diligence.

78. On the other hand, there a number of factors for which the Player is not responsible that may have caused him to misunderstand or misinterpret the information available and therefore mitigate his fault. One factor is that the ATUE itself stipulated that he should take Ventolin as needed.

79. In addition, in this case the wording of the medical prescription the Player received may have increased the confusion since it states *"2 puffs before physical strain and as required",* which in good faith could be interpreted to mean that more than 2 puffs could be taken preventively before physical exercise if he felt he needed it.

80. Dr Olivier Rabin testified to the fact that the risk of misapplication of the prescription *"as needed"* was precisely one of the reasons that had led WADA to introduce a more specific definition of what will be deemed a maximum therapeutic dose of inhaled salbutamol under the 2010 WADA Prohibited List, in order to better protect the athletes.

81. The fact that the WADA Prohibited List has been amended is also in itself an indication that a more precise definition was deemed necessary and preferable in the interest of clarity and security.

82. Given the importance of informing an athlete in an unambiguous manner regarding any maximum tolerated dose and given the ambiguity of wording such as *"as needed"* or *"as required"* that has led WADA to a change of regulation for 2010 - and bearing in mind that an athlete will naturally tend to pay more attention to his/her ATUE and to corresponding medical prescriptions than to generic use instructions supplied with Ventolin - the Panel finds that the Player's negligence was real but that mitigating circumstances exist. In other words, the Panel finds that the lack of precision of the words *"as needed"* in the Player's ATUE and in particular the corresponding lack of precision of the words *"as required"* in his doctor's prescription is a mitigating factor in this case, especially since the doctor does not appear to have been much clearer in his explanations to the Player. Happily, this problem should be reduced in the future

given the planned wording of the 2010 WADA Prohibited List and the possibility that the maximum limit of a therapeutic dose be indicated also in the ATUE itself.

83. For the above reasons the Panel considers it fair to apply a sanction that is more than a reprimand but less than a one-year penalty; and has decided therefore to apply a six-month period of ineligibility that shall begin to run on 16 November 2009.

The Court of Arbitration for Sport rules:

1. The appealed decision of 16 September 2008 of the National Olympic Committee & Sports Confederation of Denmark is set aside.

2. Mr Jens Münsberg is declared ineligible for competition for 6 months commencing on 16 November 2009.

(…)

5. Dismisses all other and contrary prayers for relief.