

16 June 2023

**DECISION OF THE INTERNATIONAL TENNIS INTEGRITY AGENCY
PURSUANT TO ARTICLE 7.14 OF THE 2023 TENNIS ANTI-DOPING PROGRAMME**

I. Introduction

1. The International Tennis Integrity Agency (**ITIA**) is the delegated third party, under the World Anti-Doping Code (**Code**), of the International Tennis Federation (**ITF**), the international governing body for the sport of tennis and signatory of the Code. Under the delegation, the ITIA is responsible for the management and administration of anti-doping across professional tennis in accordance with the Tennis Anti-Doping Programme (the **TADP** or the **Programme**), which sets out Code-compliant anti-doping rules applicable to players competing in Covered Events.¹
2. Kamil Majchrzak (the **Player**) is a 27-year-old tennis player from Poland. He has achieved a career-high ATP singles ranking of 75. By virtue of (among other things) his ATP ranking and participation in Covered Events in 2022, the Player was bound by and required to comply with the TADP.
3. The ITIA charged the Player with the commission of anti-doping rule violations under Article 2.1 and/or Article 2.2 of the TADP (copied below), and proposed certain Consequences based on its analysis of the degree of fault that the Player bears for those violations:

“2.1 The presence of a Prohibited Substance or any of its Metabolites or Markers in a Player’s Sample, unless the Player establishes that such presence is consistent with a TUE granted in accordance with Article 4.4.”

“2.2 Use or Attempted Use by a Player of a Prohibited Substance or a Prohibited Method, unless the Player establishes that such Use or Attempted Use is consistent with a TUE granted in accordance with Article 4.4.”

4. The Player has admitted the anti-doping rule violations charged and acceded to the Consequences proposed by the ITIA.
5. In such circumstances, Article 7.14 of the 2023 TADP provides that:

“7.14.1 At any time prior to a final decision by the Independent Tribunal, the ITIA may invite the Player or other Person to admit the Anti-Doping Rule Violation(s) asserted and accede to specified Consequences [...]

¹ Unless specified otherwise, references in this decision to the TADP are to the 2022 edition. In accordance with Article 1.5 of the 2023 TADP (which came into effect on 1 January 2023), any case brought after 1 January 2023 based on conduct that took place prior to 1 January 2023 will be governed by the substantive rules in force at the time of the conduct (i.e., the 2022 TADP) and the procedural rules of the 2023 TADP.

Any defined term denoted by an initial capital letter that is not otherwise defined in this decision has the meaning given to it in the TADP.

7.14.2 *In the event that the Player or other Person admits the Anti-Doping Rule Violation(s) asserted and accedes to Consequences specified by the ITIA [...], the ITIA will promptly issue a reasoned decision confirming the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences [...], will send notice of the decision to the Player or other Person and to each Interested Party, and will Publicly Disclose the decision in accordance with Article 8.6. [...]*

7.14.3 *Any decision issued by the ITIA in accordance with Article 7.14.2 that an Anti-Doping Rule Violation has been committed [...] will address and determine (without limitation): (1) the factual basis of the decision that an Anti-Doping Rule Violation was committed; and (2) all of the Consequences to be imposed for such Anti-Doping Rule Violation, including the reasons for imposing the Consequences specified, and in particular the reasons for exercising any discretion not to impose the full Consequences available under this Programme.”*

II. The Player's commission of anti-doping rule violations

6. On 26 September 2022, while competing at the ATP Sofia Open event held in Sofia, Bulgaria the Player was required to provide a urine sample for drug testing pursuant to the TADP. The sample he provided was given reference number 1084154 and was split into an A sample and a B sample, which were sealed in tamper-evident bottles and transported to the WADA-accredited laboratory in Montreal (the **Laboratory**) for analysis.
7. The Laboratory detected the presence in sample A1084154 of SARM S-22 and a metabolite of LGD-4033. SARM S-22 and LGD-4033 are anabolic agents banned at all times under Section S1.2 (Other Anabolic Agents) of the 2022 WADA Prohibited List. SARM S-22 and LGD-4033 are not Specified Substances.
8. On 6 October 2022, while competing at the ATP Rakuten Japan Open event held in Tokyo, Japan, the Player was required to provide a urine sample for drug testing pursuant to the TADP. The sample he provided was given reference number 3175696 and was split into an A sample and a B sample, which were sealed in tamper-evident bottles and transported to the Laboratory for analysis.
9. The Laboratory detected the presence in sample A3175696 of SARM S-22 and GW0742 and its sulfoxide and sulfone metabolites. SARM S-22 and GW0742 are anabolic agents banned at all times under Section S1.2 (Other Anabolic Agents) and S4 (4.1) (Hormone and Metabolic Modulators) of the 2022 WADA Prohibited List. SARM S-22 and GW0742 are not Specified Substances.
10. On 12 October 2022, while competing at the ATP Challenger Seoul event held in Seoul, South Korea, the Player was required to provide a urine sample for drug testing pursuant to the TADP. The sample he provided was given reference number 1084366 and was split into an A sample and a B sample, which were sealed in tamper-evident bottles and transported to the Laboratory for analysis.
11. The Laboratory detected the presence in sample A1084366 of SARM S-22 and GW0742 and its sulfoxide and sulfone metabolites. SARM S-22 and GW0742 are anabolic agents banned at all times under Section S1.2 (Other Anabolic Agents) and S4 (4.1) (Hormone and Metabolic

Modulators) of the 2022 WADA Prohibited List. SARM S-22 and GW0742 are not Specified Substances.

12. On 9 November 2022 the Polska Agencja Antydopingowa (**POLADA**) carried out an out-of-competition test on the Player. The sample he provided was given reference number 1033819 and was split into an A sample and a B sample, which were sealed in tamper-evident bottles and transported to the Polish Anti-Doping Laboratory in Warsaw for analysis.
13. The Polish Anti-Doping Laboratory detected the presence in sample A1033819 of GW0742 and its sulfoxide and sulfone metabolites. GW0742 is banned at all times under Section 4 (4.1) (Hormone and Metabolic Modulators) of the 2022 WADA Prohibited List. GW0942 is not a Specified Substance.
14. The Adverse Analytical Findings reported by the Laboratory in respect of the samples 1084154, 3175696 and 1084366 were each considered by an independent Review Board in accordance with TADP Article 7.4. The Review Board did not identify any apparent departures from the applicable sample collection and sample analysis procedures that could have caused these Adverse Analytical Findings. It therefore decided that the Player had a case to answer for breach of TADP Articles 2.1 and/or 2.2.
15. Accordingly, on 30 November 2022 the ITIA sent the Player a formal pre-charge Notice, asserting that the Player had a case to answer for breach of TADP Articles 2.1 and/or 2.2.
16. Given that SARM S-22, GW0742 and LGD-4033 (together, the **Substances**) are not classified as Specified Substances under the TADP, the Player was subject to a mandatory provisional suspension under TADP Article 7.12.1, which came into effect on 30 November 2022.
17. The Laboratory subsequently analysed samples B1084154, B3175696 and B1084366 and reported, on 21 December 2022, that it had detected the presence of SARM S-22 and a metabolite of LGD-4033, SARM S-22 and GW0742 and SARM S-22 and GW0742 respectively, i.e., the B sample analysis confirmed the Adverse Analytical Finding made in respect of the A samples.
18. Separately POLADA confirmed the presence of GW0742 and its sulfoxide and sulfone metabolites in sample B1033819.
19. Given the proximity of the tests carried out under the TADP (i.e., those on 26 September 2022, 6 October 2022 and 12 October 2022) and the test conducted by POLADA on 9 November 2022, the fact that one or more of the Substances were detected in each of those tests, and the fact that the test conducted by POLADA was carried out before the Player had been sent a pre-charge Notice by the ITIA, the result management of POLADA's 9 November 2022 test was passed to the ITIA. The Player was notified by POLADA that results management of its test would now be conducted by the ITIA.
20. TADP Article 2.1 is a strict liability offence that is established simply by proof that a prohibited substance was present in the Player's sample, i.e., the ITIA does not have to prove how the substance got into the Player's system or that the Player took the substance intentionally (or even knowingly).
21. On 11 January 2023, the ITIA sent the Player a formal Charge Letter, asserting that the presence of SARM S-22 and a metabolite of LGD-4033 in his sample collected on 26 September 2022, SARM

S-22 and GW0742 in his sample collected on 6 October 2022, SARM S-22 and GW0742 in his sample collected on 12 October 2022 and GW0742 in his sample collected on 9 November 2022 constituted anti-doping rule violations under TADP Articles 2.1 and/or 2.2.

22. In his preliminary response to the Charge Letter, the Player accepted that the Substances were present in his samples collected on 26 September 2022, 6 October 2022, 12 October 2022 and 9 November 2022 and therefore admitted that he had committed the anti-doping rule violations with which he was charged.

III. Consequences

A. Period of Ineligibility

(i) How the Substances got into the Player's system

23. The Player has asserted that he did not intend to cheat and did not knowingly ingest the Substances. He asserts that he had a meeting with Mr Jacek Feldman, a dietician based in Warsaw, on 19 September 2022. During that meeting it was recommended that the Player change his supplement regime in order to help with muscle cramps. Mr Feldman suggested a number of different supplements including INTRA manufactured by Placebo Nutrition. The Player asserts that, unbeknownst to him, the INTRA supplement was contaminated with the Substances.
24. In support of his explanation, the Player provided (among other things): (i) a detailed explanation of how, in September 2022, the Player was first introduced by his physical trainer, Mr Slawomir Fotek, to Mr Feldman and how they worked together thereafter; (ii) a witness statement from both Mr Feldman and Mr Fotek verifying the Player's account; (iii) receipts showing the purchase and delivery of the supplements, including INTRA; and (iv) an explanation of when in the time around collection of the samples the Player ingested INTRA and the doses he took in that period.
25. When the Player received the ITIA's Charge Letter on 11 January 2023, he still had in his possession several sachets of INTRA, from the same box as he had received in September 2022, as that which he had been taking in September and October 2022. The Player sent the remaining sachets of INTRA, along with certain other supplements which he was taking at the time, them to a laboratory in Turin for testing by Professor Salomone. That laboratory found the Substances in the INTRA sachets.
26. At the ITIA's request, the remaining sealed sachets of INTRA, as well as the opened sachets which had been independently tested by the Player, were sent to the Laboratory for testing. The Laboratory detected the Substances in the sachets of INTRA as per the independent testing carried out by Professor Salomone.
27. The ITIA consulted Professor Christiane Ayotte, the Director of the Laboratory. Professor Ayotte confirmed that the levels of contamination of the INTRA supplement by the Substances could explain the Player's Adverse Analytical Findings.
28. Given all of the circumstances of this case, the ITIA accepts the Player has established that it is more likely than not that the presence of the Substances found in his urine samples 1084154, 3175696, 1084366 and 1033819 were due to the presence of the Substances (undisclosed contaminants) in the sachets of the INTRA supplement which he consumed in the days prior to collection of each of those samples.

(ii) TADP Article 10.2

29. This is the Player's first doping violation. Under TADP Article 10.9.4.1, as the Player received notice of the first anti-doping rule violation after the second, third and fourth doping violations had been committed, the doping violations shall be considered together as one single anti-doping rule violation.
30. TADP Article 10.2.1 mandates a four-year ban for a TADP Article 2.1 and/or 2.2 violation that is "*intentional*" and is a first violation.² If the prohibited substance in question is not classified as a Specified Substance (as here), the Player has the burden of proving that the violation was not "*intentional*." If the Player can do so, then TADP Article 10.2.2 provides for a two-year period of ineligibility, subject to potential further mitigation. TADP Article 10.2.3 explains that in this context "*the term 'intentional' 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*". The jurisprudence is clear that what counts in this context is what the Player actually knew, not what he should have known.³
31. As set out above, the ITIA has accepted that undisclosed contamination of the INTRA supplement was more likely than not the source of the Player's positive test. The Player knew that other tennis players had tested positive for prohibited substances attributed to supplements and was therefore aware of the significant risk of using them. However, the Player (i) did not know that the INTRA supplement contained contaminants; (ii) checked in advance that the INTRA supplement did not list any prohibited substances as ingredients; and (iii) informed Mr Feldman that he was a professional tennis player and so subject to anti-doping rules. In such circumstances, the ITIA considers that the Player did not manifestly disregard the significant risk that the INTRA supplement contained a prohibited substance. Accordingly, the ITIA accepts that the Player has met his burden of demonstrating that his commission of the violation was not "*intentional*" within the meaning of TADP Articles 10.2.1 and 10.2.3, and so the two-year period of ineligibility set out in TADP Article 10.2.2 applies.

(iii) TADP Articles 10.5 and 10.6

32. TADP Article 10.5 provides that if a player establishes that he bears No Fault or Negligence for the anti-doping rule violation in question, the otherwise applicable period of ineligibility will be eliminated. No Fault or Negligence is defined in the TADP as follows: "*The Player or other Person establishing that they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule.*"
33. TADP Article 10.6.1.2 provides that where the player can establish that he bears No Significant Fault or Negligence and that the prohibited substance came from a Contaminated Product, then

² In accordance with TADP Article 10.9.4.1, for the purposes of imposing consequences under the TADP, the anti-doping rule violations will be "*considered together as one single first Anti-Doping Rule Violation, and the sanction imposed will be based on the Anti-Doping Rule Violation that carries the more severe sanction*" if (as here) the Player did not commit the second anti-doping rule violation after he received notice of the first.

³ ITF v Sharapova, Independent Tribunal decision dated 6 June 2016, para 68, not challenged on appeal, Sharapova v ITF, CAS 2016/A/4643.

the otherwise applicable two-year period of ineligibility may be reduced by up to 100% (in which case there would be a reprimand only). A 'Contaminated Product' is defined in the TADP as a "product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search". The definition of No Significant Fault or Negligence is: "The Player or other Person establishing that their 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 relation to the Anti-Doping Rule Violation". Where No Significant Fault or Negligence is found, the amount of reduction to be applied depends upon the degree of the player's Fault.

34. A plea of No Fault or Negligence or No Significant Fault or Negligence is assessed by considering how far the player departed from their duty under the TADP to use "utmost caution" to ensure that they would not ingest any prohibited substances or otherwise do anything that might constitute or result in the commission of an anti-doping rule violation.⁴ "The difference between the two [...] is one of degree: to establish No Fault or Negligence, the athlete must show that he took every step available to him to avoid the violation, and could not have done any more; whereas to establish No Significant Fault or Negligence, he must show that, to the extent he failed to take certain steps that were available to him to avoid the violation, the circumstances were exceptional and therefore that failure was not significant".⁵ The TADP definition of Fault⁶ makes clear that the first question is how far the player departed from the duty of utmost caution (objective fault) and the second question is whether there is any acceptable explanation for that failure (subjective fault).
35. The standard of "utmost caution" is very onerous and requires a player to show that he "made every conceivable effort to avoid taking a prohibited substance".⁷ It follows that "even in cases of

⁴ See, e.g., *Kutrovsky v ITE*, CAS 2012/A/2804, para 9.49 ("the athlete's fault is measured against the fundamental duty that he or she owes under the Programme and the WADC to do everything in his or her power to avoid ingesting any prohibited substance"); *FIFA & WADA*, CAS 2005/C/976 & 986, paras 73-75 ("The WADC imposes on the athlete a duty of utmost caution to avoid that a prohibited substance enters his or her body. [...] It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping violation has been identified").

⁵ *IBAF v Luque*, IBAF Anti-Doping Tribunal decision dated 13 December 2010, para 6.10.

⁶ "Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Player's or other Person's degree of Fault include, for example, the Player's or other Person's experience, whether the Player or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. In assessing the Player's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that a Player would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Player only has a short time left in their career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2".

⁷ *Knauss v FIS*, CAS 2005/A/847, para 7.3.1; *WADA v NSAM et al*, CAS 2007/A/1395, para 80 ("The burden is therefore shifted to the athlete to establish that he/she has done all that is possible to avoid a positive testing result").

inadvertent use of a Prohibited Substance, the principle of the Athlete's personal responsibility will usually result in a conclusion that there has been some degree of fault or negligence".⁸

36. The Player does not assert that he bears No Fault or Negligence for his violation. He asserts however that he bears No Significant Fault or Negligence, so that a period of ineligibility of less than two years should be imposed, because: (i) he consulted a dietician, and only took the products that he prescribed; and (ii) he told the dietician that he was a professional tennis player and specifically checked with the dietician that the ingredients of the INTRA supplement were not prohibited under anti-doping rules.
37. The ITIA accepts that these factors weigh in the Player's favour. However:
- 37.1 Article 1.3.1 of the TADP states that it is the "*personal responsibility*" of each player bound by the TADP to "*be knowledgeable of and comply with this Programme at all times*", "*take responsibility for what they use*", "*carry out research regarding any products or substance that they intend to Use to ensure that Using them will not constitute or result in an Anti-Doping Rule Violation*", and "*ensure that any medical treatment they receive does not violate this Programme*".
- 37.2 Article 4.2.1.5 of the TADP specifically reminds players that "*[m]any Prohibited Substances may appear (either as listed ingredients or otherwise, e.g., as unlisted contaminants) within supplements and/or medications that may be available with or without a physician's prescription. Since Players are strictly liable for any Prohibited Substances present in Samples collected from them (see Article 2.1.1), they are responsible for ensuring that Prohibited Substances do not enter or come to be present in their bodies by any means and that Prohibited Methods are not Used*".
- 37.3 In any event, it has long been known that supplements may contain substances that are not listed as a named ingredient. The comment to Code Article 10.5 is clear that a plea of No Fault or Negligence cannot succeed in the case of "*a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination*".
38. As a result of the foregoing, the Player knew, and is deemed to have been on specific notice that, there is a significant risk that supplements may contain prohibited substances that are not listed as ingredients. The Player could not assume that he was avoiding that risk based on cursory checks – the ITIA notes that the Player did not perform specific checks in relation to the INTRA supplement, for example, checking whether the supplement had been batch tested, or carrying out tests on the supplement prior to using it. To the contrary, he voluntarily assumed that risk.
39. In the circumstances, the Player was right not to pursue a plea of No Fault or Negligence, because it is not sustainable on these facts. However, the Code comment to Article 10.5 that is quoted above goes on to say: "*depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.6 based on No Significant Fault or Negligence*". The ITIA accepts that, in the specific circumstances of this case, the Player's fault was not 'significant' within the meaning of TADP Article 10.6.1, justifying a reduction from the

⁸ Adams v CCES, CAS 2007/A/131, para 155.

two-year starting point. The ITIA also accepts that the Player has shown that the prohibited substance in his sample came from a Contaminated Product, in that the prohibited substance was not disclosed on the product label, nor would it have been disclosed in information available in a reasonable internet search. Therefore, discretion arises to reduce the two-year ban applicable under TADP Article 10.2.2 by up to 24 months, depending on the Player's level of objective and subjective fault.

40. In determining the appropriate period of ineligibility, the ITIA is mindful of the bans imposed in other recent tennis cases involving contaminated supplements: Mr Agamenone (10 months), Ms Haddad Maia (10 months), and Mr Jarry (11 months), Mr Klier Junior (12 months) and Ms Venter (12 months). The Player is more at fault than each of those athletes because he was on greater notice with respect to the dangers of contaminated supplements. The recent cases set out above have been widely publicised and the Player has also received specific education in relation to the risks of contaminated supplements. In addition, it appears that the previous sanctions have not been sufficient to deter players from using utmost caution to avoid ingesting prohibited substances even inadvertently. Taking the foregoing and the specific facts of this case into account, the ITIA has proposed, and the Player has acceded to, a period of ineligibility of 13 months.
41. In accordance with TADP Article 10.13.2, the Player is entitled to credit for the period of provisional suspension served to date, such that his 13-month period of ineligibility will be deemed to have started running from 30 November 2022. Therefore, it will expire at midnight on 29 December 2023.
42. During his period of ineligibility, the Player's status will be as set out under TADP Article 10.14, i.e., he may not play, coach or otherwise participate in any capacity in (i) any Covered Event; (ii) any other Event or Competition, or activity (other than authorised anti-doping education or rehabilitation programmes) authorised, organised or sanctioned by the ITF, the ATP, 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; (iii) any Event or Competition authorised or organised by any professional league or any international or national-level Event or Competition organisation; or (iv) any elite or national-level sporting activity funded by a governmental agency. Nor will he be given accreditation for or otherwise granted access to any Event referred to at points (i) and (ii). In accordance with TADP Article 10.14.5.2, the Player may use the facilities of a club or other member organisation of a Signatory's member organisation for training purposes in the last two months of his period of ineligibility, i.e., from 29 October 2023 on.

B. Disqualification of results

43. The results obtained by the Player at the Event and in subsequent events are disqualified pursuant to TADP Articles 9.1 and 10.10, and the points and prize money that he won at those events are forfeited in accordance with the same provisions.

C. Costs

44. Each party shall bear its own costs of dealings with this matter.

D. Publication

45. In accordance with 2023 TADP Article 8.6, this decision will be publicly reported by being posted (in full and/or summary form) on the ITIA's website.

E. Acceptance by the Player

46. The Player has accepted the consequences proposed above by the ITIA for his anti-doping rule violations and has expressly waived his right to have those consequences determined by the Independent Tribunal at a hearing.

IV. Rights of appeal

47. This decision constitutes the final decision of the ITIA, resolving this matter pursuant to 2023 TADP Article 7.14.

48. Further to 2023 TADP Article 13.2.1, each of WADA and POLADA has a right to appeal against this decision to the CAS in Lausanne, Switzerland, in accordance with the procedure set out at 2023 TADP Articles 13.8 and 13.9.

49. As part of this resolution of the matter, the Player has waived his right to appeal against or otherwise challenge any aspect of this decision (both as to the finding that the Player has committed anti-doping rule violations and as to the imposition of the consequences set out above), whether pursuant to 2023 TADP Article 13.2.1 or otherwise. However, if an appeal is filed with the CAS against this decision either by WADA or POLADA, the Player will be entitled (if so advised) to exercise his right of cross-appeal in accordance with 2023 TADP Article 13.9.4.

Issued Decision of the ITIA

London, 16 June 2023

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The logo consists of two horizontal blue bars of equal length, positioned centrally below the text.