

**DECISION OF THE INTERNATIONAL TENNIS FEDERATION  
PURSUANT TO ARTICLE 8.1.4 OF THE 2019 TENNIS ANTI-DOPING PROGRAMME**

1. The International Tennis Federation (the **ITF**) is the international governing body for the sport of tennis. Further to its obligations as a signatory to the World Anti-Doping Code (the **Code**) and its responsibilities as custodian of the sport, the ITF has issued the 2019 Tennis Anti-Doping Programme (**TADP** or **Programme**), which sets out Code-compliant anti-doping rules applicable to players competing in '**Covered Events**' (as defined in TADP Article 1.10).<sup>1</sup>
2. Nicolás Jarry (the **Player**) is a 24-year-old professional tennis player from Chile. He has achieved a career-high singles ranking of 38. When registering each year for an International Player Identification Number, the Player expressly agreed to be bound by and to comply with the Programme for that year. By virtue of that agreement, and by virtue of his participation in '**Covered Events**', the Player became bound by and required to comply with the 2019 TADP.
3. The ITF has charged the Player with the commission of an anti-doping rule violation under Article 2.1 of the TADP, and has proposed certain Consequences based on its analysis of the degree of fault that the Player bears for that violation. The Player has admitted the anti-doping rule violation charged and acceded to the Consequences proposed. TADP Article 8.1.4 provides: '**In the event that [...] the Participant admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by the ITF [...], a hearing before the Independent Tribunal shall not be required. Instead the ITF shall promptly issue a decision confirming [...] the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences (including, if applicable, a justification for why the maximum potential sanction was not imposed) [...]**'.

**I. The Player's commission of an anti-doping rule violation**

4. On 19 November 2019, while competing at the Davis Cup Finals in Madrid (the **Event**), the Player was required to provide a urine sample for drug testing pursuant to the TADP. The sample he provided was given reference number 3147630 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.
5. The Laboratory detected the presence in sample A3147630 of metabolites of stanozolol, and a metabolite of SARM LGD-4033 (aka Ligandrol) at an estimated concentration of 0.02 ng/mL. Stanozolol is an anabolic agent banned at all times under Section S1.1.a (Exogenous Anabolic Androgenic Steroids) of the 2019 WADA Prohibited List, and SARM LGD-4033 is an anabolic agent banned at all times under Section S1.2 (Other Anabolic Agents). The Player does not have a therapeutic use exemption permitting use of stanozolol or SARM LGD-4033.
6. The Adverse Analytical Findings reported by the Laboratory in respect of the A sample were considered by an independent Review Board in accordance with TADP Article 7.3. 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 Article 2.1.
7. Accordingly, on 4 January 2020 the ITF sent the Player a formal Notice of Charge (which was subsequently replaced by an amended Notice of Charge dated 10 January 2020 in order to

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<sup>1</sup> Any word or phrase in this decision that begins with a capital letter and that is not otherwise defined in this decision has the meaning given to it in the Programme.

correct an administrative error), asserting that the presence of metabolites of stanozolol and a metabolite of SARM LGD-4033 in his sample collected on 19 November 2019 constitutes an anti-doping rule violation under TADP Article 2.1.

8. Given that neither stanozolol nor SARM LGD-4033 is classified as a Specified Substance under the TADP, the Player was subject to a mandatory provisional suspension under TADP Article 8.3.1, which came into effect on 14 January 2020.
9. The Laboratory subsequently analysed sample B3147630, and reported on 15 January 2020 that it had detected the presence of metabolites of stanozolol at an estimated concentration of 0.2 to 0.6 ng/mL and a metabolite of SARM LGD-4033 at an estimated concentration of 0.2 ng/mL, i.e., the B sample analysis confirmed the Adverse Analytical Findings made in respect of the A sample.
10. On 16 December 2019, a urine sample and blood samples were collected from the Player out-of-competition, for drug testing pursuant to the TADP. The urine sample he provided was given reference number 3142025 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 A3142025 of metabolites of stanozolol and a metabolite of SARM LGD-4033, and reported Adverse Analytical Findings accordingly on 10 January 2020. The Laboratory subsequently analysed sample B3142025, and reported on 15 January 2020 that it had detected the presence of stanozolol itself, metabolites of stanozolol at an estimated concentration of 0.3 to 2.6 ng/mL, and a metabolite of SARM LGD-4033 at an estimated concentration of 0.2 ng/mL, i.e., the B sample analysis confirmed the Adverse Analytical Findings reported in respect of the A sample.
12. 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 ITF 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).
13. In his preliminary responses to the charge, the Player accepted that metabolites of stanozolol and a metabolite of SARM LGD-4033 were present in his samples collected on 19 November 2019 and 16 December 2019 respectively, and therefore admitted that he had committed the Article 2.1 anti-doping rule violation charged.<sup>2</sup>

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<sup>2</sup> Pursuant to TADP Article 10.7.4(a), for the 'purposes of imposing sanctions under Article 10.7 [Multiple Violations], an Anti-Doping Rule Violation will only be considered a second Anti-Doping Rule Violation if the ITF can establish that the Participant received notice, or after the ITF made a reasonable attempt to give notice, of the first alleged Anti-Doping Rule Violation. If the ITF cannot establish this, the Anti-Doping Rule Violations shall be considered together as one single Anti-Doping Rule Violation for sanctioning purposes, and the sanction imposed shall be based on the Anti-Doping Rule Violation that carries the more severe sanction'. The ITF accepts that the Player received notice of the two Prohibited Substances in his 19 November 2019 sample at the same time and therefore their presence in that sample is to be treated as one violation for sanctioning purposes; and the ITF also accepts that the Player's second violation (i.e., presence of Prohibited Substances in his urine sample collected on 16 December 2019) was committed before the ITF notified the Player of the first alleged violation (i.e., presence of Prohibited Substances in his urine sample collected on 19 November 2019, charged on 4 January 2020), and therefore the two violations will be considered as one single violation for sanctioning purposes.

## II. Consequences

### II.A Period of Ineligibility

#### (i) How the metabolites of stanozolol and the metabolite of SARM LGD-4033 got into the Player's system

14. The Player has asserted that he did not intend to cheat and he did not knowingly ingest stanozolol or SARM LGD-4033. He asserts that his physician (a sports medicine specialist) prescribed him four bespoke supplements (each containing different combinations of vitamins, minerals, and other compounds) that were specifically created to order by Orthofarma,<sup>3</sup> a compound pharmacy in São Paulo, Brazil (the **Bespoke Supplements**), and that (unknown to him) those Bespoke Supplements were contaminated with stanozolol and SARM LGD-4033.
15. In support of his explanation, the Player provided (among other things): (i) an explanation of how in around November 2017 the Player was first introduced by Paulo Santos (his physiotherapist, a Brazilian national) to the prescribing physician (based in Rio de Janeiro, Brazil) and how they worked together thereafter; (ii) a copy of a prescription dated 25 October 2019 from the Player's physician to the Player for the Bespoke Supplements; (iii) detailed explanations, supported by contemporaneous correspondence and other documents, regarding the prescription of the Bespoke Supplements and of how the prescription was filled by the compound pharmacy in São Paulo, Brazil, on 26 October 2019 and thereafter transported via various members of the Player's support network to the Player in Madrid, Spain, reaching him on 16 November 2019; (iv) photographs of bottles of each of the four Bespoke Supplements he was prescribed; and (v) an explanation of when the Player ingested capsules of the Bespoke Supplements (from 16 November 2019 until 4 January 2020) and the doses he took in that period.
16. When the Player's urine samples were collected on 19 November 2019 and on 16 December 2019, he was asked to declare on the Doping Control Form (**DCF**) 'any prescription/non-prescription medications or supplements, including vitamins and minerals, taken over the past 7 days'. On 19 November 2019, the Player listed on the DCF 'Etoxecoxib', 'Diclofenaco' and 'Vitamin B', and on 16 December 2019, the Player did not declare any medications or supplements on the DCF. The Player explained subsequently to the ITF that until the summer of 2019 he was in the habit of listing all the supplements he had taken in the previous seven days on the DCF when tested, but stopped doing so (he says) after he was told by a Doping Control Officer that it was not necessary. The ITF is concerned with the Player's omission of the Bespoke Supplements on the DCFs for these two samples, and emphasises that all aspects of the DCF must always be filled in accurately, including the box asking for a list of medications and supplements taken in the previous seven days.
17. When the Player received the ITF's Notice of Charge on 4 January 2020, he still had in his possession the four bottles of the Bespoke Supplements made on 26 October 2019 from which he had been ingesting capsules since 16 November 2019. The Player immediately stopped taking capsules from those bottles and delivered the (open) bottles by hand to the Sports Medicine Research and Testing Laboratory (**SMRTL**) in Salt Lake City, Utah, USA for testing.

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<sup>3</sup> See [orthofarma.com.br/](http://orthofarma.com.br/).

18. SMRTL initially tested the contents of one capsule from each of the four bottles of Bespoke Supplements and detected stanozolol in one capsule, SARM S-22 (aka Ostarine or Enobosarm) in two of the capsules, and tamoxifen in one capsule. (SARM S-22 is an anabolic agent banned at all times under Section S1.2 of the 2019 WADA Prohibited List, and tamoxifen is a selective estrogen receptor modulator banned at all times under Section S4.2). No SARM LGD-4033 was detected in any of the four capsules tested.<sup>4</sup>
19. At the Player's request, SMRTL pooled the contents of the remaining capsules of each of the Bespoke Supplements (which amounted to between approximately 50 and 100 capsules in each case) and tested them again for SARM LGD-4033. This time, SMRTL detected SARM LGD-4033 in three of the Bespoke Supplements.
20. In light of these findings, the ITF approached Orthofarma, the compound pharmacy that had made the Bespoke Supplements, explained the above facts, and asked whether the pharmacy had stanozolol, tamoxifen, SARM LGD-4033, or SARM S-22 on its premises. The pharmacy asked for details of the Bespoke Supplements it had prepared and the ITF provided them. No further response was received from the pharmacy.
21. The ITF consulted Prof. Christiane Ayotte, Director of the Laboratory. Prof. Ayotte acknowledged that, given the SMRTL test results that indicated the Bespoke Supplements contained stanozolol and SARM LDG-4033, if the Player had ingested the Bespoke Supplements each day between 16 November 2019 and 4 January 2020 (as claimed), that could account for the presence of the stanozolol metabolites and the metabolite of SARM LGD-4033 found in the urine samples collected from him on 19 November 2019 and 16 December 2019. She questioned why the Player's samples had not also tested positive for SARM S-22 and tamoxifen, but acknowledged that the amount of contaminant in each capsule could vary considerably.
22. Given all of the circumstances of this case, the ITF accepts the Player has established that it is more likely than not that the presence of the metabolites of stanozolol and the metabolite of SARM LGD-4033 found in his urine samples 3147630 and 3142025 was due to the presence of those substances in capsules of the Bespoke Supplements that he consumed in the days prior to collection of those samples.

**(ii) TADP Article 10.2**

23. This is the Player's first doping violation.
24. TADP Article 10.2.1 mandates a four-year ban for a TADP Article 2.1 violation that is 'intentional' and is a first violation. If the prohibited substances in question are not classified as Specified Substances (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 Participants who cheat. The term, therefore, requires that the Participant engaged in conduct that he/she knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the

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<sup>4</sup> In addition, in January 2020, the Player ordered a new batch of each of the Bespoke Supplements from the compound pharmacy that made the Bespoke Supplements he had taken in the preceding three months, and had that new batch of closed bottles shipped to SMRTL for testing. SMRTL detected stanozolol in two of the Bespoke Supplements and tamoxifen in one of the Bespoke Supplements (and no other prohibited substances in the other two Bespoke Supplements).

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.<sup>5</sup>

25. The ITF has accepted that the Player has shown the source of the prohibited substances found in his sample was undisclosed contaminants of the Bespoke Supplements prescribed for him by his doctor. Since the Player did not know that the Bespoke Supplements contained those contaminants, and since he had received advice that the compound pharmacy was reputable (see para 30, below), and he had not seen the notice issued by the ITF warning that several players had tested positive from contaminants in bespoke supplements mixed by compound pharmacies in South America (see para 31.5, below), he was not in fact aware (even if he should have been) that there was a significant risk they contained prohibited substances. The ITF therefore 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 10.4 and 10.5**

26. TADP Article 10.4 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 he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule'.
27. TADP Article 10.5.1(b) 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 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 his/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'. Where No Significant Fault or Negligence is found, the amount of reduction to be applied depends upon the degree of the player's Fault.
28. 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.<sup>6</sup>

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<sup>5</sup> ITF v Sharapova, Independent Tribunal decision dated 6 June 2016, para 68, not challenged on appeal, Sharapova v ITF, CAS 2016/A/4643; UKAD v Normandale, NADP Tribunal decision dated 27 June 2019, para 23.

<sup>6</sup> See, e.g., Kutrovsky v ITF, 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'). IBAF v Luque, IBAF Anti-Doping Tribunal decision dated 13 December 2010, para 6.10.

'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'.<sup>7</sup> The TADP definition of 'Fault'<sup>8</sup> 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).

29. 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'.<sup>9</sup> It follows that 'even in cases of 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'.<sup>10</sup>
30. 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 doctor who specialises in sports nutrition, and only took the products that he was prescribed by the doctor; (ii) he told his doctor that he was a professional tennis player and specifically checked with the doctor that the ingredients of the Bespoke Supplements were not prohibited under anti-doping rules, and the doctor confirmed that they were not; (iii) for previous prescriptions of the Bespoke Supplements (which ingredients and proportions changed slightly over time), the Player also asked his doctor in Chile to confirm that the prescriptions did not contain any prohibited substances, and the doctor confirmed that they did not; (iv) originally the Bespoke Supplements were made to prescription by a seemingly reputable pharmacy in Rio de Janeiro, which claimed to have worked previously with professional athletes subject to anti-doping rules; (v) in February 2018, the Player's physiotherapist, Mr Santos, told him not to take any more capsules produced by the Rio de Janeiro pharmacy because two other tennis players (Mr Bellucci and Mr Demoliner) had tested positive as a result of contaminated bespoke supplements made at that same pharmacy; (vi) instead Mr Santos sought advice from a sports doctor he knew (Dr Ricardo Diaz Savoldelli, team doctor for the Brazilian Davis Cup team) and Dr Savoldelli – at the request of several tennis players including the Player – paid an

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<sup>7</sup> IBAF v Luque, IBAF Anti-Doping Tribunal decision dated 13 December 2010, para 6.10.

<sup>8</sup> '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 or other Person's degree of Fault include, for example, the Player or other Person's experience, whether the Player or other Person is a Minor, 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 or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player 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 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'.

<sup>9</sup> 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').

<sup>10</sup> Adams v CCES, CAS 2007/A/131, para 155.

unannounced visit to the Orthofarma pharmacy in São Paulo to verify the processes it used to avoid cross contamination, and was satisfied based on what he saw that the Orthofarma pharmacy was a safe place to have supplements produced; (vi) from then on, the Player had his prescriptions filled at the Orthofarma pharmacy in São Paulo rather than from the pharmacy in Rio de Janeiro; (vii) the bottles the Player was given from Orthofarma, containing capsules of the Bespoke Supplements, each contained on the label the name of the pharmacist, the date of manufacture, and the list of ingredients, which did not mention any prohibited substance; and (viii) the Player checked the ingredients listed on the bottles of the Bespoke Supplements against the prescription before taking capsules from them.

31. The ITF accepts that these factors weigh in the Player's favour. However:

31.1 Article 1.12 of the TADP states that It is the 'sole responsibility' of each player bound by the TADP to 'ensure that anything he/she ingests or Uses, as well as any medical treatment he/she receives, does not give rise to an Anti-Doping Rule Violation'. Those responsibilities are personal to the player.

31.2 Article 3.3.1 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'.

31.3 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 Art 10.4 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'. This is the case whether the supplement is an off-the-shelf product produced in bulk by a manufacturer, or a bespoke compound mixed at a local pharmacy.

31.4 In the latter case, however, there have been several cases in Brazil of bespoke supplements mixed by a pharmacy turning out to contain not only the listed ingredient from the prescription but also prohibited substances. For example, in FINA v Cielo Filho and CBDA, the athletes were Brazilian swimmers who were prescribed caffeine pills by their doctor. They had those pills made by a reputable pharmacy, which inadvertently contaminated those caffeine pills with furosemide during the production process. This was a very high-profile case, in Brazil and elsewhere. Furthermore, three other Brazilian tennis players (Marcelo Demoliner, Thomaz Bellucci, and Igor Marcondes) have tested positive for prohibited substances in the last four years. In each case, the positive test was found to be due to the contamination of bespoke supplements produced in compound pharmacies. Those players received bans of three, five, and nine months, respectively. Those cases were reported on the ITF website at the time and in the media.<sup>11</sup>

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<sup>11</sup> See In particular, Mr Bellucci's case was widely reported in the media (see e.g. an ESPN article at [espn.co.uk/tennis/story/\\_/id/21961711/thomaz-bellucci-gets-5-month-ban-doping](http://espn.co.uk/tennis/story/_/id/21961711/thomaz-bellucci-gets-5-month-ban-doping)), as was Mr Marcondes' case (see e.g. [tennisworldusa.org/tennis/news/ATP\\_Tennis/60295/igor-marcondes-banned-for-nine-months-for-using-hydrochlorothiazide/](http://tennisworldusa.org/tennis/news/ATP_Tennis/60295/igor-marcondes-banned-for-nine-months-for-using-hydrochlorothiazide/)).

- 31.5 On 12 September 2019 (approximately six weeks before the Player sent his prescription for the Bespoke Supplements to the Orthofarma pharmacy, and nine weeks before the Player received and began consuming capsules of the Bespoke Supplements), the ITF imposed a ten-month period of ineligibility on an Argentine tennis player (Franco Agamenone) who had tested positive for a prohibited substance that was later found to be an unlisted ingredient in capsules of a bespoke supplement created by a compound pharmacy. The same day, the ITF issued a warning on its website (which was also communicated to Players and other stakeholders via the ATP PlayerZone website on 12 September 2019 in English and 18 September 2019 in Spanish). The warning reminded Players and Player Support Personnel that 'the risk of violating the [TADP] due to supplement use remains high', and while '[s]upplements from all regions may pose an elevated risk of an anti-doping violation [...] [p]layers in South America should be on particularly high alert to the use of supplements, including those prepared in pharmacies, as several violations arising from supplements prepared by similar sources have occurred in that region'.<sup>12</sup>
- 31.6 On 11 November 2019 (just five days before the Player began taking the latest course of the capsules of the Bespoke Supplement), the ITF imposed a six-month period of ineligibility on a 15-year-old Brazilian tennis player (Camilla Bossi) who had tested positive for SARM S-22 that was later found to be an unlisted ingredient in capsules of a bespoke supplement created by a compound pharmacy. Several other cases involving athletes from other sports and similar fact patterns have also been publicly reported.<sup>13</sup>
- 31.7 It is apparent that the consumption of bespoke supplements, in particular those made in compound pharmacies in South America, carries with it a significant degree of risk for sportsmen and women who are subject to anti-doping rules, and the escalating bans that have been imposed on tennis players for such violations have not been adequate to deter other players from taking those risks. The ITF (i) urges all players to exercise extreme caution in considering whether to use supplements; and (ii) warns that any TADP violation that results from the ingestion of contaminated supplements will likely lead to a significant period of ineligibility.
32. As a result of the foregoing, the Player should have known, and is deemed to have been on specific notice that, there is a significant risk that using bespoke supplements prepared by compound pharmacies in Brazil may contain prohibited substances that are not listed as ingredients. He could not assume that, by following the advice of his doctor and other advisors, he was avoiding that risk. To the contrary, he is deemed to have voluntarily assumed that risk.
33. While the Player says he did not see the ITF's warning issued on 12 September 2019, and was not aware of the cases of Mr Agamenone or Ms Bossi, he was aware of the facts of Mr Bellucci's and Mr Demoliner's cases. Indeed, in February 2018 – as a direct consequence of Mr Bellucci's and Mr Demoliner's cases – the Player sought a new compound pharmacy in which to have his supplements made. The Player asserted that he believed the Rio de Janeiro

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<sup>12</sup> See [antidoping.itftennis.com/news/310566.aspx](https://antidoping.itftennis.com/news/310566.aspx).

<sup>13</sup> Since the date that the Player provided the samples that tested positive (19 November and 16 December 2019), the ITF has imposed a ten-month period of ineligibility on another Brazilian tennis player, Beatriz Haddad Maia, after having accepted that the SARM S-22 and SARM LGD-4033 metabolite found in her sample could be explained by her ingestion of contaminated bespoke supplements made in a compound pharmacy.

compound pharmacy that made Mr Bellucci's and Mr Demoliner's supplements to be risky, but based on the advice of Dr Savoldelli he considered the São Paulo compound pharmacy to be safe. However, Dr Savoldelli's visit to that pharmacy took place in February 2018, and therefore was out of date and could no longer be relied upon 20 months later, when the Player had his Bespoke Supplements made up by the Orthofarma pharmacy.

34. Based on the foregoing, 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 10.4 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 10.5 based on No Significant Fault or Negligence](#)'. The ITF accepts that, in the specific circumstances of this case, the Player's fault was not 'significant' within the meaning of TADP Article 10.5.1, justifying a reduction from the two-year starting point. The ITF also accepts that the Player has shown that the prohibited substances 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 objective and subjective fault.
35. The ITF is mindful of the bans imposed in other recent cases involving bespoke supplements: Mr Demoliner (three months), Mr Bellucci (five months), Mr Marcondes (nine months), Mr Agamenone (ten months), Ms Bossi (a minor, six months) and Ms Haddad Maia (ten months). The Player is more at fault than each of those players, because he was on greater notice particularly with respect to the dangers of bespoke supplements made in a compound pharmacy. 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. Therefore, the ITF has proposed, and the Player has acceded to, a period of ineligibility of 11 months.
36. Due to his prompt admission of his anti-doping rule violations, the Player is entitled to the benefit of TADP Article 10.10.3(b), such that his 11-month period of ineligibility will be deemed to have started running from '[the date of last occurrence of the Anti-Doping Rule Violation \(which, in the case of an Article 2.1 Anti-Doping Rule Violation, would be on the date of Sample collection\)](#)' (i.e., 16 December 2019). Therefore, it will expire at midnight on 15 November 2020.
37. During his period of ineligibility, the Player's status will be as set out under TADP Article 10.11, 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 10.11.1(b)(ii), 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 16 September 2020 on.

### **III.B Disqualification of results**

38. The results obtained by the Player at the Event and in subsequent events are disqualified pursuant to TADP Articles 9, 10.1 and 10.8 respectively, and the points and prize money that he won at those events (totalling [REDACTED]) are forfeited in accordance with the same provisions.

### **III.C Costs**

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

### **III.D Publication**

40. In accordance with TADP Article 8.8, this decision will be publicly reported by being posted (in full and/or summary form) on the ITF's website.

### **III.E Acceptance by the Player**

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

### **III. Rights of appeal**

42. This decision constitutes the final decision of the ITF, resolving this matter pursuant to TADP Article 8.1.4.
43. Further to TADP Article 12.2.1, each of WADA and the Comisión Nacional de Control de Dopaje (**CNCD**) has a right to appeal against this decision to the CAS in Lausanne, Switzerland, in accordance with the procedure set out at TADP Article 12.6.
44. 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 an anti-doping rule violation and as to the imposition of the consequences set out above), whether pursuant to TADP Article 12.2.1 or otherwise. However, if an appeal is filed with the CAS against this decision either by WADA or CNCD, the Player will be entitled (if so advised) to exercise his right of cross-appeal in accordance with TADP Article 12.6.3.

London, 18 April 2020