

# INTERNATIONAL SKATING UNION

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**Case No. 02/2011**

October 11th 2011

**DECISION**  
**of the**  
**ISU Disciplinary Commission**

**Panel:** Volker Waldeck (Chair)  
Fred Benjamin  
Dr. Egbert Schmid

**In the matter of**

**International Skating Union**, Chemin de Primrose 2, 1007 Lausanne, Switzerland,  
represented by its Legal Advisor, Dr. Béatrice Pfister,

**- Complainant -**

**against**

**Mr. Artyom Belousov**, c/o Kazakhstan Skating Federation,  
46 Apt. 153, Abai Avenue, Almaty 050009, Kazakhstan,

**- Alleged Offender -**

**and**

**Kazakhstan Skating Federation**,  
46 Apt. 153, Abai Avenue, Almaty 050009, Kazakhstan,

**- Interested Member -**

**Concerning alleged violation of the ISU Anti-Doping Rules.**

## **I. History of the procedure**

On May 31<sup>st</sup> 2011, the ISU filed a complaint against the Alleged Offender, together with six exhibits. The Alleged Offender and the Interested Member were invited by the ISU Disciplinary Commission to file a statement of reply within 21 days upon receipt of the complaint. Both the Alleged Offender and the Interested Member waived the right of a written reply and an oral hearing.

## **II. Procedural Matters**

According to Article 24, Paragraph 10 of the ISU Constitution 2010 and Article 8.1.1 of the ISU Anti-Doping Rules 2010 the Disciplinary Commission has jurisdiction in anti-doping cases arising out of ISU Testing or Testing at International Events or Competitions. The present case arises out of a testing at the ISU Speed Skating World Cup in Salt Lake City, USA, i.e. of testing at an ISU International Event. Therefore the ISU Disciplinary Commission has jurisdiction to hear and decide this case.

## **III. Facts**

1. The Alleged Offender is a 30 year old speed skater and member of the Kazakhstan Skating Federation. He participated at the 2011 ISU Speed Skating World Cup in Salt Lake City, USA.
2. Following an in-competition Anti-Doping test carried out on February 19<sup>th</sup> 2011, the ISU has received an adverse analytical finding for sample 1544944 from the Alleged Offender. Said sample was found to contain Tuaminoheptane, which belongs to class S6.b (specified stimulants) of the 2011 WADA List of Prohibited Substances and Methods. The Complainant has offered as Evidence:
  - Doping Control Form for Sample 1544944, taken at the ISU Speed Skating World Cup in Salt Lake City, USA, on February 19<sup>th</sup> 2011,
  - Lab Result for A Sample 1544944 of the National Anti-Doping Laboratory of UTAH, USA,
3. By letter of April 12<sup>th</sup> 2011 the Interested ISU Member and the Alleged Offender were informed of the positive finding and requested to submit their written explanations. Further they were reminded that the Alleged Offender has the right to request the B sample to be analyzed.
4. In his email of April 15<sup>th</sup> 2011, the Alleged Offender admitted to having used Rhinofluimucil to solve complications of overhead paranasal sinuses. He stated that he had bought Rhinofluimucil in a drugstore upon the advice of the pharmacist. He had told the pharmacist that he is an international athlete and asked him whether the medication was prohibited for sportsmen. The chemist told him that there were no restrictions for sportsmen to take this medication. That was why he had taken it without fear. In Kazakhstan Rhinofluimucil would be on free sale without any prescription of a medical practitioner. Further he claims that he was not able to consult his team doctor because the doctor was not present during the competition. He admits not to have checked the medication on the internet because he was sure that it did not contain any prohibited substances.

He admitted that he has taken Rhinofluimucil during seven days two times a day from 10<sup>th</sup> till 17<sup>th</sup> of February 2011.

5. The Alleged Offender had neither requested a Therapeutic Use Exemption for Rhinofluimucil nor had he declared having taken this medication on his doping control form.

#### **IV. Law**

1. Tuaminoheptane, as uncontestedly found present in the Alleged Offender's bodily specimen, is contained in the Prohibited List 2011 of the World Anti-Doping Agency (WADA) under "S6.b Specified Stimulants". According to Article 4.1 of the ISU Anti-Doping Rules 2010 the Prohibited List which is published and revised by WADA is incorporated into those ISU rules.

2. Article 2.1 of the ISU Anti-Doping Rules 2010 states that the presence of a Prohibited Substance or its Metabolites or Markers in a Skater's Sample constitutes an Anti-Doping Rules violation, unless a therapeutic use exemption (TUE) for the otherwise prohibited substance has been granted in accordance with letter D of the ISU Anti-Doping Procedures 2010. The Alleged Offender had neither applied for nor received a TUE.

According to Article 2 of the ISU Anti-Doping-Rules 2010 skaters shall be responsible for what constitutes an Anti-Doping rule violation and the substances and methods which have been included on the Prohibited List. It is each Skater's personal duty to ensure that no Prohibited Substance enters his body. Accordingly it is not necessary that intent, fault, negligence or knowing use on the skater's part be demonstrated in order to establish an Anti-Doping rule violation.

The skater could not rely upon the information of the pharmacist. Even if the pharmacist would have given the advice – what the Complainant contests - , the skater still remains responsible for any prohibited substance found to be present in the sample.

3. The skater has participated in many International Events since 2007. It is the first time that he has violated the Anti-Doping Rules. According to Article 10.2 of the ISU Anti-Doping Rules 2010 a two years' ineligibility in principle is imposed for a first violation of Article 2.1. unless the conditions for reducing the period of ineligibility, as provided in Articles 10.4 and 10.5, are met.

4. According to Article 10.4 of the ISU Anti-Doping Rules the period of ineligibility may be reduced, if the skater can establish how a Specified Substance entered his body or came into his possession and that such Specified Substance was not intended to enhance his sport performance or mask the use of a performance-enhancing substance.

The substance "Tuaminoheptane" is a Specified Substance contained in the Prohibited List 2010 of the World Anti-Doping Agency (WADA) under "S6.b Specified Stimulants". The skater has explained the way how the substance got into his body, how often he has taken it, and that the intake of Rhinofluimucil was a fault he was not aware of. The panel accepts the pleading of the Alleged Offender that he has taken the medication upon the advice of the pharmacist, assuming that it would not contain any prohibited substance. The panel is satisfied by the objective circumstances of the case that the skater in taking a prohibited substance did not intend to enhance his sport performance. In assessing the skater's degree of fault the panel comes to the conclusion that the skater acted negligently and not intentionally to enhance his performance. However only a reduction of 6 months of the principal two years ineligibility is justified.

According to Article 10.4 a period of 18 months of ineligibility is therefore imposed on the skater.

5. The ineligibility starts according to Article 10.9 of the ISU Anti-Doping Rules 2010. In his letter of April 15<sup>th</sup> 2011 the skater agreed to have used the medication Rhinofluimucil after he has been confronted with the alleged Anti-Doping Rule violation. According to Article 10.9.2 ISU Anti Doping Rules the period of ineligibility may start as early as the date of sample collection, i.e. in this case February 19<sup>th</sup> 2011. The period of ineligibility will end on August 18<sup>th</sup> 2012.

## V. COSTS

According to Article 12.2 of the ISU Anti-Doping Rules 2010 the ISU Member shall be obligated to reimburse the ISU for all costs (including but not limited to laboratory fees, hearing and travel expenses) related to a violation of these Anti-Doping Rules committed by a skater affiliated with that member. Therefore the costs of these proceedings, including the laboratory fees of the Anti-Doping testing, have to be borne by the Kazakhstan Skating Federation.

The skater has to bear his own costs.

Based on the above considerations the ISU Disciplinary Commission rules as follows:

### Decision

1. Artyom Belousov is declared responsible for an Anti-Doping violation, committed on February 19<sup>th</sup> 2011 at the ISU Speed Skating World Cup in Salt Lake City, USA.
2. A period of ineligibility of 18 months, beginning on February 19<sup>th</sup> 2011 and ending on August 18<sup>th</sup> 2012, is imposed on Artyom Belousov.
3. The Kazakhstan Skating Federation has to reimburse the ISU for the costs of these proceedings and the laboratory fees of the Anti-Doping testing.
4. The skater bears his own costs.

October 11<sup>th</sup> 2011



Volker Waldeck (Chair)



Fred Benjamin



Dr. Egbert Schmid

The decision is sent to Mr. Artyom Belousov, c./o.Kazakhstan Skating Federation, by registered mail against return receipt and to the Interested Member and to the ISU by email.

The present decision is subject to appeal to the Court of Arbitration for Sport, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland, within 21 days upon receipt of the decision, in accordance with Article 24 Paragraph 12 and Article 25 of the ISU Constitution 2010.