



Patron:
His Majesty
King Constantine

UIPM DOPING PANEL REVIEW 02/23

Honorary President:
His Serene Highness
Prince Albert II of Monaco

To

Mr. Maksim Kustov
maxim.mp@mail.ru

C/o:

Russian Modern Pentathlon Federation

Copy to: RUSADA

Headquarters:
Stade Louis II – Entrée C
19 avenue des Castelans
MC-98000 Monaco

Tel.: +377 97 77 85 55
Fax: +377 97 77 85 50
Mail: uipm@pentathlon.org
Website : www.pentathlon.org

Decision of the UIPM Doping Review Panel regarding

MAKSIM KUSTOV

1. THE PARTIES

1.1. UNION INTERNATIONALE DE PENTATHLON MODERNE (“UIPM”), an Association governed by Monegasque Law and formed under Law 1355 of 23 December 2009, is the world governing body for the sport of Modern Pentathlon a multi-disciplinary sport comprising fencing, swimming, horse riding, shooting, and running or any combination thereof. UIPM has its headquarters in the Principality of Monaco. According to § 3.2 of its Statute, among other things the role of UIPM is “promote integrity, ethics and fair-play in the sport of Modern Pentathlon and constituent sports preventing the use and diffusion of any kind of doping”. To pursue this goal, UIPM has implemented, in accordance with UIPM’s responsibility under the World Anti-doping Code, the UIPM Anti-Doping Rules.

1.1.1. UIPM is represented by Ms. Fulvia Lucantonio, UIPM Legal Counsel

1.2. MR. MAKSIM KUSTOV, born in the Russian Federation, on 1 September, is a Modern Pentathlon athlete (the “**Athlete**”);

1.2.1. The Athlete is affiliated with Russian Modern Pentathlon Federation, a National Federation member of UIPM.



Patron:
His Majesty
King Constantine

Honorary President:
His Serene Highness
Prince Albert II of Monaco

Headquarters:
Stade Louis II – Entrée C
19 avenue des Castelans
MC-98000 Monaco

Tel.: +377 97 77 85 55
Fax: +377 97 77 85 50
Mail: uipm@pentathlon.org
Website : www.pentathlon.org

1.2.2. Following ritual notification, the Athlete did not participate to the proceeding.

2. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Section I – Analysis and notification to the Athlete

- 2.1. The elements set out below are a summary of the main relevant facts as established by the Panel by way of a chronology on the basis of the submissions of the parties. Additional facts may be set out, where relevant, in the other chapters of the present award.
- 2.2. Save as otherwise provided below, terms with capitalized letters shall have the same meaning attributed to them in the UIPM Rules.
- 2.3. The Athlete is competing in Modern Pentathlon and has UIPM International license.
- 2.4. On 9 August 2014, the Athlete provided sample number 2920035 in occasion of an Out-of-Competition testing (“**Sample**”).
- 2.5. The testing authority was the Russian Anti-Doping Agency (RUSADA), Sample collection authority was the Moscow Anti-Doping Centre (“**Moscow Laboratory**”).
- 2.6. The Moscow Laboratory did not report any Adverse Analytical Finding (“**AAF**”) and reported the sample “*negative*” to ADAMS.
- 2.7. Subsequently, extensive investigations carried out by the World Anti-Doping Agency (WADA) regarding anti-doping report evidenced the existence of a complex scheme aimed at protecting Russian athletes. Such scheme involved a very high number of Russian athletes up to the point that its existence was even admitted by the Russian Minister of Sport in 2018.
- 2.8. In such respect, on 16 July 2016 and 9 December 2016, Prof. Richard McLaren published two reports into allegations of a systemic doping scheme in Russia (the First and Second McLaren Reports, together the “**McLaren Reports**”). These reports are based on the evidence collected by Prof. McLaren during his investigations, as retrieved primarily from the hard drives of whistleblowers (so called “**EDP Evidence**”). In the McLaren Reports, Prof. McLaren made findings with respect to the scheme and concluded that Russian athletes had been protected over the course of years. In other words, a vast number of positive samples had been officially reported as negative. The three main counterdetection methodologies which were used in Russia, at least between 2011 and 2015, were the so-called (i) Disappearing Positives Methodology (“DPM”), (ii) the Sample Swapping Methodology and (iii) Washout Testing.



Patron:
His Majesty
King Constantine

Honorary President:
His Serene Highness
Prince Albert II of Monaco

Headquarters:
Stade Louis II – Entrée C
19 avenue des Castelans
MC-98000 Monaco

Tel.: +377 97 77 85 55
Fax: +377 97 77 85 50
Mail: uipm@pentathlon.org
Website : www.pentathlon.org

- 2.9.** As a consequence of the evidence provided in the context of the investigation, the Sample became the subject of further investigation by WADA and UIPM. In such respect, the UIPM relied on the information contained in the Joint Statement of Aaron Richard WALKER & Doctor Julian BROSEUS related to investigation conducted by WADA in relation to the Laboratory Information Management System (LIMS) data and underlying analytical data obtained from the Moscow Laboratory.
- 2.10.** In the context of such review, the following emerged:
- 2.10.1.** Following the Initial Testing Procedure (ITP) analysis, and successful Confirmation Procedure (CP), the Sample produced a presumptive presence of Trenbolone, Metenolone and Oxandrolone (the “**Presumptive AAF**”);
- 2.10.2.** the Moscow Laboratory did not report the detection of the Presumptive AAF in the Sample to ADAMS.
- 2.11.** According to UIPM, the above is evidenced by the elements listed below:
- 2.11.1.** one of the three detected anabolic steroids, namely trenbolone, was at concentrations higher than the Minimum required performance level (MRPL). Protection of the Athlete also extended to the targeted and selective manipulation of the Moscow Data and the 2019 Database – to the betterment of the Athlete – prior to its release to WADA by Russian authorities on 17 January 2019.
- 2.11.2.** In other words, analytical evidence that the Athlete was using Prohibited Substances was intentionally destroyed and evidence that the Sample was ‘negative’ was falsely and purposely created.
- 2.11.3.** The 2015 Database, which is an accurate copy of the original LIMS created contemporaneously as part of the Moscow Laboratory’s analytical procedures, is a reliable evidence. The 2015 Database and its contents can be relied upon as being accurate and forensically valid information, generally, and in relation to the Sample more specifically. Moreover, the Moscow Data contains observable digital evidence that the 2015 Database is the true data while the 2019 Database contains manipulated data and therefore it is not to be accepted as a trustworthy source of information;
- 2.11.4.** The efforts to protect the Athlete and conceal his doping were not entirely successful. More specifically, observable digital evidence confirms that analytical data of the Samples present



Patron:
His Majesty
King Constantine

Honorary President:
His Serene Highness
Prince Albert II of Monaco

Headquarters:
Stade Louis II – Entrée C
19 avenue des Castelans
MC-98000 Monaco

Tel.: +377 97 77 85 55
Fax: +377 97 77 85 50
Mail: uipm@pentathlon.org
Website : www.pentathlon.org

in the 2015 Database were missing from the 2019 Database. Such data existed but were deleted from the LIMS prior to its release to WADA by Russian authorities on 17 January 2019. Key ITP Raw Data and PDFs were manipulated to conceal the existence of the Presumptive AAF for the so called “*Duchess Cocktail*”. Moreover, the International Experts uncovered evidence that a PDF produced following analysis for anabolic steroids in the Sample, was selectively manipulated to falsely report the sample as ‘negative’ for Prohibited Substances.

- 2.12. As a consequence of the above, in the opinion of UIPM the competent officer, falsely reported the Sample as ‘*negative*’ in ADAMS. Such course of action, along with the evidence contained in the so-called “*Mc Laren Reports*” made UIPM conclude that the Athlete as one of the persons subject to special protection under the Russian cover-up scheme.
- 2.13. trenbolone is a prohibited substance and a Specified Substance listed in the WADA Prohibited List under Section S1 (*Anabolic Agents*) and was in the WADA Prohibited List at the time of the sampling.
- 2.14. Following review of the evidence listed above, the UIPM considered that:
 - 2.14.1. the matters set out aforesaid (and detailed in the Joint Statement of Aaron Richard WALKER & Doctor Julian BROSEUS) constitute violation of article 1.2.3 of the UIPM Medical Rules 2013, which reads as follows: “1.2.3 *Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method*”;
 - 2.14.2. as with other anti-doping rule violations, the term “*Use*” had the meaning of Article 3.2. *Facts related to anti-doping rule* and violations may be established by any reliable means, including admissions.
- 2.15. In consideration of all the above, by means of a notification served to the Athlete and dated 20 May 2022 (“**Notification**”) the Athlete was informed by UIPM of an adverse analytical finding (“**AAF**”) in his sample as a result of the test and invited him to provide a reply within 20 days.
- 2.16. Among other things, by means of the Notification, the Athlete was informed that, in accordance with Article 7.4.1 of the UIPM Rules, the Athlete was provisionally suspended from the date of receipt of the Notification from national and international competitions until this procedure has been completed.



Patron:
His Majesty
King Constantine

Honorary President:
His Serene Highness
Prince Albert II of Monaco

Headquarters:
Stade Louis II – Entrée C
19 avenue des Castelans
MC-98000 Monaco

Tel.: +377 97 77 85 55
Fax: +377 97 77 85 50
Mail: uipm@pentathlon.org
Website : www.pentathlon.org

- 2.17. The Athlete did not reply to the Notification.
- 2.18. Considering the above, UIPM referred the case of the Athlete to the UIPM Doping review panel and requested that it promptly issue a written decision.

3. JURISDICTION. APPLICABLE RULES

Jurisdiction and governing rules

- 3.1. In accordance with WADA's World Anti-doping Code, UIPM has implemented its Anti-Doping Rules ("**UIPM Rules**"), in accordance with UIPM's responsibilities under the Code, and in furtherance of UIPM's continuing efforts to eradicate doping in sport.
- 3.2. As per §8.1 of the UIPM Rules, the UIPM Doping Review Panel ("**DRP**") is the responsible body to adjudicate cases relating to violations of the UIPM Rules and, more precisely,
- has jurisdiction to hear and determine whether an Athlete or other Person, subject to these Anti-Doping Rules, has committed an anti-doping rule violation and, if applicable, to impose relevant Consequences*
- 3.3. The provisions of the UIPM Rules, entitled "*Scope of these antidoping rules*", stipulates that such rules shall apply to, among others:
- all Athletes and Athlete Support Personnel who are members of UIPM, or of any National Federation, or of any member or affiliate organization of any National Federation (including any clubs, teams, associations, or leagues;*
- 3.4. In the case at hand, the Russian Federation is a member of UIPM and the Athlete is affiliated with the Russian Federation.
- 3.5. Therefore, the Athlete is bound by the UIPM Rules.
- 3.6. Pursuant to §8.1.2.2 of the UIPM Rules:
- The Chair of the Doping Review Panel shall appoint either three (3) members (which may include the Chair) or a single adjudicator, who can be the Chair, to hear a case, depending on the nature of the charge and the evidence put forward.*
- 3.7. In the case at hand, the UIPM Doping Review Panel Chairman chose to decide on this case alone as a single adjudicator, without appointing the panel. In such respect, no challenges have been brought by any of the parties.
- 3.8. As the facts relating to the case at hand occurred on 9 August 2014:



Patron:
His Majesty
King Constantine

Honorary President:
His Serene Highness
Prince Albert II of Monaco

Headquarters:
Stade Louis II – Entrée C
19 avenue des Castelans
MC-98000 Monaco

Tel.: +377 97 77 85 55

Fax: +377 97 77 85 50

Mail: uipm@pentathlon.org

Website : www.pentathlon.org

3.8.1. the asserted Anti-Doping Rules violation occurred in 2014 and shall therefore be governed by the UIPM Medical Rules and Disciplinary Rules in force at the time; and

3.8.2. 2021 UIPM Anti-doping rules currently in force shall govern the procedural aspects of this matter.

3.9. The Athlete did not reply to the Notification and therefore is deemed to have waived the right to a hearing, in accordance with UIPM Rule 8.3.

Application of UIPM Rules

3.10. Pursuant to Article 7.4.1 of the UIPM Disciplinary Rules 2013, “*an athlete having been found of having committed an anti-doping rule violation shall be disqualified from all competitions the athlete participated since the collection of a positive Sample and from a competition where the anti-doping rule violation occurred or is connected with., All medals, points and prizes achieved at these competitions shall be forfeited. The medals, points and prizes shall be reallocated to the next ranked athlete who moves into the position of the disqualified athlete. The athletes ranked behind move forward accordingly [...]*”.

3.11. Pursuant to Article 7.8.1. of UIPM Disciplinary Rules 2013 “*A ban of two years will be imposed on athletes who are found having violated Articles 1.2.2 (Presence of a Prohibited Substance or its Metabolites or Markers), 1.2.3 (Use or attempted use of a Prohibited Substance or Prohibited Method), 1.2.4 (Refusing or failing to submit to Sample collection), 1.2.6 (Tampering with Doping Control) or 1.2.7 (Possession of Prohibited Substances and Methods) of the UIPM Medical Rules, in or out of competition. Athletes who are found having been doped in such a way a second time shall be banned from 8 years to lifetime from UIPM competitions, in case of aggravated circumstances for lifetime. A third time will result in a lifetime ban from UIPM competitions, unless already so banned before*”.

3.12. From a procedural standpoint, it must be also considered that:

3.12.1. under UIPM Rule 16 “*No anti-doping rule violation proceeding may be commenced against an Athlete or other Person unless he or she has been notified of the anti-doping rule violation as provided in Article 7, or notification has been reasonably attempted, within ten (10) years from the date the violation is asserted to have occurred*”;

3.12.2. the collection of the Sample occurred on 9 August 2014, while the notification of the ADRV 20 May 2022, therefore, before well within the limits of UIPM Rule 16;



Patron:
His Majesty
King Constantine

Honorary President:
His Serene Highness
Prince Albert II of Monaco

Headquarters:
Stade Louis II – Entrée C
19 avenue des Castelans
MC-98000 Monaco

Tel.: +377 97 77 85 55
Fax: +377 97 77 85 50
Mail: uipm@pentathlon.org
Website : www.pentathlon.org

3.12.3. therefore, the case can be adjudicated.

3.13. Per Rule 12.3 of the UIPM Medical Rules 2013, the Use of Prohibited Substances constitutes an anti-doping rule violation. The provision adds the following:

“(i) it is each Athlete’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 Athlete’s part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

“(ii) the success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used, or Attempted to be Used, for an antidoping rule violation to be committed.”

3.14. Use within the meaning of Rule 3.2 of the IAAF UIPM Medical Rules 2013 can be established “*by any reliable means, including admissions*”.

3.15. This rule gives greater leeway to anti-doping organisations to prove violations, so long as they can comfortably satisfy a tribunal that the means of proof is reliable. As a result, it is not even necessary that a violation be proven by a scientific test itself. Instead, a violation may be proved through admissions, testimony of witnesses, or other documentation evidencing a violation. This rule is not a requirement that the evidence adduced be “*reliable evidence*”. Rather, it is a rule as to the method or manner or form in which the facts that are necessary to sustain an allegation of an ADRV may be established, and the rule provides (in a non-exhaustive list) a number of examples of means of establishing facts which are characterised as “reliable”.

3.16. In case there is no direct but only circumstantial evidence, the adjudicatory body must assess the evidence separately and together and must have regard to what is sometimes called “the cumulative weight” of the evidence. It is in the nature of circumstantial evidence that single items of evidence may each be capable of an innocent explanation but, taken together, establish guilt beyond reasonable doubt. There may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion, but the whole taken together, may create a strong conclusion of guilt.

3.17. In the present case, the 2015 LIMS data and EDP Evidence show that trenbolone was detected in samples collected from the Athlete in 2014. This clear and reliable evidence shows that the Athlete used



Patron:
His Majesty
King Constantine

Honorary President:
His Serene Highness
Prince Albert II of Monaco

Headquarters:
Stade Louis II – Entrée C
19 avenue des Castelans
MC-98000 Monaco

Tel.: +377 97 77 85 55
Fax: +377 97 77 85 50
Mail: uipm@pentathlon.org
Website : www.pentathlon.org

Prohibited Substances in 2014 in breach of Rule 32.2(b) of the IAAF Competition Rules.

- 3.18.** In addition, this Single Adjudicator notes that, when confronted with the anti-doping rule violations, the Athlete did not provide any explanation for them. In addition, having failed to request a hearing, the Athlete was deemed to have accepted the anti-doping rule violations.
- 3.19.** In view of the above, it can be assessed that the Athlete committed anti-doping rule violations in breach of Rule 1.2.3 of UIPM Medical Rules 2013.

4. SANCTIONS AND CONSEQUENCES

- 4.1.** By way of background, it has been brought to the attention of this Sole Adjudicator that the Athlete already served a four-year suspension from UIPM Sports as a result of a doping offence relating to the athlete's biological passport. This followed the provision of evidence to UIPM by the Russian Anti-Doping Agency (RUSADA).
- 4.2.** The Athlete had been, therefore, ineligible to compete for a period of four years starting on October 4, 2016. The sanction included the disqualification of results achieved by the Athlete during the period 15 June 2015 to 4 October 2016.
- 4.3.** According to current UIPM Rule 10.9.3.1 (applicable to the case at hand):

“For purposes of imposing sanctions [...], an anti-doping rule violation will only be considered a second violation if UIPM can establish that the Athlete or other Person committed the additional anti-doping rule violation after the Athlete or other Person received notice pursuant to Article 7, or after UIPM made reasonable efforts to give notice of the first anti-doping rule violation. If UIPM cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction, including the application of Aggravating Circumstances. Results in all Competitions dating back to the earlier anti-doping rule violation will be Disqualified as provided in Article 10.10”.

- 4.4.** In the case at hand, the ADRV relating to this case occurred prior to the first notification.
- 4.5.** Therefore:
- 4.5.1.** having assessed the violation of UIPM Disciplinary Rule 2013 1.2.3, a ban of two years can be imposed; but



Patron:
His Majesty
King Constantine

Honorary President:
His Serene Highness
Prince Albert II of Monaco

Headquarters:
Stade Louis II – Entrée C
19 avenue des Castelans
MC-98000 Monaco

Tel.: +377 97 77 85 55
Fax: +377 97 77 85 50
Mail: uipm@pentathlon.org
Website : www.pentathlon.org

4.5.2. the sanction is absorbed in the previous, more severe sanction.

- 4.6.** In addition, in the present case, the evidence of the Athlete's anti-doping rule violation was on 9 August 2014. As a result, per Rule 7.4.1 of the UIPM Disciplinary Rules 2013, all results obtained by the Athlete from 6 August 2014 until the date of this decision should be disqualified.
- 4.7.** This adjudicator, however, intends to conform to CAS Jurisprudence according to which length of the disqualification can be reduced based on a principle of fairness (see CAS 2016/O/4881, CAS/ 2017/O/4980, CAS 2017/O/5039 and CAS 2017/A/5045). While Clause 7.4.1 of UIPM Disciplinary Rules 2013 does not expressly provide for an evaluation of "fairness" by the adjudicator (as in other set of rules applicable to other discipline at the time), fairness can be considered as a general rule applicable to the interpretation and construction of the entire set of anti-doping rules, and this justifies an evaluation of fairness even where no express reference is made.
- 4.8.** As a consequence, it can be deemed fair to extend the disqualification term from the date of the violation to 31 December 2016 (see in this respect CAS 2019/A/6161, CAS 2019/A/6165, CAS 2019/A/6166, CAS 2019/A/6167, CAS 2019/A/6168, and CAS 2019/O/6156). This partly overlaps with the disqualification already provided under previous sanctions to the Athlete.

5. RULING

In light of the above, the UIPM Doping Review Panel decides as follows:

- 5.1.** The Athlete is found to have committed anti-doping rule violation under Article 1.2.3 of the UIPM Disciplinary Rules 2013;
- 5.2.** The Athlete is imposed a period of ineligibility of 2 (two) years starting from the day when the provisional suspension has been imposed. The sanction, however, is absorbed by the previous sanction already imposed to the Athlete;
- 5.3.** All competitive results obtained by the Athlete from 9 August 2014 until 31st December 2016 are disqualified, with all of the resulting consequences, including forfeiture of any medals, titles, points, prize money and prizes.
- 5.4.** This decision shall be notified by UIPM to the Athlete and to the Anti-Doping Organization of the Athlete. Right of appeal shall be regulated by the UIPM Rule 13.

UNION INTERNATIONALE DE PENTATHLON MODERNE - UIPM



Patron:
His Majesty
King Constantine

Honorary President:
His Serene Highness
Prince Albert II of Monaco

Headquarters:
Stade Louis II – Entrée C
19 avenue des Castelans
MC-98000 Monaco

Tel.: +377 97 77 85 55
Fax: +377 97 77 85 50
Mail: uipm@pentathlon.org
Website : www.pentathlon.org

5.5. The single adjudicator decided that it should not address the “*Financial Consequences*” (a financial sanction imposed for an anti-doping rule violation) due to the above, or to recover any costs associated with present proceeding.

5.6. It also considers that “Public Disclosure” or “Public Reporting” of the fact and terms of this decision on the general public is justified and authorizes it accordingly.

Signed

Dr/Alfonso Parziale – Single Adjudicator

Made in Monaco-Rome, dated 20 June 2023