

CAS 2024/A/10658 Issamade Asinga v. World Athletics (WA)

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Jacques **Radoux**, Référendaire at the Court of Justice of the European Union, Luxembourg

Arbitrators: Mr. Jeffrey G. **Benz**, Attorney-at-law and Barrister in London, United Kingdom and Los Angeles, CA, United States of America

Mr. Ulrich **Haas**, Professor of Law in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany

in the arbitration between

Issamade Asinga, Dacula, Georgia, United States of America

Represented by Mr. Paul J. Greene and Mr. Matthew D. Kaiser, Attorneys-at-Law, Global Sports Advocates, and Ms. Alexis Garmey Chardon Attorney-at-Law, Garmey Law, Portland, ME, United States of America

- Appellant -

and

World Athletics (WA), Monaco

Represented by Mr. Nicolas Zbinden, Ms. Louise Reilly SC and Mr. Robert Kerslake, Attorneys-at-Law, Kellerhals Carrard, Lausanne, Switzerland

- Respondent -

I. PARTIES

1. Mr. Issamade Asinga (the “Athlete” or the “Appellant”), born on 29 December 2004, is a Track and Field athlete specialized in the 100 and 200-meter sprint events. He’s competing for the Republic of Suriname.
2. World Athletics (“WA” or the “Respondent”), is the international governing body of the sport of athletics, recognised as such by the International Olympic Committee. WA has its seat and headquarters in Monaco. It is a signatory to the World Anti-Doping Code (the “WADC”), in compliance with which it has, from the year 2020 onwards, adopted a set of rules, namely the World Athletics Anti-Doping Rules (the “WA ADR”), to eradicate doping in athletics.
3. Together, the Appellant and the Respondent are referred to as the “Parties”.

II. FACTUAL BACKGROUND AND FIRST INSTANCE PROCEEDINGS

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced in this procedure. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On 18 July 2023, the Athlete was subject to an out-of-competition doping control in Clermont, USA. During that control, the Athlete provided a urine sample (the “Athlete’s Sample”). On the corresponding Doping Control Form (the “DCF”), the Athlete indicated having used, *inter alia*, the supplement “*Gatorade Recovery*”.
5. The analysis of the “A” sample by the WADA-accredited Laboratory of Lausanne, Switzerland (the “Laboratory”) revealed an Adverse Analytica Finding (the “AAF”) for the presence of metabolites of GW1516 sulfone and GW1516 sulfoxide. GW1516 is Prohibited Substance under the 2023 Word Anti-Doping Agency (the “WADA”) Prohibited List and is listed under the category S4 Hormone and Metabolic Modulators.
6. On 9 August 2023, after having determined that the Athlete did not have a Therapeutic Use Exemption (“TUE”) for the Prohibited Substance and that there was no apparent departure from the International Standard for Testing and Investigations (the “ISTI”), the Athletics Integrity Unit (the “AIU”) issued a Notice of Allegation of Anti-Doping Rule Violations (the “ADRVs”) against the Athlete and imposed a Provisional Suspension on him with immediate effect.
7. On 11 August 2023, the Athlete requested the opening of the “B” Sample.
8. On 15 August 2023, the AIU informed the Athlete that the “B” sample analysis confirmed the AAF in the “A” sample.

9. On 19 August 2023, the AIU provided the Athlete with a copy of the Laboratory Documentation Package (the “LDP”) corresponding to the analysis of the A and the B Samples by the Laboratory.
10. On 31 August 2023, the Athlete provided the AIU with an explanation for his AAF. In his explanation, the Athlete stated, *inter alia*, that he was given Gatorade products, including Gatorade Recovery Gummies for Athletes Cherry Flavour (the “Recovery Gummies”) and Gatorade Immune Support Gummies Citrus Flavour (the “Immune Support Gummies”), on 10 July 2023 when he was awarded the title of Gatorade 2023 National Boys Track and Field Player of the Year and that he had taken all the Gatorade products he was given the week before the Sample collection.
11. On 1 September 2023, the Athlete informed the AIU he wanted the supplements called (i) Airborne, (ii) Immune Support Gummies; (iii) Recovery Gummies, and (iv) Skratch Labs Hydration packets to be analysed by the WADA-accredited Sports Medicine Research and Testing Laboratory (the “SMRTL”, Salt Lake City, Utah, USA).
12. On 15 September 2023, following a request from the AIU, the Athlete indicated, *inter alia*, that he had ingested Immune Support Gummies (lot number 22091937150233) and Recovery Gummies (lot number 22092117150234), in the lead up to the collection of his Sample.
13. On 22 September 2023, the SMRTL received eight types of products from the Athlete, including two containers of Immune Support Gummies (unsealed, lot number 22091937150233) and two containers of Recovery Gummies (unsealed, lot number 22092117150234).
14. On 6 December 2023, the AIU provided the Athlete with copies of the results from the preliminary screening analysis done by the SMRTL showing that there was a presumptive finding for GW501516 and GW5011516 sulfoxide in both the Immune Support Gummies (citrus) (Specimen ID: 230922-02; Batch 22091937150233) and Recovery Gummies (cherry) (Specimen ID: 230922-03; Batch 22092117150234). For the Recovery Gummies (cherry) (Specimen ID: 230922-04; Batch 22092117150234) no GW501516 and GW501516 sulfoxide was detected.
15. On 21 December 2023, the confirmation analysis performed by the SMRTL on these products revealed the following results:
 - Immune Support Gummies (citrus) 56/60 gummies, (Specimen ID: 230922-02; Batch 22091937150233): no prohibited substances detected.
 - Recovery Gummies (cherry) 3/60 gummies (Specimen ID: 230922-03; Batch 22092117150234): two gummies taken from the container were further tested for GW501516 and its sulfoxide within the exterior and the interior of the gummy. For gummy 1: GW501516 was detected at approximately 220 nanograms per gram in the exterior and at approximately 3.4 nanograms per gram in the interior, total 610 nanograms per gummy; GW501516 sulfoxide was detected at approximately 14

nanograms per gram in the exterior and at approximately 1.3 nanograms per gram in the interior, total 40 nanograms per gummy. For gummy 2: GW501516 was detected at approximately 250 nanograms per gram in the exterior and at approximately 4.8 nanograms per gram in the interior, total 810 nanograms per gummy; GW501516 sulfoxide was detected at approximately 15 nanograms per gram in the exterior and at approximately 2.4 nanograms per gram in the interior, total 50 nanograms per gummy.

- Recovery Gummies (cherry) 35/60 gummies (Specimen ID: 230922-04; Batch 22092117150234): three gummies taken from different positions within the container were further tested for GW501516 and its sulfoxide within the exterior and the interior of the gummy. For gummy 1: GW501516 was detected only in the exterior at approximately 0.6 nanograms per gram, total 1.5 nanograms per gummy. For gummy 2: GW501516 was detected only in the exterior at approximately 0.2 nanograms per gram, total 0.65 nanograms per gummy. For gummy 3 no banned substances were detected.

16. On 5 April 2024, the Laboratory issued a Test Report on a sealed container of Recovery Gummies with lot number 22092117150213 (*i.e.* a different lot number of the Recovery Gummies than the one provided for analysis by the Athlete) obtained by the AIU, concluding that no GW1516 was detected.
17. On the same day, the AIU issued a notice of charge (the “Notice of Charge”) against the Athlete, reproaching the latter to have committed an ADRV for the presence of metabolites of GW1516, pursuant to Article 2.1 of the WA ADR, and for the use GW1516, pursuant to Article 2.2 of the WA ADR.
18. On 30 April 2024, a hearing took place before the WA Disciplinary Tribunal (the “WA DT”).
19. On 6 May 2024, the WA DT issued an operative decision, and the reasoned decision (the “Appealed Decision”) was rendered on 17 May 2024. The operative part of the Appealed Decision reads as follows:
 - “i. *Mr Issamade Asinga committed an Anti-Doping Rule Violation pursuant to Rule 2.1 of the ADR.*
 - ii. *Mr Issamade Asinga is sanctioned with a period of Ineligibility of 4 (four) years, starting on 6 May 2024. Any period of Provisional Suspension effectively served by Mr Issamade Asinga before the entry into force of this decision shall be credited against the total period of Ineligibility to be served.*
 - iii. *All competitive results of Mr Issamade Asinga since 18 July 2023 (the date of the collection of the Sample) are disqualified with all resulting Consequences, including forfeiture of any medals, titles, points, prize money and prizes.*

- iv. *Mr Issamade Asinga is ordered to pay World Athletics a contribution of £ 1,000 (one thousand Pound Sterling) towards World Athletics' legal fees and other expenses incurred in connection with these proceedings".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 20. On 7 June 2024, the Appellant filed his Statement of Appeal with the Court of Arbitration for Sport (the "CAS"), in Lausanne, Switzerland, in accordance with Articles 13.2 and 13.6 of the WA ADR and Articles R47 *et seq.* of the Code of Sports-related Arbitration (2023 edition) (the "CAS Code") against WA with respect to the Appealed Decision. In his Statement of Appeal, the Appellant nominated Mr. Jeffrey G. Benz, Attorney-at-law in London, United Kingdom and Los Angeles, CA, USA, as arbitrator.
- 21. On 12 June 2024, the CAS Court Office acknowledged receipt of the Appellant's Statement of Appeal and invited WA, *inter alia*, to nominate an arbitrator and to state whether it objected to English being the language of these proceedings.
- 22. On 25 June 2024, the Respondent nominated Prof. Dr. Ulrich Haas, Professor of Law in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany, as arbitrator in the present matter.
- 23. On 26 September 2024, the CAS Court Office informed the Parties that the Panel appointed to resolve these disputes was constituted as follows:
 - President: Mr. Jacques Radoux, Référéndaire, Court of Justice of the European Union, Luxembourg,
 - Arbitrators: Mr. Jeffrey G. Benz, Attorney-at-law and Barrister in London, United Kingdom and Los Angeles, CA, USA,
 - Prof. Dr. Ulrich Haas, Professor of Law in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany.
- 24. On 12 November 2024, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code.
- 25. On 13 November 2024, the CAS Court Office invited the Respondent to submit its Answer pursuant to Article R55 of the CAS Code, *i.e.*, following an agreement between the Parties, on 25 March 2025, emphasising that if it failed to do so, the Panel may nevertheless proceed with the arbitration and deliver an award.
- 26. On 28 November 2024, the CAS Court Office acknowledged that the Parties, in response to a question posed by the Panel, had agreed that a two (2) day hearing would be required in the present matter and informed the Parties that the Panel would be available for a hearing on 14 and 15 April 2025.

27. On 16 January 2025, the CAS Court Office informed the Parties that the Panel, in response to the Appellant's request to have a public hearing under Article R57 of the CAS Code, had decided to make the recording of the hearing available to the public shortly after the hearing.
28. On 6 February 2025, the CAS Court Office invited the Parties to state, *inter alia*, whether they requested a Case Management Conference ("CMC") in the present matter.
29. On 14 February 2025, the CAS Court Office acknowledged that the Parties requested a CMC in these proceedings and informed the Parties that the Panel had decided to hold a hearing in Lausanne on 14 and 15 April 2025.
30. On 27 March 2025, the Respondent, after having obtained a two day extension in this regard, filed its Answer.
31. On 31 March 2025, the CAS Court Office notified an Order of Procedure to the Parties. The Appellant and the Respondent signed the Order of Procedure respectively on 4 and 9 April 2025.
32. On 8 April 2025, the Parties informed the CAS Court Office that they had agreed to postpone the hearing scheduled for the 14 and 15 April 2025 and requested that new hearing dates be set between the 21 and the 30 May 2025 – subject to the availability of the witness and experts.
33. On 9 April 2025, the CAS Court Office informed the Parties that the Panel was unavailable for a hearing during the suggested period and invited the Parties to provide the Panel with at least two possible periods for the hearing.
34. On 15 May 2025, the Parties informed the CAS Court Office that they would be available for a hearing on 26 and 27 June 2025 as well as 7 to 9 July 2025.
35. On 26 and 27 June 2025, a hearing took place via videoconference. The Panel was assisted by Ms. Amelia Moore, counsel to the CAS, and joined by the following participants:

For the Appellant:

Mr. Paul Greene, counsel;

Ms. Alexis Chardon, counsel;

Mr. Issamade Asinga, Appellant;

Ms. Ngozi Asinga, witness;

Mr. Tommy Asinga, witness;

Dr. Pascal Kintz, expert;

Mr. John Travis, witness;

Mr. Andrew Reisman, expert;

For the Respondent:

Ms. Louise Reilly SC, counsel;

Mr. Nicolas Zbinden, counsel;

Mr. Robert Kerslake, counsel;

Mr. Tony Jackson, Athletics Integrity Unit;

Mr. Roger Tyre, witness;

Mr. Ryan Van Wagoner, expert;

Prof. Martial Saugy, expert;

Mr. Nicolas Jan, expert.

36. At the outset of the hearing, the Parties confirmed that they had no objection as to the constitution of the Panel.
37. During the hearing, the Panel heard evidence from the above mentioned witnesses and experts. Before taking their evidence, the President of the Panel informed each of the witnesses and experts of their duty to tell the truth subject to sanctions of perjury under Swiss law. The Parties had the opportunity to examine and cross-examine them, and the Panel also asked them some questions. Finally, the Athlete made a statement.
38. The Parties were given full opportunity to present their case, submit their arguments and answer the questions from the Panel. At the end of the hearing, the Parties confirmed that their right to be heard and their right to a fair trial had been fully respected during the hearing and that they had no objections as to the manner in which the proceedings had been conducted.

IV. THE PARTIES' SUBMISSIONS

39. The aim of this section of the Award is to provide a summary of the Parties' main arguments rather than a comprehensive list thereof. However, the Panel confirms that in making its decision it has carefully considered all the Parties' submissions and evidence, even if not expressly mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant's Submissions and Requests for Relief

40. The Appellant, who does not contest the AAF and thus the ADRV, considers, in his Appeal Brief, that he bears No Significant Fault or Negligence within the meaning of the WA ADR and that, pursuant to Article 10.6.1 of the WA ADR, the sanction to be imposed must be at the lowest end of the 0-to-24-month range because he bears a light degree of fault under the totality of the circumstances.
41. In support of his position, the Appellant argues, that the GW1516 found in his Sample came from ingesting contaminated Recovery Gummies. Indeed, it is uncontested that the SMRTL found GW1516 and GW1516 sulfoxide in the Recovery Gummies sent by the Athlete on 20 September 2023. What is contested is whether it is more likely that these Gummies were contaminated in the manufacturing process or by way of after-the-fact manipulation by the Athlete himself or someone close to him. The Athlete would only have to convince the Panel that there is a 51% chance that he was contaminated in the way he asserts, *i.e.* through ingesting the contaminated Recovery Gummies.
42. According to the Appellant, first, the factual evidence overwhelmingly points to manufacturing contamination. In this regard, he points out that (i) there is no evidence that he knowingly purchased or knowingly consumed GW1516; (ii) he tested negative on 11 June 2023, meaning that he must have ingested the GW1516 between 11 June 2023 and 18 July 2023; (iii) the Recovery Gummies were a new product given to him on 10 July 2023 and ingested for the first time in the week leading up to his 18 July 2023 test; (iv) the level of GW1516 metabolites found in his Sample is very low and supports a contamination scenario; (v) he declared the Gatorade Recovery Gummies on the DCF.
43. As to the Recovery Gummies themselves, the Appellant argues, *inter alia*, that (i) the Gummies he was given were not actually certified by the NSF (National Sanitation Foundation) as Certified for Sport program and were not tested for banned substances; (ii) the raw materials used to make these Gummies were not tested for the presence of GW1516 or any other banned substance; (iii) emails show that the producer, Better Nutritionals, was rushing to meet Gatorade's 4 October 2022 launch date and was cutting corners to meet the goal; (iv) the production of these Gummies was compromised by three common failures in manufacturing facilities, *i.e.* a failure to verify the identity of a dietary ingredient prior to use; a failure to follow written procedures for Quality Assurance operations and a failure to verify the finished product; (v) two different containers of Gummies were found to have GW1516 in them, and (vi) none of the Athlete's other supplements tested positive for GW1516.
44. The Appellant argues, second, that the scientific evidence also overwhelmingly points to a manufacturing contamination given that (i) the low levels of GW1516 detected by the SMRTL in the Recovery Gummies are pharmacokinetically consistent with the low picogram levels of GW1516 metabolite detected in the Athlete's Sample; (ii) according to the expert report of Dr. Pascal Kintz, the unique ratio between the GW1516 sulfoxide metabolite and the GW1516 sulfone metabolite found in the Athlete's Sample can only be explained by the ingestion of amounts of GW1516 sulfoxide through gummies contaminated with GW1516 in the manufacturing process that had already begun to

oxidize when ingested by the Athlete; (iii) no deformities were detected in the Recovery Gummies by the SMRTL.

45. Further, the scientific evidence does not support a manipulation theory given that (i) it would have been nearly impossible to dilute GW1516 in and outside of the Gummies to the concentration necessary to be pharmacokinetically consistent with the AAF detected in the Athlete's Sample; (ii) no other banned substance was detected in the Recovery Gummies even though nearly half the GW1516 products available for purchase online contain other banned substances not listed on the label, (iii) the Recovery Gummies were not deformed when received by the SMRTL for testing, in marked contrast to the gummies exposed to water in Dr. Kintz's experiment; (iv) in Dr. Kintz's other experiment, neither GW1516 nor GW1516 sulfoxide migrated to the interior of Gummies even after 30 days of being exposed to GW1516 let alone after the 5 minutes that Prof. Saugy stated would be needed to manipulate the Gummies with GW1516, and (v) Prof. Saugy could not explain how the Gummies in container 2 (which the Appellant obtained through Mr. [...], an athlete who had received that container at the same event that the Appellant had received container 1) could have been manipulated in the picogram range.
46. Hence, based on the factual and scientific evidence, a manufacturing contamination would be the only way in which the Recovery Gummies could have been contaminated with GW1516 and the Appellant would thus have met his burden of establishing, on the balance of probability, that the source of the AAF was the ingestion of Recovery Gummies that were contaminated through the manufacturing process as opposed to intentional after-the-fact manipulation of these Gummies.
47. In light of the above considerations, the Appellant argues that his degree of fault for unknowingly ingesting GW1516 is not significant in relation to his ADRV, within the meaning of the definition of "*No Significant Fault or Negligence*" set out in Appendix 1 to the WA ADR. Indeed, he could not have known that GW1516 was in Recovery Gummies and his perceived degree of risk when ingesting these Gummies was very low since they were labelled as being NSF Certified for Sport and free from banned substances. Moreover, they were given to him by Gatorade at an award ceremony honouring the Appellant and a dozen other athletes.
48. The Appellant considers that, based on the criteria set out by the panel in CAS 20213/A/A/3327 and CAS 2013/A/3335 (the "Cilic case") and the consistently applied CAS jurisprudence, his degree of fault is low and that, consequently, his period of ineligibility should be 4 months or less. Given that he has already been suspended for far longer, he should be declared immediately eligible to compete again.
49. As regards the objective elements that should be taken into account to determine the Appellant's degree of fault, he emphasises that (i) he and those around him read the label on the container of the Recovery Gummies and observed that there was an NSF Certified for Sport logo plus an ingredients list that was safe; (ii) GW1516 was not on the label and its inclusion as a hidden contaminant could not have been identified no matter how much research was done; (iii) a search of the internet for the ingredients in

the Recovery Gummies could not have led to the discovery that GW1516 was a hidden contaminant; (iv) he received the product from an extremely reliable source, *i.e.* Gatorade itself.

50. As regards the subjective elements that should be taken into account in the present matter, the Appellant highlights that (i) he was just 18 years old when he was given the Recovery Gummies and justifiably trusted that a Gatorade supplement, offered by Gatorade at an official Gatorade event, would be free from banned substances; (ii) he is an inexperienced athlete, as demonstrated by the fact that the 18 July 2023 anti-doping test was just his second-ever doping control test after entering the testing pool; (iii) he had limited anti-doping education at the time of his positive test; (iv) he used the supplement only after getting the all-clear from his coach, and (v) he declared his use of the Recovery Gummies on the DCF.
51. Finally, the Appellant argues that, in application of Article 10.10 of the WA ADR, fairness would require that he could keep his competitive results and any medals, points and prizes earned between 18 July 2023 (the date of his positive test) and the 9 August 2023 (the beginning of his provisional suspension) given that he only has a light degree of fault in relation to his ADRV and that he tested negative on 28 July 2023, *i.e.* just ten (10) days after his positive test, meaning his subsequent results (specifically, those he achieved at the South American Championships) were not tainted by his positive test.
52. In view of all of the above considerations, the Appellant requests the CAS to:
 - “A) Find that the likely source of Mr. Asinga’s positive test was his ingestion of contaminated Gatorade Recovery Gummies on 18 July 2023 and that he is therefore entitled to a sanction of 4 months or less that makes him immediately eligible to compete;
 - B) Order any other relief for Mr. Asinga that this Panel deems to be just and equitable including an award of fees and costs in part or in whole”.
53. At the hearing, the Appellant, in essence, reiterated the position adopted in his written submissions and added, *inter alia*, that:
 - the witness evidence provided during the hearing shows that there is a lack of direct or indirect evidence to support a claim of intentional doping by the Athlete or adulteration of the Recovery Gummies by himself, someone of his family or coach Phiri. It is clear that the Athlete and his entourage did not have access to the technical means to adulterate the Recovery Gummies in the way insinuated by the Respondent.
 - the inconsistencies and the absence of precision in the record of the events and the travel arrangements of the family after 9 August 2023 are due to the stress and the inexperience of the persons concerned. The fact, *inter alia*, that they provided full access to their electronic devices for forensic purposes would be inconsistent with the behavior of someone seeking to conceal wrongdoings.

- the testimonies provided during the hearing further show that there were deficiencies in the manufacturing process at Better Nutritionals (mislabelling, poor inventory management, and the fraudulent use of NSF certification) and a lack of robust quality control. The possibility of an unintentional contamination of the Recovery Gummies would thus be plausible. Mr. Tyre could not be considered a credible witness as he relied on his memory and not on contemporaneous records. Additionally, there were inconsistencies between his different witness statements and what he stated during the hearing.
- the sum of the concrete evidence before the Panel demonstrates the Athlete's innocence and that there is no legal or factual basis to find that the ADRV was intentional.
- the experts, in particular, Prof. Saugy could not explain the very low concentrations of GW1516 found in the Recovery Gummies in Container 2. Even the Lausanne Laboratory, despite having had six months to replicate the findings, failed to do so. Hence, an adulteration of the Recovery Gummies would not be plausible and the only viable explanation for the GW1516 found in the Recovery Gummies by the SMRTL is a contamination during the production process.
- the scientific analysis confirms that the concentration of GW1516 metabolites found in the Athlete's Sample is consistent with the concentration of GW1516 found in the Recovery Gummies, supporting the argument that the AAF is most likely due to the ingestion of the contaminated Recovery Gummies. This is even more true as peer-reviewed studies and the expert testimony regarding ratios of GW1516 sulfone and GW1516 sulfoxide do not support the adulteration theory put forward by the Respondent but rather indicate instability or degradation of the GW1516 within the Recovery Gummies.
- in case the Panel considers that the Appellant has not established the source of the GW1516 found in his Sample, it may, as was done in the Ademi case (CAS 2016/A/4676) and the Shayna Jack case (CAS 2020/A/7579 & CAS 2020/A/7580), reduce the sanction given that there is clear evidence of lack of intent and that the probability of an unintentional ingestion exceeds that of a deliberate intake.

B. The Respondent's Submissions and Requests for Relief

54. The Respondent observes, as preliminary points, that the Appellant's entire case is based on the hypothesis that his AAF was caused by contaminated Recovery Gummies and on the premise that the two open containers of Gummies he provided and submitted for analysis returned positive findings for GW1516. However, it is clear from the file, *inter alia*, (i) that the SMRTL noted, upon analysis of the Gummies provided by the Appellant, that "*it was not possible to rule out deliberate adulteration of the Gatorade Recovery Gummies after it was opened*"; (ii) that the Lausanne Laboratory was able to replicate an adulteration scenario resulting in similar results to the ones found by the SMRTL without employing a particularly sophisticated method; (iii) that the Athlete's

coach, Mr. Gerald Phiri, was recently provisionally suspended by the AIU for potential possession violations involving GW1516 in 2018 and 2019, and the fact that two other athletes coached by him were found positive for the same the substance between July 2023 and August 2024; (iv) that, during the first instance proceedings, the Appellant has not mentioned that one of the two containers of contaminated Gummies which he sent to the SMRTL for analysis belonged to another athlete, and (v) that, since the WA DT issued the Appealed Decision, a sealed container of Recovery Gummies from the same lot number as that consumed by the Appellant was retrieved and tested by the SMRTL, which showed no presence of GW1516.

55. As regards the findings of the SMRTL in relation to the 2 containers provided for analysis by the Appellant, the Respondent emphasises that the SMRTL noted two unusual aspects to those results, (i) the large discrepancy in the findings between the two open containers of Recovery Gummies that the Appellant provided and (ii) that the contamination was initially present on the surface of the gummies with limited diffusion of the adulterant to the interior of the gummy (rather than the contaminant being uniformly distributed throughout the gummy at the time of manufacture). Further, the Appellant notes that, according to the witness statement from Mr. Roger Tyre, former Chief Operating Officer of Better Nutritionals LLC, the manufacturer of the Recovery Gummies, Gummies with Batch/Lot# 22092117150234 that the Appellant ingested are the same gummies as the Gummies with Batch/Lot# 22092117150213, which were analysed through the NSF Certified For Sport program and which did not contain GW1516. The Batch/Lot# on the jars is different due only to a relabelling process that was undertaken after the results of the NSF testing had been obtained. Moreover, a sealed jar of the Recovery Gummies with Batch/Lot# 22092117150213 obtained by the AIU was analysed by the Laboratory and tested negative for GW1516.
56. The Appellant adds that, following the notification of the Appealed Decision, the AIU was provided with sealed containers of the Recovery Gummies from the same Batch/Lot# 22092117150234 as those that were ingested by the Appellant. The analysis of 5 gummies from one of the sealed containers performed by the SMRTL (using the same methodology that was previously used on the Gummies provided by the Athlete) on 19 June 2024 revealed no GW1516 in any of the samples. This result would render moot the Appellant's case theory according to which the manufacture of Lot# 22092117150234 was somehow different to Lot# 22092117150213 in a way that led to the gummies in containers bearing Lot# 22092117150234 being contaminated. In light of the clear analytical evidence, it would be unequivocal that this scenario is without merit.
57. Regarding Container 2 sent by the Appellant to the SMRTL, the Respondent argues that is it clear from the evidence on file, *i.e.* an email from [...]’s father and screenshots of messages sent by the Appellant to [...], that this Container had not been given to the Appellant during the awards ceremony on 10 to 14 July 2023, that the Appellant could not have ingested any of the Gummies contained in that Container before his positive test, and that Container 2 was sent to the address of the Appellant’s father, a practicing veterinarian, in Dacula, GA, and not the Appellant’s address in College Station, TX, from where they were sent to the Salt Lake City Laboratory. The Respondent highlights

that, at no point in the procedure before the WA DT, the Appellant acknowledged that Container 2 did not belong to him. According to the Respondent, to the contrary, the Appellant made assertions according to which the Gummies that tested positive for GW1516 came from “*two containers of Gatorade Recovery Gummies given to [him]*”.

58. In light of the fact that, as noted by the WA DT, Dr. Scott and Prof. Saugy agreed that the Appellant would very likely have tested positive for GW1516 on 28 July 2023, *i.e.* ten days after his positive test, if he had consumed the Gatorade Recovery Gummies from Container 1, and the fact it is now established that the only container from which the Athlete was consuming the Recovery Gummies prior to his test on 28 July 2023 was Container 1, it would be clear that (i) the Appellant misled the WA DT by representing that both Container 1 and Container 2 belonged to him and he was eating gummies from both Containers prior to his positive test on 18 July 2023, and (ii) even on the Appellant’s own case, the contamination theory is not supported by the evidence of his own scientific expert at first instance.
59. In the present matter, the analysis of the facts, the analysis of the science and the analysis of the digital forensic evidence provided by the Appellant do not withstand the necessary scrutiny and do not support the manufacturing contamination scenario brought forward by the Appellant. Hence, as the Appellant has not been able to provide any credible explanation regarding the source of the GW1516 found in his system and has not provided any evidence objectively ruling out an intentional ADRV, the applicable sanction, pursuant to the relevant provisions of the WA ADR, *i.e.* Articles 2.1, 2.2, 10.2.1 and 10.5, would be a period of ineligibility of four (4) years.
60. According to Article 10.13 of the WA ADR and given that the Appellant is provisionally suspended since 9 August 2023, that period of ineligibility would apply from the date of the Appealed Decision, with credit given for the period of ineligibility already served.
61. Finally, according to Article 10.10 of the WA ADR and in absence of any circumstances justifying an exception on the basis of the fairness principle, all competitive results as from the Appellant’s positive test, *i.e.* 18 July 2023, are to be disqualified, with all resulting Consequences. Hence, the Appellant’s results of 28 July 2023 where he obtained first place at the South American Outdoor Championships in Sao Paolo, Brazil, should be disqualified.
62. In light of all of the above considerations, the Respondent requests the CAS to rule as follows:
 - “1. *The appeal filed by Issamade Asinga is dismissed.*
 2. *The decision rendered by the Disciplinary Tribunal on 17 May 2024 is confirmed.*
 3. *Issamade Asinga is ordered to pay World Athletics a significant contribution towards its legal fees and other expenses incurred in defending the Appeal.*

4. *Issamade Asinga is ordered to bear the arbitration costs, if any*”.

63. At the hearing, the Respondent added, *inter alia*, that:

- the Appellant and his family provided inconsistent and sometimes contradictory statements concerning the handling and location of the Recovery Gummies, and there is a lack of credible, independent corroboration regarding the events in question immediately following the notification of the positive result.
- the athlete has not been able to provide persuasive or objective evidence in support of his claim that his AAF came from the ingestion of contaminated Recovery Gummies. The testimony provided by Mr. Tyre regarding the manufacturing process as well as the evidence provided by the NSF official indicate it is highly improbable that the Recovery Gummies were contaminated during the production process. Further, a sealed jar from the same production lot, tested by the SMRTL in June 2024, returned negative results for GW1516.
- the interpretation of the ratios of GW1516 metabolites and their forensic value was contested between the experts during the hearing. However, the preponderance of scientific evidence and expert opinion does not support the Appellant’s contentions. Instead, the AAF is consistent with a possible intentional intake as well as with a contamination.
- the Appellant’s coach, Mr. Phiri, is provisionally suspended for potential possession of GW1516, and three of his athletes have tested positive for that substance. This suggests that the Appellant’s AAF is unlikely to be a matter of mere coincidence.
- the Respondent is not obligated to establish or even bring forward alternative hypotheses such as adulteration, sabotage, or spiking, given that the burden of proof rests entirely with the athlete. While the evidence shows that there is a possibility that the Recovery Gummies may have been adulterated post-production, there is no definitive proof as to when or by whom such adulteration has been performed.

V. THE WITNESS AND EXPERT EVIDENCE HEARD AT THE HEARING

64. In addition to the written evidence filed, at the hearing the Panel heard the witness testimonies from the Athlete, Ms. Ngozi Asinga (the Athlete’s mother), Mr. Tommy Asinga (the Athlete’s father), Mr. John Travis, Mr. Andrew Reisman, Mr. Roger Tyre and Dr. Ryan Van Wagoner.

65. The Panel further heard expert evidence in form of a “hot tub” attended by Prof. Martial Saugy and Mr. Nicolas Jan (retained by the Respondent) as well as Prof. Pascal Kintz (retained by the Appellant). The “hot tub” focused on questions relating, *inter alia*, to the concentrations and ratios of GW1516 found in the Athlete’s Sample and in the Recovery Gummies sent to the SMRTL by the Appellant, the potential spiking of the Recovery Gummies without sophisticated tools, the possibility that the AAF could be

explained by the consumption of the Recovery Gummies from Container 1 and the likelihood that GW1516 purchased over the internet being contaminated with another prohibited substance.

66. The relevant parts of the witness testimonies may be summarized as follows:

- The Appellant confirmed his previous written and oral witness statements but clarified that he had not meant to insinuate that both Containers of Recovery Gummies he had sent to the SMRTL were his or to hide that he had gotten Container 2 from [...]. He stated that he had not told his counsel that he had received this Container from [...]. He explained that, given that he and his parents were not able to find any sealed containers of the Gummies, he asked [...] if he had some of the Gummies left that they had received at the Gatorade event. Knowing what he knows now, he would have asked [...] to send his Gummies straight to SMRTL and not to the address in Dacula, Georgia. When asked why he had them sent to Dacula and why his mother did not directly send the Gummies to the SMRTL but instead send them to his address in Texas, he stated that he wanted them to stay within his chain of custody and to have his name on the package sent to the SMRTL. His mother was leaving for Zambia on the 10th or 11th of September and instead of leaving the Gummies in Dacula, she sent them to his address in Texas. At that date they didn't know yet whether they would be allowed to send the Gummies to the SMRTL. They got the okay from the SMRTL only on 18 September 2023. He further stated that he never knowingly ingested a Prohibited Substance and that he has not manipulated the Recovery Gummies sent to the SMRTL.

During cross-examination, he acknowledged that during the first instance hearing, he had stated that there were 35 Gummies in Container 2 although he had never looked inside that Container. He also acknowledged that when he made his third Witness Statement, he already knew that the Gummies from Containers 1 and 2 had tested positive and that neither in that Witness Statement nor in his testimony during the hearing before the WA DT he had revealed that Container 2 was not his own and that he had not consumed any Gummies from that Container. He confirmed that he had stopped eating the Recovery Gummies approximately on 25th July 2023. He also confirmed that he had been informed of his adverse analytical finding by Mr. Tony Jackson on 9 August 2023 and that he contacted his counsel the following day on 10 August 2023. He confirmed that he asked [...] for his Containers on 13 August and that he left for College Station, Texas, with his mother on 19 or 20 August 2023. He stated that the first supplement that he thought could have caused his AAF was a melatonin supplement and that his counsel had considered that the Gatorade supplements could be considered safe. He nevertheless asked [...] whether he had some Gummies left, because the Gummies were the only new thing on his diet that had changed between the negative test on 11 June 2023 and his adverse analytical finding resulting from the test on 18 July 2023. He stated that his father was also present in College Station when he was there with his mother. Finally, after some confusion as to what was exactly in the package that was sent to him by [...], he stated that there were two Containers, one with Recovery Gummies and one with Immune Gummies and he reconfirmed that he never opened them.

- Ms. Ngozi Asinga confirmed that she had helped her son to find a sealed container of the Recovery Gummies, but in vain. They had tried to find sealed containers of the Gatorade Gummies everywhere. She stated that she was not aware of the fact that the Container of Recovery Gummies that she had received from [...] was an issue. She stated that she had never tried to hide the fact that she had received Container 2 from [...]. She testified that she was in Texas with her son when the package sent by [...] arrived in Dacula and that she found the package when she got back from Texas. She stated that she was by herself at that point in time. Her husband had been with her when she was in Texas and in Florida. She stated that when she came back from Texas to Dacula, the package was by the door (inside) and that the parcel had her name on it. She testified that after opening the package she stored the content in the basement of the house she was staying in. She could not remember the exact day on which she sent the package with the supplements to her son, but stated that it must have been before 12 September 2023 as she left for Zambia on that day. She stated that neither herself nor her husband had done anything to tamper with the Recovery Gummies.

In cross-examination she stated that three to four or four to five days after having been informed of her son's positive test, they talked to their counsel for the first time. She confirmed that they had not informed their counsel that they had asked [...] for his Gatorade Gummies only three days after having consulted with their counsel and explained this omission by the fact that in such a situation "*you don't think straight*" and that she was just more focused on her son. She then stated that the package arrived by UPS and when confronted with evidence that the package had been sent via the United States Postal Service, she said she had made a confusion. She confirmed that they thought it would be best if the package with the supplements eventually to be sent to the SMRTL came from her son's address but could not explain why she had not immediately sent this package to her son in Texas. She could not exactly remember the date on which she sent the package to her son and mentioned the date on 10 September 2023. When being asked whether her husband was in Georgia at the time, she answered that he was not. She then testified that the package she found when she came back from Texas to Dacula had her son's name on it. When asked about the dates of travel between Florida, Georgia and Texas, she contradicted herself several times as to the dates, the means of transportation she had used and the people she travelled with. The same is true about the people that were present in the house in Dacula when she came back from Texas and the package sent by [...] had already arrived: first she said her "niece" was there, later she stated her "relatives" were there as well as they had left Texas before her.

- Mr. Tommy Asinga stated that he did not do anything to manipulate the Recovery Gummies sent to the SMRTL. He testified that he is a trained veterinarian and that he practices in Lusaka, Zambia. He stated that in his practice he measures things in milligrams and not in micrograms. He further testified that he does not have access to a laboratory or chemical laboratory equipment in Georgia or Texas and that he does not have any expertise in pharmacokinetics or pharmaceutical manufacturing. He said that after he got the news of his son's AAF, he went to Texas to visit him

there and that, he also spent two to three days in Dacula, Georgia. He testified that even if he had wanted to, he could not have manipulated the Recovery Gummies “*because he didn’t even know the drug*”. He further testified that didn’t know whether he has access to buy GW1516 in Zambia because he has never tried.

During his cross-examination, he acknowledged that in his practice he is used to handling medicine, which is a critical part of his work, and that he can buy medication and controlled substances that the general population does not have access to. He further stated that on 9 August 2023 he was still in Zambia and that he was driving home when he got the call from his wife to inform him about their son’s positive test. He stated that he could not remember whether his wife told him that the substance found was GW1516. He also stated that he immediately thought about contacting coach Phiri to understand what was going on but that he could not remember whether he contacted the coach by phone or by text message. When asked about the WhatsApp exchange dated 10 August 2023, 04h37 a.m., whether he understood what the reference “1516” in that text message meant, he stated that he did not at the time. He testified that, at the time, he did not ask coach Phiri what “1516” would stand for. He stated that he did not understand what the references “1516” and “0742” in coach Phiri’s text message meant and that he did not ask him what the numbers meant. When asked why he had answered coach Phiri’s text message with the question “*where [sic] the gummy’s consumed around that time?*”, he acknowledged that he had understood that what coach Phiri had talked about, i.e. even the excretion times 40 days (for 1516) and 20 days (for 0742), and that he was referring to the Gatorade Gummies because there was nothing else that he knew of that his son was taking at the time. He also stated that he was present at the event at which his son got the Gatorade Gummies. He testified that he left Zambia approximately on the 20 August 2023 and arrived when his son was already in College Station, Texas. He stated that he stayed around four days to a week in Texas and left for Georgia on the 28 August 2023. He testified that he only spent a day or so with his wife in Texas as she left for Georgia before he did. He flew from Texas to Georgia on a Delta flight and left Georgia to fly back to Zambia on 1 or 2 September 2023. When asked again about the WhatsApp text message exchanged with coach Phiri, he stated he did not know what the reference “40 days” meant. Interrogated about the text passage where he asked, “*where [sic] the gummy’s consumed around that time?*”, he could not explain whether there was a link with the “40 days” mentioned in coach Phiri’s precedent message.

- Mr. Travis, a principal technical manager for NSF Certified for Sport program, stated that the Certified for Sport program is a program where they test dietary supplements on a lot basis to ensure that they are clean of substances prohibited in sport. He testified that the use of the NSF logo for lot code 209-2117-150234 by Pepsi Gatorade was unauthorized, as that lot had not been tested, contrary to the lot ending with 213. He stated that the cleared lots receive the certification, and the codes appear on the NSF website.

In cross-examination, he acknowledged that Better Nutritionals, which manufactured the Recovery Gummies, had been recognised by the NSF as being a

good manufacturing practice certified facility and has successfully passed the audit to receive that certification. He stated that some Recovery Gummies cooked by Better Nutritionals on 21 September 2022 and 15 December 2022 were certified by NSF.

- Mr. Reisman, a digital forensic expert, stated that he had made forensic images of the Athlete's computer and mobile phone and also performed forensic collections of the Athlete's iCloud account and Gmail accounts. He testified that the Athlete had given him full access to his devices and accounts and stated that he had not found any trace during the six months prior to the 9 August 2023 of any search for the keywords "GW 1516" or "1516", "*cardarine*", picograms or nanograms. He also stated that he had received access, at the later and more recent moment in time, to the Athlete's parents' phones, *i.e.* in 2024 for Ms. Asinga and more recently for Mr. Asinga.

During cross-examination, Mr. Reisman stated, in relation to the WhatsApp messages exchanged between the Athlete, the Athlete's father and coach Phiri, that there were messages before and after the excerpt displayed in his report but that those messages did not seem relevant.

- Mr. Tyre, a former Chief Operating Officer at Better Nutritionals, stated that in 2022, Better Nutritionals was holding several licences and certifications, *inter alia*, a registration as a Good Manufacturing Practices (GMP) facility with the U.S. Food and Drug Administration (FDA), a food handling license from the Department of Public Health, a NSF GMP certification, an NSF GMP for sport certification, a GFSI (Global Food Safety Initiative) certification and a kosher certification. The Gardena facility held a two-pillar Sedex Members Ethical Trade Audit (SMETA) certification, related to environmental, social and ethical practices. He stated that to get the NSF GMP certification for sport, the facility had to undergo an in-person audit by an NSF representative ensuring that you do not purchase, warehouse, or use any substances on their banned substance list, which mirrors very closely the WADA list of prohibited substances. Further, NSF requires evidence regarding the measures taken to secure the supply chain, in particular supplier qualifications as well as some level of evidence from its vendors that they also do not purchase, warehouse, or use any substances that are on NSF's banned substance list. He gave evidence about the cleaning process at the Gardena facility and stated that it was an industry standard process for food manufacturing. He testified that an NSF audit had occurred in July-August of 2022. He stated that, in September 2022, the only sports supplements produced by Better Nutritionals were the recovery and immune chews, that were made for Gatorade/Pepsi. He further testified that no product made at the facility used or contained GW1516 as an ingredient. He explained the procedure followed to qualify as a vendor to Better Nutritionals, which included, *inter alia*, full panel testing of the raw material they intended to buy. He further stated that the raw material received at the warehouse were tested on a sample basis to check whether the material met its specifications. He explained the production process and stated that the aim of the mixing of the slurry is to have a homogenous solution. He testified that it follows from the lot number 2209211715023 that, on 21 September

2022, on production line one, Better Nutritionals produced a product that has a final packaging code 7150234. He confirmed that the gummies with that lot number and the gummies with the lot finishing with 0213 were the same as they were produced on the same day on the same production line. He stated that on 21 September 2022, 20,000 bottles worth of Recovery Gummies were cooked at the Gardena facility. He explained that the difference in lot number is due to the fact that they were *“requested by PepsiCo to put together some finished goods so that they could have them quickly, understanding that they had not yet gone through the about 30-day process for NSF testing. So we were going to label them on their request with a label that did not bear the NSF Sport logo and keep the others until the results came back”*. He testified that the result of the NSF testing came back in October 2022 and that a second lot of Recover Gummies produced in December 2022 was also certified by NSF as not containing a prohibited substance. He stated that he does not know why PesiCo decided to discontinue the Gummies and specified that, in his view, manufacturing issues, i.e. meaning difficulties with manufacturing, not meeting specifications, et cetera, were not plausible reasons for discontinuing the product. None of those existed with the Gummies at the time he was at Better Nutritionals, i.e. until 22 December 2022.

During cross-examination, he acknowledged that they did not test every good delivered to the facility on Prohibited Substances, that the 12,500 containers in the lot finishing with 0234 were not NSF certified, that he had incorrectly stated, in his 1st witness statement, that PepsiCo had advised Better Nutritionals, after the successful completion of the NSF testing of the lot finishing with 0213, that the remaining containers could be labelled with a new product label but that, after he had access to documents provided after the bankruptcy of Better Nutritionals, he found emails exchanges in which it was asked to label all the containers at the same time. He also acknowledged that there is no email exchange proving that the lots finishing on 0234 and in 0213 had been produced together, but he considered that the emails from 26 July 2022 and 16 September 2022 imply that the content of all 20,000 container had been produced together. He testified that there is no record within the documents provided to him by the trustee about what happened on the floor of the Gardena facility on 21 September 2022. He stated that they did not test the raw ingredients for GW1516 at the facility. When asked how he could fairly state that it was as close to statistical zero for GW to have been used at the facility, he stated that, from the point of food fraud or economically motivated adulteration, there is no benefit to anyone economically to add GW1516 to a food ingredient like sugar, syrup, citric acid, etc. that were used in the manufacture of the Gummies. According to him, it would, in fact, be an economic loss to contaminate the Gummies with a banned substance that has a higher value than someone is willing to pay for the material. Furthermore, the quality systems that were put in place at the Gardena facility met, and in most instances exceeded, the requirements for dietary supplement manufacturing and the audits of the facility, *inter alia* by NSF for GMP for sport immediately prior the manufacturing of the Gummies in September 2022, show that the quality system in place was actually being followed. Finally, the Gummies were then tested after they had been manufactured and were

found to not contain any Prohibited Substances. He also stated that it would take 17,4 hours to cook 20,000 jars worth of Gummies on production line 1 in Gardena and that it would take 12 to 16 hours to clean the production line. He finally testified that to him the difference in lot numbers 0234 and 0213 are irrelevant as the most important numbers are the first seven numbers of the lot as they indicate that the gummies were produced on a specific day on a specific production line.

- Dr. Van Wagoner, Senior Scientist at the SMRTL, confirmed that the SMRTL had tested two open containers of the Recovery Gummies of lot number 22092117150234 sent to it by the Athlete and both tested positive for GW1516. He stated that they found it noteworthy, first, that the exterior of the Gummies tested at a much higher level of GW1516 than the interior of those gummies. That could indicate external contamination of the gummies rather than contamination of the entire source material from which the gummies were made. Second, they noted that the Gummies from the second container had much lower levels of GW1516 and then undetectable levels of the sulfoxide analogue compared to the other container. However, two samples from the same lot that were tested together would often and typically show concentrations closer together than what was found in this case. He testified that the container tested by SMRTL in 2024, and that was referred to as a sealed container, appeared to be at neutral pressure, meaning that there might have been a *“potential that the air tightness of the seal may have been compromised at some point between manufacturing when we received it”*. He stated that they did not see a bulging of the seal, but that there were *“no other signs of tampering, so we have no reason to suspect that there had been any tampering with the contents of the seal, only to note that it did not appear to be airtight when we received it”*. He testified that they detected no GW1516 in the gummies in that container and that when they tested the Gummies that had shown the low concentrations of that Substance in December 2023, they could not detect any GW1516 in those Gummies. When asked if he would expect to find a more homogenous distribution of the GW1516 through the Gummies if the source of the GW1516 had been an ingredient or a raw material used in the manufacturing of the gummies, he stated that he would expect a more even distribution *“than what we observed in the gummies themselves. There may be some minor discrepancies, but, you know, maybe a factor of two to five or something like that, but not the large discrepancy that we did see”*. He finally testified that when bought from a reputable source, he would not expect GW1516 in the ingredients or raw materials.

During cross-examination, he acknowledged that the SMRTL remark that there could have been an adulteration of the Gummies tested in December 2023, *i.e.* the two containers sent by the Athlete, was just an observation and that they did not have any evidence to support a statement that these Gummies were definitely adulterated. He also stated that they could not completely rule out that the container received in 2024 had been manipulated as the seal had apparently been compromised. He testified that when he did a study in 2017, he found that in 26 out of 44 products available online, the contents differed substantially from the label.

He confirmed that the levels of GW1516 metabolites found in the Athlete's Sample could have been caused by the consumption of the Gummies found in Container 1.

In response to a question from the Panel, he confirmed that their remark regarding a potential adulteration was motivated by the fact that the concentrations of GW1516 found on the outside of the Gummies was higher than on the inside, and that he would expect the exterior to show faster degradation than the interior, because it is exposed to oxygen but that it was conceivable, if the outside of the Gummy had a lower acidity compared to the inside just due to aging effects, that something on the interior of the gummy could degrade faster.

67. The discussion during the expert “hot tub” may, in its relevant parts, be summarized as follows:

- As regards the potential significance of the athletes' negative tests on 11 June 2023 and 28 July 2023 in relation to the AAF for GW1516 sulfoxide and GW1516 sulfone in the Athlete's Sample, the experts agreed that the only thing that could be deducted from these negative tests was that the Athlete must have ingested or been exposed to GW1516 after 11 June and before 18 July 2023 and that the substance had been excreted from the Athlete's system before 28 July 2023.
- Concerning the significance that should be given to the ratio of GW1516 sulfone to GW1516 sulfoxide detected in the Athlete's Sample, Prof. Saugy stated that according to his experience that ratio found in the Athlete's Sample is similar to the ones usually found in other athletes' samples. According to him, the ratio described in the article published by Dr. Sobolevsky in 2012 could be explained by the extraction procedures and mass spectrometry used at the time by the Moscow laboratory and would not correspond with the ratios found by different laboratories over the last 10 years. Prof. Kintz disagreed with Prof. Saugy and noted that the Lausanne Laboratory had not published any study regarding this ratio. There would be one other study on humans, published by the WADA accredited Laboratory of Cologne, concerning a contamination by intimate moments, in which they “*cite a case where they have also the standard ratio more sulfone than sulfoxide*”. Finally, according to Prof. Kintz, in two studies on horses, they found, that the sulfone was higher than the sulfoxide. He considers that the ratio found in the present matter is unusual as the sulfone is lower than the sulfoxide and an explanation could be that the GW1516 in the Recovery Gummies was transformed into sulfoxide and led to an excess of sulfoxide. The ratio between GW1516 sulfone and GW1516 sulfoxide found in the Athlete's Sample would thus support the thesis that the contaminated Recovery Gummies could have caused the AAF. Dr. Scott, the expert appointed by the Athlete in the procedure before the WA DT, had stated that the GW1516 sulfoxide would usually be higher than the GW1516 sulfone. Prof. Kintz explained in this regard that he did not know why Dr. Scott had stated that, and that this position was not supported by the literature. Prof. Saugy added that the metabolism of drugs in horses is not similar to the one in rats or humans and that nothing can be drawn from a study on horses. He further explained that the results found by the Cologne laboratory showed a difference of 20% at a level of 4 and 5 picograms.

That finding could not be compared with the present matter where they found 200 picograms/mL of GW1516 sulfone and 500 picograms/mL of GW1516 sulfoxide.

- As regards the significance of the variations in the estimated concentrations between different Recovery Gummies and between the inside and the outside of these Gummies reported by the SMRTL in December 2023, Prof. Kintz stated that GW1516 was not stable as it transformed into GW1516 sulfoxide. He further explained that the difference of concentrations between the inside (lower concentrations) and the outside (higher concentrations) of the Gummies could be explained by the fact that “*on the inside you have a lot of water*” and that GW1516 is not stable in the presence of water. He did not take a position on the differences noticed between the Gummies coming from two different Containers. Prof. Saugy noted that the difference in concentration on the inside and the outside of the Recovery Gummies in Container 1 is extremely high and speaks for itself. As regards the Recovery Gummies in Container 2, he highlighted that there was no GW1516 sulfoxide and that when analysed for the second time, the analysis was negative. Mr. Jan stated that the difference in the concentrations found inside and outside of the Recovery Gummies indicates that the contamination must have happened after the production of the Gummies. The very low concentrations found in the first analysis of the Gummies in Container 2 could explain that six months later, during the second analysis, nothing could be detected anymore. He added that he was not sure whether there was water in the inside of the Recovery Gummies, but he agreed with Prof. Kintz that GW1516 is prone to degradation and creates metabolites like GW1516 sulfoxide. Prof. Saugy considered that the hypothesis advanced by Prof. Kintz, according to which the GW1516 inside the Gummies had reacted with the water inside the same Gummies was not in line with the results of the analysis. In response to the two other experts’ statements, Prof. Kintz reiterated and maintained his position.
- Concerning the experiments done by Prof. Kintz. on the one hand, and the Lausanne Laboratory, on the other hand, to test the possibility of an adulteration or spiking of the Recovery Gummies, Mr. Jan explained that, at the Lausanne Laboratory, they had realized the experiment with really unsophisticated tools and that they did not try to produce the lowest possible contamination. They had not been told how Prof. Kintz had done his experiment, and they just chose what they considered a non-sophisticated way to spike the Gummies by using methanol and by letting them dry in the air. He stated that they used a pure standard of GW1516 and did not just buy something over the internet as they did not have the necessary time to do so. He agreed that if put into water for five minutes, the Recovery Gummies would show some deformation. He also stated that, in his opinion, it was possible to contaminate the Gummies in the picogram range with the method used at the Lausanne Laboratory if one uses a more diluted solution. Prof. Saugy acknowledged that he found the concentrations found by the SMRTL in the Gummies from Container 2 very surprising and he still could not really understand how the SMRTL could find these low concentrations in Container 2 and that he had no explanation on how the Gummies in Container 2 could have been contaminated in the levels detected by the

SMRTL. Mr. Jan clarified that such low contamination could be achieved by using a liquid with a lower concentration than they had used at the Lausanne Laboratory. Prof. Kintz stated that, in his view, the fact that the Lausanne Laboratory used a pure standard of GW1516 to conduct its experiment shows that they were using a sophisticated method.

- Regarding the fact that the same batch of Recovery Gummies tested negative in July 2024 after having initially tested positive in December 2023, the experts agreed that this shows that GW1516 is not stable and that there could be degradation. Mr. Jan noted that the concentrations found in Container 2 were already very low when tested for the first time and that it was possible, at the time of the second test, that the concentrations in the Gummies had fallen below the limit of detection of the SMRTL. The probability of seeing a degradation down to zero after six months would be really low.
- Concerning the question whether the levels detected in the Recovery Gummies by the SMRTL are consistent with the levels detected in the Athlete's Sample of 18 July 2023 based on his reported ingestion, Prof. Saugy stated that if the Athlete was indeed taking 2 Recovery Gummies per day from Container 1 in the days prior to the anti-doping test, the results would be consistent. Prof. Kintz agreed with Prof. Saugy on this point. Prof. Saugy however pointed out that the AAF could also be the end of an excretion tail of a normal dose taken after 11 June 2023, on which the Athlete tested negative. Prof. Kintz agreed that one could not exclude a single dose. However, he could clearly exclude a cycle of intake because the concentration found in the Athlete's Sample is too low.
- In relation to the question whether the Athlete would have tested negative on 28 July 2023 if, as stated by him, he stopped eating the Recovery Gummies from Container 1 three days before the test, Prof. Kintz stated that it could be consistent as the Rio de Janeiro Laboratory, which proceeded with the analysis of that Sample, might have another quantification and limit of detection than the Lausanne Laboratory which performed the analysis of the 18 July 2023 Sample. Prof. Saugy stated that the Rio de Janeiro Laboratory has a very good reputation and is a very good laboratory, and that, in his view, it is highly improbable that the Athlete would have tested negative on 28 July 2023 if he had been consuming the Recovery Gummies from Container 1 until three days before that date.
- Regarding the likelihood that GW1516 purchased over the internet to spike the Recovery Gummies would have been contaminated with another Prohibited Substance that would have been detected by the SMRTL, Prof. Kintz stated that generally, nowadays, that likelihood would be low. However, he pointed out that the concentrations of such a product would very often not be in line with what is indicated on the package. Prof. Saugy agreed that, insofar as GW1516 is concerned, the likelihood of such a contamination with another Prohibited Substance would be low. Mr. Jan also agreed that it was not very likely that GW1516 bought over the internet would not be contaminated with another Prohibited Substance but stated that that could not be fully excluded.

VI. JURISDICTION

68. Article R47 of the CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.

69. According to Rule 13.2 of the WA ADR:

“The following decisions may be appealed exclusively as provided in Rules 13.2 to 13.7: a decision that an anti-doping rule violation was committed; a decision imposing Consequences or not imposing Consequences for an anti-doping rule violation; [...]”.

70. Rule 13.2.1 of the WA ADR provides as follows:

“In cases involving International-Level Athletes or arising from Persons participating in an International Competition, the decision may be appealed exclusively to CAS”.

71. In the present matter, it is uncontested that the Appellant is an International-Level Athlete within the meaning of Rule 13.2.1 of the WA ADR and none of the Parties objected to the CAS jurisdiction.

72. Moreover, all Parties confirmed such jurisdiction by signing the Order of Procedure, and they participated fully in this proceeding without objection.

73. In view of the above, the Panel holds that the CAS has jurisdiction to decide on the present appeal.

VII. ADMISSIBILITY

74. Article R49 of the CAS Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties”.

75. Rule 13.6.1 sub (a) of the WA ADR provides:

“The time to file an appeal to the CAS will be thirty (30) days from the date of receipt of the reasoned decision by the appealing party. Where the appellant is a party other than World Athletics or WADA, to be a valid filing under this Rule 13.6.1, a copy of the appeal must be filed on the same day with World Athletics”.

76. In the present matter, the reasoned version of the Appealed Decision was notified to the Athlete on 17 May 2024. The Statement of Appeal filed by the Appellant on 7 June 2024 has thus been filed within the thirty (30) day time limit set out in Rule 13.6.1 sub (a) of the WA ADR.
77. Furthermore, the Statement of Appeal complied with the requirements of Article R48 of the CAS Code, and the admissibility of the Appeal has not been challenged.
78. In light of the above, the Panel holds that the Appeal is admissible.

VIII. APPLICABLE LAW

79. Article R58 of the CAS Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

80. In the present matter, the “applicable regulations”, within the meaning of Article R58 of the CAS Code, are those contained in the WA ADR as the Appealed Decision was rendered by the WA DT in application of the WA ADR.

81. Pursuant to Rule 13.7.4 of the WA ADR:

“In all CAS appeals involving World Athletics, the CAS Panel shall be bound by the World Athletics Constitution, Rules and Regulations (including these Anti-Doping Rules). In the case of conflict between the CAS rules currently in force and the World Athletics Constitution, Rules and Regulations, the Constitution, Rules and Regulations shall take precedence”.

82. Rule 13.7.5 of the WA ADR provides:

“In all CAS appeals involving World Athletics, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise”.

83. In light of the above, the Panel will apply the WA ADR that entered into force on 31 March 2023 and were still applicable at the time of the Sample collection. Furthermore, it will apply Monegasque law on a subsidiary basis.

IX. MERITS

84. In the present matter, it is common ground between the Parties that the Athlete committed an ADRV in the sense of Rule 2.1 of the WA ADR for the presence of a prohibited substance, *i.e.* of metabolites of GW1516. GW1516 is a Prohibited Substance under the WADA 2023 Prohibited List under the category S4, Hormone and Metabolic Modulators. It is a non-Specified Substance that is prohibited at all times.

A. The Relevant Provisions

85. According to Rule 10.2.1 of the WA ADR, the period of Ineligibility, save where Rule 10.2.4 applies, shall be four (4) years where the ADRV “*does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional*”.

86. Rule 10.2.3 of the WA ADR provides:

“As used in Rule 10.2, the term ‘intentional’ is meant to identify those Athletes or other Persons who engage in conduct which 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. [...]”.

87. Pursuant to Rule 10.5 of the WA ADR:

“If an Athlete or other Person establishes in an individual case that they bear No Fault or Negligence for the [ADRVs] alleged against them, then the otherwise applicable period of Ineligibility shall be eliminated”.

88. Rule 10.6.1 sub (b) of the WA ADR provides:

“In cases where the Athlete or other Person can establish both No Significant Fault or Negligence for the [ADRVs] alleged against them and that the Prohibited Substance (other than a Substance of Abuse) came from a Contaminated Product, then the period of Ineligibility will be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete’s or other Person’s degree of Fault”.

89. The comment to Rule 10.6.1 sub (a) reads as follows:

“In order to receive the benefit of this Rule, the Athlete or other Person must establish that the detected Prohibited Substance came from a Contaminated Product and must also separately establish No Significant Fault or Negligence. It should be further noted that Athletes are on notice that they take nutritional supplements at their own risk. The sanction reduction based on No Significant Fault or Negligence has rarely been applied in Contaminated Product cases unless the Athlete has exercised a high level of caution before taking the Contaminated Product. In assessing whether the Athlete can establish the source of the Prohibited Substance, it would, for example, be significant for

purposes of establishing whether the Athlete actually Used the Contaminated Product, whether the Athlete had declared the product that was subsequently determined to be contaminated on the Doping Control form. This Rule should not be extended beyond products that have gone through some process of manufacturing. Where an Adverse Analytical Finding results from environment contamination of a 'non-product' such as tap water or lake water in circumstances where no reasonable person would expect any risk of an anti-doping rule violation, typically there would be No Fault or Negligence under Rule 10.5”.

90. Appendix 1 of the WA ADR, entitled “Definitions” defines the concept of No Significant Fault or Negligence (“NSFN”) as follows:

“No Significant Fault or Negligence: The Athlete or other Person’s establishing that any 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. Except in the case of a Protected Person or Recreational Athlete, for any violation of Rule 2.1, the Athlete must also establish how the Prohibited Substance entered their system”.

91. In the same Appendix 1, the concept of “No Fault or Negligence” (“NFN”) is defined as follows:

“No Fault or Negligence: The Athlete or other Person’s 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. Except in the case of a Protected Person or Recreational Athlete, for any violation of Rule 2.1, the Athlete must also establish how the Prohibited Substance entered their system”.

B. The Burden and Standard of Proof

92. As is clear from the above provisions, the burden of proving that the ADRV was not intentional, within the meaning of Rule 10.2.3 of the WA ADR, lies on the Athlete. Further, according to this provision, the Athlete is required to prove that his ADRV was not deliberate (direct intent) nor reckless (indirect intent).
93. As to the standard of proof applicable to the Athlete, Rule 3.1 of the WA ADR provides, in its relevant parts, that “[w]here these [ADRs] place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Rules 3.2.3 and 3.2.4, the standard of proof will be by a balance of probability”.
94. As recalled by some CAS panels, according to predominant line of jurisprudence, this standard of proof requires the athletes to establish that “*the occurrence of a specified circumstance is more probable than its non-occurrence*” or, in other words, the athletes must establish that the facts they rely on are more likely than not to have occurred (more than 50%) (CAS 2024/A/10655).

95. Pursuant to another line of jurisprudence, it is sufficient for athletes to prove that the theory put forward by them is the most likely among several scenarios (see, e.g., CAS 2007/A/1370 & 1376; CAS 2008/A/1515; CAS 2012/A/2986; CAS 2011/A/2384 & 2386). The Panel considers that, as is clear, for example, from the award in CAS 2011/A/2384 and 2386), this second line of jurisprudence is mainly inspired by the thought that, in some cases, athletes have to prove a negative fact and that principles of procedural fairness impose, in such a case, a duty of cooperation on the counterparty. Hence, while it is accepted that, in the present matter, WA does not have the burden of establishing that scenarios alternative to the one advanced by the Athlete caused the AAF, the lack of sufficiently plausible alternative scenarios presented to the Panel may assist the Athlete in meeting his burden of proof (CAS 2024/A/10655). However, it must be recalled that, ultimately, the burden of proving that the ADRV was not intentional lies with the Athlete.

C. The Position of the Parties

96. In the present matter, the Athlete argues, primarily, that he should benefit from Rule 10.6.1 of the WA ADR as he has established (i) that the GW1516 metabolites detected in his Sample came from contaminated Recovery Gummies and (ii) that he bears No Significant Fault or Negligence within the meaning of the above mentioned definition. At the hearing, he argued, on a subsidiary basis, that if the Panel were to find that he had not established the source of the GW1516 found in his Sample, the Panel should consider that he acted with no intent and that the probability of an unintentional ingestion exceeds that of a deliberate intake. The Respondent argues that the Appellant has not established, on the balance of probabilities, the source of the GW1516 found in his system and has not provided any evidence objectively ruling out that the ADRV was intentional. Hence, there would be no room for the application of Rule 10.6.1 or Rule 10.2.1 of the WA ADR in the present matter.

D. Preliminary Points

97. As a preliminary point, the Panel recalls that, as is clear from the wording of Rule 10.2.3 of the WA ADR, an athlete does not have to establish how the Prohibited Substance entered his/her system in order to claim that the ADRV was not intentional. However, according to constant CAS jurisprudence, apart from extremely rare cases (see CAS 2016/A/4534, CAS 2016/A/4676, and CAS 2016/A/4919), athletes must establish how the prohibited substance entered their system in order to discharge the burden of establishing the lack of intention (CAS 2016/A/4377, CAS 2023/A/9377).
98. Regarding the “*extremely rare cases*” in which an ADRV may be deemed unintentional even if an athlete has failed to prove the source of a prohibited substance, the Panel considers that in such a case an athlete has to establish lack of intention with other robust evidence, such as the possibility that the prohibited substance came from a specific product, the athlete’s credible testimony, evidence by the athlete’s doctors that the athlete had no intent to use a prohibited substance, or the implausibility of a scenario that the athlete intentionally used prohibited substances (CAS 2017/A/5248 and

CAS 2023/A/10273). Or, as the CAS Panel in CAS 2023/A/9451, 9455 & 9456 has summarized it:

“An athlete must provide actual evidence to support his protestations of innocence; he or she must provide ‘concrete and persuasive evidence establishing such lack of intent on the balance of probabilities’; protestations of innocence, however credible they appear, ‘carry no material weight in the analysis of intent’ [...]. The same applies to a ‘lack of a demonstrable sporting incentive to dope, diligent attempts to discover the origin of the prohibited substance or the athlete’s clean record’, which have constantly been rejected as justifications for a plea of lack of intent [...]”.

E. Applying the above Principles to the Case at Hand

99. In the present matter, the Athlete has only put forward a single scenario to explain the presence of GW1516 metabolites in his Sample, *i.e.* that the Recovery Gummies he consumed the days prior to his anti-doping test of 18 July 2023 were contaminated with GW1516.
100. The Appellant mentioned the Recovery Gummies on the DCF during his anti-doping test of 18 July 2023 and the Respondent has not put into doubt the fact that Appellant indeed ingested said Gummies prior to that test. Further, as was clear from the expert evidence provided during the hearing, it is uncontested that the AAF is consistent with the alleged ingestion, by the Athlete, of Recovery Gummies from the Container 1 as analysed by the SMRTL in December 2023. However, during the hearing, the experts agreed that the AAF could, given the excretion period of GW1516, also have been caused by the intake of a single dose of GW1516 after 11 June 2023. Moreover, it is uncontested between the Parties that, before his positive test on 18 July 2023, the Appellant never consumed any Recovery Gummies from Container 2, which he had received from [...] on 26 August 2023.
101. However, what is contested is whether, as argued by the Appellant, it is more likely than not that the Recovery Gummies sent by the Appellant to the SMRTL in September 2023, and which tested positive for GW1516, were contaminated during the manufacturing process.
102. In this regard, the Panel recalls that it is up the Appellant to establish that the facts he relies on are more likely than not to have occurred and that while the Respondent does not have the burden of establishing that scenarios alternative to the one advanced by the Athlete caused the AAF, the lack of sufficiently plausible alternative scenarios presented to the Panel may assist the Athlete in meeting his burden of proof (CAS 2024/A/10655).
103. Regarding the different elements brought forward by the Appellant in support of his claim that the AAF was caused by the ingestion of Recovery Gummies contaminated during the manufacturing process, the Panel notes, from the outset (first), that in light of the fact that the experts were in agreement that the AAF could also have been the result of an intake of GW1516 after 11 June 2023, that the Appellant’s argument that

the low concentrations of GW1516 metabolites found in his Sample allow to conclude that the AAF is most likely due to a contamination must be rejected.

104. Second, as regards the origin of the GW1516 found by the SMRTL in the Recovery Gummies from the two containers provided by the Appellant, it appears unlikely that the contamination of the Recovery Gummies could have occurred during the cooking of the slurry. Indeed, as is clear from the evidence on file and the testimony of Mr. Tyre, the aim of the stirring of the slurry during the cooking process is precisely to create a homogeneous redistribution of the different raw materials within that slurry. This would lead to gummies which all have a very similar, if not identical, composition. Given that the analysis carried out by the SMRTL in December 2023 revealed (i) a large discrepancy in the findings between the two containers of Recovery Gummies, and (ii) that the GW1516 was initially present on the surface of the Recovery Gummies with limited diffusion of that substance to the interior of the Gummies, rather than a uniform distribution throughout those Gummies, the Panel finds it unlikely that the contamination of the tested Recovery Gummies could have come from a raw material used for the production of the slurry.
105. The only possible way for a contamination of the Recovery Gummies to have happened during the manufacturing process would thus be in either the drying phase or the “bottling” phase.
106. As to the first of these two phases, the Panel notes that it does not appear impossible that a contamination of the Recovery Gummies with GW1516 could have occurred when the slurry was put into the molds, on the conveyor belts or on the trays that were used for drying the Gummies. However, this scenario appears to be rather of a hypothetical nature. Indeed, Mr. Tyre, who provided clear and consistent evidence as regards the manufacturing process, and whom the Panel considers to be a credible witness as regards, in particular, this production process, explained that no GW1516 was used in any products manufactured in the Gardena facility. Further, the Appellant has not provided any explanation as to why any product used in that facility for the purposes of cleaning, drying, etc. would have contained GW1516 as no producer or provider of these products would have any benefit from that. Further, as Mr. Tyre and Mr. Travis testified during the hearing, the Gardena facility was certified by various institutions, *inter alia* by NSF, and had, shortly before the production of the relevant Recovery Gummies, been successfully audited. The Panel considers that, in such a context, it is not sufficient for the Appellant to raise the mere possibility of a contamination of these Gummies within the Gardena facility. Instead, the Athlete has to adduce some concrete and credible evidence to prove this beyond mere speculation.
107. As regards the second of these two phases, the Panel notes that while it is not totally excluded that a contamination at the stage of “bottling” could occur, the Appellant has not produced any evidence that would render such a contamination plausible or more likely than not.

108. In light of the above considerations, the Panel finds that it does not appear more likely than not that the Recovery Gummies sent to the SMRTL by the Appellant were contaminated during the manufacturing or bottling process.
109. Such a finding is, in the Panel's view, corroborated by several other elements of this case. First, there is the fact that the Recovery Gummies with the lot number 22092117150213 were tested by the NSF and were certified to not contain any Prohibited Substance on 17 October 2022. As convincingly explained by Mr. Tyre, the first six digits of the lot number refer to the manufacturing date: YYMMDD. The seventh digit refers to the production line used for the manufacturer. The Gardena facility had two production lines. Thus, from the 7 first digits, it can be concluded that the lot finishing with -0234 and the lot finishing with -0213 were produced on the same day and on the same production line at the Gardena facility. As Mr. Tyre also convincingly explained during the hearing, the production process for the Recovery took around 17,4 hours to cook the content of 20'000 containers of Recovery Gummies. Furthermore, it takes around 12 to 16 hours to clean a production line. Thus, it appears impossible that two different lots of these Gummies were cooked on the same day on line 1 at the Gardena facility. This conclusion is, in the Panel's view, supported by other elements on file suggesting that the content of 20'000 jars worth of Recovery Gummies was manufactured in one go on 21 September 2022. Indeed, a PepsiCo document from 19 September 2022 setting out the requested production quantities referred to 20'000 jars of, *inter alia*, Recovery Gummies and did not make a reference to several batches or lots although it was mentioned that 7'500 jars should be labelled with non NSF logo labels and the remainder (*i.e.* 12'500) to be labelled with NSF logo labels after the confirmation from PepsiCo. If these 20'000 jars had come from different batches, the use of the term "remainder" would not have made any sense, and it would not have been necessary for PepsiCo to specifically request that the 12'500 jars be labelled with the NSF logo only after it gave its confirmation. The fact that, as acknowledged by Mr. Tyre, the labelling of the 12'500 was finally done before the NSF had even delivered its certification, appears irrelevant in this respect.
110. Second, there is the fact that from the 3 Recovery Gummies from Container 2 tested by the SMRTL in December 2023, only 2 tested positive for GW1516, moreover in infinite concentrations. The Panel considers that this shows that the contamination of the Recovery Gummies could not have come from the containers themselves.
111. Third, there is the fact that a sealed container of the Recovery Gummies with the same lot number as the containers sent to the SMRTL by the Appellant, *i.e.* 22092117150234, was tested by SMRTL in June 2024 and did not reveal any traces of GW1516. While Dr. Van Wagoner stated that the seal of that jar was not airtight, he also specified that the jar did not show any "*other signs of tampering*" and that they "*had no reason to suspect that there had been any tampering with the contents*". Although it is true that all 5 Recovery Gummies from Container 2 tested by the SMRTL in July 2024 were negative for GW1516 and its metabolites, it is worth reminding that not all Gummies from that Container tested in December 2023 were positive for GW1516 or its metabolites. The Panel thus considers that the fact that none of these 5 Gummies tested positive for GW1516 does not allow to draw the conclusion that the GW1516

disappeared from these Gummies and/or the Gummies from the sealed container tested by the SMRTL in June 2024 as it is equally possible and, in light of the above considerations, even plausible that none of these Gummies ever contained GW1516.

112. Fourth, the Appellant's argument according to which the ratio between GW1516 sulfone and sulfoxide found in his Sample was unusual and supports the thesis that the AAF was the result of the ingestion of contaminated Recovery Gummies cannot be followed. Indeed, Prof. Saugy and Dr. Scott, the expert retained by the Athlete before the WA DT, who both acknowledged that they have not published the results of the analysis they did as regards the found ratios of GW1516 sulfone and sulfoxide, agreed that the article published by Dr. Sobolevsky in 2012 has, over the last decade, proven to be wrong in many aspects and, in particular, in relation to said ratio. The Lausanne laboratory comes to the same conclusion in its response, dated 25 March 2025, to follow-up questions asked by the Respondent and explains that disparities in the findings from 2012 and the findings nowadays mainly stem from "*several technical and analytical differences between the methods applied*" in 2012 in the Moscow laboratory and more than ten years later in Lausanne laboratory. Further, and more importantly, an article referred to by Prof. Kintz, the expert appointed by the Appellant, entitled "*Complementary information concerning the suspected interindividual transmission of GW1516, a substance prohibited in sport, through intimate contact: a case report*" (Breuer et al., 2024), expressly mentions a case in which an athlete's urine sample was found to contain GW1516 sulfoxide estimated at 15pg/mL and GW1516 sulfone estimated at 5pg/mL. Hence, contrary to what the Appellant argues, it is not unusual to find a ratio between these two metabolites in which the sulfoxide is superior. Thus, the Panel considers that, in the present case, said ratio does not support the scenario brought forward by the Appellant, *i.e.* that the source of the GW1516 metabolites found in his Sample was the contaminated Recovery Gummies.
113. Fifth, as regards the differences in concentrations of GW1516 between the inside and outside of the Recovery Gummies analysed by the SRMTL in December 2023, the Panel observes that the experts were not in agreement as to how these differences could be explained. While they seemed in agreement that GW1516 is not stable when in contact with water, there is no evidence that the Recovery Gummies contained such water or, in the affirmative, how much water they contained. The Panel however notes that there were important differences between the Recovery Gummies from Container 1 and the Recovery Gummies from Container 2 as regards the found concentrations of GW1516 metabolites. In the Panel's view, this clearly does not support the thesis that the Recovery Gummies were contaminated during the manufacturing process.
114. Sixth, concerning the likelihood of an after-the-fact contamination of the Recovery Gummies sent to the SMRTL by the Appellant, the Panel finds that some of the Appellant's explanations and arguments appear to be inconsistent. Indeed, while stating that, after he had contacted his counsel on or around 10 August 2023, they had excluded the Recovery Gummies as a possible source of the GW1516 because they had been produced by Gatorade, these Gummies were explicitly mentioned in the WhatsApp chat between the Athlete, the Athlete's father and the Athlete's coach exchanged on that same day, *i.e.* 10 August 2023. Moreover, only three days later, *i.e.* on 13 August 2023,

the Appellant asked [...] whether he had some of these Recovery Gummies left. In the Panel's view, this does not make much sense and it seems even more counterintuitive that, as stated by the Appellant during the hearing, the latter did not inform his counsel that [...], in response to his request, had agreed to send him, *inter alia*, his container of Recovery Gummies.

115. As regards the already mentioned WhatsApp chat of 10 August 2023, the Panel finds that this WhatsApp chat appears even more remarkable when considered in light of Mr. Tommy Asinga's testimony. Indeed, the latter stated that he did not know what GW1516 was when his wife informed him of their son's AAF immediately after they had gotten the notification. He testified that he could not have spiked the Recovery Gummies because he did not "*even know the drug*". However, he could not explain why, only two minutes after having received a message from coach Phiri stating "[...] *if I'm understanding 1516 is up to 40days and 0742 is 20 days. In this case we are working with the 40 days*", he inquired "[w]here [sic] the gummy's consumed around that time?". The Panel considers that these WhatsApp messages undermine both Mr. Tommy Asinga's statement that he did not know what GW1516 was and the Appellant's affirmation that the Recovery Gummies were – originally – not of a prime interest as a potential source of the GW1516 found in his Sample.
116. Further, contrary to what the Appellant alleges, it does not appear impossible that a non-scientist would have been able to adulterate the Recovery Gummies in Container 1 in such a way that the concentrations of GW1516 would match the concentrations of GW1516 metabolites found in the Athlete's Sample. Indeed, as was clear from Mr. Jan's explanations during the hearing, the Lausanne laboratory was able to spike the Recovery Gummies without any sophisticated tools or methods and without affecting the Recovery Gummies' exterior appearance. While it is uncontested that the Lausanne laboratory was not asked to reproduce the exact same concentrations as the one's found by the SMRTL in the Recovery Gummies from Containers 1 and 2, the Panel found Mr. Jan's explanations, as to how they could have achieved that concentration by, for example, diluting the used solution to the relevant concentration, convincing. The validity of the Lausanne laboratory experiment is not put into question by the fact that the Lausanne laboratory had ordered a pure standard of GW1516. The Panel considers indeed that it would be highly illogical to order anything else but a pure standard when the objective is to spike a product, in this case the Recovery Gummies, in such a way as to exactly match the AAF for a single specific Prohibited Substance such as, in the present matter, GW1516.
117. This leads the Panel to the question as to whether it would have been impossible or implausible for the Appellant and/or a person from his entourage to order a pure standard of GW1516.
118. In this regard, the Panel holds that, on the basis of the evidence provided during the hearing, in particular by Mr. Tommy Asinga, it is not excluded that the latter could have ordered such a pure standard. Indeed, during his cross-examination, Mr. Tommy Asinga acknowledged that, if needed, he could buy medications and controlled substances that the general population cannot buy.

119. Moreover, the Panel notes that the inaccuracies and inconsistencies in the testimonies of the Appellant and his parents do not support the Appellant's allegation that an after-the-fact adulteration of the Recovery Gummies in the Containers sent by the Appellant to the SMRTL was impossible, in particular those concerning (i) their whereabouts and their exact travel agenda in the weeks after 9 August 2023, (ii) the access to the package containing the supplements sent by [...] between 26 August 2023 (date of delivery) and 10 or 11 September 2023 (dispatching to the Appellant), (iii) the reason why the Appellant asked [...] for his Recovery Gummies on 13 August 2023 although the Recovery Gummies were not considered as a likely source of the AAF and (iv) the reason why, if the aim was that the Recovery Gummies from [...] would stay within the Appellant's chain of custody, [...] was asked to send his package to Dacula, Georgia, when it must have been clear to the Appellant that he (and his mother) were travelling to College Station, Texas, only six days later. Indeed, when considering that in the experiment done by the Lausanne laboratory it took, as explained by Mr. Jan during the hearing, only one day to contaminate and dry the Gummies, it appears that there was ample time between 9 August 2023 (day of the notification of the AAF) and 20 September 2023 (day on which the Appellant sent the Recovery Gummies to the SMRTL) to perform a potential adulteration.
120. In light of the above considerations, the Panel finds that the Appellant has failed to establish that, on the balance of probabilities, it is more likely than not that the Recovery Gummies he ingested in the days prior to his anti-doping test of 18 July 2023 were contaminated with GW1516. Hence, having not established the source of the GW1516 metabolites found in his Sample to the relevant standard of proof, the Appellant cannot benefit from Rule 10.6.1 of the WA ADR.

F. Lack of Intent

121. As the Appellant has not put forward any other potential source of how the GW1516 entered his system, it remains to be examined whether the Athlete has overcome his burden to establish that, on the balance of probabilities, his ADRV was not intentional.
122. The Appellant suggests that the Panel follow the same reasoning as the Panel in case CAS 2016/A/4676 (the "Ademi case") and find that the Appellant has discharged his burden of establishing, on the balance of probabilities, that he had not knowingly taken GW1516. In this regard, the Panel observes that, as mentioned in para. 76 of the award in the Ademi case, the decision of the panel in charge was motivated by "*the special circumstances of [that] case*". Concerning these special circumstances, that panel stated that the "*totality of the evidence, including the possibility that the stanozolol came from the Pills (even if not necessarily due to contamination and even if not meeting the burden of proving source for purposes of Article 10.02 UEFA ADR), combined with the Panel's acceptance of the testimony provided by the Player which the Panel found to be credible, as further supported by the evidence of Mr Vajda and of the Club doctors, that the Player had no intent to use a prohibited substance and that the Player merely used Pills provided by Dr Vajda for back pains believing them to be safe to use (even if this amounted to, at the very least, significant negligence) is sufficient to establish on the balance of probabilities that the Player had no intention to cheat*".

123. This reasoning cannot be transposed to the present matter given that the Appellant has not provided the same kind of evidence as the athlete in the Ademi case. In fact, the only evidence in front of the Panel is the Appellant's protestations of innocence and his testimony that he did not manipulate the Recovery Gummies in any way.
124. The Appellant also made reference to the award in CAS 2020/A/7579 and CAS 2020/A/7580 (the Jack case) in which the panel explained the factors which it considered relevant when determining whether an athlete had managed to get through the narrowest of corridors and establish lack of intent without having established the source of the Prohibited Substance found in his or her sample. However, in the present matter, the Appellant, contrary to the athlete in the Jack case, submitted hardly any evidence in support of his claim that the ADRV was unintentional. The Panel considers indeed that it is not enough for the Appellant to have reached out to Gatorade and find more containers to get the Recovery Gummies tested or that his mother contacted his coach to ask whether the Recovery Gummies he had been given during the Gatorade event in July 2023 were safe for consumption. These are, in the Panel's view, actions that would be expected of any athlete in the same position as the Appellant. Further, while it is true that the Appellant tested negative on 11 June 2023 and again on 28 July 2023, this does not, *per se*, exclude an intentional intake after 11 June 2023 and before the positive test on 18 July 2023. Moreover, all the experts agreed that, given the excretion period of GW1516, such an intake would also be consistent with the AAF. The Panel is thus, again, left with the Appellant's pure protestations of innocence and claim that he did not have anything to do with intentionally taking GW 1516. The Panel does thus not see any room to come to the same conclusion as the panel in the Jack case did.
125. In light of all the above considerations, the Panel concludes that the Appellant failed to establish, on the balance of probabilities, that his ADRV was not intentional.
126. Consequently, the Panel finds that the ADRV committed by the Appellant must be qualified as intentional within the meaning of Rule 10.2.1 of the WA ADR and that the applicable sanction is a four (4) year period of Ineligibility.
127. Finally, Rule 10.10 of the WA ADR states as follows:

"In addition to the automatic Disqualification of the results in the Competition that produced the positive Sample under Rule 9, all other competitive results obtained by the Athlete from the date a positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through the commencement of any Provisional Suspension or Ineligibility period, will, unless fairness requires otherwise, be Disqualified with 10.11.2 10.11.3 all of the resulting Consequences including forfeiture of any medals, titles, points, prize money, and prizes".
128. The Panel finds that, pursuant to Rule 10.10 of the WA ADR, the Appellant's results shall be disqualified from 18 July 2023 with all resulting consequences. The Panel considers that fairness does not require otherwise. Hence, in consideration of the fact

that the Appellant is provisionally suspended since 9 August 2023, all his competitive results obtained from 18 July 2023 to 9 August 2023 are disqualified with all resulting Consequences, including forfeiture of any medals, titles, points, prize money, and prizes.

129. In view of the above considerations, the Panel decides that the Appeal is dismissed, and that the Appealed Decision is upheld.

X. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 7 June 2024 by Mr. Issamade Asinga against World Athletics (WA) with respect to the decision rendered by the World Athletics Disciplinary Tribunal on 6 May 2024 is dismissed.
2. The decision rendered by the World Athletics Disciplinary Tribunal on 6 May 2024 is confirmed.
3. (...).
4. (...).
5. All other and further claims or prayers for relief are dismissed.

Seat of the arbitration: Lausanne, Switzerland

Dated: 30 October 2025

COURT OF ARBITRATION FOR SPORT

Jacques Radoux
President of the Panel

Jeffrey G. Benz
Arbitrator

Ulrich Haas
Arbitrator