

# INTERNATIONAL SKATING UNION

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**Case No. 01/2011**

October 10th 2011

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

**Panel:** Volker Waldeck (Chair)  
Fred Benjamin  
Dr. Allan Böhm

**In the matter of**

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

**- Complainant -**

**against**

**Mr. Thibaut Fauconnet**, France,

**- Alleged Offender -**

**and**

**Fédération Française des Sports de Glace**, 6 Avenue du Professeur André Lemierre,  
F-75020 Paris, France,

**- Interested Member -**

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

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

On May 5<sup>th</sup> 2011, the ISU filed a complaint against the Alleged Offender, together with seven exhibits. The Alleged Offender and the Interested Member were invited by the ISU Disciplinary Commission to file a statement of reply within 21 days upon receipt of the complaint. Both the Alleged Offender and the Interested Member waived the right of a written reply and an oral hearing.

## **II. Procedural Matters**

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

## **III. Facts**

1. The Alleged Offender is a 26 year old short track skater and member of the Fédération Française des Sports de Glace. He participated at the ISU Short Track World Cup (500 m Event) in December 2010 in Shanghai, China.
2. Following an in-competition Anti-Doping test carried out on December 12<sup>th</sup> 2010, the ISU has received an adverse analytical finding for sample 1930429 from the Alleged Offender. Said sample was found to contain Tuaminoheptane, which belongs to class S6.b (specified stimulants) of the 2010 WADA List of Prohibited Substances and Methods. The Complainant has offered as Evidence:
  - Doping Control Form for Sample 1930429, taken at the Short Track World Cup, Shanghai, on December 12<sup>th</sup>, 2010,
  - Result for A Sample 1930429 of the National Anti-Doping Laboratory of China,
3. By letter of March 17<sup>th</sup> 2011 the Interested ISU Member and the Alleged Offender were informed of the positive finding and requested to submit their written explanations. Further they were reminded that the Alleged Offender has the right to request the B sample to be analyzed.
4. In his letter of March 23<sup>rd</sup> 2011 the Alleged Offender admitted to having used Rhinofluimucil to solve his breathing problems due to a cold that occurred in China. He conceded to having made a mistake and he should have known that this product contains Tuominoheptane. He also admitted that he should have requested a Therapeutic Use Exemption for the medication from the ISU. Finally he pointed out, that he had 8 urine tests during the season starting October 2010 and 3 blood tests during the season starting January 2011 without any presence of a prohibited substance.

The Alleged Offender waived his right to have the B sample analyzed.

5. On April 1<sup>st</sup> 2011 the ISU requested additional information. In his letter of April 11<sup>th</sup> 2011 the Alleged Offender explained that he has put the medication Rhinofluimucil into his first aid box for the travel to China without deliberating about whether it might contain any forbidden substance. He has taken the medication once in the morning during the first three days of the event to solve his breathing problems. In both two World Cup events there was no French team doctor whom he could have consulted.

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

#### **IV. Law**

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

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

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

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

The substance "Tuaminoheptane" is a Specified Substance contained in the Prohibited List 2010 of the World Anti-Doping Agency (WADA) under "S6.b Specified Stimulants". The skater has explained the way how the substance got into his body, how often he has taken it, and that the intake of Rhinofluimucil was a fault he was not aware of. The panel accepts the pleading of the Alleged Offender that he has taken the medication with him from France in his first aid box assuming that it would not contain any prohibited substance.

The skater has been tested eight times by urine tests and three times by blood tests before the event in China without any adverse analytical findings. The panel is comfortably satisfied by the objective circumstances of the case that the skater in taking a prohibited substance did not intend to enhance his sport performance. In assessing the skater's degree of fault the panel comes to the conclusion that the skater acted negligently and not intentionally to enhance his performance. However only a reduction of 6 months of the principal two years ineligibility is justified. According to Article 10.4 a period of 18 months of ineligibility is therefore imposed on the skater.

5. The ineligibility starts according to Article 10.9 of the ISU Anti-Doping Rules 2010. In his letter of March 23<sup>rd</sup> 2011 the skater agreed to have used the medication Rhinofluimucil after he has been confronted with the alleged Anti-Doping Rule violation. According to Article 10.9.2 ISU Anti Doping Rules the period of ineligibility may start as early as the date of sample collection, i.e. in this case December 27<sup>th</sup> 2010. The period of ineligibility will end on June 26<sup>th</sup> 2012.

## V. COSTS

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

The skater has to bear his own costs.

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

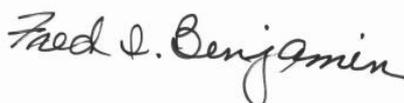
## Decision

1. Thibaut Fauconnet is declared responsible for an Anti-Doping violation, committed on December 12<sup>th</sup> 2010 at the Short Track World Cup in Shanghai, China.
2. A period of ineligibility of 18 months, beginning on December 27<sup>th</sup> 2010 and ending on June 26<sup>th</sup> 2012, is imposed on Thibaut Fauconnet.
3. The Fédération Française des Sports de Glace has to reimburse the ISU for the costs of these proceedings and the laboratory fees of the Anti-Doping testing.
4. The skater bears his own costs.

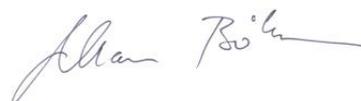
October 10<sup>th</sup> 2011



Volker Waldeck (Chair)



Fred Benjamin



Dr. Allan Böhm

The decision is sent to Mr. Thibaut Fauconnet by email and registered mail against return receipt and to the Interested Member and to the ISU by email.

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