



Arbitration CAS 2010/A/2229 World Anti-Doping Agency (WADA) v. Fédération Internationale de Volleyball (FIVB) & Gregory Berrios, award of 28 April 2011.

Panel: Mr Romano Subiotto QC (United Kingdom), President; Mr Quentin Byrne-Sutton (Switzerland); Mr José Axtmayer (Puerto Rico)

Volleyball

Doping (sibutramine)

Elimination or reduction of the period of ineligibility for specified substances

Criteria for the determination of the correct and proportionate sanction by CAS panels

Athletes' responsibility with regard to the intaking of dietary weight loss products or food supplements

- 1. Article 4.2.2 of the WADA Code seeks to introduce some flexibility when determining a sanction for an athlete that has ingested a Specified Substance; nevertheless, for the elimination or reduction of the period of ineligibility an athlete must establish a) how a Specified Substance entered his or her body or came into his or her possession; and b) that such Specified Substance was not intended to enhance the athlete's sport performance or mask the use of a performance-enhancing substance. With respect to the second condition, a panel must be comfortably satisfied by the objective circumstances of the case that the athlete in taking or possessing a Prohibited Substance did not intend to enhance his or her sport performance. An athlete only needs to prove that he/she did not take the specified substance with an intent to enhance sport performance. The athlete does not need to prove that he/she did not take the product with the intent to enhance sport performance. The second condition is thus met when an athlete can produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of a panel that he or she ingested a specified substance unknowingly, e.g. by means of ingesting a contaminated product.**
- 2. In determining, as an international appellate body, the correct and proportionate sanction, CAS panels must also seek to preserve some coherence between the decisions of the different federations in comparable cases in order to preserve the principle of equal treatment of athletes in different sports. In that connection the introduction to the WADA Code expressly states that two of its purposes are to promote equality for athletes worldwide and to ensure harmonization of anti-doping programs. A sanction must further comply with WADA's objective of proportionate and consistent sanctions for doping offences based on an athlete's level of fault under the totality of circumstances.**
- 3. In the context of contaminated supplements, CAS panels have highlighted the large number of public warnings and internationally published cases on the risks of mislabeling and/or contamination of nutritional supplements. Since these risks now are generally known or at least foreseeable, all athletes must exercise reasonable care to**

ensure a nutrition supplement does not contain a banned substance. Although dietary weight loss products may not in the strict sense of the term be deemed a “food supplement”, in essence their use requires the same degree of circumspection and care on the part of an athlete as the use of food supplements. In many sports losing weight can in various manners enhance performance and doing so very fast using natural products is not necessarily easy to achieve, while at the same time it is known that certain substances characterized as stimulants also act as appetite suppressants, meaning that there is a risk that such substances be found in medicaments or health products aimed at accelerated slimming/fast diets. Accordingly, within their responsibilities to take great care to avoid the use of any doping products, athletes in general must be on their guard when considering the ingestion of any weight-losing product, whether in the form of a medicament or a so-called natural dietary product.

The World Anti-Doping Agency (WADA), the Appellant, is a Swiss private-law foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. WADA was established in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms.

The Fédération Internationale de Volleyball (FIVB), the First Respondent, is an international sports federation and the world governing body for volleyball based in Lausanne, Switzerland. The FIVB oversees competitive volleyball events internationally, including administration of the 2010 V Men’s Pan American Cup held in San Juan, Puerto Rico. The FIVB is a signatory of the World Anti-Doping Code (the “WADA Code”), which rules are implemented in the FIVB Medical Regulations (the “FIVB Rules”).

Gregory Berrios (“Berrios” or the “Player”, together with FIVB the “Respondents”), the Second Respondent, is an international level volleyball player from Puerto Rico who was aged 31 at the time of the in-competition doping control relevant for this case. In the past years, Berrios has regularly competed in international volleyball competitions as a player for the Puerto Rican national team, playing in the position of “libero”. WADA, FIVB and Berrios are referred to collectively as the “Parties”.

In May 2010, Berrios competed with the Puerto Rico national volleyball team on the 2010 V Men’s Pan American Cup held in San Juan, Puerto Rico. On May 27, 2010, Berrios was subject to doping control. He signed the doping control form on which he declared that he was not taking any medication or other pharmaceutical substances at the time of the control. Berrios’s sample was forwarded to the WADA-accredited UCLA Olympic Analytical Laboratory in Los Angeles.

On June 18, 2010, the FIVB received a report of the laboratory that confirmed the presence of N,N-Didesmethylsibutramine, a metabolite of Sibutramine (“Sibutramine”), a substance that is listed as a

Specified Stimulant under the Prohibited List of the WADA Code¹, which forms an integral part of the FIVB Rules on the basis of Article 4.1 of these rules.

On the FDA website Sibutramine is qualified as “... *an appetite suppressant available by prescription only and a controlled substance*”. In the releases on its website, the FDA also warns that: “*The health risks posed by these products can be very serious and include high blood pressure, seizures, tachycardia (rapid heartbeat), palpitations, heart attack, and stroke. Sibutramine, a controlled substance, was found in many of these products [including in the product “Fatloss Slimming”] at levels much higher than the daily dosage of Meridia, the only FDA-approved drug product containing Sibutramine. These higher levels of Sibutramine can increase the incidence and severity of these health risks*”.

In a written declaration made to FIVB on July 8, 2010, Berrios explained that prior to the start of the tournament, he had gained some weight as a result of a knee injury and he had decided to ingest a substance that would assist him with weight loss in order to reduce the pressure on his knee. At the hearing in this proceeding, he indicated in substance that the attempt to lose weight was also to help him perform better by getting closer to what he empirically deemed his ideal playing weight, but that to achieve that goal he had never intended to ingest any prohibited substance and thereby enhance his performance in a manner contrary to anti-doping regulations. Without consulting a physician or member of the team’s medical staff, Berrios proceeded to buy a product named “Fat Loss Slimming Beauty” (the “Product”) from an up-market local natural products store named “Freshmart”.

At the hearing in this proceeding, Berrios declared that he believed in a healthy life style and for that reason had the custom of also sometimes going to Freshmart to eat in its cafeteria, accompanied by his girlfriend, Y.

He said that given the type of up-market natural products store it was, he believed Freshmart would only sell natural products and that upon purchasing the Product he had questioned the employee about a suitable natural product helping with weight loss and had been recommended “Fat Loss Slimming Beauty”.

The following is an extract from the website of Freshmart: “*Founded in 1995, Freshmart is the first supermarket fully dedicated to natural products. Puerto Rican company 100% committed to the pursuit of fresh, pure and clear through his careful selection. Product your health through food and products free of preservatives, dyes or artificial flavor additives [...] The customer can visit Freshmart and find a supermarket where you can enjoy breakfast, lunch and take an afternoon snack in the cafeteria, also can participate in our vegetarian cooking classes are free*”.

Berrios added that he had fully trusted the employee’s recommendation and submits that neither the box nor the provided product information revealed that the Product contained a substance that could be compared with or identified as a prohibited substance.

¹ N,N-Didesmethylsibutramine is a metabolite of sibutramine, which appears in category S6(b) (Specified Stimulants) on the Prohibited List of the WADA Code, available at www.wada-ama.org.

Berrios also submits an Internet search of the ingredients listed on the package, which he performed before ingesting the Product and which did not suggest that it contained prohibited substances. He submits that his search did not lead him to the releases of the FDA.

After having been informed of his positive analytic results, Berrios provided a sample of the Product to the FIVB hearing panel.

On his own initiative, Berrios commissioned NMS Labs in the United States to test the Product for the presence of controlled substances and pharmaceuticals.

By letter dated November 3, 2010, the laboratory confirmed the presence of Sibutramine in the Product.

Berrios also filed a Freedom of Information Act request with the FDA.

After being informed about the positive test, the FIVB provisionally suspended Berrios by letter of July 13, 2010. Following the proceedings, which included a hearing of Berrios, the FIVB issued a decision (the “FIVB Decision”) on August 4, 2010, in which Berrios was found to have committed an anti-doping offence contrary to Article 2.1 of the FIVB Rules, which would lead to a sanction of two years of ineligibility on the basis of Article 9.2 of the FIVB Rules. However, the FIVB also found under Article 9.4 of the FIVB Rules that – taking into account the specific circumstances of the case – Berrios had had no intention to enhance his sport performance, and, therefore, the FIVB reduced Berrios’ suspension to three months, commencing on July 13, 2010.

Article 9.4 of the FIVB Rules provide that:

Article 9.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances

Where an Athlete or other Person can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the Athlete’s sport performance or mask the use of a performance-enhancing substance, the period of Ineligibility found in Article 9.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the Athlete or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The Athlete or other Person’s degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.

By letter dated September 15, 2010, WADA filed with the CAS a Statement of Appeal against the FIVB Decision, in which it appointed Mr. Quentin Byrne-Sutton as arbitrator.

On October 4, 2010, the Player informed the CAS that it proposed to appoint Mr. Jose Alberto Axtmayer as arbitrator with the consent of FIVB although the latter would be adopting an independent position in these proceedings.

On October 7, 2010, WADA filed its Appeal Brief, which contained the following Prayer for Relief: *WADA hereby respectfully requests CAS to rule:*

- 1. The Appeal of WADA is admissible.*
- 2. The decision rendered by the FIVB Anti doping Panel, on August 4, 2010, in the matter of Mr Gregory Berrios is set aside.*
- 3. Mr Gregory Berrios is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility (whether imposed to or voluntarily accepted by the Player) before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*
- 4. WADA is granted an award for costs.*

On October 29, 2010, FIVB filed its Answer, which contained the following Prayer for Relief: *FIVB requests the CAS:*

- 1. to reject the Appeal filed by WADA against the decision of the FIVB Anti-Doping Hearing Panel dated 4 August 2010;*
- 2. to order the Appellant to pay the legal fees and expenses of FIVB, to be determined at a later stage of the present arbitration.*

By letter dated November 12, 2010, the CAS advised the parties that the President of the CAS Appeals Arbitration Division had nominated Mr. Romano Subiotto QC, as President of the Panel. By letter dated November 12, 2009, the Panel was provided with a copy of the file.

On December 8, 2010, having received an extension for doing so, the Player filed his Answer, which contained the following Prayer for Relief:

We respectfully request the CAS to sustain the determination of the panel from FIVB.

Among the exhibits filed by the Player with his Answer was an analytical report dated 3 November 2010, issued by “NMS Labs”, showing that Sibutramine and Phenolphthalein were identified in the “Fatloss Slimming Beauty” product he alleged to have ingested.

By letter of December 9, 2010, the Parties were invited to inform the CAS whether they wished for a hearing to be held. WADA and FIVB both indicated that they did not consider a hearing necessary, while Berrios did not respond within the given deadline.

On December 10, 2010, the Player submitted an additional exhibit constituted by a witness statement of Y. declaring, among others, that she had been present with the Player at the natural products store named “Freshmart” when he had purchased the product “Fatloss Slimming Beauty”.

By letter dated January 11, 2011, the CAS indicated to the parties that, pursuant to Rule 57 of the Code of Sports Related Arbitration (the “Arbitration Code”), the Panel considered it was sufficiently well informed not to hold a hearing.

However, after receiving a request for a hearing from Berrios by email of January 11, 2011, the Panel decided to have a hearing.

By letter of March 11, 2011, WADA informed the CAS that given the findings of the report of November 3, 2010, of NMS Labs filed by the Player with his Answer - indicating that the product "Fatloss Slimming Beauty" contained Sibutramine - as well as extracts from the website of the United States Food and Drug Administration (the "FDA") disclosing that the product in question is tainted with Sibutramine, "*WADA accepts the allegations of the Respondent [regarding how the prohibited substance entered his body] are true and that he tested positive to a metabolite of Sibutramine because he ingested a weight loss product*".

In its letter of March 11, 2011, WADA specified that "*[i]n order to narrow the issues of this case, the Appellant wanted to inform the CAS Panel and the Respondents before the hearing about the position which is adopted forthwith. In WADA's opinion, the remaining issues are (1) to determine if the Athlete intended to enhance his performance and (2) to assess his degree of fault*".

The hearing took place in Lausanne on March 24, 2011 as scheduled.

All Parties were present at the hearing as well as the witness Y. called by the Player.

During the hearing counsel of each of the Parties submitted oral arguments and the Player was amply heard. Certain of the oral declarations he made are referred to below in sections VII and VIII of this award.

Upon hearing the Player's oral declarations and in light of the evidence adduced, WADA declared at the hearing that (i) it accepted the Player's allegation that he had not ingested any prohibited substance with the intent of enhancing his sport performance and, accordingly (ii) it was modifying its Prayer for relief, requesting only that the Player be sanctioned with a one-year period of ineligibility (instead of the two-year period initially requested).

In light of WADA's foregoing position, it was deemed unnecessary to hear the testimony of Y. and none of the parties objected to such manner of proceeding.

LAW

CAS Jurisdiction

1. Rule 47 of the Arbitration Code provides, in part, as follows:

Rule 47 Appeal

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

2. Article 12.2.1 and Article 12.2.3 of the FIVB Rules provide that WADA may appeal decisions in cases involving an International Event or International-Level Athletes (as defined in the FIVB Rules) exclusively to CAS. The V Men's Pan American Cup is an International Event and Berrios an International-Level Athlete for purposes of the FIVB Rules. The Panel therefore has jurisdiction to consider WADA's appeal, as confirmed by the Parties' signed Order of Procedure, signed by WADA and the FIVB on March 18, 2011, and by Berrios on March 21, 2011.
3. Rule 58 of the Arbitration Code provides as follows:

Rule 58 Law Applicable

This Panel shall decide the dispute according to the applicable regulations and 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.
4. The FIVB Decision, against which the appeal was brought, was issued under the 8th edition of the FIVB Rules (effective as of January 1, 2009), and there is no dispute as to the applicability of the FIVB Rules.

Admissibility

5. Under article 12.6 of the FIVB Rules, the "time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party" and the deadline for WADA to file an appeal is the later of (i) 21 days after the last day on which any other party in the case could have appealed, or (ii) 21 days after WADA's receipt of the complete file relating to the decision.
6. Berrios submits that the appeal is not admissible, alleging that WADA missed both of the foregoing deadlines.
7. WADA submits that the appeal is admissible since even if one assumes that Berrios received the FIVB Decision on the day it was rendered, i.e. on August 4, 2010, the Player's appeal would

have expired on August 25, 2010, meaning that WADA had another 21 days, until September 15, to file its appeal, which is when CAS received WADA's statement of appeal.

8. The Panel finds that in view of the documents on record and of the calendar, WADA's foregoing calculation of the various deadlines is correct and that its appeal was therefore timely.

Violation of the Anti-Doping Rule

9. Article 2.1.2 of the FIVB Rules provides, in part, as follows:

Article 2.1.2

Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed [...].

10. By email dated July 14, 2010, Berrios waived his right to have the B Sample analyzed.
11. Moreover, Berrios does not contest the fact that a WADA accredited laboratory identified Sibutramine in his urine sample, nor that Sibutramine is a substance appearing on the Prohibited List of the WADA Code.
12. Berrios therefore admits to having committed a doping offence under Article 2.1 of the FIVB Rules.

Legal Analysis

A. Existence of the Anti-Doping Rule Violation

13. It is undisputed that Berrios committed an anti-doping rule violation within the meaning of Article 2 of the FIVB Rules.
14. According to Article 9.2 of the FIVB Rules, such a violation is sanctioned with two years of ineligibility, unless the conditions for eliminating, reducing or increasing this period are met.
15. The FIVB decided that Berrios qualified for a reduction of the period of ineligibility on the basis of Article 9.4 of the FIVB Rules, and it is against this finding that the WADA has appealed. The question that must therefore be decided is whether the conditions of Article 9.4 of the FIVB Rules are met, and what the appropriate sanction is under the relevant circumstances.

B. *Fulfillment of the Conditions to Benefit from a Reduced Sanction*

16. As indicated above, N,N-Didesmethylsibutramine is a metabolite of Sibutramine, which appears in category S6(b) (Specified Stimulants) on the Prohibited List of the WADA Code (implemented by Article 4.1 of the FIVB Rules). Sibutramine is thus a Specified Substance.

17. The commentary to Article 4.2.2 of the WADA Code, which provides a definition of Specified Substances, (and which is implemented by Article 4.2.2 of the FIVB Rules) explains the reason for providing specific rules for Specified Substances:

In drafting the Code there was considerable debate among stakeholders over the appropriate balance between inflexible sanctions which promote harmonization in the application of the rules and more flexible sanctions which better take into consideration the circumstances of each individual case. This balance continued to be discussed in various CAS decisions interpreting the Code. After three years experience with the Code, the strong consensus of stakeholders is that while the occurrence of an antidoping rule violation under Articles 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers) and 2.2 (Use of a Prohibited Substance or Prohibited Method) should still be based on the principle of strict liability, the Code sanctions should be made more flexible where the Athlete or other Person can clearly demonstrate that he or she did not intend to enhance sport performance. The change to Article 4.2 and related changes to Article 10 provide this additional flexibility for violations involving many Prohibited Substances.

18. Article 4.2.2 of the WADA Code thus sought to introduce some flexibility when determining a sanction for an athlete that has ingested a Specified Substance.

19. Article 10.4 of WADA Code – which is implemented by Article 9.4 of the FIVB Rules – provides for more flexible sanction, and the commentary to article 10.4 further explains why Specified Substances are treated differently to other Prohibited Substances:

[T]here is a greater likelihood that Specified Substances, as opposed to other Prohibited Substances, could be susceptible to a credible, non-doping explanation.

20. Nevertheless, to benefit from the elimination or reduction of the period of ineligibility under article 9.4 of the FIVB Rules, an athlete must establish:

21. How a Specified Substance entered his or her body or came into his or her possession; and

22. That such Specified Substance was not intended to enhance the athlete's sport performance or mask the use of a performance-enhancing substance.

23. Regarding the first condition, the commentary to Article 10.4 of the WADA Code provides that *"the Athlete may establish how the Specified Substance entered the body by a balance of probability"*. In other words, a panel should simply find the explanation of an Athlete about the presence of a Specified Substance more probable than not.

24. With respect to the second condition, a panel must be *"comfortably satisfied by the objective circumstances of the case that the Athlete in taking or possessing a Prohibited Substance did not intend to enhance his or her sport performance"*. In case CAS 2010/A/2107, the panel clarified that an athlete only

needs to prove that he/she did not take the specified substance with an intent to enhance sport performance. The athlete does not need to prove that he/she did not take the product (e.g. a weight loss product) with the intent to enhance sport performance (at para. 9.14).

25. It follows that the second condition is met when an athlete can produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of a panel that he or she ingested a specified substance unknowingly, e.g. by means of ingesting a contaminated product.
26. As already indicated, it is uncontested that Berrios meets the two foregoing conditions, i.e. that he established how the Product entered his body and that he did not ingest the Specified Substance in question, i.e. Sibutramine (contained in the Product), with the intent of enhancing his performance.
27. Consequently, the question that remains to be addressed is what sanction must be applied to the Player in the circumstances of this case.

C. *Applicable sanction*

a. Scope of review

28. The WADA is requesting that the Player be sanctioned by an ineligibility period of one year whereas both the FIVB and Berrios are requesting that the period of ineligibility of three months decided in the first instance be confirmed.
29. Furthermore, referring to case CAS 2006/A/1175, the Respondents claim that the applicable sanction set by the FIVB falls within its discretion, and that *“such exercise of discretion is to a very limited extent subject to CAS scrutiny”*.
30. The Panel disagrees that such discretion can be invoked as a matter of law and principle, even if CAS panels may consider that the circumstances warrant it following a disciplinary body’s judgment and if in certain cases CAS has considered that the sanction should only be reviewed if it is evidently and grossly disproportionate to the offence (see e.g. cases CAS 2009/A/1870, para. 125, CAS 2009/A/1918, para. 106 and references therein).
31. Indeed, in determining, as an international appellate body, the correct and proportionate sanction, CAS panels must also seek to preserve some coherence between the decisions of the different federations in comparable cases in order to preserve the principle of equal treatment of athletes in different sports. In that connection the introduction to the WADA Code expressly states that two of its purposes are to promote equality for Athletes worldwide and to ensure harmonization of anti-doping programs. As the panel in CAS 2010/A/2107 notes, a sanction must further comply with WADA’s *“objective of proportionate and consistent sanctions for doping offences based on an athlete’s level of fault under the totality of circumstances”*.

32. Moreover, the Panel has full power to review the matter in dispute pursuant to Rule 57 of the Arbitration Code.
33. The Panel will therefore examine with full powers what it deems the appropriate sanction to be within the bounds of the Parties' prayers for relief requesting a one-year period of ineligibility on Appellant's side and a three-month period on the side of both Respondents.
34. As shall now be examined, in making that determination, the Panel must focus on the Player's degree of fault.
 - b. The degree of fault
35. In keeping with Article 10.4 of the WADA Code, Article 9.4 of the FIVB Rules provides that "*The Athlete or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility*".
36. The commentary to Article 10.4 of the WADA Code indicates that "*[i]n assessing the Athlete's or other Person's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior*".
37. The foregoing commentary goes on to underline that "*the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article*".
38. The Panel finds that such circumstances are indeed not relevant for assessing an athlete's degree of fault. Consequently, the Respondents' submission that the sanction under the FIVB Decision is proportional because it has caused Berrios to miss out on a large number of international events and cost him his professional contract in France is rejected.
39. As to the criteria for assessing the degree of fault, in CAS 2010/A/2107, the panel found a reduction to the period of ineligibility appropriate because the athlete had taken steps that "*constitute the exercise of at least some degree of care to ensure she did not take any banned substances*".
40. In the context of contaminated supplements, the panel in case CAS 2005/A/847 highlighted the large number of public warnings and internationally published cases on the risks of mislabeling and/or contamination of nutritional supplements (at paras. 13-14). In CAS 2010/A/2107, the panel stressed that since these risks "*now are generally known or at least foreseeable, all athletes must exercise reasonable care to ensure a nutrition supplement does not contain a banned substance*".
41. The Panel finds that Berrios has failed to exercise such reasonable care and finds on the contrary that he was quite negligent, notably for the following reasons combined:

42. Although dietary weight loss products may not in the strict sense of the term be deemed a “food supplement”, in essence their use requires the same degree of circumspection and care on the part of an athlete as the use of food supplements. Indeed, it is easy to understand for an athlete that in many sports losing weight can in various manners enhance performance and that doing so very fast using natural products is not necessarily easy to achieve, while at the same time it is known that certain substances characterized as stimulants also act as appetite suppressants (as is the case of Sibutramine according to the FDA), meaning that there is a risk that such substances be found in medicaments or health products aimed at accelerated slimming/fast diets.
43. Accordingly, within their responsibilities to take great care to avoid the use of any doping products, athletes in general must be on their guard when considering the ingestion of any weight-losing product, whether in the form of a medicament or a so-called natural dietary product.
44. As a very experienced international athlete required to be knowledgeable of doping issues and risks, Berrios had no excuse not to be very careful in that respect.
45. In addition, Berrios understood this need for caution since he did make some enquiries about the Product rather than simply ingesting it without any forethought.
46. Berrios however overlooked one of the most basic actions of prudence which he could easily and should have taken in the circumstances, which would have been to consult his doctor (or this team’s medical staff) who could have warned him that even if the Product’s label did not mention any form of stimulant or prohibited substance it could be tainted, particularly since at the time he was already consulting a sports doctor for his knee problem.
47. Furthermore, just as it is risky to purchase/ingest food supplements of any type without enquiring directly with the manufacturer and having them analyzed, it was naïve and a lack of diligence on Berrios’ part to trust the recommendation and assurances of a mere employee of a health shop in determining whether the Product was risk-free in terms of its compatibility with anti-doping requirements.
48. Although Berrios did do some research on Internet, the evidence adduced in this proceeding indicates that if he had pushed the research further, e.g. with the advice of his doctor, he would have been able to find the nationwide alerts to consumers by the FDA dating from 2009, in which it warned that “Fatloss Slimming” is among 72 identified weight loss products that contain undeclared, active pharmaceutical ingredients, including Sibutramine.
49. Having found that Berrios’ degree of negligence is quite significant for the above reasons and in light of cases mentioned hereafter, the Panel considers it would not be proportionate to reduce the period of ineligibility by more than one half of the maximum sanction of two years stipulated in Article 9.4 of the FIBV Rules, i.e. to reduce the sanction to a period below the one-year suspension being requested by WADA:

50. The Respondents argue that the case resembles to case CAS 2006/A/1175, since both cases concern the unintentional ingestion of Sibutramine. However, the panel in that case did not examine the degree of fault of the athlete, and the circumstances of that case cannot therefore be compared to the circumstances of the current case. Berrios also refers to two other cases of athletes who were sanctioned by the All Russian Athletic Federation for using Sibutramine, but those are first-instance cases, i.e. do not offer guidance as to the position of CAS panels as an international appellate body, and in addition the Panel has insufficient information about these cases for it to draw an analogy.
51. Case CAS 2008/A/1490 and decision No. 77 190 E 00447 08 of the American Arbitration Association, *USADA v. Brunemann*, which are both extensively described in CAS 2010/A/2107, concern cases in which the respective panel took into consideration factors such as inexperience at the professional level, the lack of any formal drug education, and the fact that an athlete inquired about the food supplement with the distributor. In both cases, the total period of ineligibility was reduced by 50%.
52. In CAS 2010/A/2107, the athlete had taken a supplement to help combat fatigue and to maintain her stamina during cycling training sessions, but she had failed to thoroughly research the product, despite the fact that she bought it from a manufacturer that also supplies supplements to bodybuilders; this last fact was clear from a cursory glance at the company's internet site. Moreover, she failed to check carefully the label of a new supply of supplements she received, which listed the specified substance (although under a different name). On the other hand, the panel took into consideration the fact that the athlete had consulted with a physician, was rather inexperienced, had not received any drug education prior to her first in-competition test, did not knowingly ingest a lawful stimulant, and did not receive any formalized anti-doping instruction or training. Comparing these circumstances to other cases in which athletes were granted a reduction in their ineligibility period, the panel found that a period of ineligibility of 18 months was proportional and consistent with similar cases.
53. In conclusion, the Panel would like to underline that it believes that Berrios did not intend to cheat or enhance his sport performance. On the contrary, at the hearing Berrios made a very good impression on the Panel, and it has no doubt he is the role model in his sports environment that some of the statements on record describe him to be. It is therefore unfortunate that he made this one-time mistake that is inconsistent with his otherwise clean anti-doping record. To be in keeping with the applicable rules and to meet the need of promoting equality of athletes worldwide the panel must nevertheless apply a sanction that is proportionate to the quite significant lack of diligence Berrios demonstrated in purchasing and ingesting the Product. Thus, for the reasons indicated above, Berrios is declared ineligible to compete in all sporting competitions for a period of one year.

c. Start date of ineligibility period

54. Article 10.9 of the WADA Code and Article 9.9 of the FIVB Rules provide the Panel with some discretion as to when to commence the period of ineligibility. The Panel takes note of the fact that when confronted with the results of the analytic tests Berrios promptly accepted a provisional suspension from the FIVB on July 13, 2010. On the same day, Berrios waived his right to have the B sample tested, thereby acknowledging the anti-doping rule violation, in order to create the opportunity for an expedited hearing. Berrios has not competed since the start of his provisional suspension. Despite Berrios' cooperative attitude in advancing the process, a convenient hearing date could not be found at short notice. In view of these factors and based on article 9.9 of the FIBV Rules which enables to "... *start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection...*", the Panel determines that Berrios' suspension will run from May 27, 2010.

The Court of Arbitration for Sport rules:

1. The appeal filed by the World Anti-Doping Agency on September 15, 2010 is partially upheld.
2. The decision of the Fédération Internationale de Volleyball of August 4, 2010 is set aside.
3. Mr. G. Berrios is declared ineligible for a period of one year, commencing on May 27, 2010.
4. (...).
5. (...).
6. All other requests for relief are rejected.