

**IN THE MATTER OF PROCEEDINGS BROUGHT BY THE INTERNATIONAL TENNIS  
FEDERATION UNDER THE 2021 TENNIS ANTI-DOPING PROGRAMME**

**Before:**

Mr. Lucas Ferrer (Chair)  
Dr. Leanne O’Leary  
Professor Isla Mackenzie

**BETWEEN:**

**International Tennis Federation (ITF)**

**Anti-Doping Organisation**

**and**

**Mr Mariano Tammaro**

**Respondent**

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**DECISION OF THE INDEPENDENT TRIBUNAL**

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**I. INTRODUCTION**

1. The International Tennis Federation (“**ITF**”) is the International Federation governing body of the sport of tennis worldwide. It has its registered seat in Nassau, Bahamas. The ITF is a signatory to the World Anti-Doping Code (the “**Code**”). As part of its responsibilities under the Code, each year the ITF issues the Tennis Anti-Doping

Programme (the “**TADP**”<sup>1</sup>) a set of anti-doping rules that implement the Code in the sport of tennis.

2. The ITF has, pursuant to Article 8.2.1 TADP and Article 1.1 of the Procedural Rules Governing Proceedings Before an Independent Tribunal Convened under ITF rules (the “**Procedural Rules**”), elected to refer cases to an Independent Tribunal for resolution.
3. Mr. Mariano Tammaro (“**Mr. Tammaro**” or “**the Player**”) is an 18-year-old professional tennis player from Italy (17 years old at the time of the relevant facts).
4. The ITF asserts that Mr. Tammaro has committed an Anti-Doping Rule Violation (“**ADRV**”) under the TADP Article 2.1 (presence of a Prohibited Substance or its Metabolites) based on the presence of Clostebol metabolite, a Prohibited Substance under the TADP, in the category of Anabolic Agents, in a urine sample the Player provided In-Competition on 11 October 2021 at the Napoli 2 Challenger, held in Napoli, Italy, from 11 October to 17 October 2021 (the “**Event**”).
5. Mr. Tammaro does not dispute the commission of the ADRV. The Player however contends that he never knowingly ingested Clostebol and denies it was intentional as defined in Article 10.2.3 TADP. Given there is no dispute with respect to the commission of the ADRV, the sole issue for this Tribunal is that of the consequences that would follow after the commission of the aforementioned ADRV, *i.e.* the sanction.
6. What follows below is the Decision of the Independent Tribunal convened under Article 8.1.1 TADP and Article 1.1 of the Procedural Rules (the “**Procedural Rules**”).

## II. FACTUAL BACKGROUND

7. On 11 October 2021, the Player provided a urine sample with code 3167505 (the “**Sample**”) during an In-Competition test at the Event. Such Sample was split into an A

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<sup>1</sup> For the purposes of the present Decision, the applicable TADP is the 2021 edition of the TADP. Therefore, any reference to the TADP shall be made to the 2021 TADP, which was the applicable regulation at the time of the Anti-Doping Rule Violation committed by the Player.

Sample and a B Sample and were then sent for analysis to a World Anti-Doping Agency (“**WADA**”) - accredited laboratory in Montreal, Canada (the “**Laboratory**”).

8. On 19 November 2021, the ITF sent the Player a Pre-Charge Notice notifying him that the Laboratory had recorded an Adverse Analytical Finding (“**AAF**”) in the A Sample (ref. no. A3167505) with the presence of a Prohibited Substance or its Metabolites or Markers, namely Clostebol and advising him that he may therefore have committed an ADRV under the TADP Articles 2.1 and/or 2.2. The Player was then invited to provide an explanation to the asserted ADRV by no later than 30 November 2021 and was informed about his right to request the opening and analysis of the B Sample.
9. In the same Pre-Charge Notice, the ITF notified Mr. Tammaro that a Provisional Suspension had been imposed on him, with effect from 30 November 2021.
10. Clostebol is a Prohibited Substance under the TADP, in the category of Anabolic Agents (section S1 of the 2021 WADA Prohibited List: see page A3.2 TADP). It is a non-Specified Substance prohibited at all times.
11. On 30 November 2021, the Player, via his appointed representative, Mr. Ciro Pellegrino, provided his response to the Pre-Charge Notice, admitting the charge of a potential ADRV, but disputing the imposition of default consequences. Among other things, the Player put forth explanations and evidence to demonstrate that the presence of Clostebol could be attributable to the use of the product Trofodermin (the “**Product**” or “**Trofodermin**”), in spray form, which the Player’s father, Mr. Marco Tammaro (the “**Father**”), applied once on a bad wound that had affected his son’s knee between 25-26 September 2021 and which was not healing. Additionally, the Player requested the analysis of the B Sample (the “**First Explanation**”).
12. On 30 November 2021, the Laboratory reported that the analysis of the B Sample (ref. no. B3167505) had confirmed the presence of a Clostebol metabolite, thereby confirming the finding in the Player’s A Sample.
13. On 1 December 2021, the ITF informed the Player that the analysis of the B Sample confirmed the finding reported in the A Sample, that is, the presence of the Clostebol metabolite.

14. Also on 1 December 2021, the ITF sent a Charge Letter to the Player, formally notifying him that he was being charged for violations of Article 2.1 and/or Article 2.2 TADP and requesting the Player to provide a response to the Charge by no later than 21 December 2021.
15. On 20 December 2021, the Player, via his appointed representative, provided his response to the Charge Letter, once again admitting the charge of the ADRV but disputing its consequences, also including further explanations for the AAF.
16. On 29 December 2021, the ITF invited the Player to provide further evidence and responses to questions relating to the Player's First Explanation, paying particular attention to (i) the source of the Clostebol metabolite found in his Sample and (ii) factors relevant to the Fault analysis. The latter was requested in order for the ITF to further consider whether or not it was able to accept proof of source and extend Mr. Tammaro an offer to resolve the matter without a hearing.
17. On 26 January 2022, the Player's representative provided the additional evidence requested by the ITF.
18. On 2 March 2022, after several email exchanges where the ITF and the Player sought to resolve the dispute without a hearing, the Player's representative again provided the ITF with further evidence in relation to the source of Clostebol found in the Player's Sample.
19. In the end, the parties were not able to reach an agreement as to the possible case resolution without a hearing, and the matter was therefore referred to the Independent Panel for adjudication and determination of potential consequences of the violation of Article 2.1 and/or 2.2 TADP.

### III. PROCEDURE BEFORE THE INDEPENDENT TRIBUNAL

20. On 24 February 2022, the Chair of the Independent Panel, Mr. Charles Flint QC, appointed Mr. Lucas Ferrer as Chair of the Independent Tribunal ("**the Chair**").

21. On 19 April 2022, the Parties reached an agreement regarding the calendar for the present procedure without the need to hold a Preliminary Meeting. The same day, the Chair issued Directions for the present procedure in line with the Parties' agreement.

22. On 16 May 2022, Dr Leanne O'Leary and Professor Isla Mackenzie were appointed to form the Independent Tribunal to hear and determine this dispute.

23. On 23 May 2022, the Player filed its Brief and accompanying exhibits before the Independent Tribunal.

24. On 4 July 2022, the ITF submitted its Answering Brief and accompanying exhibits before the Independent Tribunal.

25. On 29 July 2022, a hearing was held via videoconference. The Independent Tribunal was composed of Mr. Lucas Ferrer, Dr. Leanne O'Leary and Professor Isla Mackenzie.

26. The following individuals were present:

For the ITF:

Ms. Louise Reilly, Legal Counsel

Mr. Rory Scott, Legal Counsel

Dr. Stuart Miller, ITF Representative

Ms. Bianca Mazza, Interpreter

For Mr. Tammaro:

Mr. Ciro Pelligrino, Legal Counsel

Ms. Artemisia Lorusso, Legal Counsel

Ms. Virginia Comitini, Legal Counsel

Mr. Michele Giorgino, Legal Counsel

Mr. Mariano Tammaro, the Player

Mr. Marco Tammaro, the Player's Father, Witness

Ms. Loredana Esposito, the Player's Mother, Witness

Mr. Domenico Piccardi, the Player's Coach, Witness

Dr. Riccardo Bernabò, Family Doctor, Witness

Observers: Ms. Nicole Santiago

Secretariat: Ms Kylie Brackenridge, Sport Resolutions  
Ms Astrid Mannheim, Sport Resolutions

#### **IV. JURISDICTION**

27. The Parties do not dispute the jurisdiction of the Independent Tribunal to hear this case.

28. In any case, the Independent Tribunal notes that the ITF has elected to confer Jurisdiction to the Independent Tribunal pursuant to Article 8.1 TADP and Article 1.1 of the Procedural Rules, which state as follows:

Article 8.1 TADP:

***"8.1 Jurisdiction of the Independent Panel***

*The following matters arising under this Programme will be submitted for determination by an Independent Tribunal in accordance with the Procedural Rules Governing Proceedings Before an Independent Tribunal, as amended from time to time:*

*8.1.1 A charge that one or more Anti-Doping Rule Violations has been committed (and any issues relating to that charge). Where such charge is upheld, the Independent Tribunal will determine what Consequences (if any) should be imposed, in accordance with and pursuant to Articles 9 and 10."*

Article 1.1 of the Procedural Rules:

*“1.1 The ITF has contracted Sport Resolutions ([www.sportresolutions.co.uk](http://www.sportresolutions.co.uk)) to organise a panel of individuals with the necessary skills and experience (the **Independent Panel** or the **Panel**) from whom independent tribunals (each, an **Independent Tribunal**) may be formed to hear and determine particular matters. Sport Resolutions will act as secretariat to the Panel (working closely with the Panel member who is designated to act as Chairman of the Panel) and to Independent Tribunals appointed from the Panel to hear and determine particular matters (...)*”

29. The application of the TADP to the Athlete is set out in Article 1.2.6 TADP:

*“1.2.6. Each of the Persons covered by Article 1.2 is deemed, as a condition of their participation in the activities described in that Article, to have agreed to be bound by this Programme, and to have submitted to the authority of the ITF to enforce this Programme, including any Consequences for breach thereof, and to the jurisdiction of the hearing panels identified below to hear and determine cases and appeals brought under this Programme.”*

30. Additionally, Article 1.2.5 TADP establishes the players to whom the TADP applies as follows:

*“1.2.5. the following Players, Player Support Personnel, and other Persons:*

*1.2.5.1. all Players and Player Support Personnel who are members of or registered with the ITF, or any National Association, or any member or affiliate organisation of any National Association;*

*1.2.5.2 all Players entered in or participating in such capacity in Events, Competitions, and/or other activities organised, convened, authorised or recognised by the ITF or any National Association or any member or affiliate organisation of any National Association, wherever held, and all Player Support Personnel supporting such Players' participation; (...)*”

31. In this regard, the Independent Tribunal notes that the Player participated in Covered Events, including the Event, as will be further analysed below.

32. Therefore, in light of all of the above, the Independent Tribunal has jurisdiction to rule on the present dispute.

## V. APPLICABLE LAW

33. The parties do not dispute the applicability of the TADP, specifically the 2021 version in force at the time the ADRV occurred.

34. Article 2 TADP specifies the circumstances and conduct that may constitute an ADRV. This includes Article 2.1, which provides:

*“2.1 The presence of a Prohibited Substance or any of its Metabolites or Markers in a Player’s Sample, unless the Player establishes that such presence is consistent with a TUE granted in accordance with Article 4.4.”*

35. Article 1.3.1 TADP establishes the personal responsibilities of each player as follows:

*“1.3.1.1 be knowledgeable of and comply with this Programme at all times;*

*(...)*

*1.3.1.4 carry out research regarding any products or substance that they intend to Use to ensure that Using them will not constitute or result in an Anti-Doping Rule Violation. Such research must, at a minimum, include a reasonable internet search of:*

*(a) the name of the product or the substance;*

*(b) the ingredients/substances listed on the product or substance label; and*

*(c) any potentially relevant information revealed through research of points (a) and (b);”*

36. Article 2.1.1 TADP also states the following:

*“2.1.1 It is each Player’s personal duty to ensure that no Prohibited Substance enters their body. Players are responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary to demonstrate intent, Fault, Negligence, or knowing Use on the Player’s part in order to establish an Article 2.1 Anti-Doping Rule Violation; nor is the Player’s lack of intent, Fault, Negligence or knowledge a defence to an assertion that an Article 2.1 Anti-Doping Rule Violation has been committed.”*



37. With regards to the presence of a Prohibited Substance or its Metabolites or Markers in a player's Sample, Article 2.1.2 TADP states:

*"2.1.2 Sufficient proof of an Anti-Doping Rule Violation under Article 2.1 is established by any of the following: (a) the presence of a Prohibited Substance or its Metabolites or Markers in the Player's A Sample where the Player waives analysis of the B Sample and the B Sample is not analysed; or (b) where analysis of the Player's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Player's A Sample; or (c) where the Player's A or B Sample is split into two parts, the presence of a Prohibited Substance or its Metabolites or Markers in the first part of the split Sample and the Player waives analysis of the confirmation part of the split Sample or analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample."*

38. Article 3.1.1 ADR provides that the ITF shall have the burden of establishing that an ADRV has occurred to the comfortable satisfaction of the Tribunal:

*"3.1.1 The ITF will have the burden of establishing that an Anti-Doping Rule Violation has occurred. The standard of proof will be whether the ITF has established the commission of the Anti-Doping Rule Violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt."*

39. Article 3.2 TADP states that facts relating to an ADRV may be established by any reliable means, including admissions.

*"3.2.1 Facts related to Anti-Doping Rule Violations may be established by any reliable means, including admissions."*

40. Article 10.2 TADP states the following with regards to the period of Ineligibility to be imposed for the presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method:

***"10.2 Imposition of a period of Ineligibility for presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method"***

*The period of Ineligibility imposed for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Player's or other Person's first doping offence will be as follows, subject to potential elimination, reduction, or suspension pursuant to Article 10.5, 10.6, or 10.7.*

*10.2.1 Save where Article 10.2.4.1 applies, the period of Ineligibility will be four years:*

*10.2.1.1 where the Anti-Doping Rule Violation does not involve a Specified Substance or a Specified Method, unless the Player or other Person establishes that the Anti-Doping Rule Violation was not intentional; and*

*10.2.1.2 where the Anti-Doping Rule Violation involves a Specified Substance or a Specified Method and the ITF can establish that the Anti-Doping Rule Violation was intentional.*

*10.2.2 If Article 10.2.1 does not apply, then (subject to Article 10.2.4.1) the period of Ineligibility will be two years.”*

41. In this regard, it shall be noted that Article 10.2.3 defines “intentional” as a term that “*is meant to identify those Players or other Persons who engage in conduct that they knew constituted an Anti-Doping Rule Violation or knew there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk.*”

42. Finally, the sanctions described above may be eliminated based on a finding of No Fault or Negligence pursuant to Article 10.5 TADP or otherwise reduced based on No Significant Fault or Negligence pursuant to Article 10.6 TADP. The pertinent language for each of these articles will be reproduced, where relevant, in the subsections below.

## **VI. POSITIONS OF THE PARTIES**

43. The principal submissions of the parties may be summarized as follows:

- **Mr. Tammaro’s Brief**

44. The Player requests that the Independent Tribunal eliminates the period of Ineligibility, or, in the alternative, that the sanction is limited to the period of suspension already

served by the Player since testing positive. Subsidiarily, the Player requests that the sanction to be imposed be the minimum possible.

45. Mr. Tamaro first submits that he does not dispute the presence of Clostebol in his Sample but alleges that it was not intentional, nor can it be attributed to any culpable and/or negligent conduct on his part. In this respect, the Player asserts that the presence of Clostebol in his urine is attributable to the use of the Product, Trofodermin.

46. The Player alleges that a bad wound on his knee was not healing well and that his Father, concerned about it and encouraged by the advice of his Mother, decided, on the Father's own initiative, to apply the Product on 1 or 2 October (Mr. Tamaro does not remember the precise day the application took place). Additionally, the Father's witness statement (Exhibit no.7 of the Player's Brief) establishes that the decision to apply the Product stemmed from the advice of Dr. Riccardo Bernabò, who told the Father in 2020 when the Father sought medical advice for a bad wound on his own leg, that the Father could use the Product on any occasion of infected wounds for healing.

47. Moreover, the Player indicates that the Product was purchased by his Mother on 10 July 2020. Dr. Riccardo Bernabò, the family's general practitioner, confirms in his witness statement (Exhibit no.10 of the Player's Brief) that he advised the Father to buy Trofodermin spray, as this was a product suitable whenever there were infections and/or scarring difficulties.

48. With regards to the application of the Product, the Player states that since the day he fell over, his Father had treated his wound with a disinfectant (hydrogen peroxide). The Player further asserts that he did not even realize that the Product was being applied on his wound, because the application was made so quickly that it prevented Mr. Tamaro from realizing that, in that occasion and unlike the previous days, the Father had unilaterally decided to apply a different product.

49. Furthermore, since the Player was a minor at that time, his parents exercised their parental authority, not allowing the Player to share their choice, or in any case, to oppose it.

50. The Player submits that, upon realizing that his Father had applied a spray (rather than hydrogen peroxide, as usual), he asked what had been applied, in response to which his Father replied that the Player should stay calm because it was a product (whose name he did not specify) that he himself had used before. The Player then asked his Father whether the Product bore the anti-doping pictogram or any other forbidden substance and his Father reassured him that the Product was safe.
51. In this respect, Mr. Tammaro alleges that he did not know that the Product had been applied on him until the ITF's notification and the subsequent reconstruction of the events his parents made regarding the circumstances in which Clostebol could have entered in his body. Mr. Tammaro also states that when the application took place, his parents did not know that the Product contained a Prohibited Substance, since there was no "anti-doping" indication on the Product's bottle, let alone the Player, who did not even know that the Product was being applied to him.
52. The Player further alleges that the application of the Product only took place on one occasion and that the amount of Clostebol found in Mr. Tammaro's urine sample was very minimal (0.04 ng/ml). As stated in his Brief, this allegation is supported by the report Dr. Luigi Sabbatella (Technical Consultant for Forensic Toxicology) issued, which establishes that the amount of Clostebol found in the urine sample *"is about 60 times lower than the MRLP (Minimum Required Performance Levels) established by WADA for AAS (Anabolic Androgenic Steroids) in October 2021, currently 2.5 ng/ml"* and indicates that the explanation provided by the Tammaros regarding the source of the Prohibited Substance was compatible with the findings regarding the amount of Clostebol.
53. The Player also submits that his participation in the Event was accidental, due exclusively to a Wild Card granted by the Italian Tennis Federation 24 hours before the beginning of the Event.
54. Finally, Mr. Tammaro asserts that he adheres to a sophisticated, three-pronged anti-doping precautionary framework when considering the use of medical products, and thus is aware of the risks associated with using medicinal products without first checking with medical personnel and conducting his own research.

55. In conclusion, the Player's assertions to support his position that the ADRV was neither intentional nor due to fault or negligence are based on the following points:

- i. The casual nature of the contact with the substance, which occurred without the Player being able to understand what was happening;
- ii. The insignificant quantity of the substance found in the urine sample, which is totally unsuitable to improve the Player's sporting performance; and
- iii. The fact that the Player is a very young athlete, very observant of the TADP and regularly followed by his doctor and coach.

- **ITF Answer Brief**

56. The ITF requests the Independent Tribunal:

- i. to find that the Player has committed an ADRV pursuant to Article 2.1 of the 2021 TADP;
- ii. to find that the Player has not met his burden to demonstrate that his ADRV was not intentional within the meaning of Article 10.2.3 TADP, and therefore impose a period of Ineligibility of four years;
- iii. alternatively, if the Independent Tribunal finds that the Player has met his burden of proving that the ADRV was not intentional, to impose a period of Ineligibility of two (2) years, without any elimination (Article 10.5 TADP) or any further reduction (Article 10.6.2 TADP);
- iv. to fix the starting date of the period of Ineligibility on the date of the Independent Tribunal's final decision, with credit given for the period of Provisional Suspension served (Article 10.13.2 TADP);
- v. to disqualify the results obtained by the Player in the singles competition at the Event (Article 9.1 TADP).

The ADRV

57. The ITF establishes that as the Player has admitted the ADRV, the Independent Tribunal must only decide what consequences should be imposed for the Player's violation.
58. The ITF does not accept the Player's assertion regarding the quantity of Clostebol found in his urine sample, which allegedly is unsuitable to improve sporting performance. The presence of the Clostebol metabolite (in whatever quantity) in the Player's urine sample is demonstrative (as the Player accepts) of the Player's prior use of Clostebol. Further, Clostebol is not a threshold substance, i.e. a substance for which certain concentration must be present in an athlete's sample in order for an ADRV to have been committed, nor a Specified Substance; it is a synthetic anabolic androgenic steroid that mimics testosterone – but does not break down into estrogen, thus avoiding estrogenic side-effects – and thereby enhances sporting performance.
59. As the Player has admitted the ADRV, the only further relevance of the estimated concentration of the Clostebol metabolite is whether it is compatible with the Player's account of facts.

#### Presumption of Intent

60. The ITF maintains that the Player's explanation regarding how the substance entered his system is not acceptable because (among other things) the relevant objective evidence adduced by the Player as to source is essentially limited to proving that:
- i. The Player suffered an injury to his knee on 25 or 26 September 2021;
  - ii. The Player's Mother had purchased Trofodermin spray (containing Clostebol) in July 2020 to treat a wound suffered by the Player's Father; and
  - iii. The estimated concentration of the Clostebol metabolite in the Player's urine sample is compatible with (but does not demonstrate the veracity of) the Player's explanation regarding the administration of Trofodermin spray.
61. The ITF highlights that there is a presumption that the Player ingested Clostebol intentionally to enhance his performance and that it is the Player's burden to rebut that presumption by adducing evidence that satisfies the Independent Tribunal that, on the

balance of probabilities, the ingestion of Clostebol was not intentional. Save in the most exceptional circumstances, a Player cannot rebut the Article 10.2.1.1 TADP presumption of intentional use unless he proves exactly when and how the substance entered his system.

62. The ITF accepts the Sabbatella Report's conclusion that the estimated concentration of the Clostebol metabolite in the Player's urine sample is compatible with the Player's account of facts. However, an expert's opinion that a scenario is compatible with an explanation simply denotes that the scenario cannot be ruled out. Therefore, the ITF asserts that the Player has failed to provide specific, objective, and persuasive evidence that his explanation is more likely than not to be true.

63. However, the ITF further considers the evidence adduced by the Player regarding the alleged administration of Trofodermin spray to be inconsistent and/or implausible.

- i. First, the ITF considers the evidence of the Player and his parents regarding the status of the Player's injury on 1 or 2 October 2021 to be inconsistent. The most recent evidence of the Player's parents is that they determined that a different treatment was required, not because the wound was struggling to heal (as first indicated), but because the Player's wound had become infected.
- ii. Second, the evidence of the Player's parents regarding the decision to use the Trofodermin spray is both inconsistent and implausible. The Player's Father provides contradictory declarations regarding the fact of who had the initiative to apply the spray on the Player's knee, first asserting that the Player's Mother had the initiative but then stating that the initiative stemmed from what Dr. Riccardo Bernabò had advised him to do in July 2020.
- iii. Third, the assertion that Trofodermin spray was administered by the Player's Father to the wound on the Player's knee in a "sudden manner", without any advance warning to the Player, is highly improbable. It would have taken seconds for the Player's Father to explain to the Player that he was going to apply a different medicine to treat the wound. The suggestion that the Player's father considered that those few seconds would jeopardize the Player's health, such

that he did not have time to explain to the Player that he was going to apply the Product, is not credible.

64. The ITF raises the question of why the parents did not obtain medical advice prior to or following the application of Trofodermin if they were in an emergency situation, as alluded to in the Player's brief.

65. Moreover, the ITF alleges that a cogent explanation has not been provided as to why the Player's parents considered it to be necessary to assert their parental authority over the Player. Whilst the Player was a minor at the time of the incident, as a 17-year-old professional athlete with 'excellent grades', he was surely more than capable of understanding that an infected wound would need to be treated with appropriate medication. In the absence of evidence that the Player had acted in a manner that would have indicated to his parents that he would have resisted his Father's efforts to apply the Trofodermin spray, the assertion that his parents felt the need to exercise their parental authority is logically incoherent.

66. As a conclusion, the ITF submits that the evidentiary record does not provide an adequate basis for the Independent Tribunal to conclude that the Player has met his burden to demonstrate that the source of the Clostebol was more likely than not from the application of Trofodermin spray and consequently a four-year period of Ineligibility must be imposed on the Player.

67. The ITF further submits that, in the case that the Independent Tribunal accepts the explanation provided by the Player as to how the substance entered his system, the Independent Tribunal must still consider whether it also accepts the specifics of the Player's account regarding the administration of that spray, and whether the Player knew that there was a significant risk that using the Trofodermin spray might constitute or result in an ADRV and manifestly disregarded that risk. Therefore, the burden is on the Player to prove that there was not a clear and obvious risk that the Trofodermin spray might contain a Prohibited Substance.

No Fault or Negligence / No Significant Fault or Negligence



68. Even if the Player is able to rebut the presumption of intent, the period of Ineligibility is two years, subject to (i) elimination if the Player establishes that he bears No Fault or Negligence for his ADRV, or, alternatively, (ii) reduction if the Player is able to establish that he bears No Significant Fault or Negligence for his ADRV.
69. The ITF points out that the fundamental duty imposed by the TADP on every player to exercise the “*utmost caution*” to avoid ingesting any prohibited substance equates to a duty on the player “*to do everything in his or her power to avoid ingesting any Prohibited Substance*”. To successfully establish that they have fully complied with that duty and therefore bear No Fault or Negligence, the individual must have “*made every conceivable effort to avoid taking a prohibited substance.*”
70. It is well established that in determining whether the Player complied with his duty of utmost caution, the Player is affixed with personal responsibility not only for his own acts and omissions, but also the acts and omissions of his “entourage”, *i.e.*, any persons – whether friends, relatives, coaches, doctors, or otherwise – to whom the Player delegated any part of their anti-doping responsibilities.
71. The ITF submits that it cannot credibly be suggested – even if the Player’s version of events is accepted in its entirety – that either of the Player’s parents made “*every conceivable effort*” to avoid administering a Prohibited Substance to the Player.
72. Alternatively, the ITF submits that the Player has not shown that he bears No Significant Fault or Negligence for his ADRV under Article 10.6 TADP and, therefore, if the two-year period of Ineligibility set out in Article 10.2.2 TADP applies, it must not be reduced below two years.
73. In this respect, the ITF notes that the Player asserts that “*no fault or negligence on the part of the Player can be established, given that the Player was not put in a position to understand, because of his father’s conduct, that there was even the slightest risk of a possible anti-doping violation.*” Yet the Player is personally responsible for his parents’ actions and the degree of Fault exercised by the Player’s parents is to be imputed on him. In this regard, the ITF position is that the Player’s parents’ Fault is clearly significant, as they failed to take any (let alone all) of the clear and obvious precautions that any reasonable person would be expected to take in the same set of circumstances.

74. Finally, even if the Player could be said to have committed his violation with No Significant Fault or Negligence, no reduction of the two-year presumptive ban is justified under Article 10.6.2 TADP.

## **VII. ISSUES**

75. In view of the fact that the Player has admitted the ADRV, the issues that the Independent Tribunal must determine in this case may be summarized as follows:

- What was the source of the Prohibited Substance?
- Has the Player, on a balance of probabilities, established that the ingestion of the Prohibited Substance was not intentional?
- If the Player has established that it was not intentional, what are the appropriate consequences and has the Player satisfactorily demonstrated that the applicable period of Ineligibility may be reduced or altogether eliminated based on the particular circumstances of the case?

## **VIII. MERITS**

76. The Independent Tribunal now turns to the analysis of the arguments and evidence as put forward by the Parties. In doing so, the Independent Tribunal has considered all the allegations set forth and refers below only to those elements which are deemed pertinent to decide the matter at hand.

### **A. Preliminary Remark: The Player's potential consideration as a Protected Person**

77. Given the Player's age, the Independent Tribunal recognizes there is a possibility that he may be considered a Protected Person under the TADP. According to the TADP, a Protected Person is defined as follows:

*“A Player or other natural Person who at the time of the Anti-Doping Rule Violation: (i) has not reached the age of 16; or (ii) has not reached the age of 18 and is not included in any Registered Testing Pool and has never competed in any International Event in an open category; or (iii) for reasons other than age has been determined to lack legal capacity under applicable national law.”<sup>2</sup>*

An International Event, as used in the definition above, is defined as:

*“An Event or Competition where the International Olympic Committee, the International Paralympic Committee, an international federation, a Major Event Organisation, or another international sport organisation is the ruling body for the Event or appoints the technical officials for the Event. In respect of the ITF, an Event is an International Event if it is a Covered Event.”<sup>3</sup>*

Finally, a Covered Event, is defined as:

*“The Grand Slam tournaments, Davis Cup, Billie Jean King Cup, Hopman Cup, the Olympic Tennis event, the Paralympic Tennis event, other IOC-recognised International Events, WTA tournaments and WTA Finals and WTA Elite Trophy, ATP Tour tournaments and ATP Finals, ATP Cup, Next Gen ATP Finals, ATP Challenger Tour tournaments, ITF Pro Circuit events, ITF World Tennis Tour events, ITF Juniors events, ITF Seniors events, ITF Wheelchair events, and ITF Beach Tennis Tour events.”<sup>4</sup>*

78. In this case, the Independent Tribunal notes the Napoli 2 Challenger where the Player participated and tested positive was an ATP Challenger Tour<sup>5</sup> tournament and, therefore, a Covered Event. Considering the foregoing definitions, the Player has competed in an International Event and, as such, cannot be considered a Protected Person.

## **B. The ADRV**

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<sup>2</sup> TADP Appendix One, page A1.9

<sup>3</sup> TADP Appendix One, page A1.5

<sup>4</sup> TADP Appendix One, page A1.3

<sup>5</sup> Please see: <https://www.atptour.com/es/tournaments/napoli/9591/overview>

79. The ADRV is not disputed in the present case as the Player has admitted it. Therefore, the Independent Tribunal must only decide what consequences should be imposed for the Player's violation.

80. The specific ADR violations identified in the Notice of Charge pertain to the presence and/or Use of a Prohibited Substance (Article 2.1 and/or 2.2 TADP). However, it should be noted that the ITF has specified in its Answer Brief and at the hearing that it is requesting consequences be imposed upon the Player for the commission of a violation of Article 2.1 TADP.

81. For the sake of completeness, the Independent Tribunal highlights that, under the strict liability regime of Article 2.1, an ADRV is established where there is an AAF in respect of the Player's A Sample and the analysis of the Player's B Sample confirms the presence of the Prohibited Substance found in the A Sample.

82. Here, the Clostebol metabolite was found to be present in the Player's A Sample and was then confirmed by the analysis of the Player's B Sample. There is no question that the ADRV is therefore established.

### **C. The Consequences of the ADRV**

83. As mentioned above, Article 10.2 TADP provides the sanction to be imposed for violations under Article 2.1 TADP (presence of a Prohibited Substance).

84. The Independent Tribunal first notes that this is the Player's first ADRV.

85. To determine the applicable consequences, the starting point is Article 10.2.1.1, which states that the period of Ineligibility for the presence of a non-Specified Substance in a Player's Sample will be four years, unless the Player establishes that the ADRV was not intentional. If the Player establishes that the ADRV was not intentional, the period of Ineligibility may be reduced to two years, subject to a further reduction if the Player can establish No Fault or Negligence or No Significant Fault or Negligence.

86. In evaluating whether it has been established that the ADRV was not intentional, the Panel shall first consider whether the origin of the Prohibited Substance has been

satisfactorily established, in accordance with the long-standing line of jurisprudence – duly highlighted by the ITF in its Brief – holding that, save for the most exceptional of circumstances, an athlete will need to establish how the Prohibited Substance entered his or her system to successfully demonstrate there was no intent (See *inter alia* ITF v. Varvara Lepchenko, para. 39-40; CAS 2017/A/5112 Arashov v. ITF, para.109; CAS 2016/A/4534 Villanueva v. FINA, para. 37). Upon considering this first issue of the source and depending upon the conclusion reached by the Independent Tribunal as to whether it has been satisfactorily established, the Tribunal can then move on to a determination of the presence or absence of intent in the commission of the ADRV and, if applicable, any elimination or reduction of the period of Ineligibility based on the Player’s degree of Fault.

### **1) What was the source of the Clostebol metabolite?**

87. In the present case, the Player asserts that he has identified the source of the Prohibited Substance, namely that the AAF was caused by the application of the Trofodermin spray on a bad wound that the Player suffered between 25-26 September 2021.

88. The Player bears the burden of proving how the substance entered his body, the applicable standard of proof being a balance of probability<sup>6</sup> pursuant to Article 3.1.2 TADP and bearing in mind that “*in order to establish the origin of a Prohibited Substance by the required balance of probability, an athlete must provide actual evidence as opposed to mere speculation.*” (CAS 2014/A/3820 WADA v. Damar Robinson & JADCO)

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<sup>6</sup> As to the understanding of what exactly “proven by a balance of probability” means, the Independent Tribunal adopts the guidance provided in CAS 2009/A/1926 International Tennis Federation v. Richard Gasquet and CAS 2009/A/1930 WADA v. ITF & Richard Gasquet that:

*“(…) In other words, for the Panel to be satisfied that a means of ingestion is demonstrated on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51% chance of it having occurred. The Player thus only needs to show that one specific way of ingestion is marginally more likely than not to have occurred.”* (emphasis added)

89. In this regard, the Independent Tribunal takes note of the detailed explanations provided by the Player, the Father, and the Mother, both in their various witness statements and in oral testimony at the hearing, in addition to the written and oral testimony provided by Dr. Riccardo Bernabò, and the additional documentary evidence on the subject of the Trofodermin spray.

90. Specifically, the Independent Tribunal highlights that there is sufficient evidence to find that it is more likely than not that the Trofodermin spray had been purchased for the Father by the Mother in July 2020 on the advice of Dr. Bernabò, who had recommended it to the Father for a wound he had sustained, which had issues healing, and that in providing his medical advice to the Father in that instance, Dr. Bernabò had indicated that the spray could be used on any wound where there were infections and/or scarring difficulties. The Independent Tribunal is equally satisfied that the initiative to use the Product on the Player arose after a discussion held exclusively between the Player's parents out of concern for the Player, who had complained that day about the wound getting worse, and after recalling that they had the Trofodermin spray in the house.

91. As the ITF has pointed out in its submissions, there are certain details that appear to vary somewhat across the witness statements and in the oral testimony provided by Mr. Tammaro, his Father, his Mother, and Dr. Bernabò. However, the Independent Tribunal finds that the witness testimony offered still succeeds in weaving a cogent explanation as to the source of the Clostebol metabolite found in the Player's Sample. The Independent Tribunal can appreciate the difficulties that may arise when giving written and oral testimony in one language and then having it translated into another language (here, Italian and English), where the sense in which certain words are used may differ and some nuances may be muddled or otherwise lost in translation. Furthermore, it can be expected that a witness's ability to recall details of a particular event, in writing or orally in a trial setting, at different points in time in the months following that event can lead to slight variations or even confusion in the witness's explanations. Nonetheless, the Independent Tribunal finds that the essential elements of the explanation regarding the source of the Prohibited Substance have largely remained unchanged throughout the witness testimony adduced, particularly that of the Player, the Father, and the Mother. In Dr. Bernabò's case, it should be noted that he indicated in his oral testimony

that the Father had consulted him via telephone in 2021 about the Player's wound and using Trofodermin, a fact that had not appeared on the record up until that point and which the Father (especially) denied emphatically. There was no other evidence to back up this new detail in Dr. Bernabò's testimony, not to mention the fact that, if it were true that the parents acted on Dr. Bernabò's specific medical advice to apply the Product on the Player, it would have no doubt been alleged as a mitigating circumstance. No such allegation has been made – in fact, it has been directly addressed and denied at the hearing – which leads the Tribunal to consider that this was a mere instance of confusion for Dr. Bernabò which is easily attributable to the factors mentioned above.

92. The Tribunal also highlights Dr. Sabbatella's report, which concluded that *"the small amount of Clostebol metabolite highlighted by the analyses (40 pg/ml, or 0,04 ng/ml) and the detailed timing of intake, are compatible with the kinetics observed in vivo after controlled intake, via topical transcutaneous route, of the active ingredient in object."* In this respect, the Independent Tribunal accepts that this report establishes that the amount of the Prohibited Substance found in the Sample is consistent with the explanations provided by the Player and his parents as to how the Prohibited Substance entered the Player's system and considers that it lends further credibility to the witness testimony.

93. The Tribunal is therefore satisfied, based on the credible testimony, the supporting evidence and scientific report offered by the Player, that it is not mere speculation but actual evidence regarding the most plausible source of the Clostebol metabolite. As such, the Independent Tribunal concludes that the source of the Prohibited Substance in the Player's system was more likely than not to be the Trofodermin spray applied on the Player's knee on 1 or 2 October 2021 and which had apparently been purchased in July 2020 by his Mother.

94. At this juncture, the Independent Tribunal considers it is important to highlight that establishment of the source of the Prohibited Substance does not by itself prove negative intent, although it may be a powerful indicator of the presence or absence of intent (CAS 2018/A/5583 Taylor v. World Rugby).

95. In this context, the Independent Tribunal has already advanced that a legal question arises as to whether proof of the source of the prohibited substance is mandated under Article 10.2.3 TADP in order to allow a player to establish lack of intent, in the same way that it is mandated for the purposes of Articles 10.5 or 10.6 TADP under the definitions of No Fault or Negligence and No Significant Fault or Negligence which require that "*the player must also establish how the prohibited substance entered his system*". Indeed, several CAS cases have held that the athlete must necessarily establish how the substance entered his/her body (see e.g. CAS 2016/A/4377 WADA v. IWF & Alvarez; CAS 2016/A/4585 Fabien Whitfield v. FIVB) whereas other CAS cases have held that such establishment, whilst not always necessary, will normally be so and that the exceptions to that norm will be extremely rare (see e.g. CAS 2016/A/4534 Villanueva v. FINA; CAS 2016/A/4919 WADA v. WSF & Iqbal).
96. On any view, therefore, the presence or absence of such proof is obviously material to the issue of intention and, in the case at hand, the Independent Tribunal considers the Player has satisfied his burden of proof on the source of the Prohibited Substance.

## **2) Intentionality of the ADRV**

97. Moving forward with the Tribunal's evaluation of intent, the Independent Tribunal recalls that, in arguing for a departure from the applicable period of Ineligibility, the Player alleges that the ADRV was not intentional, nor can it be attributed to any culpable and/or negligent conduct on his part, thereby warranting the elimination of the applicable period of Ineligibility pursuant to Article 10.5 TADP, or in the alternative, a reduction pursuant to Article 10.6 TADP.
98. The term "intentional" as employed in the TADP is meant to identify those Players or other Persons who engage in conduct they knew constituted an ADRV or who knew that there was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded that risk (Article 10.2.3 TADP). In order, therefore, for an athlete to fall within this definition, there clearly exists the concept of acting with knowledge and with recklessness (also termed indirect intention or *dolus eventualis*, in civil law



jurisdictions) in the commission of the ADRV. (see CAS 2016/A/4716 Henning v. SAIDS, para. 45; CAS 2012/A/2822 Qerimaj v. IWF, para. 8.14 and 8.23)

99. Thus, to establish that he did not commit the ADRV intentionally, the Player must prove, by a balance of probability, (i) that he did not engage in conduct that he knew constituted an ADRV (first part of Article 10.2.3 TADP), and (ii) that (a) he did not know his conduct involved a significant risk, or (b) if he did know, he did not manifestly disregard that risk (second part of Article 10.2.3 TADP).

100. Against the background of its threshold finding that the Player has established, on a balance of probability, that the application of the Trofodermin spray was the source of the Prohibited Substance in the Player's system, the Independent Tribunal has considered all of the Player's allegations and evidence and holds the following:

- i. As mentioned above, the Player asserts that the Product had been purchased in July 2020 by the Player's Mother after the Father had suffered a wound on his leg that had issues healing and, upon consulting with Dr. Bernabò, the doctor recommended the use of the Trofodermin spray, which is the reason why the Product was in the Tammaro household in the first place. The Independent Tribunal observes once more that there is documentary evidence supporting the purchase of the Trofodermin spray and corroborating witness testimony from Dr. Bernabò on this point, in addition to the testimonies of the Player and his parents. The Tribunal therefore accepts this explanation of how the Prohibited Substance was acquired.
- ii. The Player submits the Product's application occurred when the Father, who usually cleaned and disinfected the Player's wound after the Player showered, entered the bathroom and sprayed the Product on the wound without giving the Player prior notice or opportunity to react beforehand. Further, the Player submits that, upon questioning his Father's action and asking about any anti-doping warnings, the Father rebuked such questioning and reassured the Player, mentioning it was a product he had used on himself pursuant to medical advice and that there was no anti-doping pictogram on the spray. Moreover, the witness testimony offered in this respect highlighted that, in applying the Product, the

Father and the Mother asserted their parental authority with regards to their son's health, albeit, by their own admission, impulsively. It was their testimony that they had discussed the matter only between themselves (the Player was in the shower) in a moment of particular concern for their child's well-being, as the Player had complained the wound was especially bothersome that day. In this respect, the Independent Tribunal deems this testimony credible and is prepared to accept it.

- iii. The Tribunal must also take into account that the Player was 17 years old at the time of the aforementioned events, an age where there is, in many cases, still a great deal of deference towards the opinions and decisions of one's parents. As such, under the particular circumstances of this case, the Tribunal can accept that in the moment when his Father came into the bathroom to dress the Player's wound and suddenly did something differently, it would not have crossed Mr. Tamaro's mind to reject his Father's efforts to care for his wound, as it likely would not enter many a child's mind to reject or defy their parents in such a situation. That is not to say, however, that such a determination excludes the fact that taking into account the Player's age and circumstances, the Player may have fallen short of his obligations under the TADP by not giving the matter a second thought or investigating the Product at a later point in time.
- iv. The Player submits that the Product was only applied on one occasion. At the hearing, and upon being asked why the Product was only applied once, it was reiterated that the Player's wound had formed a scab and had an improved appearance the following day, and the Player and his Mother also testified that they generally refrain from using medication. The Independent Tribunal accepts that the application only occurred once, particularly taking into consideration that the Sabbatella Report, not contested by the ITF, affirms the compatibility of such an explanation with the small amount of the Clostebol metabolite found in the Player's Sample.
- v. In conjunction with the findings in points (i) – (iv) above regarding the motivation for and manner of the application of the Trofodermin spray, the Independent Tribunal also takes into consideration the fact that the Product was administered

at a point in time where the Player was outside of competition and apparently was not scheduled to appear in a competition until 10 October 2021, when he received the Wild Card invitation to participate in the Napoli 2 Challenger tournament the following day. The Independent Tribunal considers this suggests the unlikelihood of a deliberate attempt to enhance performance or “cheat” when the ADRV was committed, which is not conclusive of the matter of intent but is nonetheless informative.

- vi. The Player admitted that he has received antidoping education and usually engages in a thorough three-pronged anti-doping check to avoid violations. On the basis of the evidence provided in this respect, the Independent Tribunal concludes that the Player is aware that medications and supplements must be checked for Prohibited Substances before being administered. Similarly, the Father’s testimony confirmed that both he and the Mother were aware of their son’s anti-doping obligations, having observed him conduct his anti-doping checks before, and even knew to check for the anti-doping pictogram on the Trofodermin spray before administering it. As such, the Independent Tribunal can also conclude that the Player’s parents were aware that medications and supplements must be checked for Prohibited Substances before being administered on the Player. However, the Independent Tribunal must contrast the foregoing with the fact that, at 17 years of age, the Player is not an elite established athlete; whilst not a Protected Person, he has nonetheless had a relatively brief career in tennis, with one junior tournament title under his belt. All things considered, the Player cannot be presumed to have significant experience in anti-doping practices or exposure to potentially risky situations as, perhaps, an older, more seasoned tennis player playing at higher levels would, in addition to the fact that it is not unusual for a minor in his position to defer to his parents in matters such as health or medical treatments without questioning their decisions.

101. Taking all these elements together, the Independent Tribunal finds that the Player, by a balance of probabilities, has very narrowly satisfied his burden of proving that his ADRV was not intentional.

102. On one hand, it has become quite apparent to the Independent Tribunal that the Player did not know that when his Father applied the Trofodermin spray, this constituted an ADRV, thus removing the possibility of finding intention in the strictest sense of the word (first part of Article 10.2.3 TADP).

103. On the other hand, in view of all the relevant circumstances, the Independent Tribunal is prepared to accept that, in the moment, the Player was not able to appreciate that his Father suddenly applying an (at the time) unknown spray on him carried a significant risk of committing an ADRV. The Tribunal accepts that the Player had no idea that his Father would apply a different product than he normally did when he cleaned and dressed the Player's wound, let alone a medication. The application occurred suddenly, only once, and by the Player's own Father, which the Independent Tribunal - due to the specific circumstances of the case - can accept contributed greatly to the Player not having conducted further inquiries as to what exactly was sprayed on his knee. The Player's failure to recognize the significant risk of committing an ADRV in this situation, whilst certainly unfortunate, cannot properly be characterized as intentional conduct under Article 10.2.3 TADP. Therefore, the Independent Tribunal concludes, by a balance of probability, that the Player did not know there was a significant doping risk.

104. Moreover, even if, for the sake of argument, the Independent Tribunal were to conclude that the Player had sufficient knowledge to be able to appreciate the significant doping risk that the application of an unknown product posed, the Tribunal is nonetheless able to accept that it is more likely than not that the Player did not manifestly disregard that risk.

105. There is indeed a fine line between recklessness and obliviousness or carelessness, with only the first of these mental states being sufficient to support a finding of intentionality under the TADP. The Sole Arbitrator in CAS 2020/A/7536 Kratzer v. ITF provided highly instructive guidance on this topic, concluding that *"to qualify a behavior as 'intentional' the person concerned must have accepted or consented to the realization of the offence or at least accepted it for the sake of the desired goal. On the other hand, a conduct is negligent or oblivious only, if the offender does not agree with the occurrence of the offence that is recognized as possible and, in addition, credibly – not only vaguely – trusts that the offence will not materialize."* (para. 94)

106. In this case, and based on its conclusions outlined above, the Independent Tribunal is inclined to hold that the Player, a minor whose wound was being cared for by his Father, credibly – and not only vaguely – trusted that a possible doping risk would not materialise in the single instance when his Father applied the Product. The Tribunal holds the Player was acting negligently in blindly relying on his Father, and whilst such behaviour falls quite short of the Player's duty of care under the TADP, it does not amount to an intentional ADRV. (See CAS 2017/A/5015 FIS v. Johaug; CAS 2018/A/5581 Radojevic v. FINA). On the facts, the Independent Tribunal considers that the possibility of committing an ADRV appears to have been so remote in the Player's mind in the moments during and after the application of the Product that it seems quite unlikely that he accepted that an ADRV could materialise, such that he could fall within the scope of intentional behaviour under the TADP (See CAS 2020/A/7536, para. 94-95; see also CAS 2017/A/5015 and AAA No. 01-16-0000-6096 discussed therein).

107. Therefore, the Independent Tribunal holds that even if the Player was able to recognise the significant doping risk associated with the administration of the Product, on a balance of probability, he did not manifestly disregard that risk.

108. As a final matter and following the Panel in CAS 2018/A/5583 Taylor v. World Rugby, the Independent Tribunal emphasises that this is a case which turns on its particular facts. (See also CAS 2017/A/5926 World Anti-Doping Agency v. Gil Roberts) In this respect, the conclusion that it reaches in application of well-established principles of law cited above should not accordingly be misused as creating precedent for cases where the facts will in all certainty be different.

### **3) No Fault or Negligence or No Significant Fault or Negligence**

109. As has been established above, the Independent Tribunal accepts that the ADRV was not intentional and therefore the presumptive period of Ineligibility is automatically reduced to two years, subject to (i) elimination if the Player establishes that he bears No Fault or Negligence for his ADRV (Article 10.5 TADP), or, alternatively (ii) reduction if the Player is able to establish that he bears No Significant Fault or Negligence (Article 10.6 TADP).

110. For the Player to benefit from the provisions of Articles 10.5 or 10.6 TADP and have the period of suspension reduced or even completely eliminated, the Player must prove, on a balance of probabilities, both of the following elements:

- i. That he bears No Fault or Negligence or No Significant Fault or Negligence for the presence of the Clostebol metabolite in his system; and
- ii. The source of the Clostebol metabolite (under the specific definitions of the terms No Fault or Negligence and No Significant Fault or Negligence).

111. For the sake of efficiency, the Independent Tribunal recalls that it has already determined the Player has demonstrated the source of the Clostebol metabolite to a sufficient degree and will therefore not reiterate its conclusions on this issue.

112. The Independent Tribunal further notes that under the TADP “No Fault or Negligence” is defined as *“The Player or other Person 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.”*<sup>7</sup>

113. In paragraphs 97-108 above, the Independent Tribunal has already advanced some observations regarding the Player’s failure to satisfy his duty of care and negligence in; namely, that the Player did not even think to conduct the most cursory of investigations to find out what was used on him. As such, it considers there is no need to enter into a lengthier discussion regarding No Fault or Negligence on the Player’s part. According to Articles 2.1.1 TADP and the consistent CAS jurisprudence pertaining to doping matters, the Player has a fundamental duty to do everything in his power to avoid ingesting any Prohibited Substance, which the evidence shows he did not do. Even where the circumstances are extraordinary and there is minimal negligence, athletes are not exempt from the duty to maintain utmost caution,<sup>8</sup> and under these particular circumstances, it cannot readily be stated that the Player exercised the utmost caution required to consider the elimination of the period of Ineligibility under No Fault or

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<sup>7</sup> TADP Appendix One, page A1.7

<sup>8</sup> See CAS 2006/A/1025 Mariano Puerta v. International Tennis Federation (ITF), cited in CAS 2017/A/5015 FIS v. Therese Johaug & NIF, para. 186.

Negligence. Therefore, the Independent Tribunal dismisses any requests for the elimination of the period of Ineligibility under Article 10.5 TADP.

114. In light of the above, the only potential avenue for a modification of the two-year period of Ineligibility at issue is a reduction based on a finding of No Significant Fault or Negligence on the Player's part (Article 10.6 TADP), defined as:

*“The Player or other Person establishing that their 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 relation to the Anti-Doping Rule Violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1 the Player must also establish how the Prohibited Substance entered their system.”*

115. Hence, a period of Ineligibility can be reduced based on No Significant Fault or Negligence by:

- (i) determining how far the Player departed from his or her duty under the TADP to exercise “utmost caution” to ensure that they do not ingest any prohibited Substance or otherwise engage in conduct that might constitute or result in an ADRV; and
- (ii) ascertaining whether the Player has demonstrated that, *“to the extent he failed to take certain steps that were available to him to avoid the violation, the circumstances were exceptional and therefore the failure was not significant.”* (ITF v. Elsa Wan, agreed decision dated 8 April 2022, citing IBAF v Luque, IBAF Anti-Doping Tribunal decision dated 13 December 2010, para 6.10).

As explained in CAS 2013//3327 & 3335 ITF v. Cilic, the first question is one of objective degree of Fault, whereas the second is one of subjective degree of Fault, both of which shall be taken into consideration when exercising the discretion afforded under Article 10.6.2 TADP to reduce the period of Ineligibility otherwise applicable.

116. It must also be noted that since the Panel is dealing with a case involving a non-Specified Substance, Article 10.6.2 TADP provides that the sanction can, at most, be reduced to one year.

117. With the foregoing in mind, the Independent Tribunal finds that, with respect to the Player's objective degree of Fault, the Player has clearly departed from the standard of utmost caution required of him:

- It is the sole responsibility of each player bound by the TADP to know what constitutes an ADRV under the Programme and what substances and methods are prohibited, and to ensure that anything he or she ingests or uses, as well as any medical treatment he or she receives, does not give rise to an ADRV (Article 1.3.1 TADP). Those responsibilities are personal to each player.
- Moreover, as established in CAS jurisprudence<sup>9</sup>, the Player's responsibility includes that he or she is responsible for the behaviour of his entourage, be it coaches, medical staff etc. or, in the present case, the family members living in the same house. Following the Panel's decision in CAS 2017/A/5015, an athlete cannot abdicate his or her personal duty to avoid consumption of a Prohibited Substance by simply relying on his parents and presuming they have discharged his anti-doping responsibilities. In fact, the degree of Fault exercised by the Player's parents is to be imputed to the Player.<sup>10</sup>
- The Player's duty of care implies that he should have inquired as to what the spray applied on him was and identified it, ascertained its ingredients, and cross-referenced them against the Prohibited List to ensure that none of the Product's ingredients were prohibited. The Father's reassurance that there was no anti-doping pictogram on the bottle and that he himself had used it before is insufficient to satisfy the Player's duty of care.
- While the Player did not apply the Product himself and did not see the Product at the time of application, this does not excuse his failure to abide by the standard of utmost caution. The Independent Tribunal recalls that the Player confirmed that he always adheres to a three-pronged anti-doping precautionary framework in which he first consults Dr. Marassi before using any medicine, and only uses medicine approved by Dr. Marassi, secondly, informs Mr. Petrazzuolo of any

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<sup>9</sup> See CAS 2017/A/5301 Sara Errani v. ITF, para. 198

<sup>10</sup> See CAS 2017/A/5301 Sara Errani v. ITF, para. 199



medicines he uses, and, finally, conducts his own extensive research regarding the medicines he uses. In the present case, the Player never sought out the Product used or verified the name of the ingredients that it contained, never consulted Dr. Marassi after the application, and does not seem to have taken any anti-doping-related precaution before, during, or after the application of the Trofodermin spray took place, save for asking his Father once what the spray was and if it had any anti-doping warnings on it. The Independent Tribunal observes that the Trofodermin spray remained in the Tammaro's possession for approximately 10 days (1/2-11 October 2021) before the Sample was taken, such that the Player had ample opportunity to verify whether its ingredients were on the WADA Prohibited List. The word "clostebol" was clearly visible on the Product canister, as demonstrated at the hearing (specifically, "Clostebol acetate"). A simple internet search for "Trofodermin" or "Clostebol acetate" and the "WADA Prohibited List" would have yielded the necessary information to avoid the ADRV.

118. As far as the Player's subjective degree of Fault, the Independent Tribunal finds that there are no subjective factors that would provide a sufficient explanation as to why the Player failed to take the precautions that were expected of him:

- In his testimony, the Player confirmed more than once that he did not conduct any further checks on the Product applied on him because he trusted his Father, who usually cared for his wound. Being a minor, the Independent Tribunal can understand that it would be natural for the Player in that situation to defer to his parents in how to care for his wound. However, this implies that the Player made an improper assumption that his Father and Mother would have discharged the Player's anti-doping obligations in that moment by conducting the requisite checks.
- The Player is young – 17 at the time of the ADRV – and is not as experienced in anti-doping matters as an older, more seasoned athlete might be, especially one who participates in elite competition. Nonetheless, the duty for all athletes under the TADP are the same, and the Player's own evidence made it clear that he is a smart, capable person, that he was aware of his obligations and duties under the TADP, that he took those obligations seriously, and that he had devised a

process for himself for checking to ensure he was not ingesting a Prohibited Substance. In this instance, regrettably, he did not follow his own procedure.

119. In view of the foregoing, neither the objective nor subjective factors to determine Fault that have been alleged in this case suffice to reduce the applicable period of Ineligibility under Article 10.6 TADP. The Athlete's conduct falls short of the expected standard of behaviour for an athlete in his position and, in view of the totality of the circumstances, the Independent Tribunal cannot conclude that he bore No Significant Fault or Negligence. Considering the absence of any circumstances that would mitigate the degree of Fault or Negligence attributable to the Player, the Independent Tribunal concludes that the period of Ineligibility to be imposed in the matter at hand must be two years.

#### **4) Disqualification of Results and Other Consequences**

120. Article 9.1 TADP provides that an ADRV "*committed by a Player in connection with or arising out of an In-Competition test automatically leads to Disqualification of the results obtained by the Player in the Competition, with all resulting consequences (...)*". In addition, all further results obtained by the Player in subsequent events may be disqualified.

121. The Independent Tribunal notes that the Player was provisionally suspended on 30 November 2021 and takes into account that the Player did not participate in any tournament after his appearance in the Event. Therefore, the Independent Tribunal concludes that, pursuant to Article 9.1 TADP, the Player's results in the singles competition at the Event must be automatically disqualified, "*with all resulting consequences, including forfeiture of any medals, titles, ranking points and Prize Money obtained by the Player in that Competition*".

#### **5) Commencement date of the applicable period of Ineligibility**

122. Article 10.13 TADP provides:

*“Where a Player or other Person is already serving a period of Ineligibility for an Anti-Doping Rule Violation, any new period of Ineligibility will start on the first day after the current period of Ineligibility has been served. Otherwise, the period of Ineligibility will start on the date of the final decision providing for Ineligibility, or (if the hearing is waived, or there is no hearing) on the date Ineligibility is accepted or otherwise imposed (...).”*

123. Since the Player is not already serving a period of Ineligibility for an ADRV, the two-year period of Ineligibility imposed shall start on the date of this Decision

#### **6) Credit for the period of Provisional Suspension**

124. Article 10.13.2.1 TADP contemplates that an athlete be given credit towards the period of Ineligibility for any period of Provisional Suspension served by the athlete:

*“Any period of Provisional Suspension (whether imposed or voluntarily accepted) that has been respected by the Player or other Person will be credited against the total period of Ineligibility to be served.”*

125. In this sense, the Independent Tribunal remarks that both parties to the present proceedings acknowledge that the Player has not participated in any tournament after his participation in the Event, therefore respecting the Provisional Suspension imposed on him as of 30 November 2021.

126. Based on the foregoing, the Independent Tribunal concludes that the Player's two-year period of Ineligibility will commence upon the issuance of this Decision with the period of Provisional Suspension already served to be credited against the total period of Ineligibility to be served.

### **IX. CONCLUSIONS**

106. Considering all of the above, the Independent Tribunal concludes that the Player has infringed Article 2.1 TADP and shall impose a period of Ineligibility of two (2) years.

## **X. COSTS**

107. Article 8.5.4 TADP states:

*“The Independent Tribunal has the power to make a costs order against any party, where it is proportionate to do so. If it does not exercise that power, each party will bear its own costs, legal, expert, hearing, and otherwise.”*

108. The Independent Tribunal first notes that neither the ITF nor the Player requested to be awarded a significant contribution of the legal costs of these proceedings. In addition, the Independent Tribunal remarks that although the Player is the unsuccessful party, it is not justified to impose the costs on him. Bearing in mind the period of Ineligibility of two years imposed on the Player, the Independent Tribunal sees no need to burden him with such a contribution.

## **XI. ORDER**

109. In light of the above, the Independent Tribunal:

- Rules that it has jurisdiction to decide on the subject matter of this dispute.
- Finds that the Player has committed an Anti-Doping Rule Violation pursuant to Article 2.1 of the TADP.
- Imposes a period of Ineligibility of two (2) years upon the Player, commencing on the date of this Decision in accordance with Article 10.13 TADP. The period of Provisional Suspension imposed on the Player from 30 November 2021 until the date of the Independent Tribunal’s Decision shall be credited against the total period of Ineligibility, which will start on 30 November 2021 and end at 23:59 on 29 November 2023.
- Orders the disqualification of the results obtained by the Player in the singles competition at the Event on 11 October 2021, in accordance with Article 9.1 TADP, with all resulting consequences including the forfeiture of any titles, awards, medals, ranking points and prize money.

- Dismisses all other prayers for relief.

## **XII. RIGHT TO APPEAL**

110. This decision may be appealed to the Court of Arbitration for Sport (“CAS”), located at Palais de Beaulieu, Avenue des Bergières 10, CH-1004 Lausanne, Switzerland (procedures@tas-cas.org), in accordance with Article 13 TADP and its relevant subsection, 13.2.1.

111. In accordance with Article 13.8.1.1 TADP, parties shall have 21 days from receipt of this decision to lodge an appeal with the CAS.



Lucas Ferrer (Chair)  
On behalf of the Independent Tribunal  
London, UK  
25 August 2022

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