FIVB
Disciplinary Panel
Decision

In the matter of
Ms. Lucia Paz LOZANO LORENZINI
(Chile)

23 May 2014
THE FIVB DISCIPLINARY PANEL

Constituted in accordance with Article 8.1.2
of the FIVB Medical and Anti-Doping Regulations

and composed by

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
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<tbody>
<tr>
<td>Ms. Margaret Ann Fleming, Chair</td>
<td>(Scotland) Disciplinary Panel Vice-Chair</td>
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<tr>
<td>Ms. Sabinah Clement</td>
<td>(British Virgin Islands) Disciplinary Panel Member</td>
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<td>Dr. Annie Peytavin</td>
<td>(France) Medical Commission Member</td>
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At the hearing which took place via telephone conference
on 8 May 2014, 3 P.M. Swiss Time, heard the case identified as n. 8981:

FACTUAL BACKGROUND

1. On 25 March 2014, the FIVB was notified by the WADA-accredited Laboratory in Bogota, Colombia regarding an Adverse Analytical Finding for the A-sample 8981, which contained the prohibited substance “methylhexaneamine (dimethylpentlyamine)”.  
2. The above-mentioned urine sample was taken in-competition on 8 February 2014 in Osasco, Brazil during the CSV South American Women Club Championship and belongs to the athlete Ms. Lucia Paz LOZANO LORENZINI (Chile, born 29.03.1994, hereinafter the “Athlete”).  
3. On 1 April 2014, the FIVB contacted the Federación de Voleibol de Chile and through it informed the Athlete of her right to request the analysis of the B sample and to attend the opening thereof.  
4. By email of 9 April 2014, the Athlete expressly waived here right to have her B Sample opened, and sent a written statement to the FIVB explaining how the substance entered her body. The Athlete in essence submitted that:
   - She was surprised she tested positive;
   - She took the substance Jack 3d as stated on her doping control form;
• She researched the product after she received the letter informing her of her positive test and found that it contained the substance “methylxamina”;

• She took the product without knowing that it contained this substance and without consulting any doctors or trainers;

• She took this without the intention of gaining a sporting advantage but rather merely to control her weight;

• Ultimately, she took this substance without trying to enhance her performance and without knowing that the substance was prohibited by WADA.

5. By letter dated 17 April 2014, the FIVB informed the Athlete that (a) she had the right to be heard before the FIVB Disciplinary Panel either by telephone conference or by a hearing in person and (b) the FIVB had received the Athlete’s position sent by email on 9 April 2014 which would be provided to the Panel before the Hearing.

6. By email of 2 May 2014 the Athlete opted to be heard via telephone conference.

7. On 8 May 2014, the hearing via telephone conference was attended –aside from the FIVB Disciplinary Panel– by the Athlete. Also in attendance were the FIVB legal advisor Mr. Andreas Zagklis and the FIVB Medical and Anti-Doping Manager Mrs. Nadège Veintimilla.

8. The Athlete answered questions from the Panel and was given ample opportunity to explain her position and request a reduced sanction. She confirmed the written statement of 9 April 2014, in outlining that:

• She took the supplement, Jack 3d, without informing her coach or training staff;

• She took the supplement without researching what was in the supplement and stated that she was unaware of the Specified Substance’s presence in the supplement until after these proceedings had already been initiated;

• She confirmed that she did not take the supplement to enhance her sporting performance but rather, took the supplement in order to control her weight because she had been gaining weight due to her inability to train for a long
period of time. Specifically, she had suffered an abdominal injury before the Christmas break in 2013 and, upon return to her club’s activities in early January, she realized that she was still unable to train and that she had gained weight;

- Some friends from her gym that she knew told her that the supplement was a fat burner so she took it based on their advice without looking into its contents. She did not buy the product but simply used for a short period of time the quantity given to her by a friend in the gym;

- She stated that she took the product over a two week period before the competition in Brazil and consumed four tablets during that time, the last of which was taken one day before the competition;

- She did not buy the product but received it from friends who were not athletes themselves. This product was very “trendy” ("de moda", according to the Athlete’s testimony in Spanish) and many people were taking it in the gym;

- She stated that her club did not have doctor but merely have a physiotherapist;

- She stated that she did not have any anti-doping education and had merely experienced the doping control process during a competition four years earlier, where she tested negative;

- She is an amateur athlete since there is no professional volleyball in Chile. She is currently studying and living in Curico, Chile and will travel to Santiago where her club has its premises only when there is an evening training, namely a few times a week;

- She expressed regret over taking this supplement and emphasized that it was merely a mistake.
LEGAL CONSIDERATIONS

9. According to the WADA 2014 Prohibited List, the substance methylhexaneamine is included in the category S6 (Specified Stimulants) and is prohibited both in- and out-of-competition.

10. According to Article 2.1 of the FIVB Medical and Anti-Doping Regulations ("FIVB MADR") and of the World Anti-Doping Code, the presence of a prohibited substance in an athlete’s bodily specimen constitutes an anti-doping rule violation, sanctioned as per Article 10 of the FIVB MADR.

11. The above-mentioned sample (Nr. 8981) belongs to the player Ms. Lucia Paz LOZANO LORENZINI.

12. No Therapeutic Use Exception (T.U.E.) exists in this case, as per Article 4.4 of the FIVB MADR.

13. Therefore, being the presence of the prohibited substance in the Athlete’s urine undisputed, the anti-doping rule violation is established. This fact remained uncontested.

14. The Panel emphasizes that, according to Article 2.1 of the FIVB MADR

   "It is each Athlete's personal duty to ensure no Prohibited Substance enter his or her body. Athletes are responsible for any prohibited substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is no necessary that intent, fault, negligence or knowing use, by the athlete’s part, be demonstrated in order to establish an anti-doping violation under art. 2.1."

   (emphasis added)

15. The Panel shall review whether Article 10.4 is applicable to the case at hand because the prohibited substance found in the Athlete’s sample is a specified substance. Article 10.4 provides for the possible reduction of the otherwise applicable period of ineligibility under exceptional circumstances only, if the Athlete can (1) establish how the Specified Substance entered her body or came into her possession and (2) that the Specified Substance was not intended to enhance the Athlete’s performance or mask the use of a performance-enhancing substance.

16. The Panel finds that the Athlete has, on a balance of probabilities, successfully established how the prohibited substance entered her system by submitting that
she took an over-the-counter weight loss supplement, Jack 3d, which is known to contain the Prohibited Substance in question. The Athlete admitted to using Jack 3d on her Doping Control Form. Moreover, her own posterior research as well as past CAS jurisprudence demonstrate that Jack 3d contains the Specified Substance that the Athlete tested positive for.

17. When it comes to the second part of the analysis, as required by Article 10.4, the Panel finds that the Athlete has sufficiently demonstrated that the Specified Substance was not intended to enhance her sporting performance. The general consensus in anti-doping jurisprudence is that taking a product for weight loss is not usually considered an intentional attempt to enhance sporting performance. In addition, the Athlete did not take this prohibited substance, which is a stimulant, on the day of the competition. The pattern of use, only 4 pills over a period of 2 weeks, the last being one day before the competition, is not consistent with the use of methylexaneamine for performance enhancing purposes. In addition, the Panel notes that the Athlete was not aware that the supplement contained such prohibited substance.

18. Furthermore, the Athlete testified both in writing and at the hearing that she was taking the product in order to lose weight. The Panel did not see or hear anything that undermines the Athlete’s statement. The Panel’s view of the Athlete’s credibility as it relates to her expressed reasons for taking the substance are further buttressed by the fact that the Athlete admitted to taking Jack 3d on her Doping Control Form. If the Athlete were trying to use the product in order to enhance her sporting performance, she would not have admitted to taking it on the Doping Control Form. Thus, the Doping Control Form acts as corroborating evidence that the Athlete did not seek to enhance her sporting performance. Based on the above, the Panel is convinced that the Athlete was not trying to gain a sporting advantage but merely made the mistake of taking a product that contained a Specified Substance.

19. In determining the length of the sanction and a possible reduction or mitigation, the Panel must take into account the degree of fault by looking at the circumstances of
this case. In particular, the Panel focuses on circumstances such as the level of the Athlete, age of the Athlete, anti-doping education, organized versus unorganized volleyball environment, whether or not the Athlete researched the product, etc.

20. Regarding the reduction of the sanction in question, the Panel first notes that the Athlete received the supplement from a friend at her gym. She did not attempt to research the product or ask her trainer or medical personnel. A simple internet search would have revealed that this product contained the Prohibited Substance. This is demonstrated based on the fact that the Athlete’s internet search after receiving the FIVB’s letter informing her of her positive test revealed that the product contained the banned substance. Moreover, Jack 3d has been the subject of many anti-doping bans which was also information that was easily accessible by the internet. Thus, the circumstances of this case do not justify a sanction close to the lower end of the range, i.e. to a reprimand and no period of ineligibility.

21. However, the Panel also notes that the Athlete, at age 19 at the time of her positive test, is very young and inexperienced in doping matters. Specifically, the CSV South American Women Club Championships was one of her first tournaments as a senior player. As such, she was not completely familiar with the FIVB’s or the CSV’s anti-doping procedures. Moreover, the Panel also highlights the fact that the Athlete previously had no anti-doping education. Coupled with her lack of experience, this fact further demonstrates the Athlete’s regrettable naïveté to the anti-doping rules and process. She also did not have a club doctor to consult with regarding the product and guide her in relation to supplements. These factors favor a reduction of the otherwise 2-year applicable sanction.

22. The Panel concludes that, in the circumstances detailed above, the Athlete clearly failed to exercise the care that one could reasonably expect from her. However, the Panel finds that the conditions of Article 10.4 of the FIVB MADR are met and a reduction of the standard 2-year period of ineligibility by one half is warranted.

23. Lastly, given that the FIVB did not impose a provisional suspension on the Athlete and that she has been allowed to participate in competitions to date, the applicable
sanction shall start as of the date of this decision, in accordance with Article 10.9 of the FIVB MADR.

24. In view of the above legal analysis and the evidence on file, considering also that this is the Athlete’s first anti-doping violation.

Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL
Concludes and Decides

1. The athlete Ms. Lucia Paz LOZANO LORENZINI has committed an anti-doping rule violation.

2. A sanction of one (1) year of ineligibility is imposed on the athlete Ms. Lucia Paz LOZANO LORENZINI.

3. The period of ineligibility shall start on 23 May 2014 and end on 22 May 2015.

4. This decision may be appealed in accordance with the attached Notice of Appeals.

Decided in Lausanne, on 23 May 2014

For the FIVB DISCIPLINARY PANEL

Ms. Margaret Ann Fleming
Chair
NOTICE OF APPEALS
(doping cases)

An appeal may be filed against this decision exclusively before the Court of Arbitration for Sport (CAS), in accordance with Article 13 of the FIVB Medical Regulations and with the provisions of the Code of Sports-Related Arbitration (see www.tas-cas.org).

The time-limit to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of this decision by the appealing party.

In accordance with Article 18.6 of the FIVB Medical Regulations: “Notice to an Athlete or other Person who is a member of a National Federation may be accomplished by delivery of the notice to the National Federation.”

In the event of an appeal, this decision shall remain in effect while under appeal unless the CAS orders otherwise.

The address and contact details of the CAS are the following:

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne, Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org