

INTERNATIONAL OLYMPIC COMMITTEE

**IOC DISCIPLINARY COMMISSION
DECISION**

**REGARDING STEFAN SCHUMACHER
BORN ON 21 JULY 1981, ATHLETE, GERMANY, CYCLING - ROAD**

(Rule 23.2.1 of the Olympic Charter)

1. On 4 August 2008, at approximately 09:30, Stefan Schumacher (hereinafter the "Athlete"), a participant in the Games of the XXIX Olympiad in Beijing (the "2008 Olympic Games") was requested to provide a pre-competition blood sample for a doping control.
2. On 13 August 2008, the Athlete competed in the Men's Individual Time Trial event of the 2008 Olympic Games, in which he placed 13th.
3. The above-noted A sample of the Athlete was tested during the 2008 Olympic Games by the WADA-Accredited Laboratory in Beijing for Recombinant Human Growth Hormone, but did not give rise to an adverse analytical finding at the time.
4. After the end of the 2008 Olympic Games, the A and B samples collected from the Athlete were sent to Lausanne, at the WADA-Accredited "Laboratoire Suisse d'Analyse du Dopage" (hereinafter the "LAD"), along with other samples from other athletes collected upon the occasion of the 2008 Olympic Games.
5. The International Olympic Committee (hereinafter the "IOC"), pursuant to Article 6.5 of the *IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008* (the "*Rules*"), decided in January 2009 to perform further testing on the samples collected during the 2008 Olympic Games, targeting mirCERA© (hereafter "CERA", a third generation of EPO) and insuline.
6. The remaining portion of the A sample of the Athlete was subject to a screening test for the prohibited substance CERA by the LAD, and subsequently sent for analysis to the WADA-Accredited "Laboratoire d'Analyses de l'Agence Française de Lutte contre le Dopage" (hereinafter the "LAAFLD").
7. Pursuant to Article 7.2.1 of the *Rules*, the representative of the Chairman of the IOC Medical Commission, Dr. Patrick Schamasch, was informed on 28 April 2009, by the Head of the LAAFLD, of an adverse analytical finding on the A sample of the Athlete.
8. Pursuant to Article 7.2.2 of the *Rules*, Dr. Patrick Schamasch determined that the above-noted A sample belonged to the Athlete, and verified that it did in fact give rise to an adverse analytical finding. He also determined that there was no apparent departure from the International Standards for Testing or the International Standards for Laboratories that undermined the validity of the adverse analytical finding.
9. Pursuant to Article 7.2.3 of the *Rules*, the IOC President, Dr. Jacques Rogge, was promptly informed of the existence of the adverse analytical finding and the essential details concerning the case.
10. Pursuant to Article 7.2.4 of the *Rules*, the IOC President, by letter dated 28 April 2009, set up a Disciplinary Commission, consisting of:
 - Denis Oswald (Chairman)
 - Frank Fredericks

- Gerhard Heiberg

The IOC President decided that the decision of the Disciplinary Commission shall constitute the decision of the IOC.

The IOC President has in this case decided that the procedure may be extended beyond the 24-hour time-limit as per Article 7.2.13 of the *Rules*.

11. Pursuant to Article 7.2.5 of the *Rules*, by letter dated 28 April 2009 notified to the Athlete, to the Director General of the Deutscher Olympischer SportBund, to the Secretary General of the Union Cycliste Internationale (UCI) and to the Head of the Independent Observers' Programme, the IOC President advised of, among other things, the above-mentioned adverse analytical finding and that the Athlete had the option to attend a hearing of the Disciplinary Commission and/or to submit a defence in writing. In this letter, the Athlete was also informed of his right to request the analysis of the B sample; it was already mentioned that the B sample opening and analysis would take place on 11 June 2009, at 9:00 a.m. at the LAAFLD, if requested.

The analytical report of the laboratory analysis of the A sample, prepared by the Head of LAAFLD in Paris and attached to the above-mentioned letter dated 28 April 2009, indicated the presence of the prohibited substance CERA.

12. In a letter dated 8 May 2009, the Athlete, through his attorney, requested to be provided with additional documents before deciding whether to request the B sample analysis. He also disqualified the LAAFLD alleging this laboratory was biased. The IOC Legal Affairs Department answered that the LAAFLD was WADA-accredited and that the B sample analysis should be performed by the same laboratory as the A sample analysis according to the International Standard for Laboratories. Therefore, the IOC decided to uphold the B sample analysis in the LAAFLD on 11 June 2009, if so requested by the Athlete.

In a letter dated 29 May 2009, the IOC Legal Affairs Department granted the Athlete a deadline until 9 June 2009, at 6 p.m., to exercise his right to request the B sample analysis on the scheduled date of 11 June 2009. The Athlete did not exercise his right within that deadline. He was informed by the IOC, by a telefax of 9 June 2009 at 6:09 p.m. to his attorney that the IOC had chosen to have the B sample tested nevertheless on 11 June 2009. A new deadline until 10 June 2009 was granted to the Athlete to communicate to the IOC if he would attend or send a representative to attend the B sample analysis. The Athlete replied that the conditions for a regular B sample analysis were not met; he did not request the B sample analysis be postponed.

13. As announced to the Athlete, the opening and analysis of the B sample occurred on 11 June 2009, in Paris, at the LAAFLD. Neither the Athlete, nor his representative were present on this occasion. However, Mr Jean-Louis Prat attended to the B sample analysis as an independent observer, in compliance with the International Standards.

The B sample analysis result confirmed on 17 June 2009 the finding of the A sample analysis, indicating the presence of CERA in the B sample.

The A and B sample Laboratory Packages and certificates have been sent to the Athlete, through his attorney.

14. By a letter of the IOC dated 12 June 2009, the Athlete has been informed of the date of the hearing of the Disciplinary Commission. All relevant parties have been informed accordingly as well.

The Athlete was also granted, by the IOC upon request from the Athlete, a deadline extension until 20 July 2009 to submit his defence in writing.

15. On 15 June 2009 and again on 29 June 2009, Mr. Rashid Ramzi's attorney sent letters on behalf of, by and through their undersigned counsel, Mr. Ramzi, Mr. Davide Rebellin, the Athlete and Ms. Yudelquis Contreras, requesting information and a number of documents from the IOC, including, but not limited to, "[A]ll documents relating to or concerning the collection of all blood, serum and/or urine samples taken from the athletes during the Games of the XXIX Olympiad, Beijing 2008, "and documents concerning the LAAFLD's CERA test method, and information regarding any testing, and the results of the testing performed on the athletes' other samples provided during the 2008 Olympic Games.

The IOC answered by providing relevant documentation and reminding the Athlete that a number of the requested documents were in the A and B samples Laboratory Packages, which were previously provided to the Athlete by the IOC.

In its letter dated 13 July 2009, the IOC provided the Athlete with the following documents relating to the validity of the method used by the LAAFLD:

- Attestation from Ms. Françoise Lasne, Head of the Biology Section of the Analysis Department of the LAAFLD dated 7 July 2009;
- Attestation from Pr. Jacques de Ceurriz, Director of the Analysis Department of the LAAFLD dated 7 July 2009;
- Attestation from Mr. Olivier Rabin, Scientific Director of WADA dated 8 July 2009; and
- Attestation of accreditation from the Comité Français d'Accreditation ("COFRAC") for the LAAFLD dated 30 June 2009.

16. The Athlete made a written submission dated 20 July 2009.

In his written submission, the Athlete, through his attorney, alleges that the burden of proof has not been met. In support of his defence, the Athlete stated, in summary, that :

- The chain of custody is deficient;
- The A and B samples cannot be associated with him;
- The analytical method conducted by the LAAFLD was not accredited at the time of the analyses of his samples;
- The B sample analysis has been arbitrarily performed without his consent;
- The LAAFLD is biased and the B sample analysis should have been performed in another laboratory;
- The LAAFLD has not performed the samples analysis pursuant to the WADA Technical Document TD2009EPO; therefore, his samples could have been contaminated;
- The screening analyses performed by the LAD are not reliable.

17. The Disciplinary Commission held a hearing on 27 July 2009 at approximately 2:30 pm, at the IOC Headquarters in Vidy, Lausanne, in the Coubertin Room, in the presence of :

- Mr. Stefan Schumacher, Athlete
- Dr. Michael Lehner and Dr. Thomas Badelt, lawyers, assisted by Ms. Caroline Bechtel

18. The Union Cycliste Internationale (UCI) was represented at the hearing by Mr. Philippe Verbiest, UCI Counsel, and Ms. Anne Gripper.

19. Also attending the hearing were:
- Dr. Patrick Schamasch, Director of the IOC Medical and Scientific Department
 - Mr. Andre Sabbah and Mr. Christian Thill, IOC Legal Department
 - Dr. François Carrard, IOC Counsel
 - Dr. Martial Saugy, external scientific expert
 - Ms. Soheyla Behnam, Ms. Cherine Fahmy and Ms. Sophie Berwick, IOC staff
20. At the hearing, the Athlete stated that he had not taken any prohibited substances. Through his lawyers, the Athlete reiterated the arguments he made in his written submission, notably that the LAAF LD was not accredited and that no validation study was available at the time of the tests. The Athlete submitted that it was improper for his B sample to be analyzed without his consent pursuant to the 2003 World Anti-Doping Code (WADC). He also raised the argument that some of the people who had worked on the A sample were involved in the B sample analysis, which is not allowed by the 2008 International Standard for Laboratories. He stated that the chain of custody was deficient and did not believe that his sample had been kept frozen during transportation. Additionally, the Athlete contends that the IOC has not provided any details about the A sample analysis conducted by the Beijing Laboratory and about the complete chain of custody. In particular, the Athlete alleges that the transport conditions remain unclear (namely the cooling and the supervision of the containers).
21. Upon hearing the Athlete and his lawyer, the Disciplinary Commission declared the hearing closed and informed the Athlete that a decision would be rendered in due course after the Panel took the time to consider and address the various issues at hand.
22. After a careful review of the Athlete's arguments and all the documents relating to the chain of custody between the Beijing Laboratory and the LAAF LD, the Disciplinary Commission is satisfied that no deviation occurred. Moreover, even if such a deviation had occurred in the chain of custody, with the consequence of causing an alteration of the samples, such deviation and alteration could not have caused a positive result. As Dr. Martial Saugy, Director of the LAD, previously explained to the Disciplinary Commission, since CERA is a very specific synthetic substance, it cannot appear in a blood sample through an alteration process of such sample. On the contrary, Dr. Saugy, further explained that an alteration of a sample, due, for example, to insufficient cooling conditions during transport, would more likely lead to a false negative, as the alteration of the sample would eliminate the prohibited substance, rather than create it. Put another way, samples that are not properly transported would not create a false positive but might prevent an adverse analytical finding due to an elimination of the prohibited substance.
23. The Athlete submits that some packages containing samples have been opened and were damaged when they arrived in Lausanne. However, Dr. Saugy has confirmed in a written statement dated 5 June 2009, which was submitted to the Athlete by the IOC via email on the same date, that no blood samples were in the box that was delivered open to the LAD. The Disciplinary Commission has no reason to depart from the attestation provided by Dr. Saugy. The Athlete further argued that the translation from Chinese to English of the documents relating to the samples' transport conditions was not made by a sworn translator. The Disciplinary Commission does not doubt the correctness of the translation from Chinese to English of the documents relating to the samples' transport conditions. Furthermore, the Disciplinary Commission notes that the Athlete did not establish that any error occurred in that translation of these documents.
24. With reference to the case of an athlete where the B sample analysis turned out negative in the re-testing process, the Athlete contends that this case illustrates that the A and the

B samples were obtained from different athletes. Therefore, he argued that his samples cannot reliably be associated to himself.

This submission is not supported by any convincing evidence. On the contrary, the samples of the Athlete can be tracked from the collection at the doping station to the receipt of the samples at the LAAF LD. The doping control form signed by the Athlete on 4 August 2008 indicates that the code N° 282687 has been attributed to his blood sample. The document packages issued by the LAD and by the LAAF LD always refer to this code N° 282687 and the Athlete does not show, on a balance of probabilities, that the samples in dispute could be associated to another athlete but him.

25. The Athlete argues that the analyses of the A sample and B sample were performed outside the scope of accreditation of the LAAF LD. The Athlete submits that the LAAF LD was not permitted to use the analytical method in dispute before 1st July 2009 pursuant to article 4.4.10 of the International Standard for Laboratories (ISL). The Athlete contends that, pursuant to this provision, a new analytical method should be validated by WADA before its implementation and that no study of validation has been provided to the Athlete.
26. The Disciplinary Commission notes that the LAAF LD performed an isoelectric focusing and immunodetection after immunoextraction method ("IEF method") in order to detect CERA, and further notes that the IEF method is not new, since it has been previously approved (since many years) for urine sample analyses.. In this respect, the LAAF LD has been granted the accreditation ISO/IEC 17025 from the Comité français d'accréditation (COFRAC). According to article 4.4.10 ISL, *"WADA accredited Laboratories may modify or add analytes to existing scientific methods to expand their scope or develop new methods that involve technology already within the scope of accreditation without the need for approval by the body that completed the ISO/IEC 17025 accreditation of that Laboratory. To have a Flexible Scope of Accreditation, the laboratory must have within its quality management documentation processes for method validation/acceptance, competence of key personnel, record keeping and reporting"*. In conformity with this provision, the LAAF LD could validly perform the IEF method, which is accredited for urine samples, to detect CERA in blood samples.

Pursuant to an attestation dated 10 September 2009 from Pr Jacques de Ceaurriz, Director of the Analysis Department of the LAAF LD, the Disciplinary Commission notes that the validation study was completed by the LAAF LD on 25 September 2008. Contrary to the Athlete's submission, the validation study was finished when the A and B samples analyses were performed, which have therefore been conducted in accordance with art. 4.4.10 ISL.

Moreover, the extension of the IEF method for the detection of prohibited substances in blood samples has been accredited by the COFRAC on 30 June 2009. This accreditation is a confirmation that the method is reliable. The Disciplinary Commission is of the view that the IEF method could be validly performed on blood samples before the notification of the extension of the accreditation dated 30 June 2009 of the COFRAC, since it is not a new method but an only application of a pre-existing method. The Disciplinary Commission also notes that this method has been published in a peer review, namely "haematologica" (2009; 94(6); p. 888-890).

In addition, the Disciplinary Commission took note of a decision dated 28 October 2009 (decision Nr. 327306 - publicly available on : <http://www.conseil-etat.fr/cde/node.php?articleid=1833>), in which the Conseil d'Etat of France rejected an appeal filed by Mr S. against the sanction ordered by the LAAF LD for an anti-doping rule violation for the presence of the prohibited substance CERA in his body during the 2008 Tour de France. The Conseil d'Etat held that the LAAF LD could retrospectively carry out

analyses on samples already tested. Furthermore, the Conseil d'Etat held that accredited laboratories could use, in compliance with the International Standard for Laboratories, a method of analysis that had not been previously validated.

27. The Athlete stated that the B sample had been opened and analysed without his consent. Consequently, the Disciplinary Commission must determine if the IOC had the right to have the B sample analysed despite the Athlete's objection.

Pursuant to article 3.1 of the *Rules*, the Anti-Doping Organization, i.e. the IOC for the Olympic Games, has the burden of establishing that an anti-doping rule violation has occurred. Article 3.2 of the *Rules* provides that "*facts related to anti-doping rule violations may be established by any reliable means, including admission*".

The same provisions appear under arts. 3.1 and 3.2 of the WADA Code 2003 (WADC 2003) and of the WADA Code 2009 (WADC 2009).

The *Rules* and the WADC 2003 do not contain any specific provision with respect to the possibility for the anti-doping organization to analyze the B Sample if it is not requested by the Athlete. However, there are no provisions in the *Rules* which could imply a prohibition for the anti-doping organization to conduct such an analysis for the purpose of meeting its burden of proof. In addition, art. 3.2 of the *Rules* permits the Anti-Doping Organization to meet its burden of proof by any reliable means. Conducting the B sample analysis when the A sample analysis results are contested constitutes such a reliable means in order to establish the requested proof.

Before the entry into force of the WADC 2009, the case law had already permitted an Anti-Doping Organization to request a B sample analysis despite the refusal of the Athlete (CAS 2007/A/1794 Floyd Landis v. USADA).

The right of an anti-doping organization to request the B sample analysis is implemented in the WADC 2009, which contains several references to the right of an Anti-Doping Organization to discharge its burden of proof of establishing that an anti-doping rule violation occurred by having the B Sample analyzed.

In particular, the comment to art. 2.1.2 WADC 2009 states: "*The Anti-Doping Organization with results management responsibility may in its discretion choose to have the B Sample analyzed even if the Athlete does not request the analysis of the B Sample*". Articles 7.2, 7.3.1 and 7.5.2 WADC 2009 also implement the right of an anti-doping organization to request the B sample analysis. In the view of the Disciplinary Commission, these provisions confirm and implement in the WADC a pre-existing practice.

Based on the above, the Disciplinary Commission holds that the IOC could request the analysis of the B sample – despite the Athlete's objections – in order to meet its burden of proof of establishing that an anti-doping rule violation occurred.

28. In addition, the Athlete claims that he had not been provided with all the relevant documentation before the B sample analysis was performed. In particular, the study of validation was missing which prevents a proper supervision of the B sample analysis since the representative he would have appointed could not familiarise himself with the new analytical method.

The Disciplinary Commission notes that the IOC complied with article 7.2.5 letter d) of the *Rules* by sending to the Athlete the A and B laboratory packages. The Athlete's rights have been respected. Moreover, the IEF method is not a new method. In this respect, the

request of the Athlete to be provided with additional documents allegedly to be in a position to correctly supervise the B sample analysis is without merit.

29. The Athlete also contends that he has not been informed of the B sample opening in a timely manner.

In the view of the Disciplinary Commission, the Athlete had been duly informed, by letter dated 28 April 2009 of the IOC President, that the B sample would be opened and analysed, if requested, on 11 June 2009, at 9:00 a.m. The Athlete waived his right to have the B sample analysed, as he did not address such a request within the deadline set for 9 June 2009. Nevertheless, he was informed by a fax sent on 9 June 2009, at 6:09 p.m. to his attorney, that the B sample would be analysed upon the IOC's request and that he could attend to the opening and analysis. In the Disciplinary Commission's opinion, the argument of the Athlete falls short since he waived his right to request the B sample analysis. In this respect, he cannot complain that he could allegedly not attend to the analysis or send a representative to attend to it. The Disciplinary Commission stresses that the Athlete did not ask for the B sample analysis to be postponed so that he could make himself available to attend to it.

30. The Athlete was, and still is, in litigation with the French authorities to challenge a suspension pronounced on 22 February 2009 by the Agence Française de Lutte contre le Dopage following an analysis made by the LAAF LD. The Athlete contends that the analyses of the LAAF LD are biased since the A sample analysis is used in the legal proceedings following the doping control during the Tour de France 2008 for the defence of the Agence and its laboratory. The B sample analysis should have been conducted in another laboratory.

Pursuant to article 6.2.4.2.2.2 of the ISL 2009, which is applicable to sample analyses made in 2009, the B sample confirmation shall be performed in the same laboratory as the A sample. In this respect, the IOC had no other choice but to have the B sample analyzed at the LAAF LD, in conformity with the mandatory provisions of the ISL. The Disciplinary Commission notes that the analysis of the B sample was performed under the supervision of an independent observer. Furthermore, in a double reading of an adverse analytical finding for EPO, the WADA-Accredited doping control laboratory of Barcelona examined the counter-analysis data of the B sample provided by the LAAF LD, and confirmed the positive result. Therefore, the B sample analysis conducted by the LAAF LD is fully reliable.

31. According to the Athlete's defence, the A and B samples analyses have not been conducted according to the WADA technical document TD2009EPO. He supports that his samples have allegedly been contaminated by a previous use of the column in the analytical method.

This allegation is contradicted by the attestation dated 7 July 2009 of Ms. Lasne, Head of the Biology Section of the Analysis Department of the LAAF LD, who confirms that the samples have been tested according the WADA technical document TD2009EPO. The Disciplinary Commission notes that the Athlete offered no evidence to support that a departure of the ISL occurred. The Disciplinary Commission therefore concludes that no departure from the ISL occurred in that respect.

32. The Athlete points out that the analysis performed in Lausanne was only a screening procedure from which no reliable conclusion can be drawn with regard to the presence of a prohibited substance in his body. This argument is irrelevant. The anti-doping violation is established by the analyses of both the A and B samples performed by the LAAF LD. The screening procedure conducted by the LAD serves only as a screening process to identify the presence of CERA and to refer the case to the LAAF LD for analysis.. The

anti-doping violation is sufficiently established by the LAAFLD documentation packages which clearly show that CERA was detected in the blood samples provided by the Athlete.

33. At the hearing, the Athlete submitted that a departure from the ISL occurred since some people of the LAAFLD were allegedly involved in both A and B sample analyses. This argument is rejected. Pursuant to the 2009 version of the ISL, which is applicable since the analyses have been conducted in 2009 by the laboratory, article 6.2.4.2.2.2 no longer prevents the same analysts to be involved in both samples analyses.

Moreover, the Disciplinary Commission notes that, even under the ISL applicable in 2008, the same analysts were allowed to take part in the A and B analytical procedures as long as they did not work on some parts of the procedure when both A and B aliquots were open and accessible (article 6.2.4.2.2.2 of ISL 2008). Even if the 2008 version of the ISL applied, which is not the case, the Disciplinary Commission notes that the same analysts were involved in the "A" analytical procedure were not involved in the "B" analytical procedure when the aliquots were open and accessible.

34. The Disciplinary Commission notes that several weeks have passed since the hearing. Given the serious nature of the case, the amount of documents in the file, and the technical nature of the information, it was necessary for the Disciplinary Commission to take the necessary time to carefully review and analyse the numerous documents, arguments and issues.
35. After carefully considering the Athlete's arguments and the various complex issues at hand, and based upon the testimony, documents and information available, the Disciplinary Commission unanimously concludes that the Athlete has committed an anti-doping rule violation pursuant to Article 2.1 of the *Rules* in that there was the presence of the prohibited substance CERA in his body.

CONSIDERING the above, pursuant to the Olympic Charter and, in particular, Rule 23.2.1 thereof, and pursuant to the *IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008* and, in particular, Articles 2.1, 8 and 10 thereof

THE DISCIPLINARY COMMISSION OF THE
INTERNATIONAL OLYMPIC COMMITTEE
DECIDES

- I. The Athlete Stefan Schumacher, Germany, Cycling, is disqualified from Men's Individual Time Trial event of the Beijing 2008 Olympic Games, where he had placed 13th;
- II. The Union Cycliste Internationale is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
- III. This decision shall enter into force immediately.

Lausanne, ____ November 2009

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