Arbitration CAS 2022/A/9141 Mariano Tammaro v. International Tennis Federation (ITF), award of 7 November 2023 (operative part of 2 March 2023)

Panel: Mr Hans Nater (Switzerland), President; Prof. Massimo Coccia (Italy); The Hon. Michael Beloff KC (United Kingdom)

Tennis
Doping (clostebol)
Applicable law
Effect of peripheral inconsistencies and variation of testimonies on their validity
Extent of the athlete's duty of care
Elimination or reduction of the sanction for No Significant Fault in the case of a Protected Person
Assessment of the athlete's level of fault when the fault comes after the violation
Extent of the athlete's responsibility for the fault of the entourage

1. **An Anti-Doping Rule Violation (ADRV) will be governed by the substantive anti-doping rules in effect at the time the alleged ADRV occurred unless the hearing panel determines that the principle of *lex mitior* appropriately applies under the circumstances of the case. The procedural aspects of the case will be governed by the rules in force at the time of the proceedings. In addition, pursuant to the applicable regulations, a national law shall be applied on a subsidiary basis to any issues with which the applicable regulations do not deal.**

2. **Peripheral inconsistencies and variations do not cast doubt on the written and oral testimony of the athlete as to how the prohibited substance was administered. It can be expected that a witness' ability to recall details of a particular event, in writing or orally in a hearing, at different points in time in the months following that event can lead to slight variations or even confusion in the witness' explanations. Furthermore, the translation of testimonies into English can lead to certain differences and nuances in the terms that are used and translated. What is more important are the undisputed facts.**

3. **Athletes have a fundamental duty to do everything in their power to avoid ingesting any prohibited substance and to maintain utmost caution. It is also the duty of the athletes to ensure that they do their best to avoid and mitigate any violation, including the continuing presence of a prohibited substance in their body. The required exercise of utmost care to know or suspect that a prohibited substance or method has been used or has been administered or otherwise an anti-doping rule has been violated is not limited to the moment when the prohibited substance is used or administered (and the time period before) but extends to the subsequent conduct of the athlete. In this respect, a player who did not have the opportunity to object to the medical treatment he received but who however did not even think to carry out the most superficial**

investigations to find out what had been used on him, clearly does not act without fault or negligence and is liable for the ADRV.

4. **Pursuant to Appendix 1 to the 2021 Tennis Anti-Doping Programme (TADP), an athlete who has not reached the age of 18 but participate in an International Event in an open category loses his status of Protected Person and should receive the same treatment as other elite athletes against whom he is competing. Where the presence of the non-specified substance is detected *after* the player participated in the relevant Event, the more flexible sanctioning regime granted to Protected Persons by the 2021 TADP i.e. elimination of the period of suspension if the Protected Person bears no Significant Fault, does not apply and the sanction may be reduced to no less than one-half of the period of ineligibility otherwise applicable. Thus, where the violation is not intentional and involves a non-specified substance, the breadth of the possible sanction ranges from twelve (12) to twenty-four (24) months, depending on whether the player is able to prove, by a balance of probability, that he bore no significant fault or negligence for the ADRV.**

5. **Where a non-specified substance is involved, the allocation of the sanction range to the degrees of fault is as follows: *"Significant degree of or considerable fault"*: No reduction of the otherwise applicable sanction (Article 10.6.2 of the 2021 TADP); *"Normal degree of fault"*: 18 to 24 months, with a standard normal degree of fault of 21 months; *"Light degree of fault"*: 12 to 18 months, with a standard light degree of fault of 15 months. The level of fault or negligence always depends on the particular circumstances of the case at hand. While similarities with existing decisions can give certain indications, each case must be decided individually. Pursuant to the 2021 TADP, factors to be taken into consideration in assessing a player's degree of fault include, *inter alia*, (i) the player's youth/experience /education, (ii) whether the player is a Protected Person, (iii) special considerations such as impairment, (iv) the degree of risk that should have been perceived by the player, and (v) the level of care and investigation exercised by the player in relation to what should have been the perceived level of risk. Both the *objective* and the *subjective* level of fault are to be considered. The subjective elements for the determination of fault can move an athlete from one category of fault to the other. The objective elements of fault imply to assess the standard of care that could have been expected from a reasonable person in the player's situation. The objective elements should be foremost in determining into which of the three relevant categories a particular case falls and relate to the intake of an unknown product by the athlete exclusively. These objective elements refer to the obligations of the athletes *prior* to the intake of a product. *After* the facts, the athlete remains under a duty to deal appropriately with the presence of a potentially prohibited substance in his or her body. In a situation in which the player departed from his duty of care only *after* the involuntary application of an unknown product, the objective degree of fault is less significant than in a situation where the duty of care was violated *before* such application. As an additional mitigating factor for the determination of the objective degree of the player's fault, the fact that the relevant product was used only once and not over an extended period of time is relevant.**

Turning to the subjective degree of fault, the age of the player is a relevant factor. Likewise, the fact that the player did not comply with the standard of care that could have been expected from a reasonable person in the player's situation when he was still a Protected Person i.e. when the unknown product was administered to him, and had never participated in a Covered Event before, is also relevant.

6. **In principle, a player's responsibility includes that he is responsible for the behaviour of his entourage, be it his coaches, his medical staff as well as the members of his family. However, where the objective and subjective fault of the player's parents is more severe that the fault of the player, notably because they decided to apply the relevant product on the player without his consent and without carrying out sufficient anti-doping checks before, during and after the application of the product, the parent's fault cannot increase the fault of the player which is limited to his omissions after the involuntary application of the product by his parents.**

I. PARTIES

1. Mr. Mariano Tammaro (the "Player" or the "Appellant") is an Italian tennis player. He was born on 27 February 2004. He held a career-high ITF Junior ranking of 106.

2. The International Tennis Federation ("ITF" or the "Respondent") is the international governing body for the sport of tennis worldwide. The ITF is a signatory to the World Anti-Doping Code (the "WADA Code") and issues each year the Tennis Anti-Doping Programme (the "TADP").

3. The Appellant and the Respondent will be jointly referred to as the "Parties".

II. NATURE OF THE CASE

4. The issue under consideration in the present arbitration concerns the consequences of an Anti-Doping Rule Violation ("ADRV") for presence of a prohibited substance which is undisputed by the Player, in particular the issue as to whether the Player qualified as a Protected Person as defined in the TADP and whether the two year period of ineligibility imposed by the Independent Tribunal of the ITF must be eliminated or reduced because the Player bore, in fact, no fault or negligence or no significant fault or negligence for the ADRV.

III. BACKGROUND FACTS

5. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings and evidence adduced. Additional facts and allegations found in the

Parties' submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows in this Award. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the arguments and evidence it considers necessary to explain its reasoning.

6. The Player participated on 11 October 2021 in the Napoli 2 Challenger competition held in Napoli, Italy, from 11 October 2021 to 17 October 2021 ("the Event"), due to a "Wild Card" granted by the Italian Tennis Federation 24 hours before its start. He was then seventeen years old.

7. On 11 October 2021, the Player provided an in-competition urine sample at the Event. The urine sample was assigned the reference number 3167505 and was split into an A-sample and a B-sample, which were sealed in tamper-evident bottles and transported to the WADA-accredited laboratory in Montreal, Canada (the "Laboratory") for analysis.

8. On 30 October 2021, the Laboratory reported to the ITF that a Clostebol metabolite was detected in the Player's A-sample at an estimated concentration of approximately 40 pg/mL (= 0.04 ng/ml).

9. Clostebol metabolite is a prohibited substance as defined by the WADA Code.

10. On 19 November 2021, the ITF sent to the Player a Pre-Charge Notice notifying him about the A-sample and imposing on him a Provisional Suspension with effect from 30 November 2021. The ITF notified the Player that he may have committed an ADRV under Articles 2.1 and/or 2.2 of the 2021 Tennis Anti-Doping Programme (the "2021 TADP"). The ITF informed the Player that he had the opportunity to provide an explanation for the potential ADRV by no later than 30 November 2021. The Player was also informed that the B-sample would be analysed at the Laboratory on 29 November 2021 if the Player did not admit to the ADRV in the meantime.

11. On 30 November 2021, the Player, via his appointed representative, Mr. Ciro Pellegrino, provided his response to the Pre-Charge Notice. He admitted to the charge of the ADRV but disputed the imposition of default consequences. The Player also provided 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 1 October 2021 or 2 October 2021 on a bad wound that had affected the Player's knee between 25-26 September 2021 and which was not healing. In addition, the Player requested the analysis of the B-sample.

12. On 30 November 2021, the Laboratory reported that the B-sample confirmed the presence of Clostebol metabolite.

13. On 1 December 2021, the ITF notified the Player of the results of the analysis of his B-sample.

14. On the same date, the ITF formally notified the Player of a disciplinary charge for a violation of Articles 2.1 and/or 2.2 of the 2021 TADP, on the basis that Clostebol metabolite, a prohibited substance, was found to be present in the urine sample A3167505 that the Player provided at the Event on 11 October 2021. The ITF also asked the Player to file a written response to the charge by no later than 21 December 2021.

15. On 20 December 2021, the Player submitted his response, admitting again to the charge of the ADRV but disputing its consequences, and including further explanations and evidence.

16. By e-mail of 29 December 2021, the ITF invited the Player to provide any further evidence, information, and documentation, namely regarding proof of source and factors relevant to the analysis of the Player's fault, in order to consider whether or not the ITF was able to accept proof of source and submit an offer to resolve the matter without a hearing.

17. By e-mails of 26 January 2022 and 2 March 2022, the Player provided further evidence to the ITF.

IV. THE PROCEEDINGS BEFORE THE INDEPENDENT TRIBUNAL

18. By e-mail of 17 February 2022, the ITF asked Sport Resolutions to appoint an independent tribunal to hear the matter pursuant to Article 8 of the 2022 Tennis Anti-Doping Programme (the "2022 TADP"). On 24 February 2022, the chair of the independent panel, Mr. Charles Flint KC (then QC), appointed Mr. Lucas Ferrer as chair of the independent tribunal (the "Chair").

19. Pursuant to the e-mails of the ITF to the Player of 24 February 2022 and to Sport Resolutions of 1 March 2022, the Parties discussed whether the case could be resolved without a hearing. However, on 16 April 2022, the ITF informed about the Parties' agreement that the case should proceed to a hearing before the independent tribunal.

20. On 19 April 2022, the Chair issued, by agreement of the Parties, directions for the procedure before the independent tribunal.

21. On 16 May 2022, Dr. Leanne O'Leary and Professor Isla Mackenzie were appointed to the independent tribunal (together with the Chair the "Independent Tribunal") to hear and determine the dispute.

22. There was no dispute and/or challenge as to the jurisdiction and composition of the Independent Tribunal.

23. On 23 May 2022, the Player submitted his defense brief, including exhibits.

24. On 4 July 2022, the ITF submitted its answer, including exhibits.

25. On 29 July 2022, a hearing was held via videoconference. The Independent Tribunal, the Parties and their representatives were present. The hearing before the Independent Tribunal was recorded in a written transcript.

26. On 25 August 2022, the Independent Tribunal of the ITF issued the Appealed Decision. In short, the Independent Tribunal of the ITF considered that the Player was not a Protected Person as defined in the TADP and had satisfied his burden of proving the source of the prohibited substance, and, by a balance of probabilities, had very narrowly satisfied his burden of proving that his ADRV was not intentional. The Independent Tribunal of the ITF held, however, that the requirements for an elimination or reduction of the period of ineligibility – the Player showing that he bore no fault or negligence or no significant fault or negligence for the ADRV – had not been satisfied. The Independent Tribunal therefore concluded that the period of ineligibility had to be two years.

27. The Independent Tribunal of the ITF ruled as follows:

"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".*

V. THE PRESENT PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 12 September 2022, the Player, represented by his counsel, Mr. Ciro Pellegrino, filed his statement of appeal with the Court of Arbitration for Sport ("CAS") against the ITF and the International Tennis Integrity Agency (the "ITIA") (the "Statement of Appeal") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"). The Player appointed Mr. Massimo Coccia, Professor and Attorney-at-law in Rome, Italy, as arbitrator.

29. By letter of 15 September 2022, the CAS Court Office invited the Independent Tribunal to file an application if it intended to participate as a party in the arbitration and asked the Independent Tribunal to provide the CAS Court Office with an unmarked copy of the Appealed Decision.

30. On the same date, the CAS Court Office acknowledged receipt of the Statement of Appeal and informed the Parties and the ITIA that the arbitration had been assigned to the Appeals Arbitration Division of the CAS. The CAS Court Office also took note of the Player's request that the matter be expedited in accordance with Article R52 of the CAS Code and asked the ITF and the ITIA to inform the CAS whether they agreed with this request. The CAS Court Office invited the Player to file an appeal brief within ten (10) days following the expiry of the time limit for the appeal. Further, the CAS Court Office invited the ITF and the ITIA to jointly nominate an arbitrator.

31. By letter of 20 September 2022, the ITIA informed the CAS Court Office that it had not been party to the Appealed Decision and requested to be removed as a respondent.

32. By e-mail of 20 September 2022, Bird & Bird LLP informed the CAS Court Office that it had been instructed by the ITF to act in the arbitration and that the ITF objected to an expedited procedure.

33. By letter of 21 September 2022, the CAS Court Office informed that no expedited procedure would be implemented and invited the Parties to comment on ITIA's request to be removed as respondent by 28 September 2022.

34. On 22 September 2022, Sport Resolutions informed the CAS Court Office that neither the Independent Tribunal nor Sport Resolutions intended to participate in the matter and provided the CAS Court Office with an unmarked copy of the Appealed Decision, together with the cover e-mail of 25 August 2022 as sent to the Parties.

35. By letter of 23 September 2022, the CAS Court Office took note that the ITF, by e-mail of 21 September 2022, supported ITIA's request to be removed as respondent in the proceedings, and provided the Parties with the correspondence between the CAS Court Office and Sport Resolution.

36. On 23 September 2022, the Player submitted his appeal brief (the "Appeal Brief") in accordance with Article R51 of the CAS Code.

37. On 26 September 2022, the CAS Court Office invited the ITF and the ITIA to submit an answer to the Appeal Brief within twenty (20) days upon receipt of the letter by e-mail pursuant to Article R55 of the CAS Code.

38. By e-mail of 27 September 2022, the ITF nominated the Hon. Michael J Beloff MA KC, Barrister in London, United Kingdom, as arbitrator.

39. By e-mail of 28 September 2022, the Player informed the CAS Court Office that it had no comments on ITIA's request to be removed as respondent.

40. On 29 September 2022, the CAS Court Office informed the Parties about its understanding that the Player agreed that the ITIA be removed from the proceedings, unless the Player objected by 3 October 2022. By e-mail of the same date, the Player confirmed that he agreed that the ITIA be removed from the proceedings.

41. On 3 October 2022, the CAS Court Office confirmed that the ITIA would be removed from the proceedings.

42. By e-mail of 11 October 2022, the ITF requested a ten (10) day extension to submit the answer to the Appeal Brief. The CAS Court Office, on behalf of the CAS Director General, confirmed on the same day the extension of the deadline until 27 October 2022.

43. On 20 October 2022, the CAS Court Office provided the Parties with the acceptance and statement of independence form of the Hon. Michael J Beloff MA KC, drew the Parties' attention to the remarks made on the form, and reminded the Parties of Article R34 of the CAS Code.

44. On 27 October 2022, the ITF filed its answer brief (the "Answer") in accordance with Article R55 of the CAS Code.

45. On the same date, the Parties were invited to inform the CAS Court Office by 3 November 2022 whether they preferred to hold a hearing or whether they wished that the Panel issue an award based solely on the Parties' written submissions.

46. On 28 October 2022, the CAS Court Office informed the Parties that no challenge had been filed against the nomination of the Hon. Michael J Beloff MA KC within the deadline prescribed in Article R34 of the CAS Code.

47. By e-mail of 3 November 2022, the Player requested a hearing. On the same date, the ITF informed the CAS Court Office that it considered that the matter could be determined solely on the basis of the Parties' written submissions, but that the ITF would not object to a one-day oral hearing by video-conference if the Player preferred an oral hearing.

48. On 3 November 2022, the CAS Court Office informed the Parties that the question regarding the hearing would be decided by the Panel, once constituted, in accordance with Article R57 para. 2 of the CAS Code.

49. On 29 November 2022, the CAS Court Office confirmed on behalf of the President of the CAS Appeals Arbitration Division that the arbitral panel appointed to decide this case was constituted as follows: Dr. Hans Nater (President), Professor Massimo Coccia and the Hon. Michael J Beloff MA KC (the "Panel"). On the same date, the CAS Court Office transferred the file to the Panel.

50. On 6 December 2022, the Parties were informed that the Panel decided to hold a hearing in Lausanne, Switzerland.

51. By letter of 8 December 2022, the Parties were informed that the Panel determined that two consecutive days were needed for the hearing, given the number of witnesses requested.

52. The Parties and the Panel were not able to find suitable dates for the two-day hearing earlier than in April 2023. By e-mail of 30 December 2022, the ITF considered that the procedure could be heard in one day, and that the ITF would be willing to waive cross-examination of Dr. Sabatella and Mr. Picardi, since their evidence was not disputed. By e-mail of the same date, the Player agreed to the ITF's proposal, given the need for the hearing be held as soon as possible.

53. By e-mails of 5 January 2023, the Parties confirmed a one-day hearing date of 16 February 2023.

54. On 16 January 2023, the CAS Court Office sent the Parties an Order of Procedure, which was signed by the Appellant on 18 January 2023 and by the Respondent on 16 January 2023.

55. On 2 February 2023, the Parties informed the CAS Court Office about the list of persons attending the hearing on 16 February 2023.

56. On 6 February 2023, the CAS Court Office informed the Parties of the appointment of Mr. Florentin Weibel, Attorney-at-Law in Zurich, Switzerland as *ad hoc* Clerk, and provided the Parties with the *ad hoc* Clerk's Acceptance and Statement of Independence.

57. On 8 February 2023, the CAS Court Office provided the Parties with a tentative hearing schedule.

58. By e-mail of the same date to the CAS Court Office, the ITF noted that the Player's counsel had not mentioned Dr. Bernabò as witness. The ITF referred to its e-mail to the CAS Court Office of 30 December 2022 in which it advised that the ITF was willing to waive the right to cross examine Dr. Sabatella and Mr. Picardi, since their evidence was not disputed, but maintained its right to cross examine Dr. Bernabò. The ITF requested the Player's counsel to confirm that Dr. Bernabò would be made available for cross examination at the hearing, and informed that the ITF would seek the appropriate ruling from the Panel in the absence of such confirmation. By letter of 9 February 2023, the CAS Court Office notified the Player of this e-mail.

59. By e-mail of 10 February 2023, the Player informed the CAS Court Office that Dr. Bernabò would not be able to attend the hearing on 16 February 2023 for professional reasons, and that a declaration from Dr. Bernabò would be sent in lieu. On 13 February 2023, the CAS Court Office sent a copy of this e-mail to the ITF and the Panel.

60. On 13 February 2023, the CAS Court Office informed the Parties on behalf of the Panel and pursuant to Article R44.2 of the CAS Code, that Respondent's request to make available Dr.

Bernabò for cross examination at the hearing (in presence or by video connection) was granted, and that the Panel might draw adverse inferences if, on or before 14 February 2023 at 08.00 am, the Appellant failed, without a satisfactory explanation, to make available Dr. Bernabò for cross examination by the ITF. The Panel informed the Parties that it would be possible to cross examine Dr. Bernabò remotely and that, at the beginning of the hearing, the Panel would discuss with the Parties how to adapt the tentative hearing schedule.

61. On 13 February 2023, the Player submitted a declaration signed by Dr. Bernabò, according to which Dr. Bernabò was unable to attend the hearing as he was engaged in his medical practice visiting numerous patients, including by means of home visits, and that he had scheduled five home visits and sixteen ambulatory examinations on 16 February 2023. The Player informed the CAS Court Office about the willingness to ask Dr. Bernabò to find a time slot in which he could make himself available to attend the hearing virtually for the time strictly necessary.

62. On 14 February 2023, the CAS Court Office informed the ITF and the Panel about the Player's counsel's e-mail of 13 February 2023. On the same date, the CAS Court Office informed the Parties on behalf of the Panel that the Panel was pleased to hear that the Player endeavoured to find a time slot for Dr. Bernabò's cross examination, and that the matter would be discussed at the beginning of the hearing.

63. Also on 14 February 2023, the ITF informed the CAS Court Office by e-mail that the ITF did not anticipate that cross examination of Dr. Bernabò would require more than 15 minutes, and that the ITF's preference was to hear Dr. Bernabò after the Player gave his own evidence.

64. On 16 February 2023, a hearing was held in Lausanne, Switzerland (the "Hearing"). The Panel was assisted by the *ad hoc* Clerk, Mr. Florentin Weibel, and Ms. Andrea Sherpa-Zimmermann, CAS Legal Counsel. In addition, the following persons physically attended the Hearing:

<u>For the Appellant:</u>

- Mr. Ciro Pellegrino (Player's counsel) and his Associate Attorneys Ms. Virginia Comitini and Ms. Artemisia Lorusso;
- Mr. Mariano Tammaro (the Player) in his capacity as Appellant;
- Mr. Marco Tammaro (the Player's father) as witness;
- Ms. Loredana Esposito (the Player's mother) as witness; and
- Ms. Gabriella Fortunato as interpreter.

<u>For the Respondent:</u>

- Dr. Stuart Miller, ITF Senior Executive Director, Integrity and Legal;
- Ms. Louise Reilly, barrister, and
- Mr. Chris Lavey, solicitor-advocate, Bird & Bird.

65. At the beginning of the Hearing, the Parties confirmed that they had no objections as to the constitution of the Panel.

66. The Parties agreed to amend the tentative hearing schedule and to include a remote witness examination of Dr. Riccardo Bernabò as witness by video conference after the examination of the Player.

67. After the opening statements of the Parties, the Panel heard testimony/evidence from the following persons, in order of appearance:

- Mr. Mariano Tammaro (the Player);
- Dr. Riccardo Bernabò (per video conference);
- Mr. Marco Tammaro (the "Father"), and
- Ms. Loredana Esposito (the "Mother").

68. At the request of the ITF, the Father and the Mother remained outside the Hearing room before they gave their oral testimony.

69. All witnesses were instructed by the President of the Panel to tell the whole truth and nothing but the truth, subject to penalties of perjury under Swiss law. They all confirmed their written statements and, then, the Parties had the opportunity to examine and cross-examine them. The Panel members also put questions to them.

70. The evidence of the Player and the above-mentioned witnesses at the Hearing can be summarised as follows:

- The Player: He fell during a training session and injured his leg. In the beginning, the wound was bleeding a lot. During the next days, there was a red halo around the wound and yellow fluid exited the wound. After around one week, the situation got worse. On the evening of 1 or 2nd October 2021, he told his parents that it had probably been the worst day for the wound, as he had had to change the bandage often and a lot of yellow fluid had exited the wound. He talked about the wound with his Father when the Father picked him up from training. When he arrived at home, he went into the bathroom, undressed, and took a shower. When he undressed, the parents saw the wound, and he told them that he had had to change the bandage often and yellow fluid had exited. His Mother told him to take a shower, but he saw from the body language of his parents, that they were worried. Usually, he arrived at home at around 6:30/7 p.m., but he did not remember at what time he exactly arrived at home that evening.

  When the Player finished his shower, he put on his towel and sat on the top of the toilet seat for maybe five seconds, before his Father entered the bathroom. He did not know how his Father knew that he had finished his shower. The Player was not surprised that the Father entered the bathroom because his Father entered the bathroom on the previous evenings, too. While he sat on the toilet cover, his Father suddenly sprayed a product on his leg in the area of the wound. The Player noticed only afterwards that his Father had

applied a different spray from the one he had used the previous evenings. When the Player asked his Father what he had done, the Father answered in an authoritative tone, and was a bit annoyed by the Player's query. The Player was calm because he trusted his Father, and because his Father told him that he had checked the product. The Player had never seen the medication box of the spray prior to the hearing of the Independent Tribunal.

When his Father used the spray, the Player did not think that there might be a doping issue. He had never refused when his Father gave him medication, and he trusted his Father. He did not ask his Father whether he could have a look at the bottle because his Father told him that he had checked the product. On the following day, the wound improved, and the Player did not use the spray again. He only realised that there was a doping issue when he received the doping notification. The Player thought that it was a joke. He was surprised that one spray on a wound could be doping. He stated that his Father was a "figure", that he was 17 years old and that he obeyed his Father. The Player was very careful about his medication and he rarely used it. He developed a test of checking his medication with his doctor, coach and doing his own research. He understood that he would take a risk if he took medication without these tests.

– Dr. Riccardo Bernabò: The Player's Father called him regarding an own wound in July 2020. He told the Father to use Trofodermin spray as a maximum two to three times a day for several days, on condition that the wound did not heal. He made a confusion during the first hearing before the Independent Tribunal. He did not speak with the Father of the Player in October 2021, but in February 2022. In February 2022, the Father told him that he had used the same spray for his son, and that the Player was in trouble for that. Dr. Bernabò is a doctor of general medicine and has been in practice since 1984. He stated that it was a difficult question whether the Father administered the spray on his son without giving any explanation to what he was giving and why, or whether the Father administered the spray on his son by explaining that he was giving him a spray which he had used before and which would help his wound. Dr. Bernabò knows the Player and the Player had always been very careful about the administration of medicine. Dr. Bernabò believes that the Father and the son underestimated the quantity of the spray and how it was administered.

– The Father: His son told him in the car that he had had pain in his knee during the day and that he had had to change the bandage because more yellow fluid than usual came out of the wound. He did not see the wound in the car. At home, the Player undressed, as usual, in the area of the bathroom and the laundry which are next to each other. At this moment, the Player showed him and the Mother the wound. The Father told him to take a shower. He does not remember whether he told his son or his wife that he worried about his son's knee and did not want him to take the same path as him with his own knee. The Father discussed the wound with his wife and decided to apply the spray. He did not remember for how long he had held the spray in his hands, but it was for a certain period of time. He would have had time to search the product name and check the substances. The Father did not call Dr. Bernabò on that night, but in 2022.

When the Father realised that his son had finished his shower, he, as usual, entered the bathroom to disinfect the wound (which he had done in previous days with hydrogen peroxide, a basic disinfectant). The Father's gesture to stretch his leg was clear to the Player. The Father was holding the spray and directly sprayed on the wound to cover it. The Father had not said anything to his son before he used the spray. There was no emergency, but it was an impulsive reaction. He had had a discussion with his wife a few moments earlier and she had been very anxious and had insisted to do something different than before, not just to disinfect. The Father's action was to try to close the issue. In his opinion, he was doing something good for his boy, and he was considering what his wife wanted him to do. He was persuaded that he needed to apply something on the wound, as he was convinced that the wound could go in the same direction as his own.

The Father did not inform his son as he used the spray on him. He acted in a similar way to the previous days. The Father told the son that he had checked the bottle, and that there was no pictogram on the spray. It was the only thing he verified. As there was no pictogram on the bottle, he did not check further. In the week prior to the application of the Trofodermin spray, the Father had used hydrogen peroxide on the wound. He did not ask a pharmacist for advice, but he remembered the advice he had received from his doctor the year before. His wife reminded him of the doctor's advice.

The Father had used the Trofodermin spray a year before upon suggestion of his family doctor. When asked if the Doctor had told him (the year before) that he could use the Trofodermin spray on any other possible wounds similar to his, also on other people, the Father answered in the affirmative.

The Father remembered that he had applied the spray two times a day for several days, until he saw a crust on his wound. He confirmed that he had used the spray only once on his son, because the wound was much different on the next day, with a crust which made it harder.

Since his son had been three years old, it was always a battle when he had had to give him some tablets. He has never imposed medication on his son since his son was of an age that he could understand and interact with him.

– The Mother: The Player undressed when he came back from his ordinary training, at around 7 p.m. The Player usually leaves at 5:30 p.m. from the tennis club, and is supposed to be home at around 6:30/7 p.m. Because of the traffic, she could not be more precise. The Player arrived at home, undressed and put the clothes in the laundry. When he was just wearing underpants, he removed the bandage and showed her the wound, in the presence of the Father. The Player said that the wound was not improving and was getting worse. The Mother told her son to have a shower and to be calm. The Mother confirmed that she was really worried.

When the Player went into the bathroom, the Mother turned to her husband and told him that the wound was infected and that she was worried. They went to the living room,

which is just opposite the bathroom. The Mother told her husband to use the same product that he had used in July 2020 on himself for a serious wound on his leg. They searched for the Trofodermin spray. Her husband was present when she found the spray. The spray was without packaging because she had removed it the year before and had thrown the box away. The Mother could not give a precise timing but just a window of a timing for how long her husband held the spray in his hands. Everything happened within one hour. The Mother stated that if her husband said that he held the bottle for 10-30 minutes, then this would be correct.

The Player is careful about his medication. They spray was used only once, and on the following day the wound was dry, without a reddish halo around it. As there was a crust, there was no reason to put more spray on the wound.

71. The Parties were given the opportunity to present their cases, to make their submissions and arguments, and to answer the questions asked by the Panel. Neither Party objected to the procedure and the hearing schedule adopted by the Panel (as amended at the beginning of the Hearing). At the close of the Hearing, the Parties confirmed that they had had a fair hearing.

72. At the end of the Hearing, the Parties agreed that the Panel could send out the operative part of the Award first and then notify the fully reasoned Award to the Parties at a later stage. The Parties also agreed that the Award could be published.

73. On 17 February 2023, the Player submitted a document with a list of inaccurate translations into English of the declarations rendered during the hearing before the Independent Tribunal of the ITF. The Player included the ITF's comment that the ITF did not object to these clarifications but noted – for the sake of completeness – that nothing turned on the clarifications, and none of the statements were the subject of cross-examination at the Hearing.

74. On 2 March 2023, the CAS Court Office notified the Operative part of the Award to the Parties.

VI. POSITIONS OF THE PARTIES AND REQUESTS FOR RELIEF

75. This section contains a brief summary of the Parties' positions in these proceedings. The Panel's recapitulation of the Parties' positions serves the purpose of synopsis only and does not necessarily include every submission advanced by the Parties in their written submissions and oral pleadings at the Hearing. The Panel has, however, considered all arguments advanced before it in deciding the present Award, including allegations and arguments not mentioned in this section of the Award or in the discussion of the merits below.

A. Appellant

76. In his Appeal Brief, the Player requested the Panel to

"a) Adjudge and declare that the decision of the Independent Tribunal dated 25 August 2022 is set aside; and consequently

b) Adjudge and declare that on the Athlete no period of ineligibility is imposed in accordance to article 10.5 TADP, or – in the alternative and if it accepts that No Significant Fault or Negligence is applicable – that the minimum sanction applies in accordance to article 10.6 TADP, starting on the date on which the Provisional Suspension imposed on the Athlete; that the results obtained by the Player in the singles competition on the Event on 11 October 2021 not be disqualified with all resulting consequences;

c) Adjudge and declare that Mr. Tammaro is entitled to receive a contribution towards its legal fees and other expenses incurred in connection with this arbitration".

77. The Player's position, in essence, may be summarised as follows:

- The Player did not dispute that he had tested positive for Clostebol metabolite, a non-specified substance prohibited according to section S1 of Annex 3 to the 2021 TADP, as a result of a urine sample test he had provided in-competition on 11 October 2021 at the Event. The Player, however, disputed the consequences of the ADRV as decided by the Independent Tribunal.

- The Player's participation in the Event was accidental, as it was the first time that he played in an ATP event and this was exclusively due to a Wild Card granted by the Italian Tennis Federation just 24 hours before the beginning of the Event.

- As to whether the Player qualified as Protected Person as defined in the 2021 TADP, the Independent Tribunal erred in taking into account the Event in which the urine sample was taken. The question whether the Player had participated in an international event in an open category could be answered only by reference to events prior to the time when the violation of the ADRV occurred, and not to the tournament in which the relevant urine sample was taken.

- As to the source of the prohibited substance, the presence of Clostebol in his urine was due to the application of the Trofodermin spray by his Father on his knee on only one occasion on either 1 or 2 October 2021. In more detail, the Player was subjected to the impulsive and sudden, and as such unpredictable and inevitable, action of his Father, who took the initiative of spraying Trofodermin on the Player's knee, before the Player was able to realize what was happening. After the administration of the spray, he asked his father what spray had been used, and if the product bore the anti-doping pictogram or an indication of some other prohibited substance.

- The Player submitted a technical report dated 17 December 2021 by Dr. Luigi Sabbatella, a forensic biologist and technical consultant for forensic toxicology (the "Sabbatella Report"), which contained an analysis of the urine sample results. Pursuant to the Sabbatella Report, the origin of the minimum presence of Clostebol found in the Player's

urine – equal to 0.04 ng/ml – was consistent and compatible with the use of the spray Trofodermin, on only one occasion, on 1 or 2 October 2021.

– In support of his statements on the facts of the case, the Player relied on his own written statements and testimony as well as on the witness statements and testimonies of his Father, his Mother, Dr. Luigi Sabbatella, Domenico Picardi (the Player's trainer) and Dr. Riccardo Bernabò (the doctor who had prescribed the Trofodermin spray to the Father in July 2020).

– The Player endorsed the Independent Tribunal's assessment that the ADRV was not intentional pursuant to Article 10.2.3 of the 2021 TADP. He explained that the Independent Tribunal (i) found that the detailed testimonies of the Player, the Player's Father and Mother and Dr. Bernabò were credible, (ii) took into consideration that the Player, at the time of the facts, was a minor subjected to the role of his parents, (iii) considered that the prohibited substance was sprayed only once and that it was unlikely that this was a deliberate attempt to enhance performance or cheat, since the Player was out of competition and was not scheduled to participate in a competition until 10 October 2021, the day he received the Wild Card, (v) considered that even if the Player had received anti-doping education, he was not an established elite athlete, had a short career in tennis with only one youth tournament title, and had no significant experience in anti-doping practices and exposure to potentially risky situations, and (vi) took into account that it is not unusual for a minor in his position to defer to parents in matters such as health or medical treatment without questioning their decisions.

– The Player disputed, however, the Independent Tribunal's view that he did not fulfil his duty of care. In the Player's view, he bore no fault or negligence for the ADRV, resulting in an elimination of the period of ineligibility. The Player was subjected to the impulsive and sudden (and, as such, unpredictable and inevitable) action of his Father, who, without the Player being able to realize what was happening, took the initiative of spraying Trofodermin on his son's knee. The moment he realized that his Father had applied a different spray on his knee, he diligently asked his Father about what he had used. The Father replied, in a reproachful tone, not to worry because it was a product that he himself had used on himself on the advice of Dr. Bernabò. The Player asked his Father if the product bore the anti-doping pictogram or an indication of some other prohibited substance, and his Father replied, again very annoyed, that the bottle did not bear any indication, and that the product was necessary to block the infection. The Player submitted that the Independent Tribunal did not consider that (i) the product was used by the Father on the advice of Dr. Bernabò, (ii) the product was sprayed on a single occasion, (iii) the Player was a minor at the material time, (iv) the Player was subjected to the authority of his Father who reprimanded him for the questions the Player, his son, was asking, and (v) there was no plan to participate in sports competitions. Under these circumstances, it is understandable that the Player did not take steps, on the following days, to carry out any further verifications.

– Alternatively, the Player asserted that he bore no significant fault or negligence for the ADRV. From an objective point of view, it is not correct to find that the Player did not take any anti-doping precautions before, during or after the application of the spray, since the Player was not in a position to take such precautions before or during the application due to his Father's sudden action. It must be taken into consideration that (i) it was an isolated event, (ii) the Player was a minor and subjected to the parental role of his Father, which prevented him from any further initiative in the phase following the use of the spray, (iii) the Player was made aware by his Father that it was a product indicated by Dr. Bernabò, (iv) the Player was in training and was not taking part in any sports competition, nor was he planning to do so, and his participation in the Event came about only because of his receipt of a Wild Card, and (v) the Player placed trust in his Father and did not think that there was any possible violation, which would have required further verification. As to the subjective factors of fault, the Independent Tribunal overlooked the fact that he was a minor, the role of his parents, and the fact that he was an unexperienced Player who had participated for the first time in a professional tournament. The insignificant amount of Clostebol must also be considered when identifying the level of fault, so as to differentiate his from other cases in which the intake of the substance occurred over a long period and with more relevant analytical results.

– In further support of his position, the Player submitted that the Independent Tribunal's decision – in terms of sanction – was unfair and disproportionate. The Player referred to the cases CAS 2017/A/5301 & 5302, *Alejandro Licea* (ITF Decision dated 5 November 2020) and *Elsa Wan* (ITF Decision dated 8 April 2022) and argued, amongst other points, that the nonage and limited experience in international competitions were taken into account for the purpose of grading the athletes' fault. The Player also referred to the case CAS 2017/A/5317.

78. At the Hearing, the Player repeated and confirmed the arguments raised in the written submissions. In the opening statement, the Player's counsel explained that the substance found in the Player's positive urine test was of an insignificant amount, and asked the Panel to consider all the elements to confirm that no fault occurred, or that the fault was not significant. In its closing pleadings, the Player's Counsel stated that the facts of the case were clear, namely that (i) the Player had a wound on his leg, (ii) the wound did not get better, (iii) the Father had the same problem the year before, (iv) Dr. Bernabò suggested to the Father use of Trofodermin spray to treat his own (the Father's) wound, (v) the Mother bought the spray, (vi) the bottle of Trofodermin bore no pictogram, and (vii) that the story regarding the source of the product is coherent as confirmed by the Sabbatella report. The inconsistencies raised by the ITF were genuine and in line with someone trying to tell a story and not having created a choreography beforehand.

79. At the end of the closing pleadings, the Player's counsel mentioned that he did not seek the Panel to declare that there is no fault at all, as there was admittedly no ground for this, but rather that his fault be considered not significant.

B. Respondent

80. In its Answer, the ITF requested the Panel to rule as follows:

a) Dismiss the Appeal;

b) Uphold the Decision in its entirety;

c) Order the Appellant to pay the ITF a contribution towards its legal fees and other expenses incurred in defending the Appeal pursuant to CAS Code Article R65.3; and

d) Dismiss the Appellant's request for an order that the ITF pay him a contribution towards his legal fees and other expenses incurred in these proceedings.

81. The ITF's position, in essence, may be summarised as follows:

– The Player expressly agreed to be bound by and to comply with the TADP when he registered for an International Player Identification Number in 2016 and in each subsequent year, and the Player did not dispute that he was bound by the 2021 TADP.

– The Appeal should be dismissed, and the two-year period of ineligibility imposed on the Player should be upheld. In these Appeal proceedings, the ITF did not contest the Independent Tribunal's finding that the Player satisfied the burden of proving that his ADRV was not intentional.

– With regard to the question whether the Player was a Protected Person at the time of the ADRV, the ITF explained that the Player explicitly accepted in the proceedings before the Independent Tribunal that he could not be considered a Protected Person. The Player ceased to be a Protected Person at the moment when he competed in the first round of the Event, which is an International Event. The conduct underpinning the Player's ADRV, i.e, the provision of a urine sample that contained a prohibited substance, occurred post-match, when the Player had already ceased to be a Protected Person. In order to support its position, the ITF relied on the language and the underlying purpose of the definition of Protected Person in the 2021 TADP. From the moment that the Player competed in an International Event, he ceased to be entitled to any special sanctioning treatment, because he would otherwise be the beneficiary of unjustified differential treatment.

– As to the facts of the case, the ITF accepted certain aspects of the Player's account that were, in the eyes of the ITF, corroborated by objective evidence, namely (i) that the Player's Father was advised by Dr. Bernabò in July 2020 to purchase a Trofodermin spray to treat a wound on his leg, and that the Player's Mother purchased such spray thereafter, (ii) that the Player suffered an injury on his knee on 25 or 26 September 2021 during a training session with Mr. Picardi, and (iii) that the estimated concentration of Clostebol metabolite in the Player's urine sample is compatible with, but does not itself demonstrate

the veracity of, the Player's case of the application of Trofodermin spray on one occasion on 1 or 2 October 2021.

- However, the ITF considered several other aspects of the Player's account, namely the aspects that related to the actual administration of the Trofodermin spray and which were exclusively based on the declarations of the Player and his parents, to be inconsistent and/or implausible. There is a risk that the Player's account had been choreographed to present an exculpatory version of events. In particular, the ITF claimed that there were inconsistencies and implausible aspects as to (i) when/where the Player's parents saw the Player's wound on 1 or 2 October 2021, and what was discussed, (ii) which of the Player's parents searched for and found the bottle of Trofodermin spray, (iii) how long the Player's Father had the bottle of Trofodermin spray in his possession before applying it onto the Player's wound, (iv) whether the sudden application of the Trofodermin spray occurred in an emergency situation, (v) why the Trofodermin spray was applied onto the Player's wound on only one occasion, and (vi) why it took the Player's parents so long to recall that they had applied the Trofodermin spray to the Player's wound. In summary, these aspects of the Player's account, in particular the emergency situation necessitating the sudden application of the Trofodermin spray, had been choreographed in a deliberate attempt to eliminate or mitigate the Player's fault.

- Even if the Player's account is accepted by the Panel, the Player did not demonstrate no fault or negligence or no significant fault or negligence for his ADRV. In this regard, the Independent Tribunal considered the Player's Fault to be at the very upper limit of obliviousness or carelessness.

- As to the no fault or negligence test, the ITF mainly raised two points. First, in determining whether a player complied with his duty of utmost caution, the player is responsible for the actions of his entourage, and in the present case the Player's parents did not make every conceivable effort to avoid administering a prohibited substance. Second, the Player himself did not exercise utmost caution, deviated from his sophisticated three-pronged anti-doping precautionary framework, and instead relied blindly on his Father's reassurances that the Trofodermin spray did not bear an anti-doping pictogram or an indication of a prohibited substance.

- With regard to the no significant fault or negligence, the test to determine the level of fault is objective, and subjective factors are irrelevant. The Player's parents' fault is clearly significant, as they failed to take any of the clear and obvious precautions that any reasonable person would take in the same set of circumstances, and the degree of fault exercised by the Player's parents is to be imputed on the Player. In this regard, the ITF pointed out (i) that the packaging in which the Trofodermin spray is sold is marked with an anti-doping pictogram, (ii) that the leaflet accompanying the spray states that the use of this drug without therapeutic necessity constitutes doping and may result in a positive doping test, and (iii) that the bottle of Trofodermin spray itself bears bold lettering advising that the user should read the package leaflet before use. Further, the ITF submitted that the Player himself is responsible for his own conduct following the

application of the Trofodermin spray, that he departed from his precautionary framework, and that he did not make any attempt whatsoever to identify the name of the product and its ingredients after the administration of the spray by his Father.

– The points raised by the Player in the Appeal Brief to characterise his conduct as diligent are either irrelevant and/or do not withstand scrutiny. The ITF argued, in particular, that (i) subjective factors, such as youth and inexperience, are irrelevant, (ii) the fact that the spray was purportedly applied on only one occasion does not materially impact the risk assessment with regard to the use of a prohibited substance, (iii) the assertion of the Father's parental authority over the Player in applying the Trofodermin spray does not in any way explain or excuse the absence of subsequent steps which the Player should have taken to ascertain the ingredients of the product that had been applied, (iv) it was inadequate for the Player to rely on a single unsubstantiated assertion from his Father that the Trofodermin spray did not contain any prohibited substances, (v) in the context of the Player's understanding of the risk of using medication from an anti-doping perspective and the Player's three-pronged anti-doping precautionary framework, the ITF rejects the Player's submission that he did not think there was any possible violation. It is incorrect that the Player did not plan to compete or was scheduled to compete at a particular competition when his Father used the Trofodermin spray, as the Player competed at the J1 event held in Vrsar, Croatia, from 5 October to 10 October 2021.

– In addition, even if the Player could be said to have committed his ADRV with no significant fault or negligence, no reduction is justified under the 2021 TADP. The ITF referred to the framework of three degrees of fault (significant, normal and light) to determine a sanction within the range of 0 to 24 months as set out in the case CAS 2013/A/3327 & 3335, and explained that the CAS 2013/A/3327 & 3335 framework must be adapted since (i) there are only two categories of fault allowing for a reduction of the sanction (normal and light), because a "significant" degree of fault no longer allows for a reduction of the sanction, and (ii) the applicable scale of sanction in the case at hand only extends from 12 to 24 months, and not from 0 to 24 months as in the CAS 2013/A/3327 & 3335 case. Hence, if the Player bore no significant fault, it must be determined whether the Player's fault was "normal" (with a sanction ranging from 18 to 24 months) or "light" (with a sanction ranging from 12 to 18 months).

– Further, a two-year sanction is neither unfair nor disproportionate. The case law referred to by the Player in the Appeal Brief is distinguishable from the Player's case on the facts and/or involve the imposition of an unduly lenient sanction.

82. At the Hearing, the ITF stated in its opening statement that it must be taken into account that the Player had been member of the TADP since 2016 and that he had been bound by the anti-doping rules for six years. The Player ceased to be a Protected Person when he participated in the Event. The Player committed a violation of both Article 2.1 (presence of a prohibited substance) and Article 2.2 (use of a prohibited substance) of the TADP. However, the sanction that goes with the violation of Article 2.1 TADP is more severe, because at that time the Player ceased to be a Protected Person. Hence, the Player committed a violation of both Article 2.1

and 2.2 TADP, but the focus shall lie on the violation of the Article 2.1 TADP. The Player acted recklessly and with intent and should be sanctioned by four years, but the Appealed Decision of the Independent Tribunal is accepted and the starting point for the sanction shall be a two-year ban. There are no grounds to reduce the two-year sanction, because it is neither a case of no fault or negligence nor a situation of no significant fault or negligence. Although the Player and his parents understood the risks inherent in any medication and developed a three-pronged approach involving the doctor, coach and the Player's own research, neither the Player nor the parents took any of these steps when applying the Trofodermin spray.

83. In its closing pleadings, the ITF repeated that the statements made by the Player, his parents and Dr. Bernabò contained inconsistencies. However, it was the Player's burden of proof to show, by a balance of probability, that he bore no fault or negligence. But even if the Panel were to accept the version presented by the Player and his parents, the fault of the parents would still be imputed to the Player.

VII. JURISDICTION

84. Article R47 of the CAS Code provides that:

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

85. CAS jurisdiction in these proceedings results from Article 13.2 and 13.2.1 of the 2022 TADP[1], which provide that *"a decision imposing (or not imposing) Consequences for an Anti-Doping Rule Violation"* may be appealed, and *"in cases arising from participation in a Covered Event or in cases involving International-Level Players, the decision may be appealed exclusively to CAS".*

86. The Event in this case was an ATP Challenger Tour tournament and, therefore, a Covered Event in the sense of the 2022 TADP (and also the 2021 TADP). Moreover, the Appealed Decision concerns the consequences of an ADRV by the Player. Hence, it is possible to appeal before the CAS the Appealed Decision of the Independent Tribunal in accordance with Article 13.2.1 of the 2022 TADP.

87. No Party objects to the application of Article 13.2 of the 2022 TADP and to the jurisdiction of the CAS. Indeed, the Parties confirmed the jurisdiction of the CAS when they signed the Order of Procedure. In addition, the Parties have not objected to the exercise of jurisdiction by this Panel during the proceedings.

88. Therefore, the Panel confirms the jurisdiction of the CAS.

[1] See paragraphs 94 *et seqq.* for a discussion of the applicable version of the TADP.

VIII. ADMISSIBILITY

89. Article R49 of the CAS Code provides that:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".

90. Pursuant to Article 13.8.1.1 of the 2022 TADP (and the 2021 TADP), *"the deadline for filing an appeal to the CAS will be 21 days from the date of receipt of the reasoned decision in question by the appealing party".*

91. In the present case, the Player received the Appealed Decision on 25 August 2022. The Player submitted his Statement of Appeal on 12 September 2022, i.e., within the 21-day time period from the receipt of the Appealed Decision.

92. No Party has objected to the admissibility of the appeal. The Respondent explicitly confirmed that the appeal was filed timely and is admissible.

93. Therefore, the Panel confirms that the appeal is admissible.

IX. APPLICABLE LAW

94. Article R58 of the CAS Code provides that:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

95. The ADRV occurred on 11 October 2021. As of 1 January 2022, a new edition of the TADP has come into force, namely the 2022 TADP (see Article 1.5.1 of the 2022 TADP). In principle, the 2022 TADP does not apply retroactively to substantive matters occurred prior to 1 January 2022 (see Article 1.5.2 of the 2022 TADP). In line with this principle, Article 1.5.2.2 of the 2022 TADP provides that *"any case brought after the Effective Date based on an Anti-Doping Rule Violation that allegedly occurred prior to the Effective Date, will be governed by the substantive anti-doping rules in effect at the time the alleged Anti-Doping Rule Violation occurred, and not by the substantive anti-doping rules set out in this Programme (unless the hearing panel determines that the principle of lex mitior appropriately applies under the circumstances of the case), but the procedural aspects of the case will be governed by this Programme".*

96. The Panel notes that the 2021 TADP and the 2022 TADP contain the same provisions on Protected Persons (Appendix 1), the elimination of the period of ineligibility where there is no fault or negligence (Article 10.5) and the reduction or elimination of the period of ineligibility based on no significant fault or negligence (Article 10.6), as well as the legal definitions of these terms. Hence, no assessment regarding possible application of the *lex mitior* is required, and neither Party disputed the application of the 2021 TADP on the merits of the case.

97. Hence, the 2022 TADP applies to any procedural question, while the 2021 TADP is applicable to substantive matters on the merits.

98. Moreover, and to the extent that the 2021 TADP and/or 2022 TADP do not deal with a relevant issue, Article 1.1.5 of the 2021 TADP (exactly like the 2022 TADP) provides that the 2021 TADP is governed by English law, subject to Article 1.1.4, which states that the 2021 TADP must be interpreted in a manner that is consistent with the WADA Code and the WADA International Standards and as an independent and autonomous text. Hence, English law shall be applied on a subsidiary basis to any issues with which the 2021 TADP does not deal.

99. As a result, pursuant to Article R58 of the CAS Code, the Panel will apply primarily the 2021 TADP on the substantive issues of this case, and subsidiarily, English law.

X. SCOPE OF THE REVIEW

100. Article R57 of the CAS Code provides that:

"The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".

101. Under Article R57 of the CAS Code, the Panel considers both fact and law *de novo* on appeal (see, for example, CAS 2019/A/6254, paras. 88 and 152). In addition, Article 13.9.1 of the 2022 TADP provides that *"the scope of review on appeal includes all issues relevant to the matter and is expressly not limited to the issues or scope of review before the initial decision maker"*, and that *"any party to the appeal may submit evidence, legal arguments, and claims that were not raised in the first instance hearing so long as they arise from the same cause of action or same general facts or circumstances raised or addressed in the first instance hearing"*. Further, *"in making its decision, the CAS will not give deference to the discretion exercised by the body whose decision is being appealed"* (Article 13.9.1 of the 2022 TADP).

102. However, whilst it is an appeal *de novo* as to the facts and applicable law, the Panel must properly and duly take into account the positions that the Parties have pleaded in this arbitration.

XI. MERITS

A. The Issue

103. It is undisputed that the Player committed an ADRV when he was tested positive for Clostebol metabolite at the Event on 11 October 2021. The Panel, thus, must only deal with the consequences of the Player's ADRV.

104. More concretely, the Panel must decide whether the Player bore either no fault or negligence (Article 10.5 of the 2021 TADP) or no significant fault or negligence (Article 10.6 of the 2021 TADP) for his ADRV and, if the Player acted without significant fault or negligence, determine the applicable sanction against the Player.

B. Facts

1. Undisputed Facts

105. The following facts are undisputed:

- The Player has never committed an ADRV before the ADRV at hand.

- The Player's Father was advised by Dr. Bernabò in July 2020 to purchase a Trofodermin spray to treat a wound on his leg. The Mother purchased such Trofodermin spray in July 2020. The bottle of the Trofodermin spray contained no anti-doping pictogram, but a reference to Clostebol. The packaging is marked with an anti-doping pictogram and states that it contains Clostebol.

- The Player suffered an injury on his knee on 25 or 26 September 2021 during a training session with Mr. Piccardi. The Player's coach disinfected the wound with hydrogen peroxide, applied a sterile gauze, and determined that no medical intervention was necessary. In the following days, the Player's Father performed two daily dressings (morning and evening) with hydrogen peroxide. The Player continued his trainings.

- On 11 October 2021, the Player provided a urine sample at the Event. At that time, the Player was 17 years old. The Event was the Player's first Covered Event as defined in the 2021 TADP. The A-sample and the B-sample confirmed the presence of Clostebol metabolite in the Player's urine sample. The estimated concentration of Clostebol metabolite in the Player's urine sample amounted to approximately 0.04 ng/ml. Clostebol is an anabolic androgenic steroid that is prohibited both in- and out-of-competition under Section 1 of the 2021 WADA Prohibited List and Appendix 3, A3.2, S1. The presence of an estimated concentration of 0.04 ng/ml of Clostebol metabolite in the Player's urine sample constituted an ADRV, namely a violation of Article 2.1 (use of a prohibited substance) and of Article 2.2 (presence of a prohibited substance) of the 2021 TADP.

– The estimated concentration of the Clostebol metabolite in the Player's urine sample is compatible with the application of the Trofodermin spray on one occasion on 1 or 2 October 2021, as corroborated by the Sabbatella Report.

– Although the ITF disagreed with the Independent Tribunal's reasoning, the ITF did not dispute in these proceedings that the ADRV was not intentional.

– On 19 November 2021, the ITF imposed on the Player a Provisional Suspension with effect from 30 November 2021.

2. Disputed Facts

106. The ITF submitted that the Player's and his parents' account regarding the administration of the Trofodermin spray by the Father was inconsistent and implausible. In particular, the ITF raised the following inconsistencies and implausibilities:

107. First, the Player's and his parents' version as to when/where the Player's parents saw the Player's wound on 1 or 2 October 2021, and what was discussed, is inconsistent and implausible. The Player's testimony was that his parents saw his wound while he was in the bathroom before he took the shower, that he observed on his parents' body language that they were worried, and that he spoke with his parents for a few minutes, but without discussing the action that should be taken in relation to the wound. The Player's testimony, which was confirmed by the Player's Father, is different from the Mother's testimony. The Mother testified that the Father was not present when the Player undressed in the bathroom and that the Father had told her that he had already seen the wound in the car. For the ITF, it is not credible that the Player's parents did, at this stage, not discuss with the Player anything about what action could and/or should be taken in relation to the Player's wound.

108. Second, the parents' version as to who searched for and found the bottle of Trofodermin spray is inconsistent and implausible. While the Father testified that the Mother had searched for the spray and delivered it to the Father, the Mother's testimony was different and inconsistent. At one point, she testified that both she and her husband had searched for the Trofodermin spray, but she also explained that she told her husband to search and try and find the Trofodermin. The Mother's testimony on this issue directly contradicts the Father's evidence.

109. Third, the parents' version as to how long the Father had the bottle of Trofodermin spray in his possession before applying it to the Player's wound is inconsistent and implausible. The Father's testified that he entered the bathroom immediately after the Player had finished his shower. He explained that he received the bottle of Trofodermin spray from his wife, entered the bathroom and applied the spray on the Player's wound in one continuous act. The Mother's testimony contradicted the Father's evidence: She testified that the Father was in possession of the Trofodermin spray for approximately 30 minutes before he applied it to the Player. The ITF submitted that the Mother's version is more likely to be accurate.

110. Fourth, the Player's and his parents' version regarding the application of the Trofodermin spray was implausible. The Player and his Father described the application of the Trofodermin spray as an emergency situation. The Father decided to assert his parental authority and applied the spray to the Player's wound without any prior notice of his intention to do so. This version of the facts is implausible because (i) it was no emergency situation, (ii) no explanation has been provided as to why the Player's parents considered it necessary to assert their parental authority over the Player as the Player had not resisted previous treatments by his Father and the Player's Father had never imposed a medication on his son before, and (iii) no explanation has been provided as to why the Player's Father would not have explained to the Player that he intended to apply a different medical treatment (the Trofodermin spray) before doing so.

111. Fifth, the Player's and his parents' version as to why the Trofodermin spray was applied on only one occasion was undermined by the testimony of Dr. Bernabò and is implausible. With regard to the reason why the spray was only applied once, the Player and his parents explained (i) that Dr. Bernabò had advised the Father in July 2020 that a single application of the Trofodermin spray was sufficient, and (ii) that the day after the application of the spray, the wound had shown signs of improvement. Dr. Bernabò testified that he recommended to use the spray two or three times a day, and that in his experience the spray worked better when it was applied three times a day. In the ITF's view, a single application of the spray seems highly implausible because (i) the Player's parents had been worried about the Player's infected wound that they considered an application of the spray was necessary without consulting the Player, and (ii) the parents would have continued to use the spray until the wound had fully healed if it had had the desired effect. The Sabbatella Report merely concluded that the estimated concentration of the Clostebol metabolite was "compatible" with the application of one or two sprays of Trofodermin on 1 or 2 October 2021, but did not demonstrate the "probability" of that explanation, nor eliminate the possibility that the spray was applied on one occasion or more thereafter.

112. Sixth, the Player's and the parents' evidence that they remembered the application of the Trofodermin spray only a few hours after Dr. Marassi had told them to search the medicines in the house to find the source of the anti-doping rule violation is not plausible. The Player's parents would have immediately recalled the events of 1 or 2 October 2021, given that they described this evening as an emergency situation and that the Player rarely uses medicine at all, and only if recommended by Dr. Marassi. The Player's version of the facts, in particular the emergency situation necessitating the sudden application of the Trofodermin spray to the Player's wound, has been choreographed in a deliberate attempt to eliminate or mitigate the Player's fault for his violation.

3. The Panel's Assessment of the Disputed Facts

113. As a preliminary note, the Panel recalls that the ITF – without accepting its reasoning – has not contested the Independent Tribunal's finding that the Player, by a balance of probabilities, has very narrowly satisfied his burden of proving that his ADRV was not intentional. The

Independent Tribunal carefully reviewed and assessed the Player's, the parents' and Dr. Bernabò's testimonies regarding the source of the prohibited substance in the body of the Player. The Panel considers the reasoning of the Independent Tribunal as to the source of the Clostebol metabolite and the assessment of the evidence and written and oral testimony as well-founded and clear.

114. As the Independent Tribunal has already pointed out, there are certain details that appear to vary to a certain extent across the written statements and the oral testimony provided by the Player, his parents and Dr. Bernabò. However, the Panel takes the view that these inconsistencies are peripheral (and even to be expected when recalling facts occurred many months earlier and confined to a short timespan) and do not affect the resolution of the key issue, namely how the Trofodermin spray was applied to the Player by his Father. On this crucial point, the testimonies of the Player and his parents, in particular the Father's, were consistent and clear. The Father, who had cleaned and disinfected the Player's knee with hydrogen peroxide in the bathroom after the Player had finished his shower on the evenings before, entered the bathroom and sprayed the Trofodermin spray on the wound of the Player without giving the Player prior notice or an advance opportunity to react. Upon the application of the Trofodermin spray, the Player asked the Father what he had used and whether he had checked the product for anti-doping warnings. The Father explained that it was a product he had used on himself pursuant to medical advice from Dr. Bernabò and that the bottle bore no anti-doping pictogram.

115. The peripheral inconsistencies and variations pointed out by the ITF relate to the immediate time period before the application of the spray, the content of the advice by Dr. Bernabò and the qualification of the situation as an "emergency". As shown in further detail hereinafter, these inconsistencies do not cast doubt on the written and oral testimony of the Player and his parents as to how the Trofodermin spray was applied to the Player's knee by his Father. As pointed out by the Independent Tribunal, it can be expected that a witness' ability to recall details of a particular event, in writing or orally in a hearing, at different points in time in the months following that event can lead to slight variations or even confusion in the witness' explanations. Further, certain inconsistencies with regard to issues that are considered less important by the person giving the testimony – such as for how long exactly the Father held the bottle in his hands before he applied it to the Player – indicate that it is not a well-rehearsed and choreographed story-telling, but rather the truth. The Panel also takes into account the difficulty in providing written and oral evidence in Italian before it is translated into English, which of itself can lead to certain differences and nuances in the terms that are used and translated. In fact, the Parties and their Counsel agreed to certain amendments in the translation of the oral testimonies of the Mother in the transcript of the hearing before the Independent Tribunal.

116. The Panel notes the following as to the specific alleged inconsistencies in and implausibility of the testimonies of the Player and his parents relied on by the ITF:

117. First, the Panel is satisfied by the Player's and the Father's evidence that they had discussed the Player's wound in the car when they drove home from practice, without the Player having

showed the actual wound to his Father. The Player's and the Father's testimonies were clear and consistent in that regard. The Mother's testimony as to what happened in the car is less relevant because she was not there present. Further, the Mother's testimony did not in fact differ from the Father's and the Player's testimonies. In the corrected transcript of the Mother's oral testimony before the Independent Tribunal, the Mother testified that *"He [the Father] said, 'Yes, I saw that'. And incidentally already while in the car my son Mariano had told me that the wound… he had to change the bandage again once again and there was still some exudate, some yellowish liquid coming out"*. Hence, it cannot be derived from the Mother's testimony that the Player had showed the wound to the Father in the car and had changed the bandage in the car. Rather, both parents saw the wound at home when the Player got undressed to take a shower. Contrary to the ITF's view, it cannot be deduced from the oral testimony of the Mother before the Independent Tribunal (as corrected after the Hearing) that the Father had not been present when the Player undressed and the parents saw the wound *("I am immediately… I called my husband… I turned to my husband and I told him… Marian… Marco, Mariano's wound is getting infected"*). The Panel considers it also plausible that the parents did not discuss with their 17-year old son – neither in the car when the Player complained about the wound to his Father nor at home when the Player undressed to take a shower – what action could or should be taken in relation to the wound.

118. Second, the Panel notes that the parents' testimony as to whether the Player's parents subsequently searched for the bottle of Trofodermin together, or whether only the Mother actively searched for the bottle, was not entirely clear. However, this issue does not seem particularly relevant for determining how the Trofodermin spray was applied to the Player or to the Player's as well as his parents' level of fault in this regard. What is more important are the facts – which were not disputed – that such medication had already been bought in 2020 (upon Dr. Bernabò's prescription) to treat a Father's wound and that the parents found the bottle of Trofodermin without original packaging and the leaflet because the Mother had removed the Trofodermin spray from the packaging after she had bought it.

119. Third, the Panel considers that the Father held the Trofodermin spray in his hands for a certain period of time, between 10 and 30 minutes, before the Player had finished his shower. The Father's testimony before the Independent Tribunal (*"I can't define it in terms of minutes. I think it was immediate. So it was all at once"*) is not convincing. It would be a pure coincidence that the Father received the Trofodermin spray from his wife at exactly the same time when the Player finished his shower. Also, the Father's testimony contradicts the clear testimony of the Mother who stated that the Father held the bottle *"probably"* for another half an hour because her son usually takes long showers. The Mother's testimony was also corroborated by the parents' testimonies in the Hearing before the Panel.

120. Fourth, neither the parents nor the Player qualified the situation on the evening of the 1 or 2 October 2021 as being an *"emergency situation"* which would have warranted an immediate action and would not have allowed the Father time to explain to his son that he was going to treat the wound differently from the previous evenings before. However, it is plausible that the parents were worried that the wound did not develop as anticipated after they had treated the wound with hydrogen peroxide for around a week, and that it could take the same turn as

the Father's wound in July 2020. It is also plausible that in such a circumstance, the Mother told the Father to use the Trofodermin spray, and the Father was agitated because he had had an animated discussion with his wife about the Player's wound. In this context, it is plausible for the Panel that the Father thought to be able to solve the problem with the Trofodermin spray – which he had used the year before – and decided to apply the spray without telling the Player that he was going to do so. The Player was only 17 years old, and it is plausible that the parents asserted their parental authority over their son.

121. Fifth, the Panel is satisfied with the explanation of the Player and his parents – which was clear and consistent over the entire proceedings – that the Trofodermin spray was applied only once on the evening of the 1 or 2 October 2021. As highlighted by the Independent Tribunal, this explanation is consistent with the amount of the prohibited substance found in the Player's body on 11 October 2021 as established by the Sabbatella Report. In addition, the Player and the parents consistently, and plausibly, testified that the wound improved after the application of the Trofodermin spray and developed a crust on the following day (and no expert evidence was presented by either party that could put in doubt the fact that a dry crust could form over the wound in a single day).

122. Sixth, the fact that the Players' parents did not remember the application of the Trofodermin spray immediately when they started looking for the source of the anti-doping rule violation does not cast doubt on the general plausibility of the testimonies of the Player and his parents. On the contrary, it corroborates the Player's and his parents' testimony that the Trofodermin spray had only been used once. It is also confirmed by Dr. Bernabò's suggestion that probably the parents and the Player underestimated the effect – in terms of adverse analytical finding – of the one-time application of Trofodermin.

123. As to the testimony provided by Dr. Bernabò, the Panel believes that Dr. Bernabò confused the date of the (second) telephone conversation he had with the Player's Father in his testimony before the Independent Tribunal. Rather than in October 2021 (prior to the application of the Trofodermin spray), the Father called Dr. Bernabò in February 2022 in connection with the ADRV. In fact, as pointed out by the Independent Tribunal, if it were true that the parents acted on Dr. Bernabò's specific medical advice to apply the Trofodermin spray on the Player's wound, such fact would have been brought forward as a mitigating factor. However, neither the Player nor the parents made such allegation, but denied Dr. Bernabò's statement.

124. To conclude, the Panel is satisfied – by a balance of probability (Article 3.1.2 2021 TADP) – of the following (disputed) facts:

- The Father picked the Player up from tennis practise in the late afternoon of 1 or 2 October 2021. In the car, the Player told the Father about his wound, and that yellow fluid exited. The Player neither showed the wound to his Father nor changed the bandage in the car.

- When the Father and the Player arrived at home, the Player undressed in the bathroom and placed his clothes in the laundry. At that moment, at around 6:30/7 p.m., the Mother and the Father discovered the state of the wound. They did not discuss the wound or any treatment thereof with the Player, but the Player noticed from their body language that they were worried.

- While the Player was taking the shower, the parents discussed the wound. The Mother told the Father to use the Trofodermin spray which he had used the year before to treat his own wound based on advice by Dr. Bernabò (and the Father's incident is confirmed by the photograph of the scar still present on the Father's leg). The Mother – with the help of the Father – searched for the Trofodermin spray, which the Mother found without the original packaging and leaflet. The Mother handed the bottle over to her husband who held the spray in his hands for a certain period of time, between 10 and 30 minutes, before the Player finished his shower. During that time, the Father examined the Trofodermin spray and found no anti-doping pictogram. The Father did not call Dr. Bernabò to verify whether he could apply the spray on his son.

- The Father noticed that the Player finished the shower because the water stopped and the bathroom door has a window. The Father entered the bathroom where the Player sat on the toilet to receive from his Father the treatment of his wound, as on the previous evenings. The Father applied the Trofodermin spray on the wound without explaining to the Player that he was using a different treatment than on the evenings before (when he had applied hydrogen peroxide). After the application of the Trofodermin spray, the Player asked the Father what he had applied, and whether he checked for anti-doping references. The Father answered in an authoritative tone that he had checked for the anti-doping pictogram.

- On the following day, the Player's wound had a crust without a red halo around it. Neither the Player nor the parents applied the Trofodermin spray a second time on the Player's wound. The fact that the wound existed and that it subsequently healed is corroborated by a photograph of the Player's knee showing the current presence of a scar.

- Neither the Player nor the parents carried out any subsequent inquiries as to the Trofodermin spray and Clostebol and they all forgot about the whole episode until the Player received the ADRV notification.

C. The Period of Ineligibility

1. The regular sanction (Article 10.2 2021 TADP)

125. Pursuant to Article 10.2.1.1 of the 2021 TADP, the period of ineligibility imposed for an ADRV that is the Player's first doping offence will be four years where the ADRV does not involve a specified substance or a specified method. If the Player establishes that the ADRV

was not intentional, the period of ineligibility will be two years (Article 10.2.1.1 and Article 10.2.2 of the 2021 TADP).

126. Clostebol, which was found in the Player's body on 11 October 2021, is a non-specified substance (2021 TADP, Appendix Three, S1/1). It was the Player's first doping violation. Hence, the period of ineligibility would be, in principle, four years; this was in fact the primary request submitted by the ITF before the Independent Tribunal.

127. However, the Independent Tribunal found that the Player, by a balance of probabilities, has satisfied, albeit very narrowly, his burden of proving that his ADRV was not intentional. The ITF neither appealed this finding nor pleaded, in the present proceedings before the CAS, that the Player acted with intent and that the period of ineligibility shall be more than two years.

128. The Panel notes that the ITF did not claim aggravating circumstances that might increase the period of ineligibility (Article 10.4 of the 2021 TADP), and that the Player did not assert other reasons unrelated to fault resulting in an elimination, reduction, or suspension of the period of ineligibility and/or other consequences (Article 10.7 of the 2021 TADP). Therefore, the Panel does not need to assess the presence of such circumstances and/or reasons in the present case.

129. Accordingly, the Panel confirms the Independent Tribunal's finding in principle that the period of ineligibility is two years, subject to a potential elimination or reduction in accordance with Articles 10.5 or 10.6 2021 TADP.

2. Elimination of the sanction for no fault or negligence (Article 10.5 2021 TADP)

130. The Panel has now to identify whether the Player bore no fault or negligence for the ADRV in the sense of Article 10.5 of the 2021 TADP, which would lead to an elimination of the otherwise applicable period of ineligibility of two years.

131. Before the Independent Tribunal and in the written submissions before the CAS, the Player submitted that he bore no fault or negligence for the presence of Clostebol in his body on 11 October 2021. In the oral closing pleadings at the Hearing before the CAS, the Player's counsel acknowledged on behalf of the Player that there were no grounds for the Panel to declare that there had been no fault at all; accordingly, in his final oral submission the Player only asked the Panel to find that his fault was not significant. Thus, the submissions of the Player changed in the course of the proceedings. The Player has not, however, formally withdrawn his prayer for relief *"to adjudge and declare that on the Athlete no period of ineligibility is imposed (…)"*. Therefore, the Panel has for good order still to assess whether the Player bore no fault or negligence at all for his ADRV.

132. Article 10.5 of the 2021 TADP provides for an elimination of the period of ineligibility if the Player bears no fault or negligence:

"If a Player or other Person establishes in an individual case that they bear No Fault or Negligence for the Anti-Doping Rule Violation, the otherwise applicable period of Ineligibility will be eliminated".

133. In Appendix One to the 2021 TADP, the concept of no fault or negligence is defined as follows:

"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. 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".

134. The Player has, in any event, established how the prohibited Clostebol entered his system (*see* para. 124 above). Therefore, the Panel does not need to assess at this stage whether the Player as a Protected Person could have been exempted from establishing the source of the prohibited substance (*see*, however, para. 140 *et seq*. below).

135. As already indicated by the Independent Tribunal, the Player has a fundamental duty to do everything in his power to avoid ingesting any prohibited substance. Athletes are not exempt from the duty to maintain utmost caution. It is also the duty of the athletes to ensure that they do the best to avoid and mitigate any violation, including the continuing presence of a prohibited substance in their body (CAS 2017/A/5317, para. 56). The required exercise of utmost care to know or suspect that a prohibited substance or method has been used or has been administered or otherwise an anti-doping rule has been violated is not limited to the moment when the prohibited substance is used or administered (and the time period before) but extends to the subsequent conduct of the athlete (CAS 2017/A/5317, para. 63).

136. In the present case, the Father of the Player applied the Trofodermin spray to the Player's wound. Realistically, the Player did not have an opportunity to object to such medical treatment by his Father. However, the Player would have had ample time to carry out a research regarding the Trofodermin spray *after* it had been used on him by his Father, and before he participated in the Event on 11 October 2021. The Player did not even think to conduct the most cursory of investigations to find out what had been used on him and did not conduct any such investigation. The Player did clearly not act with no fault or negligence and is responsible for the ADRV. An elimination of the period of ineligibility is, under these circumstances, out of question, as indeed the Player himself sensibly recognized at the Hearing through his counsel.

137. The Panel concludes that the Player bore fault for the presence of the prohibited Clostebol in his body on 11 October 2021. Hence, the applicable period of ineligibility of two years is not to be eliminated.

3. Reduction of the sanction for no significant fault or negligence (Article 10.6 2021 TADP)

138. The Panel next considers whether there was no significant fault or negligence for the ADRV, resulting in a reduction of the otherwise applicable period of ineligibility of two years pursuant to Article 10.6 of the 2021 TADP.

139. Article 10.6 of the 2021 TADP provides for a reduction to no less than one-half of the period of ineligibility otherwise applicable, or, in case of a Protected Person, an elimination of the period of ineligibility if the Player bears no significant fault or negligence (Article 10.6.1.3 and Article 10.6.2 of the 2021 TADP).

a. Was the Player a Protected Person?

140. The possible length (or even the potential elimination) of the period of ineligibility depends on whether the Player is considered a Protected Person. Pursuant to a comment included in the 2021 TADP, Protected Persons are treated differently than other athletes in certain circumstances based on the understanding that, below a certain age or intellectual capacity, an athlete may not possess the mental capacity to fully understand and appreciate the prohibitions contained in the TADP. As a preliminary issue, the Panel must therefore decide whether the Player was a Protected Person in the sense of the TADP.

141. Pursuant to Appendix 1 to the 2021 TADP, a "Protected Person" is

> *"[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 law".*

142. In the present case, the Player had reached the age of 17 when his Father applied the Trofodermin spray on his wound and when he participated in the Event. Neither Party argued that for reasons other than age the Player lacked legal capacity under applicable law. Therefore, the Panel must only assess whether the Player was a Protected Person under the second alternative, i.e., if he *"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".*

143. The Panel notes that the three conditions, i.e., (i) the age below 18, (ii) the non-inclusion in any Registered Testing Pool, and (iii) the non-competing in any International Event in an open category, are cumulative and must all be realised. Here, it is undisputed that the Player was aged below 18 and was not included in any Registered Testing Pool when his Father applied the Trofodermin spray on his wound and when he participated in the Event. Therefore, the Panel must only assess whether the Player *"at the time of the Anti-Doping Rule Violation […] has never competed in any International Event in an open category".*

144. Pursuant to Appendix 1 to the 2021 TADP, *"[i]n respect of the ITF, an Event is an International Event if it is a Covered Event"*. The term "open category" is meant *"to exclude competition that is limited to junior or age group categories"*. ATF Challenger Tour tournaments are considered Covered Events, and therefore "International Events" in the sense of the 2021 TADP.

145. In the present case, the Player was still a Protected Person when the Father applied the Trofodermin spray to the Player's wound on 1 or 2 October 2021. The Event in Napoli, at which the Player participated on 11 October 2021, was a Covered Event in an open category. This remained undisputed by the Player both before the Independent Tribunal and the CAS. However, when the Player participated in the first round at the Event, the situation changed and he lost his status as a Protected Person. When the Player provided his urine sample and was tested positive for Clostebol, he had already participated in a Covered Event in an open category and had lost his status as a Protected Person. The Panel also agrees with the ITF that the more flexible sanctioning regime granted to Protected Persons does not apply to 17-year old athletes who have reached the level to participate in Covered Events in an open category, because they should receive the same treatment as other elite athletes against whom they are competing.

146. In sum, the Player lost his status as a Protected Person from the moment he participated in the Covered Event in Napoli. The presence of the prohibited Clostebol in the Player's body was detected *after* the Player had participated in that Event. Therefore, the more flexible sanctioning regime offered to Protected Persons does not apply to the Player, and the sanction may be reduced to no less than one-half of the period of ineligibility otherwise applicable. The breadth of the possible sanction therefore ranges from twelve (12) to twenty-four (24) months, depending on whether the Player is able to prove, by a balance of probability, that he bore no significant fault or negligence for the ADRV.

b. The principles applicable to determine the level of fault

147. In Appendix One to the 2021 TADP, the concept of no significant fault or negligence is defined as follows:

> *"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"*.

148. The Player established by a balance of probability how the Clostebol entered his body (*see* para. 124 above). Therefore, the Panel turns to the evaluation of the Player's individual level of fault.

149. As set forth in Article 3.1.2 of the 2021 TADP, the applicable standard of proof for the Player to establish his level of fault is *"by a balance of probability"*.

150. To determine the principles applicable to assess the individual level of fault, the Panel takes into account and is guided, in particular, by the following CAS decisions:

- In CAS 2013/A/3327 & 3335, the panel distinguished three categories of fault and established criteria to assess the objective and subjective levels of faults.

- In CAS 2017/A/5301 & 5302, the panel adapted the three categories developed in CAS 2013/A/3327 & 3335 to the 2015 version of the WADA Code, which no longer allowed for a reduction of the sanction below one year if there was no significant fault or negligence for a specified prohibited substance.

- In CAS 2017/A/5317, the panel assessed the level of fault of an athlete that becomes aware of the consumption of an unknown product only after the product had been administered to the athlete.

151. The point of departure for the level of care to be expected from athletes is their high responsibility to take care that no prohibited substance enters their system (CAS 2017/A/5301 & 5302, para. 188), as set forth in Article 2.1.1 of the 2021 TADP:

"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".

152. Pursuant to the CAS 2013/A/3327 & 3335 decision, both the *objective* and the *subjective* level of fault are to be considered. The objective level describes *"what standard of care could have been expected from a reasonable person in the athlete's situation"*, and the subjective element describes *"what could have been expected from that particular athlete, in light of his personal capacities"* (CAS 2013/A/3327 & 3335, para. 71).

153. In CAS 2013/A/3327 & 3335, three categories of fault or negligence were distinguished, namely *"significant degree of or considerable fault"*, *"normal degree of fault"* or *"light degree of fault"*. The possible sanction range of 0 to 24 months was divided into each category of fault, i.e., 16 to 24 months for a significant degree of or considerable fault, 8 to 16 months for a normal degree of fault, and 0 to 8 months for a light degree of fault (CAS 2013/A/3327 & 3335, para. 69 *et seq.*).

154. In CAS 2017/A/5301 & 5302, the CAS 2013/A/3327 & 3335 doctrine was adapted. The CAS 2013/A/3327 & 3335 award was rendered under the then applicable version of Article 10.4 TADP, which corresponded to Article 10.4 of the 2009 WADA Code. However, Article 10.5.1.1 of the 2015 version of the WADA Code and, following that, Article 10.5.1 (a) of the 2017 TADP significantly differed from the previous sanction scheme (see CAS 2017/A/5301 & 5302, para. 189 *et seqq.*). As described in CAS 2017/A/5301 & 5302, the sanction range of 0 to 24 months in CAS 2013/A/3327 & 3335 was applicable to all degrees, including a significant degree, of fault. Therefore, the sanction range was to be allocated amongst the three categories. However, under the new sanction regime, which is also the sanction regime

as set forth in Article 10.2 of the 2021 TADP, a reduction of the sanction can only be considered if an athlete can establish that he or she bore no *"significant"* fault or negligence (CAS 2017/A/5301 & 5302, para. 192 *et seq.*). If the athlete bore *"significant"* fault or negligence, the minimum sanction of two years (if the ADRV was not intentional) shall not be reduced.

155. Therefore, in CAS 2017/A/5301 & 5302, the applicable sanction range of 0 to 24 months was divided into two instead of three categories of fault, namely (i) from 12 to 24 months for a normal degree of fault, and (ii) from 0 to 12 months for a light degree of fault.

156. As correctly pointed out by the ITF, the CAS 2017/A/5301 & 5302 case concerned the prohibited substance "letrozole", i.e., a *"specified substance"*. For a specified substance, the applicable sanction range could be between no period, at a minimum, and two years of ineligibility, at a maximum (CAS 2017/A/5301 & 5302, para. 174, 179). For a non-specified substance, such as Clostebol, the minimum sanction is no less than one-half of the period of ineligibility otherwise applicable, i.e., 12 months, unless there is no fault or negligence or the athlete is a Protected Person.

157. Therefore, the CAS 2013/A/3327 & 3335 principles, as adapted in the CAS 2017/A/5301 & 5302 case, must be further adapted to the case at hand where a non-specified substance is involved. The allocation of the sanction range to the degrees of fault is as follows:

- *"Significant degree of or considerable fault"*: No reduction of the otherwise applicable sanction (Article 10.6.2 of the 2021 TADP);
- *"Normal degree of fault"*: 18 to 24 months, with a standard normal degree of fault of 21 months;
- *"Light degree of fault"*: 12 to 18 months, with a standard light degree of fault of 15 months.

158. As indicated in the CAS 2013/A/3327 & 3335 case, the subjective elements for the determination of fault can move an athlete from one category to the other (CAS 2013/A/3327 & 3335, para. 87).

159. The other guiding principles identified in the CAS 2013/A/3327 & 3335 case to determine the degree of fault in an individual case continue to be applicable. As in the CAS 2017/A/5301 & 5302 case, the Panel notes, however, that in the CAS 2013/A/3327 & 3335 case the objective elements of fault – which *"should be foremost in determining into which of the three relevant categories a particular case falls"* – related to the intake of an unknown product by the athlete in question, exclusively (CAS 2013/A/3327 & 3335, para. 72; CAS 2017/A/5301 & 5302, para. 195).

160. These objective elements are not directly applicable in the present case as they refer to the obligations of the athletes *prior* to the intake of a product, such as the obligations to (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label with the list of prohibited substances, (iii) make an internet search of

the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product (CAS 2013/A/3327 & 3335, para. 74).

161. As indicated in the CAS 2017/A/5317 case, *"if and to the extent that the fault or negligence relating to the violation comes after rather than before the violation, that may and usually will be an important component"* of the evaluation of the objective level of fault or negligence (CAS 2017/A/5317, para. 64).

162. Nevertheless, when an athlete becomes aware of the consumption of an unknown product *after the facts*, the athlete *"remains under a duty to deal appropriately"* with the presence of a potentially prohibited substance in his or her body (CAS 2017/A/5317, para. 60). This involves the obligation (i) to make inquiries as to the product which was used and its ingredients, (ii) cross-check the ingredients of such product with the list of prohibited substances, (iii) make an internet search of the product, (iv) make inquiries how the product was sourced, and (v) consult appropriate experts in these matters.

163. The subjective elements of the level of fault identified in the CAS 2013/A/3327 & 3335 case are, however, of supportive weight (CAS 2013/A/3327 & 3335, para. 76; CAS 2017/A/5301 & 5302, para. 196):

- the athlete's youth and/or experience
- language or environmental problems encountered by the athlete
- the extent of anti-doping education received by the athlete
- other *"personal impairments"*, such as having taken a product over a long period of time without incident, previously having checked the product's ingredients, suffering from a high degree of stress, or the awareness of an athlete being reduced by a careless but understandable mistake.

164. In addition to the list of subjective elements as established in the CAS 2013/A/3327 & 3335 case, the fact that an athlete was a Protected Person at the time when he used a prohibited substance must also be taken into account as a subjective element, although it does not have a bearing on the determination of the applicable sanction range when such athlete subsequently lost his status as Protected Person (*see* above, para. 140 *et seqq.*).

165. Further, the Panel notes that the Appendix 1 to the 2021 TADP defines "fault" as *"any breach of duty or any lack of care appropriate to a particular situation"*. Pursuant to the 2021 TADP, factors to be taken into consideration in assessing a player's degree of fault include, *inter alia*, (i) the player's experience, (ii) whether the player is a Protected Person, (iii) special considerations such as impairment, (iv) the degree of risk that should have been perceived by the player, and (v) the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk.

166. After having carefully assessed the Parties' submissions and allegations, and having reviewed the existing case law of the CAS on the question of the level of fault or negligence for an ADRV, the Panel now turns to its own assessment of the present case. In this regard, the Panel notes that the level of fault or negligence always depends on the particular circumstances of the case at hand. While similarities with existing decisions can give certain indications, each case must be decided individually.

c. The Player's fault

167. In a first step, the Panel assesses the Player's (i.e., not his parents') individual degree of fault for the presence of Clostebol found in his body on 11 October 2021.

168. First, to determine the objective degree of fault, the Panel will assess what standard of care that could have been expected from a reasonable person in the Player's situation after he had noticed that the Father had applied a different medical product.

169. The Father applied the Trofodermin spray to the Player's knee without explaining to the Player that he was going to use a product which was different to the hydrogen peroxide which had been applied before. The Player had realistically no possibility to resist that application of the Trofodermin spray. However, *after* the application of the spray, the situation changed, and the following actions could have reasonably been expected of the Player:

- to ask his Father what he had applied and how he had made sure that the anti-doping measures were complied with;

- to carefully examine the bottle of Trofodermin spray, research the term "Clostebol" – which was indicated on the bottle – on the internet and on the list of prohibited substances;

- to consult his sports doctor, Dr. Marassi, and his coach, Mr. Petrazzuolo, and ask them whether they are familiar with Trofodermin spray and/or the product Clostebol.

170. The Player only asked the Father what he had applied and whether the bottle bore the anti-doping pictogram. Although the Player usually consults with his sports doctor, Dr. Marassi, and with his coach, Mr. Petrazzuolo, when he uses medication, he did not consult with them after the administration of the Trofodermin spray by his Father. He also did not examine the bottle himself, and he did not search the prohibited list on the internet for the term "Clostebol" or Trofodermin spray. Based on the above, the Panel concludes that the Player personally and individually did not comply with the duty of care and the standard of utmost caution objectively expected from a reasonable person in the Player's situation.

171. As the athlete in the CAS 2017/A/5317 case (*see* above, para. 161), however, the Player bore no fault as to the conduct *prior* to the application of the Trofodermin spray on his wound. In particular, the Player did not choose to be treated with Trofodermin spray, nor did he delegate the choice of the medical treatment to his Father. Rather, the Father applied the Trofodermin

spray to the Player without the Player's consent. In a situation in which the Player departed from his duty of care only *after* the involuntary application of an unknown product, the objective degree of fault is less significant than in a situation where the duty of care was violated before such application.

172. As an additional mitigating factor for the determination of the objective degree of the Player's fault, the Panel takes into account that the Trofodermin spray was used only once on the Player's wound, and not over an extended period of time (such as, for example, in the *Licea* case, Decision of the ITF of 5 November 2020, para. 10).

173. Under such circumstances, the Panel concludes that the Player's objective degree of fault falls into the category of "normal degree of fault", which would warrant a sanction beginning with 18 months of ineligibility.

174. Second, turning to the Player's subjective degree of fault, the Panel must assess what could have been expected from the Player, in light of his personal capacities, under the particular circumstances.

175. Unlike the Independent Tribunal, the Panel considers the age of the Player – who was 17 at the time when the Father applied the Trofodermin spray and when he was tested positive for Clostebol at the Event – to be a mitigating factor. In the case at hand, the standard of caution that can be expected from a 17-year old Player after the application of a spray is not the same as if such spray had been applied on an older and more experienced Player.

176. In addition, the Panel considers that the Father answered in an authoritative tone to the Player's question whether he had checked the bottle for the anti-doping pictogram. From an objective point of view, the Father's reassurance that there was no anti-doping pictogram on the bottle and that he himself had used it before upon recommendation by Dr. Bernabò was insufficient to satisfy the Player's duty of care. However, under the particular circumstances, the Panel acknowledges that it was difficult for the 17-year old Player to find the courage to stand up against his Father and to request further information regarding the product the Father had applied on the Player's wound. Such behaviour by the Player would have questioned the Father's authority. It is understandable – yet in violation of his duty of care – that the Player did not question his Father's authority and chose to trust his Father instead.

177. The Panel also notes that the Player was a Protected Person at the time of the application of the Trofodermin spray. In other words, the conduct of which the Player is accused of, namely that he did not carry out the checks that were expected from him *after* the application of the spray, occurred when he was still a Protected Person and he did not know yet that he would receive in the following days a wild card for a Covered Event. If that status had not changed, the applicable categories of fault would lead to significantly lower sanction ranges, namely (i) from 0 to 12 months for *"light degree of fault"* and from 12 to 24 months for *"normal degree of fault"*.

178. The Panel is aware that pursuant to Article 10.9.4.1 of the 2021 TADP, for as long as an athlete has not received notice of the first ADRV, the first and the second ADRV will be considered together as one single first ADRV, and the sanction imposed will be based on the ADRV that carries the more severe sanction. For this reason, the minimum applicable sanction here is a 12 months-period of ineligibility because the Player was not a Protected Person when he violated Article 2.1 of the 2021 TADP (presence of a prohibited substance). However, this has no bearing on the determination of the subjective degree of *fault*. The subjective degree of fault is mitigated by the fact that the Player did not comply with the standard of care that could have been expected from a reasonable person in the Player's situation when he was still a Protected Person and had never participated in a Covered Event.

179. For these reasons, and against the background of the particular circumstances in the present case, the Panel finds that the Player's subjective degree of fault should lead to a reduction of the sanction to 15 months, which corresponds to a "standard light degree of fault" in the sanction range from 12 to 24 months and to a less than "standard normal degree of fault" in the sanction range from 0 to 24 months which would have been applicable if the Player were still a Protected Person.

d. The parents' fault

180. So far, the Panel only assessed the Player's personal and individual fault for his ADRV. As confirmed in the CAS 2017/A/5301 & 5302 case, the Player's responsibility includes that he is responsible for the behaviour of his entourage, be it his coaches, his medical staff as well as the members of his family (CAS 2017/A/5301 & 5302, para. 198).

181. In the CAS 2017/A/5301 & 5302 case, however, the relationship between the athlete's own fault and the fault of her entourage imputable to her was not further assessed. It was only stated that *"the Athlete's personal departure from the objective and subjective standards of care, expected to be exercised by her, together with her mother's fault which is imputed to her, amounts to a light degree of fault"* (CAS 2017/A/5301 & 5302, para. 206).

182. In the present case, the parents of the Player deviated from the objective and subjective standards of care expected to be exercised by them:

- The Mother threw away the packaging and the leaflet of the Trofodermin spray which would have allowed an immediate more thorough study of the anti-doping risks when they wanted to use the spray on the wound of the son.

- The Father, as agreed or even urged by the Mother, applied the Trofodermin spray on the Player's wound, after only a cursory review of the bottle of the spray. The Father neither called the doctor who had recommended the spray to him a year ago, nor did he research the product "Clostebol" or the Trofodermin spray on the internet before (or after) applying it to the Player's wound. The Father would have had ample time to carry out such research after the Mother had handed him the spray and before the Player had finished the shower.

– Neither the Mother nor the Father carried out any anti-doping checks after the Father had applied the Trofodermin spray to the Player.

183. In the view of the Panel, the objective and subjective fault of the parents is more severe than the fault of the Player, because (i) they decided to apply the Trofodermin spray on the Player, (ii) the Father applied the Trofodermin spray to the Player without the latter's consent, and (iii) they did not carry out sufficient anti-doping checks *before, during and after* the application of the spray.

184. However, under the particular circumstances of the present case, the fault of the parents cannot increase the fault of the Player. Upon a careful and thorough assessment of the facts of the case and an extensive witness examination, the Panel concluded that the Player neither consented to the application of the Trofodermin spray by his Father nor delegated the medical treatment of his wound to the Father to the extent that the Father could have exercised his discretion as to how to treat the wound. The Player's fault is limited to his omissions *after* the involuntary application of the Trofodermin spray by his Father. The Father's (and the Mother's) deviation from the standard of caution *prior to and during* the use of the prohibited substance cannot be imputed to the Player. It would be different if the Player had consented to the use of the Trofodermin spray by his Father, or if the Player had allowed his Father to treat the wound in the Father's own discretion.

185. The present case must be distinguished from cases in which a prohibited substance is administered by a physician or coach without disclosure. The reason being that unlike in the case at hand, where the parents of the athlete intervened *sua sponte*, athletes are *responsible* for their choice of medical personnel and for advising the personnel appropriately. The same goes for the sabotage of athletes' food or drink by a coach or a family member, because the athletes are *responsible* for what they ingest and to whom they grant access to their food or drink. Thus, this case is different from CAS 2017/A/5301 & 5302, where the CAS imputed the fault by the athlete's mother to the athlete *"because she entrusted her mother to prepare the meal she ate"* (CAS 2017/A/5301 & 5302, para. 199).

D. Conclusions

186. Based on the written and oral submissions of the Parties and the evidence before it, the Panel comes to the following conclusion:

187. The Player committed an ADRV due to the presence of Clostebol in his body on 11 October 2021.

188. The Player, by a balance of probability, established that the source of Clostebol found in his sample was the one-time administration of the Trofodermin spray by the Father to the Player's wound on 1 or 2 October 2021, without the Player's prior consent.

189. The Player was a Protected Person at the time of the administration of the Trofodermin spray but lost this status when he participated in the Event on 11 October 2021.

190. The Player bore no significant fault or negligence. His overall objective and subjective fault is light. A period of ineligibility of 15 months is to be imposed on the Player.

191. Accordingly, the appeal filed by the Player on 12 September 2022 against the Appealed Decision is partially upheld, and the Appealed Decision is partially set aside.

192. As set forth in Article 10.13.2.1 of the TADP, the period of the Provisional Suspension that has run from 30 November 2021 is to be credited against the total period of ineligibility of 15 months. Therefore, the period of ineligibility of 15 months commenced on 30 November 2021.

193. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Mariano Tammaro on 12 September 2022 against the decision rendered on 25 August 2022 by the Independent Tribunal of the International Tennis Federation (ITF) is partially upheld.

2. The decision rendered on 25 August 2022 by the Independent Tribunal of the International Tennis Federation (ITF) is partially set aside. The 3rd bullet point of paragraph 109 of the decision of the Independent Tribunal of the International Tennis Federation (ITF) is set aside and replaced with the following:

   Mr. Mariano Tammaro is declared Ineligible and barred from participating in any Competition, Event or other activity or funding in accordance with the Tennis Anti-Doping Programme for a period of fifteen (15) months commencing on 30 November 2021.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.