

UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE

UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE,)
)
<i>Complainant</i>)
)
v.)
)
USA BADMINTON,)
)
<i>Respondent.</i>)

PRELIMINARY HEARING REPORT AND SCHEDULING ORDER

On November 12, 2019, the United States Olympic & Paralympic Committee (“**USOPC**” or “**Complainant**”) filed a Complaint against USA Badminton (“**USAB**” or “**Respondent**”) (hereinafter referred to as “**Parties**”) pursuant to Section 220521(d) of the Ted Stevens Olympic and Amateur Sports Act (36 USC §§ 220501-220529) (the “**Act**”) and Section 8 of the USOPC Bylaws. In accordance with Section 220521 of the Act and Section 8.20.1 of the USOPC Bylaws, in consultation with the USOPC Board Chair, Chair of the Athletes’ Advisory Council (“**AAC**”) and Chair of the National Governing Bodies Council (“**NGBC**”), the USOPC Chief Executive Officer, Sarah Hirshland, appointed an independent Hearing Panel of three members to hear the Complaint. The Hearing Panel members are: Beth Brooke-Marciniak (Hearing Panel Chair and USOPC Board Member), Rocky Harris (CEO of USA Triathlon and Member of the NGBC), and Will Groulx (Paracycling athlete and athlete representative on the AAC) (collectively “**Panel**”). No objection has been made as to the appointment and service of the Panel.

A preliminary hearing was held on January 3, 2020, before the Panel. Attending the preliminary hearing via telephone conference call were Onye Ikwuakor (representing USOPC) and Jon Little and Derrick Morgan of Saeed & Little, LLP (representing USAB). Additionally, the following individuals attended the preliminary hearing: Linda French (CEO of USAB), Christian Dennie (Counsel for the Panel), Sara Pflipsen (Senior Counsel for Dispute Resolution and Athlete Affairs at the USOPC), and Lucy Denley (Senior Paralegal at the USOPC).

By agreement of the Parties and Order of the Panel, the following is now in effect:

1. Hearing: The in-person hearing in this matter shall commence before the Panel at **8:00 a.m. MT on March 9-10, 2020**, in Denver, Colorado at a location to be determined. The Parties contemplate that the hearing will require 1-2 days of hearing time. Parties shall be provided with a maximum of fifteen (15) minutes for opening statements and fifteen (15)

minutes for closing statements. The hearing shall be a closed hearing. Witnesses shall be allowed to attend either in-person, videoconference, or telephonically during the duration of their testimony. Except for the designated party representative, witnesses will be sequestered. This is a firm setting, and will not be changed or continued absent exceptional circumstances and upon a showing of good cause. The Parties shall follow the deadlines, to be complied with by 5:00 p.m. MT on each corresponding date unless otherwise noted, as set forth below:

February 21, 2020 *Exchange of Exhibits, Exhibit Lists, and Witness Lists:* No later than this date, the Parties shall exchange witness lists, exhibit lists, and copies of (or, where appropriate, make available for inspection) all exhibits to be offered at the final hearing. Any affidavit and/or declaration shall be made under oath and signed by the testifying party before a notary. Any witness testifying via affidavit or declaration, shall be made available for cross-examination. Each proposed exhibit shall be pre-marked for identification.

A brief explanation of the testimony to be offered by each witness shall be provided as a part of the witness list.

February 26, 2020 *Briefs on the Issues and Substantive Law:* No later than this date, the Parties shall serve and file a brief addressing all disputed issues. The Panel requests that briefs not exceed twenty (20) double-spaced pages, excluding copies of any authorities that the Parties may submit at the same time. The Parties are invited to highlight any authorities as they deem appropriate.

February 28, 2020 *Joint Exhibits, Joint Witness Lists, and Stipulations:* No later than this date, the Parties shall file a joint list of exhibits expected to be offered at the hearing, a joint list of witnesses to be offered at the hearing, and a joint statement of uncontested facts and stipulations.

Each proposed exhibit shall be pre-marked using the following designations:

<u>PARTY</u>	<u>EXHIBIT #</u>	<u>TO EXHIBIT #</u>
Complainant	C1	C__
Respondent	R1	R__

If the exhibits are agreed upon by the Parties, then they shall be numbered consecutively. Each Party shall bring sufficient copies to the hearing for opposing parties, the Panel, counsel for the Panel, and the witness. Any disputes

regarding exhibits and/or witnesses¹ will be decided by the Panel per a Party's request.

2. Additional Status Conference: An additional telephonic status conference call is scheduled for **February 28, 2020, at 4:00 p.m. MT** before the Panel. A conference call-in number will be provided. The Parties shall confer regarding a proposed agenda and shall submit a proposed agenda for the call no later than **February 24, 2020, at 5:00 p.m. MT**.

3. Discovery: The Parties agree to comply with the following discovery schedule. Any discovery tool that is not expressly provided below shall be presented to the Panel for consideration (*i.e.*, depositions, interrogatories, etc.). Any dispute regarding the exchange of information shall be brought to the attention of the Panel in writing no later than **February 10, 2020**.

a. *Written Discovery:*

i. The Parties shall exchange disclosures and all relevant documents by no later than **January 17, 2020**.

ii. The Parties may serve no more than ten (10) Requests for Production by no later than **January 17, 2020**.

iii. Answers to discovery requests are due within fourteen (14) days of receipt of the requests.

b. *Expert Designations:* No later than **January 24, 2020**, the Parties shall file and designate their expert witnesses, if any, and reports shall be provided no later than **February 14, 2020**. Expert reports shall set forth each expert's opinions and the reasons for them. The substance of each expert's direct testimony must fairly and reasonably be addressed in the expert's report.

c. *Electronic Discovery:* The Parties have expressed that there will be no issues with electronic discovery. If the Parties identify the exchange of electronic discovery will be required, then the Parties shall contact the Panel, if necessary, to issue orders relating to the same.

4. Confidentiality: A Party or the Parties may make a request to the Panel for any measures required to protect confidential information.

5. Communication: There shall be no direct oral or written communication between the Parties and the Panel. All documents and/or correspondence shall be filed with Lucy

¹ During the hearing, discussion occurred regarding certain witnesses that Respondent desires to testify at the final hearing. The Panel reserves ruling at this time. If Respondent believes that Mr. Blackmun, Mr. Adams, and Ms. Lyons (or other witnesses) are essential to its presentation of the case and the USOPC objects, such request may be presented by motion to the Panel for ruling whereby the Parties present their arguments for and against such witness testimony.

Denley (Lucy.Denley@usoc.org).

6. Deadline Enforcement: All deadlines stated herein will be strictly enforced and adhered to in order to avoid unnecessary delay and to ensure an expedient and fair resolution of this matter. This order shall continue in effect unless and until amended by subsequent order of the Panel.

7. Court Reporters/Recordings: The Parties may request a court reporter or recording of the final hearing of this matter. If only one Party requests a court reporter or other recording of the final hearing, then the requesting party shall pay the court reporter's costs and/or recording costs but each Party will be responsible for purchasing their own copy of the transcript. If both Parties request a court reporter, then the Parties will split the court reporter's costs equally. A copy of the transcript and/or recording shall be provided to the Panel at no cost within ten (10) days of the close of the hearing. The transcript and/or recording shall not be released to the Parties until the Report and Recommendation has been issued.

January 9, 2020
Date


Beth Brooke-Marciniak, Chair

Rocky Harris, Panel member
Will Groulx, Panel member