

**UNITED STATES OLYMPIC COMMITTEE**

Matthew Fogarty,	)	
	)	
Complainant,	)	
	)	DECISION
vs.	)	
	)	
USA Badminton,	)	July 14, 2008
	)	
Respondent.	)	
	)	

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I. THE PARTIES

1. Matthew Fogarty (“Fogarty”) is a member of USA Badminton (“USAB”). He is also a badminton player, having represented the United States in various international events, primarily as a doubles player.

2. USAB is the National Governing Body (“NGB”) for badminton in the United States, as recognized by the United States Olympic Committee (“USOC”) pursuant to the Ted Stevens Olympic and Amateur Sports Act (36 USC §§ 220501-220529) (the “Act”). USAB is also a member of the Badminton World Federation (“BWF”), which is the international federation for badminton as recognized by the International Olympic Committee.

II. COMMENCEMENT OF PROCEEDING AND ALLEGATION OF COMPLAINT

3. On April 9, 2008, Fogarty filed a Complaint against USAB pursuant to Article VIII, Section 8.1 of the USOC Bylaws and Section 220527 of the Act.

4. Fogarty in his Complaint alleges that:

The 2007 World Championships has past. The procedures to resolve this complaint has resulted in unnecessary delays and denied Dean Schoppe

and Matt Fogarty, MD entry into the 2007 World Badminton Championships. The 2007 World Championships is a qualifying event for the 2008 Olympics. USAB created selection procedures for the 2007 World Championships and 2008 Olympics which are more restrictive than the IF's.

5. Fogarty asserts that as a result of USAB's actions, USAB is not in compliance with Section 220522(a)(14) of the Act, which provides that an NGB shall not have "eligibility criteria related to amateur status or to the participation in the Olympic Games, the Paralympic Games, or the Pan-American Games that are more restrictive than those of the appropriate international sports federation."

### III. PANEL COMPOSITION

6. In accordance with Article VIII, Section 8.1 of the Bylaws, USOC Chair, Peter Ueberroth, appointed a Hearing Panel of five members for the purpose of hearing this matter. The Panel members are:

Mary McCagg, Chair  
USOC Board of Directors  
Max Cobb  
USOC National Governing Body Council, U.S. Biathlon Association  
Debbie Hesse  
USOC National Governing Body Council, USA Diving  
Courtney Johnson  
USOC Athletes' Advisory Committee, US Water Polo  
Robert P. Latham  
USOC Multisport Organizations Council, USA Rugby

### IV. BACKGROUND

7. Fogarty has filed a number of complaints against USAB including an Article VIII Complaint filed on May 21, 2007,<sup>1</sup> which was heard by this Panel. In that

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<sup>1</sup> Fogarty filed two Article VIII Complaints on May 21, 2007 that for administrative purposes were combined into one Complaint. Together, the two complaints are referred to as the May 21, 2007 Complaint.

Complaint Fogarty alleged that he was denied an opportunity to participate in a) the 2007 Pan American Games and b) in the 2007 World Championships, which thereby precluded his participation in the 2008 Olympic Games, because USAB employed selection procedures and a selection process that were more restrictive than BWF rules. More specifically, relating to the 2007 World Championships, Fogarty challenged USAB's actions stating a) that "USA Badminton refuses to require the BWF to fulfill its obligation to comply with the WBF [*sic*] competition Regulations which state that entry into the men's doubles draw is determined by WBF [*sic*] World Ranking," and b) that "USAB has refused to submit Dean Schoppe and Matt Fogarty's entry in Men's Doubles to the 2007 World Championships." Fogarty also contended that "USA Badminton refuses to require the BWF to acknowledge [Fogarty and Shoppe's] entry into the 2007 World Championships." Fogarty asserted that USAB's actions violate Section 220522(a)(14) of the Act, which limits an NGB from having eligibility criteria that are more restrictive than its international federation.

8. This Panel issued its Decision on Fogarty's May 21, 2007 Complaint on April 28, 2008. In its Decision it found no merit to Fogarty's claims and denied Fogarty's Complaint in its entirety.

9. Fogarty's April 9, 2008 Article VIII Complaint again alleges that USAB created selection procedures that are more restrictive than the BWF's, and therefore are in violation of Section 220522(a)(14) of the Act. Albeit, in his April 9 Complaint he has dropped his reference to the Pan American Games, but retains the allegations relating to the 2007 World Championships and the 2008 Olympic Games.

10. Since the May 21, 2007 Complaint and the April 9, 2008 Complaint seemed similar, if not identical, the Panel issued an Order on June 4, 2008 requesting that Fogarty explain the differences between the May 21 Complaint and the April 9 Complaint.

11. Fogarty responded on June 10, 2008.

V. ANALYSIS

12. The issue confronting the Hearing Panel is whether Fogarty's claim, as set forth in his April 9, 2008 Complaint, has already been heard and decided.

13. In Fogarty's June 10, 2008 response he states that the May 21, 2007 Complaint related to the selection procedures for the Pan-American Games, while the April 9, 2008 Complaint calls into question the selection procedures for the 2007 World Championships. Fogarty offers no other explanation as to how the two Complaints differ.

14. First, Fogarty's response frankly is not true. Although the May 21, 2007 Complaint dealt with the 2007 Pan American Games, it also dealt with the 2007 World Championships. That is clear from the allegations set forth in the May 21, 2007 Complaint and from the Panel's April 28, 2008 Decision. It is difficult to understand how Fogarty could make a statement that the May 21, 2007 Complaint did not deal with the 2007 World Championships, unless he were purposefully attempting to mislead this Panel.


15. Second, the allegations contained in Fogarty's April 9, 2008 Complaint are not only substantially similar to the May 21, 2007 Complaint, but at times are copied verbatim from the May 21, 2007 Complaint. Fogarty uses the same language in both

Complaints. There are no additional facts or legal arguments contained in the April 9, 2008 Complaint that would in any way distinguish it from the May 21, 2007 Complaint.

VI. ORDER

16. The Panel finds that the issues raised by Fogarty in his April 9, 2008 Complaint are identical to the issues raised by Fogarty in his May 21, 2007 Complaint. The Panel further finds that those issues have already been examined by this Panel and decided on the merits as set forth in the Panel's April 28, 2008 Decision.

17. Accordingly, Fogarty's April 9, 2008 Article VIII Complaint is denied in its entirety.

  
Mary McCagg, Chair

Robert P. Latham, Panel Member  
Max Cobb, Panel Member  
Debbie Hesse, Panel Member  
Courtney Johnson, Panel Member



Signed this 14th day of July, 2008