

UNITED STATES OLYMPIC COMMITTEE

UNITED STATES JUDO ASSOCIATION, INC.	)	
	)	
Applicant,	)	
	)	
v.	)	DECISION ON
	)	MOTION TO DISMISS
	)	
UNITED STATES JUDO, INC.	)	
	)	
Respondent.	)	November 24, 2009

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I. BACKGROUND

1. United States Judo, Inc. (“USA Judo”) is the National Governing Body (“NGB”) for the sport of Judo 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”).

2. United States Judo Association, Inc. (“USJA”) filed an Application, dated August 11, 2009,<sup>1</sup> pursuant to Section 220528 of the Act and Section 11 of the USOC Bylaws seeking to replace USA Judo as the NGB for the sport of Judo.<sup>2</sup>

3. On September 11, 2009, USA Judo filed a Motion to Dismiss the Application.

4. On September 21, 2009, the Hearing Panel issued an Initial Order. In the Order the Hearing Panel:

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<sup>1</sup> Accompanying the application was a Proof of Service dated August 12, 2009. The Application was received by the USOC on August 13, 2009.

<sup>2</sup> An Application seeking to replace an NGB is commonly referred to as a Section 11 proceeding.

- a) provided that USJA had until October 9, 2009, to respond to USA Judo's Motion to Dismiss;
- b) provided that USA Judo had until October 23, 2009, to reply to USJA's Response;
- c) directed that USJA and USA Judo address a number of questions/issues raised by the Hearing Panel concerning the Motion to Dismiss; and
- d) requested that USJA and USA Judo each inform the Hearing Panel by October 23, 2009, as to whether or not they desired argument on the Motion to Dismiss.

5. USJA filed its Response on October 9, 2009.

6. USA Judo filed its Reply on October 22, 2009.

7. Neither party requested argument on the Motion to Dismiss.

8. The Hearing Panel met by telephone conference call to discuss and deliberate on the Motion to Dismiss. In its consideration of the Motion to Dismiss, the Hearing Panel reviewed the Application and all papers filed in support of and in opposition to the Motion.

## II. DECISION

### A. Ruling

9. For the reasons set forth below, it is the determination of the Hearing Panel that the Motion to Dismiss is denied. The determination of the Hearing Panel was unanimous.

B. Basis of Motion

10. USA Judo's Motion to Dismiss is based on two grounds. The first ground for dismissal is that USJA's Application was not properly filed, therefore causing the Application to be ineffective. As such, USA Judo contends that the Application did not meet the one-year filing period as required by Section 220528(c) of the Act and Section 11.3 of the USOC Bylaws.

11. The second ground for dismissal is that USJA's Application seeks to have the Hearing Panel consider and determine issues relating to USJA's continued membership in USA Judo, which is the subject of a USA Judo administrative hearing. Thus, USA Judo asserts that the Section 11 Application is premature and improper, and should be dismissed.

C. Analysis – Ineffective Filing

12. Section 220528(c) of the Act and Section 11.3 of the USOC Bylaws provide that an Application to replace an NGB must be filed within the one-year period after the final day of the previous Olympic Games in which the sport governed by the NGB was competed.<sup>3</sup> Since the closing ceremonies of the 2008 Beijing Olympic Games occurred on August 24, 2008, USJA's Application had to be filed by August 24, 2009.<sup>4</sup>

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<sup>3</sup> The rationale for this rule is to prevent an NGB from being challenged prior to the Olympic Games, thus interfering with the NGBs obligations to prepare and nominate athletes for those Games.

<sup>4</sup> Section 220528(c) of the Act states that the Application has to be filed "within one year after the final day" of the Olympic Games. Section 11.3 of the USOC Bylaws states that the Application has to be filed "within the one-year (1-year) period after the final day" of the Olympic Games. Thus, in calculating the filing time, the day of the Closing Ceremonies is not counted, or is counted as zero, and the day after the Closing Ceremonies is counted as day one. Further, Section 11.12 of the USOC Bylaws states that "[i]n computing any period of time, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day that is not one of the aforementioned days." August 24 was a Monday and was not a legal holiday.

13. Further, Section 11.4 of the USOC Bylaws provides that the organization seeking to replace the NGB shall have the Application signed by its chief executive officer and shall affix a copy of its bylaws to the Application.

14. USJA's Application contained a Proof of Service dated August 12, 2009, and was received by the USOC on August 13, 2009.

15. However, USA Judo asserts that the Application was deficient in that i) it was not signed by USJA's Chief Executive Officer, instead having been improperly signed by USJA's Chief Operating Officer, and ii) it did not contain a copy of USJA's organic documents (bylaws).<sup>5</sup>

16. USA Judo contends that this deficiency caused the Application to be ineffective and rendered the filing null and void. Accordingly, USA Judo argues that since the Application was not filed within the one-year filing date of August 24 this matter should be dismissed.

17. In its opposition to the Motion to Dismiss, USJA responds that it met the filing requirements of Section 11.4 of the USOC Bylaws. First, USJA points out that although the Application was not signed by its Chief Executive Officer, it was signed by its Chief Operating Officer with the approval and authorization of USJA's Board of Directors. In support of its position, USJA submitted a copy of its Board minutes of June 19, 2009. Those minutes recited that the Board passed a motion authorizing USJA to "pursue decertification of USA Judo" as the NGB for the Sport of Judo "with all haste and fervor."

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<sup>5</sup> This issue was first raised by USA Judo in a letter dated August 25, 2009, addressed to the USOC Office of General Counsel.

18. Second, USJA asserts that it misunderstood the directive of USOC Bylaw Section 11.4, which states that an applicant shall append a copy of its “organic documents” to the Application, but which does not refer directly to an applicant’s bylaws. Also, USJA indicates that its bylaws were readily available on its website at the time of filing. Further, USJA states that as soon as USA Judo raised this issue in its August 25, 2009, letter, USJA corrected the omission by providing a copy of its bylaws to USA Judo and by furnishing a copy of its bylaws to the USOC to be appended to its Application.

19. Therefore, USJA contends that its Application, which was submitted on August 13, 2009, met the required filing period as set forth in Section 220528(c) of the Act and Section 11.3 of the USOC Bylaws, which required the Application be filed within one-year after the final day of the 2008 Olympic Games.

20. There is no factual dispute concerning who signed the Application. It was signed by USJA’s Chief Operating Officer, and not by its Chief Executive Officer. Nor is there a dispute regarding whether or not the USJA’s bylaws were appended to the Application. They were not.

21. The Application should have been signed by USJA’s Chief Executive Officer. Also, it would have been preferable if USJA had appended a copy of its bylaws to the Application. However, the Hearing Panel does not view these omissions as rendering the Application ineffective, therefore negating the filing altogether and causing USJA to miss the filing deadline.

22. First, USJA’s Application complied with all other filing requirements, most importantly setting forth the allegations forming the basis of the challenge to USA

Judo's status as NGB. Also, the Application was accompanied by the filing fee of \$500.00.

23. Second, the Chief Operating Officer, who signed the Application, is an authorized representative of USJA. Also, he did not sign the application on his own accord, but did so pursuant to the approval and direction of the USJA Board. Further, the Application was signed and filed with the knowledge and assent of the Chief Executive Officer. Thus, although the strict formality of Section 11.4 may not have been complied with, its intent was met, that the Application be authorized by the challenging organization and that an authorized representative of that organization sign the Application. Thus, the fact that the Application was signed by the Chief Operating Officer, instead of the Chief Executive Officer, is not fatal to USJA's filing.

24. Third, as to USJA's failure to append its bylaws to the Application, USJA corrected this omission immediately after it was first raised by USA Judo. The Hearing Panel regards this correction as one relating back to the original filing, thus rendering the Application as being properly filed.

25. Fourth, neither filing deficiency, not having the Application signed by the Chief Executive Officer and not appending a copy of the bylaws to the Application, prejudiced USA Judo in responding to the Application or impacted it in such a way as to negatively impact its ability to defend its status as NGB.

D. Analysis – Premature and Improper Filing

26. The second ground for dismissal is that USJA is seeking to have the Hearing Panel consider and determine the same issues that are the subject of an administrative hearing convened by USA Judo, pursuant to Section 5.4 of its bylaws, to

terminate USJA's membership in USA Judo. USA Judo asserts that it is therefore premature and improper for the issues that are the subject of USA Judo's administrative hearing to be heard, considered and dealt with by this Hearing Panel in the Section 11 proceeding.

27. USJA responds by pointing out that Section 11 proceedings do not require an exhaustion of administrative remedies. USJA maintains that this is what USA Judo proposes, although not stated directly.

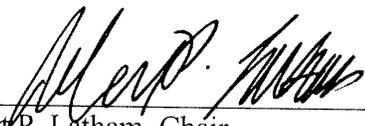
28. The fact that USA Judo has an administrative proceeding dealing with USJA's membership in USA Judo does not preclude the filing of a Section 11 Application. Membership in USA Judo and seeking to replace USA Judo as the NGB, although possibly related, are two different matters.

29. Further, the administrative proceeding concerning USJA's membership in USA Judo has now been completed, as a hearing was held on October 24, 2009, with the resulting determination to place USJA on probation.

30. Accordingly, USA Judo's contention that USJA's Section 11 proceeding is premature and improper is without merit.

### III. ORDER

31. USA Judo's Motion to Dismiss is denied.

  
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Robert P. Latham, Chair

Atif Siddiqi, Panel Member,  
Trischa Zorn-Hudson, Panel Member

Dated this 24th day of November, 2009