

Arbitration Tribunal
International Triathlon Union (ITU)
Avenue de Rhodanie 54
1007 Lausanne, Switzerland

ITU-AT/001-2016: Triathlon Canada and ITU Technical Committee vs. Ms. Julie Miller

DECISION

delivered by the

ITU ARBITRATION TRIBUNAL

sitting in the following composition:

President of the Panel: Ms **Ize Ukpoma Matebese**, attorney-at-law in Lagos, Nigeria

Members of the Panel: Mr **Timo Pennanen**, attorney-at-law in Kuopio, Finland
Mr **Philippe Renz**, attorney-at-law in Bern, Switzerland

in the disciplinary proceedings between

International Triathlon Union, Avenue de Rhodanie 54, 1007 Lausanne, Switzerland

Claimant

and

Triathlon Canada, Suite 121 – 1925 Blanshard Street, Victoria, British Columbia, Canada

National Federation

against

Ms **Julie Miller**, Box 5888, Squamish, BC, Canada V8B 0C2

Defendant

I. PARTIES

1. The International Triathlon Union (hereinafter the “Claimant” or “ITU”) is the world governing body for triathlon, duathlon, aquathlon and their nonstandard variations, with headquarters in Lausanne, Switzerland.
2. Triathlon Canada (hereinafter “Triathlon Canada”) is the recognized national governing body in Canada for triathlon and its related disciplines, with headquarters in Victoria, British Columbia, Canada.
3. Ms Julie Miller (hereinafter the “Defendant” or “Ms Miller”) is a Canadian triathlete competing at the international level. She won several titles in her age group, in particular the title of World Champion at the 2014 ITU Long Distance Triathlon World Championships (40-44 Female AG) in Weihai, China.

II. BACKGROUND FACTS

4. This section of the decision sets out a brief summary of the main facts and allegations based on the parties’ written submissions and on the ITU Arbitration Tribunal file. Additional facts and allegations found in the parties’ submissions, pleadings and evidence may be set out, where relevant, in other parts of this decision. 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 decision only to the submissions and evidence it considers necessary to explain its reasoning.
5. From 2013, the results of Ms Miller at various races were questioned by other athletes who then challenged them before Triathlon Canada and the World Triathlon Corporation (hereinafter “WTC”), the company organizing the IRONMAN Canada race.
6. Based on these allegations, the Disciplinary Committee of Triathlon Canada carried out an extensive review of all evidence provided to it and determined through a preponderance of the evidence that Ms Miller purposefully breached Triathlon Canada’s Code of Conduct 2.1 a) and 2.1 b) on three confirmed occasions. By letter dated 13 November 2015, Triathlon Canada informed Ms Miller of its decision to impose following sanctions on the athlete:

“1. Two-year ban from competing in any race sanctioned by Triathlon Canada and its members beginning November 1 2015. Two-year ban on competing for Team Canada in events outside of Canada

2. In addition, rescind Triathlon Canada Award of Excellence and remove your name from all National Championship race results from 2013 to present. Formally request that ITU look into your race results in China at the Long Distance World Championships 2014.”

7. Ms Miller did not appeal against this decision.
8. For its part, WTC disqualified Ms Miller from the 2015 IRONMAN Canada race by publishing following press release:

“Based on the combination of photographs and timing data, it was determined Julie Miller did not complete the entire run course of IRONMAN Canada and was therefore disqualified. As a

result of this, everyone in the F40-44 age group moved up one place and the final IRONMAN World Championship slot in this age group has been subsequently awarded to another athlete.”

9. By email dated 29 November 2015, Triathlon Canada informed ITU of its decision taken against Ms Miller and formally asked the Claimant to investigate Ms Miller’s result from the 2014 ITU World Long Distance Championships in China, race in which she finished in first place, arguing that some evidence seemed to point towards her allegedly cheating to obtain her result in the event.
10. This request was received by the ITU Technical Committee (hereinafter the “ITU TC”) on the 29 November 2015 which opened an investigation of the case by creating an *ad hoc* panel. Its investigation is summarized in a report relevant facts of which will be raised in the parties’ positions and in the merits below.
11. Based on these facts, the ITU TC *ad hoc* panel requested the ITU TC to support this report and to ask ITU Executive Board to remove the athlete’s results from the 2014 ITU Long Distance Triathlon World Championships (40-44 Female AG) in Weihai.

III. PROCEEDINGS BEFORE THE ITU ARBITRATION TRIBUNAL

12. On 15 March 2016, ITU sent to the ITU Arbitration Tribunal the ITU TC’s request and report. Based on this report, the ITU Arbitration Tribunal opened disciplinary proceedings against Ms Miller on 22 March 2016.
13. By procedural order dated 20 June 2016, the president of the ITU Arbitration Tribunal Panel (hereinafter the “Panel”) in charge of the proceedings sent the ITU TC’s report to Ms Miller, and requested her position on seven statements made by the ITU TC in this report and on this statement “*it appears that Miller skipped the first lap of the marathon course*” published on 28 April 2016 on the New-York Times website (<http://www.nytimes.com/2016/04/28/sports/julie-miller-ironman-video-offers-proof-that-disqualified-triathlete-cut-course.html>) and related to the 2015 IRONMAN Canada race. Furthermore, and in the same timeframe, the Defendant was given the opportunity to request an oral hearing by the Panel.
14. Following Ms Miller’s request, the president of the ITU Panel extended by Procedural Order dated 29 June 2016 the previous deadline of 15 days to take position until 25 July 2016.
15. By email dated 25 July 2016, Ms Miller provided her statement to the ITU Panel.

A. THE POSITIONS OF TRIATHLON CANADA AND ITU

16. Triathlon Canada requested ITU to investigate Ms Miller’s case based on possible evidence of an unfair behaviour of the latter in Weihai, however without making this evidence available to the Panel. The position of Triathlon Canada can thus be summarized to this request.
17. The ITU TC proceeded with an investigation of the facts contained in a report which focus on the performance of the Ms Miller in various races, on the declaration of witnesses including a

hearing with the Defendant, and on images provided from the race, downloaded from two separate cameras. This report contains in particular seven statements that are summarized below to the extent needed to establish the facts.

18. Statement Nr 1:

“Miller also states that she was in the lead on the bike until near the end. (Source: PowHERhouse Interview) This is incorrect. As we can see from the above data, Miller had already been overtaken by Gray Hewitt and had also been overtaken by Tamasin Reno who goes on to win the Overall Age Group race.”

This statement refers to pictures taken by one of the cameras on a downhill section of the bike race, which show the following athletes and their times during the first lap of this race:

*“2:24.29 - Gray Hewitt is pictured
2:25.35 - Tamasin Reno is pictured
2:30.47 - Torvik is pictured
2:30.58 - Gowan is pictured
2:31.36 - Robertson is pictured
2:32.15 - Miller is pictured”*

19. Statement Nr 2:

“A summary of this portion of the race indicates that those that initially overtook Miller are holding a similar pace as each other. Miller is not pictured.”

This statement refers to pictures taken by one of the cameras towards the end of the second lap of the bike race, at a tunnel exit:

*“3:42.13 - Gray Hewitt is pictured
3:46.58 - Robertson is pictured
3:47.33 - Gowan is pictured
3 :47.36 - Torvik is pictured”*

20. Statement Nr 3:

“A summary of this section indicates that Miller has overtaken all of the Canadian men and women that had initially passed her. Miller appears to have overcome her initial speed defect of 12 minutes per lap to Reno. Miller appears to have outridden the fastest female age grouper on the day over the last 2 laps.”

This statement refers to pictures taken by one of the cameras towards the end of the third lap of the bike race, at the same tunnel exit:

*“4:57.32 - Reno is pictured (distinctive yellow bottle and dropped bars)
4:58.52 - Miller is pictured”*

21. Statement Nr 4:

“Tamasin Reno passed Miller once on the first loop of the bike and then passed Miller again on the last loop before T2. Miller still came into T2 just 1 minute and 20 seconds behind Reno, despite being overtaken by her twice.

22. Statement Nr 5:

“Miller’s assertion that she was leading the bike until the last 2 kilometres is incorrect. She was overtaken by at least 2 Canadian Women on the first loop and several men. All appear to be pulling away from Miller. Her bike pace in comparison to Tamasin Reno was fairly pedestrian, losing 11 minutes on that first lap. Tamasin’s power files show a consistent effort throughout the 120km and Reno was the leading female Age Grouper.

Miller’s race summary also tells a story. We know from the data above that Miller was overtaken early on by Tamasin Reno. We also know from Miller’s own race recap that she was passed in the last 2km by a team mate. The results indicate that the only person that could be is Reno. A fact backed up by photography at the end of the final lap showing Reno just in front of Miller.

With Reno proven to be ahead by some margin after the first lap, proven to be the fastest female on the day and proven to have passed Miller twice (by Miller’s own admission and the photographic data); indications show that Miller did not complete the bike course as directed in order to enter T2 less than 2 minutes behind Reno.”

23. Statement Nr 6:

“Miller’s final finish time of 06:53:01 was 21:52 behind Reno’s finish time and does not match with Miller’s comment of following her around the run.”

This statement refers to Tamasin Reno’s race times posted on the official ITU results page:

“NOTE: Tamasin Reno Times TOTAL – SWIM - T1 - BIKE – T2 – RUN

06 :31 :09 01:04:48 00:03:55 03:45:36 00:00:00 01:36:48”.

24. Statement Nr 7:

“These times do not support the comment from Miller as according to these times Milton exited the swim before Miller and seemingly had a quicker bike therefore starting the run before Miller.”

This statement refers to Jen Milton’s race times posted on the official ITU results page:

“NOTE: Jen Milton Times TOTAL – SWIM - T1 - BIKE – T2 – RUN

07:04:25 01:09:32 00:05:05 04:06:44 00:00:00 01:43:03”.

25. In its reports, the ITU TC further states that:

“It should also be noted that times posted on the official ITU results page do not tie up with the photographic evidence. Miller’s official times, such as the 1:23 run time are simply incorrect (the real time likely closer to 1:50 - see data below). Possibly caused by confusion / discussion about timing chip issues after Miller had finished the race.

There has been a great deal of discussion regarding Miller’s run time in China, with a lot of focus on that particular area. As we can see from the information below it is the bike analysis that shows a great cause for concern.”

26. Based on these statements, the ITU TC concludes in its report that:

“

- *The athlete has never competed at such a high level. When she was closely monitored (Motala 2015) she finished 39th out of 53 in her Age Group.*
- *The manual inclusion of the times are suspicious.*
- *The recorded time in Weihai doesn't match with the circumstances of the event.*
- *Having reviewed the bike and run course there does appear to be ample opportunity to cut sections out on both disciplines.*
- *If we assume Miller only ran 3 laps this would be closer to the expected run time of 01:50 on what appear to be quite a tough course.”*

B. THE POSITION OF MS MILLER

27. By email dated 25 July 2016, Ms Miller submitted following determinations to the statements made by the ITU TC and the question raised by the Panel.

28. Ms Miller's answer to ITU TC's Statement Nr 1 is the following:

“In reviewing the results posted on line from ITU Weihai, I would note than many results seem inaccurate and therefore all the data presented in the document is skewed.

Several of the results posted are incorrect, and therefore it is completely impossible to describe and determine if any of the information presented is accurate, based on the discrepancies. I have outlined several inaccuracies below.

My swim time posted on the results is incorrect, many athletes show no Transition Time at all, especially between the Bike and Run, which throws off all the “stated times” in personal statements given. This includes kay athletes like Tamsin Reno and Jen Milton to whom my times are being compared.

Some examples of inaccurate times posted online, which contradict statements.

I was the first Canadian to exit the water in the swim. In photos IMG 5511 Attached you will note that I am followed by Akiko Kawashima and Akemi Takahashi, both with swim times of 59.41. This would have given me a lead of 12 minutes on my posted result times.

You will also note that Tamsin Reno's swim times (1.04.48) are inaccurate as its clear from attached photo IMG 5521, Gray-Hewitt (1.10.06) exited the water before Reno (photo 5533) and before Milton (1.09.32) (photo 5541), although results online show Tamsin and Milton had a faster swim time than Gray Hewitt.

If Reno indicated she passed me on the first hill on the bike, I would have been riding very slowly in the first section. She would have made up close to 15 minutes on that first section. The photos being used were taken by Lisa Stiver, and she did not photograph my first loop, as she returned to the hotel to change her shoes. She caught the rest of the athletes on their first loop, including Cowan and Robertson who exited the water behind me by a significant amount of time.

If your times posted were accurate, how did Tamsin pass me in the first lap, as she is clearly ahead of me in the posted results."

29. Ms Millers's answer to ITU TC's Statement Nr 2 is the following:

"As per my points above, my pace cannot be assessed if my times are inaccurate."

30. Ms Millers's answer to ITU TC's Statement Nr 3 is the following:

"This statement relies on the fact that Tamsin supposedly passed me in the first lap, which I do not agree with. This statement also relies on the posted results as accurate, which I have proven incorrect in Statement 1 response. Therefore, if I was always ahead of these riders, then these facts do not compute. As per the statement that I rode faster than the fastest female, this is inaccurate, as it's based on my swim times being 12 minutes slower. If you add the 12 minutes to my bike time, it was a fast, but achievable ride for my personal pace.

It is clear from the photos that I ran over 1.45.46 in the run, but still finished ahead of Jen Milton. Photos (IMG 5657) that are being referred to in your investigation are mistaken, as they are the same photo number for both start and finish of race.

I have proven to be a fast swimmer, which was also shown in my Ironman Whistler 2014 times."

31. Ms Millers's answer to ITU TC's Statement Nr 4 is the following:

"There is no indication that Tamsin passed me in the first loop. With the swim times being so inaccurate, it is impossible that she passed me at that time. Your entire "case" is based on this fact, and seems quite impossible with my early exit from the swim.

IF she did not pass me at that point, then the facts listed seem very accurate, as I completed the bike right behind her, and started the run after, but never passed her in the run.

As stated earlier, none of my split times are correct, and therefore my bike was much faster than 4.09.45, closer to 3.45 or 3.50 and my run was closer to 1.46.

Also Tamsin again shows no split time at all for the bike to run, which seems inaccurate. It seems that there were several issues with posted times, this was not due to an error in timing chips, but with all athletes' times being posted online."

32. Ms Millers's answer to ITU TC's Statement Nr 5 is the following:

"As per response to the statement above. This is based on a slow swim time, and under no circumstance did Tamsin pass me in the first lap."

33. Ms Millers's answer to ITU TC's Statement Nr 6 is the following:

"I started the run after Tamsin, and completed the run after Tamsin, showing I followed behind her the entire run. As the run was 4 laps of the same loop, I saw Tamsin ahead of me several times on the run, and Jen Milton was behind me.

Based on the times shown on the results, if they were accurate Jen Milton would have entered the Transition before me on the run, and this was not the case. Also note Jen Milton does not have a Transition time between the Bike and Rune either."

34. Ms Millers's answer to ITU TC's Statement Nr 7 is the following:

"Jen Milton did enter transition after me from the bike. As shown in photographs, I finished the swim well ahead of Milton, and she did not pass me in the bike, nor on the run."

35. Ms Miller further states in her determination that:

"As stated in my introduction, it is clear many of the times listed are inaccurate and incorrect. This can be established by photos taken throughout the race.

To eliminate or disqualify my results, based on information that is already in question is unfair and unjust. I completed this race to its fullest. This was documented by the many race volunteers and officials present every few blocks on the course, and others taking photos. In addition, my timing chip was clearly on my ankle and passed all timing checkpoints throughout the race. The fact that at one point my run was being challenged and now my bike indicates that others are grasping at straws to see me removed. Many of the individuals making statements against me have a significant conflict of interest, as they will gain in position by stating these inaccuracies.

Other than hearsay and Tamsin believing that she passed me on the first lap, no other "evidence" has been presented that I did not complete this course, and for that reason I expect my results to stand.

That said, significant evidence does exist that I completed the race, including my timing chip, photos taken throughout the race by race volunteers and organisers."

36. To the Panel's question raised on the statement "it appears that Miller skipped the first lap of the marathon course" published on the New-York Times website and related to the 2015 IRONMAN Canada race, Ms Miller indicates that:

"I will not comment on the article from the New York Times, as it does not pertain to the investigation from ITU Weihai and its results, and has many inaccuracies. Written as an opinion piece, it does not require the same standards of journalism ethics and is not based on factual evidence".

37. Ms Miller, who does not require to be heard orally by the Panel on her case, concludes her determination by stating that:

"As per the evidence I have provided in my comprehensive response, I believe I have clarified any questions raised in your statements. I believe I have provided enough evidence to show that I did complete 100% of the course and my results should stand from the 2014 Weihai Long Distance World Championships AG 40-44 Female."

IV. LEGAL ANALYSIS

A. JURISDICTION

38. The jurisdiction of the ITU Arbitration Tribunal derives from Article 37.1 of the ITU Constitution and from Article 2.1 of the ITU Disciplinary Rules.
39. Article 2.1 of the ITU Disciplinary Rules states that *“The ITU Arbitration Tribunal recognizes ordinary procedures submitted to it according to article 37, paragraphs 37.1 and 37.2 of the ITU Constitution.”*
40. Article 37.1 states that *“The Tribunal Rules according to ordinary procedure on violation of ITU rules and regulations to the extent such jurisdiction is not assigned to another ITU body.”* This clause is not understandable as such and includes a manifest error. The preparatory work of the last revision of the Constitution shows that this provision must be read like this: *“The Arbitration Tribunal rules according to ordinary procedure on violation of ITU rules and regulations to the extent such jurisdiction is not assigned to another ITU body.”* This is a simple and obvious gap that is filled hereby by the Panel.
41. Furthermore, such matter is not assigned by the ITU rules and regulation to another ITU body. Moreover, neither the Defendant nor the other parties did not raise any jurisdictional objection.
42. It follows that the ITU Arbitration Tribunal has jurisdiction to decide on the present matter.

B. ADMISSIBILITY

43. On Triathlon Canada’s request, the ITU TC investigated the results of Ms Miller’s race in Weihai and then submitted on 15 March 2016 a detailed written report to the ITU Arbitration Tribunal pursuant to Article 29.1 of the ITU Disciplinary Rules. Thus the Claimant, through the ITU TC, is party to this proceeding.
44. Triathlon Canada is a party to this proceeding as National Federation of the athlete concerned, pursuant to Article 10.1 of the ITU Disciplinary Rules. However, as a whistle-blower and because the litigious race in Weihai was under the sole jurisdiction of ITU, Triathlon Canada has not the status of a claimant.
45. Pursuant to Article 29.2 of the ITU Disciplinary Rules, *“the report should be submitted to the headquarters of the Arbitration Tribunal no more than (5) five days following the occurrence of the event in dispute.”* In the present case, the report of the ITU TC was submitted to the ITU Arbitration Tribunal nearly 18 months after the race in Weihai, which took place on 21 September 2014. However, the deadline of 5 days is not mandatory (“should”) and the status of limitation is set by Article 30.1, which provides that:

“Notwithstanding Article 29 (2):

- a) *Infringements committed during a competition may no longer be prosecuted after a lapse of two (2) years.*
- b) *Manipulation in a competition and other infringements may not be prosecuted after a lapse of ten (10) years.*
- c) *Anti-doping rule violations may not be prosecuted after eight years have elapsed.*
- d) *Prosecution for corruption is not subject to a limitation period."*

Thus, this decision is made on time, without being necessary to define if the charges brought against Ms Miller have to be considered as "*infringements committed during a competition*" or "*manipulation in a competition*".

46. For these reasons, the report was submitted on time by the ITU TC and its request is admissible.

C. SCOPE OF PANEL'S REVIEW

47. According to Article 16 of the ITU Disciplinary Rules, "*The Panel has full power to review the facts and the law*". This means in particular that the Panel is not limited by the submissions of the parties.

D. APPLICABLE LAW

48. Pursuant to Article 34 of the ITU Constitution, "*The governing law of the ITU shall be Swiss law*". Article 1 of the ITU Disciplinary Rules states that "*These rules set out the applicable procedure before the ITU, within the limitations of Swiss law*". The applicable law to the proceedings is not further defined by the ITU regulations and has not been disputed by the parties. Thus, the question of what law is applicable in the present proceedings is to be decided by the Panel.

49. This proceeding being a disciplinary and not an arbitration matter, the Panel's opinion is that the ITU regulations shall apply, within the limitations of Swiss law, to the exclusion of the provisions contained, or to which it is referred to, in the Swiss Federal Act on Private International Law (PIL).

50. As the charges brought against Ms Miller concern her behaviour during a competition, this is the ITU Competition Rules which apply. The types and severity of the possible disciplinary sanctions are listed in Article 6 of the ITU Disciplinary Rules.

E. MERITS

51. The key issue in this case can be simply stated: based on the facts submitted by the parties to the Panel, the question to answer is whether or not Ms Miller completed all biking and/or running laps at the 2014 ITU Long Distance Triathlon World Championships in Weihai?

52. The degree of proof on which the Panel shall rely on to answer this question and decide is not defined by the ITU regulations. Thus the Panel shall first define the relevant degree of proof required.

The Panel is of the view that this standard of proof shall be the “comfortable satisfaction” standard widely applied by the panels of the Court of Arbitration for Sport in disciplinary proceedings. According to this standard of proof, the sanctioning authority must establish the disciplinary violation to the comfortable satisfaction of the judging body bearing in mind the seriousness of the allegation. It is a standard that is higher than the civil standard of “balance of probability” but lower than the criminal standard of “proof beyond a reasonable doubt” (cf. CAS 2010/A/2172 Oriekhov v. UEFA, para. 53). The Panel will thus apply such standard of proof to this disciplinary case.

53. In analysing the facts, the Panel first notes that it is obvious and indisputable that many race times of Ms Millers and of other athletes of her age group published on the official ITU results page of the Weihai competition are not credible or wrong, and that the accuracy or inaccuracy of these times cannot be verified anymore today. These inaccuracies have been raised several times by Ms Miller in her determination and by the ITU TC in its report. These times cannot therefore be taken into consideration, which means that all arguments brought by the parties in relation to these times cannot be taken into consideration, whether in their favour or disfavour. It is in particular the case of Ms Miller’s argument pursuant to which she states that her *“timing ship was clearly on my ankle and passed all timing checkpoints throughout the race”*.
54. Due to this timing issue, the ITU TC focused its investigation on performance of the athlete in various races, on the declaration of witnesses including a hearing with Ms Miller, and on images provided from the race by two separate cameras. Through these images, the Panel finds that the ITU TC was able to provide a comprehensive timeline of the race and of the positions of various athletes on some parts of the race. It is therefore these positions that will be analysed below by the Panel, an analysis that shows repeated contradictions in the statement made by Ms Miller.
55. Indeed, the Defendant argues first that Ms Reno did not pass her in the first lap of the bike race. However, the pictures taken by one of the camera on this lap show that Ms Reno was leading the Defendant by 6 minutes and 40 seconds at this stage (see para. 18 above). This fact stands out from the Statement Nr 1 of the ITU TC, to which Ms Miller avoids answering by focusing on the accuracy of the times published on the official ITU website.
56. The Defendant then argues that she was always ahead of Ms Gray Hewitt, Ms Robertson, Ms Gowan and Ms Torvik on the bike race, which is indisputably wrong. Indeed, a first camera shows that all these athletes passed Ms Miller already on the first race lap (see para. 18 above). And a second camera shows these athletes on the second bike lap, except Ms Miller who is not pictured (see para. 19 above).
57. The Panel notes than despite these facts, Ms Miller was then only one minute behind Ms Reno and ahead of Ms Gray Hewitt, Ms Robertson, Ms Gowan and Ms Torvik shortly before the end of the third lap of the bike race.
58. Based on these facts, the Panel notes that the ITU TC correctly concluded that Ms Miller did not complete the entire bike race. Indeed, and as raised by the ITU TC in support of this conclusion, it is very unlikely that Ms Miller was suddenly able to overtake on the bike race all of the Canadian men and women who had initially passed her, that Ms Miller had suddenly overcome her initial speed defect of 12 minutes per lap to Ms Reno, and that Ms Miller had suddenly outridden the fastest female age grouper on the day over the last 2 laps. In her statement, Ms Miller does not bring any evidence or concrete elements to refute this conclusion.

59. The Panel is therefore persuaded, to its comfortable satisfaction, that Ms Miller did not complete the entire bike race in Weihai, thereby behaving in an unsportsmanlike manner. In this respect, the manner in which the Defendant cheated does not matter.
60. This conclusion makes it unnecessary for the Panel to consider the other arguments and requests submitted by the parties. Accordingly, all other requests for relief are rejected.

F. SANCTION

61. Ms Miller being indicted of unsportsmanlike behaviour, the Panel shall determine which provisions of the ITU regulations are violated.
62. According to Article 2.1 (a) of the ITU Competition Rules, in its 2015 version similar to the version 2013-2014 which was effective when the facts occurred:

“Athletes will:

(i) Practice good sportsmanship at all times;”

63. The term of “sportsmanship” is defined and interpreted in Appendix D to the ITU Competition Rules as:

“Sportsmanship: the behavior of an athlete during competition. Sportsmanship is interpreted as fair, rational and courteous behavior, while bad sports conduct is any behavior judged to be unfair, unethical or dishonest, a violent act, intentional misconduct, abusive language, intimidating behavior, or persistent infringement of the rules.”

64. By deciding not to complete the entire bike race, the Defendant gained an advantage over the other athletes and thus, violated her obligation of sportsmanship.

65. According to Article 3.1 of the ITU Competition Rules:

“a.) Failure to comply with the ITU Competition Rules may result in an athlete being verbally warned, punished with a time penalty, disqualified, suspended, or expelled;

b.) The nature of the rule violation will determine the subsequent penalty.

c.) A suspension or an expulsion will occur for very serious violations of either the ITU Competition Rules or the ITU Anti-Doping Rules.

d.) Reasons for Penalty: An athlete may be issued a verbal warning, punished with a time penalty, or disqualified for failing to abide by the ITU Competition Rules. Infringements and penalties are listed in Appendix K.

e.) The Technical Officials are allowed to assess penalties, even if the infringement is not listed, if the Technical Official deems an unfair advantage has been gained, or if a dangerous situation has been created intentionally.”

66. Appendix K to the ITU Competition Rules states that *“failing to follow the prescribed course”* leads to a disqualification (item 3) and that *“using unsportsmanlike behaviour”* leads to a disqualification and a report to the ITU Executive Board for possible suspension.

67. Article 3.6 of the ITU Competition Rules prescribes the scope, the assessment and the duration of a suspension:

“a.) General:

(i) A suspension is a penalty appropriate for fraudulent or very severe rule violation, such as but not limited to repeated dangerous or unsportsmanlike conduct;

(ii) A suspended athlete will not take part in ITU competitions or competitions sanctioned by NFs affiliated with ITU during a suspension period.

b.) Assessment:

(i) The Race Referee will submit a report to the ITU EB including all the details of the action, and the reasons to recommend the athlete for suspension. This report will be submitted to the ITU Secretary General within one week of the competition. The ITU Secretary General will inform the affected NFs.

c.) Suspensions will be assessed by the ITU EB for periods of three (3) months to four (4) years, depending on the violation

d.) Suspension due to Drug Abuse: If the suspension is for drug abuse, the athlete will not be able to compete in any other sport whose federation is recognised by ITU, IOC or Sport Accord and vice versa.

e.) Reasons for Suspension:

(i) A list of infringements, which may result in a suspension, is described in Appendix K;”

68. Moreover, Article 6 of the ITU Disciplinary Rules list the possible disciplinary sanctions:

“1. The following disciplinary sanctions may be levied:

a) Warning ;

b) Suspension from competitions for a maximum period of forty-eight (48) months;

c) Roll down in race ranking;

d) Overturning of a result ;

e) Revocation of a title ;

f) Revocation of a medal ;

g) Expulsion from participation in one or multiple national or international competitions;

h) Monetary penalties to a maximum of five thousand USD (\$5,000);

i) Expulsion for a determinate or indeterminate period of time from exercising any official functions on behalf of the ITU.

2. The severity of the disciplinary sanctions shall depend on the nature of the violation.”

69. In addition, Article 7 (2) of the ITU Disciplinary Rules states that *“athletes against whom disciplinary sanctions are imposed may be required to repay any monetary or in-kind benefits.”*
70. Based on the foregoing and after taking into due consideration all the evidence produced and all arguments made, the Panel is of the opinion that Ms Miller seriously violated the rules of sportsmanship and fairness by not hesitating to cheat in order to win the title of world champion in her age group. Therefore, and because the Defendant denied the evidence by trying to find many different excuses, this behaviour must be severely punished.
71. Given the fact that the Panel was not informed of all the facts on which the sanctions taken by Triathlon Canada and WTC against Ms Miller in relation with other races were based, the Panel considers the violation of the rules by Ms Miller during her race in Weihai as a first violation.
72. For these reasons, the Panel decides to suspend Ms Miller from all ITU competitions and from all competitions sanctioned by National Federations affiliated with ITU for a period of 24 months.
73. Due to the fact that the Defendant was banned from competing in any race sanctioned by Triathlon Canada and its members beginning 1 November 2015, and from competing for Team Canada in events outside of Canada since this date, and because it is unlikely that Ms Miller has competed in races outside of Canada since then, the Panel finds therefore proportionate to start the 24-month ineligibility period from 1 November 2015.
74. In addition, the Panel decides to revoke the title of World Champion obtained by Ms Miller on 21 September 2014 in Weihai.
75. Moreover, the Panel decides to impose a fine of USD 1'000.- upon Ms Miller.

V. COSTS

76. According to Article 24.2 (f) of the ITU Disciplinary Rules, the Panel's decision shall contain the *“decision as to the amount and payment of costs”*. Article 27.2 of the same rules states that *“Costs may be awarded by the Panel to one of the Parties, considering the legitimacy of the arguments, as well as the conduct of the Parties”*.
77. In the present case, Ms Miller caused by her behaviour the opening of these proceedings and is found guilty. Therefore, Ms Miller has to be condemned to the payment to ITU of the procedural costs amounting to USD 2'000.-.

ON THESE GROUNDS

The Panel of the ITU Arbitration Tribunal rules that:

1. Ms Miller violated Article 2.1 of the ITU Competition Rules and is sanctioned with a period of ineligibility of two years (24 months) in all ITU competitions and all competitions sanctioned by National Federations affiliated with ITU, starting from 1 November 2015.
2. The title of World Champion obtained by Ms Miller on 21 September 2014 in Weihai (China) is revoked.
3. Ms Miller is condemned to a fine amounting USD 1'000.-.
4. Ms Miller is condemned to bear and to pay to ITU the procedural costs amounting USD 2'000.
5. All other motions or requests for relief are dismissed.

Seat of proceedings: Lausanne, Switzerland

Date: 3 August 2016

ITU ARBITRATION TRIBUNAL



Ize Ukpoma Matebese
President of the Panel



Timo Pennanen
Member of the Panel



Philippe Renz
Member of the Panel

According to Articles 38 and 39 of the ITU Constitution, and Articles 45 of the ITU Disciplinary Rules, any dispute relating to their application or interpretation, after internal recourses have been exhausted, may be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration. The request for arbitration must be filed with CAS no later (21) twenty-one days following the receipt of the decision that is the subject of the arbitration procedure.