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Olympic Insider

by Alan Abrahamson

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[Jessica Hardy at the courtroom door](#)

Jessica Hardy, who tested positive during last summer's U.S. Olympic Trials in swimming for a banned substance, has filed suit against a Texas-based supplement maker, claiming products that it had made and she had taken were tainted.

Hardy, who tested positive at the Trials for the banned stimulant clenbuterol, filed the lawsuit last week in Los Angeles Superior Court against Carrollton, Texas-based AdvoCare International, seeking unspecified damages. UniversalSports.com on Thursday obtained a copy of the lawsuit.

The 21-year-old Hardy would have been a medal contender in Beijing in two individual events as well as in at least one, maybe two, relays. Instead, as the lawsuit relates, she stayed home, hit with a two-year doping-related suspension, deprived of "once-in-a-lifetime opportunities" while weighing "damage to her reputation."

A call to AdvoCare's office was met with an after-hours recording; C. Brenton Kugler, a Dallas attorney representing the company, could not be reached at his office number. One of Hardy's attorneys, Howard Jacobs, declined to comment.

The Southern California-based Jacobs is one of the leading lawyers in the nation in pursuing cases in which an elite athlete claims damages from an allegedly tainted supplement.

He has represented, among others, swimmer Kicker Vencill, who tested positive in January, 2003, for a by-product of the banned steroid nandrolone. Vencill alleged that a nutritional

supplement he was taking, a multivitamin, must have been tainted and in a California court won a jury verdict; after that, the case settled.

Hardy's lawsuit follows a case filed Jan. 16 against her by AdvoCare in a federal court in Texas. In that lawsuit, the company asked a judge to rule both that AdvoCare products did not contain clenbuterol and that her positive test at the 2008 Trials was not caused by any of its products.

Both lawsuits say Hardy agreed in a contract signed Jan. 29, 2008, to endorse AdvoCare products. The company then provided her certain products, including "Arginine Extreme" and Nighttime Recovery."

The point on which the matter is likely to turn involves the testing that both lawsuits allege were done on samples of two particular supplements, "Arginine Extreme" and "Nighttime Recovery."

Clenbuterol can be prescribed for asthma, among other disorders. It has also been advertised as a weight-loss potion. It is a stimulant that can increase aerobic capacity, and that's why it is banned for elite athletes.

The company's case says it "specifically tested the lots of AdvoCare products provided to Hardy," the tests performed by NSF International, a non-profit organization based in Ann Arbor, Mich., that certifies supplements as free from taint for the NFL, among others. Those tests "confirm that no clenbuterol is present in the AdvoCare products," the lawsuit says.

Hardy's lawsuit says she retained Anti-Doping Research in Los Angeles, the lab founded by Don Catlin, the former director of the World Anti-Doping Agency-accredited lab at UCLA.

ADR "tested all of the AdvoCare products used by Ms. Hardy during and immediately prior to the Olympic Trials, using remaining samples from those she had with her at the U.S. Olympic Trials in July 2008, or samples from the same product lot or lots as those she used at the U.S. Olympic Trials in July 2008.

"After extensive testing, ADR detected the presence of clenbuterol in samples of Arginine Extreme and Nighttime Recovery."

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So — one lawsuit says the tests didn't find anything, the other says the tests assuredly did.

If the dispute ultimately makes it to a courtroom — and keep in mind that most civil suits settle well before trial — how is this dilemma likely to be resolved?

By learning — which, at this preliminary point, the papers filed with court clerks don't spell out in any detail — which set of tests proved more refined. Think of it this way: if you're looking for something in detail, do you look with a magnifying glass or a microscope?

Stay tuned. Because there's yet another facet to the Hardy matter. That two-year suspension? If she can prove that her exposure to clenbuterol was “inadvertent and unintended,” perhaps the time can be cut significantly.

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