

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D09438

ADMINISTRATIVE LAW JUDGE:

IN THE MATTER OF:

MICHAEL HEWITT

APPELLANT

THE AUTHORITY'S RESPONSE TO APPELLANT'S APPLICATION FOR REVIEW

CERTIFICATE OF SERVICE

Pursuant to 16 C.F.R.216.1 0 Tv500.62-3 (CE)JTJ /TT1 1 BMC 216 683.88 157.2 1.2 1EMC

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Sample will be analyzed. The Rules are silent as to the method of such notification and do not “specifically require written notice” as asserted by Appellant. This challenge is clearly based upon his incorrect legal position that “written notice of the time of B Sample opening is a strict proof requirement for HIWU and a condition precedent to the finding of a rule violation.” See Application for Review at Par. 2. Appellant has provided absolutely no legal authority at all for this position.

In fact, under Rule 325(b), notification to a Covered Person under the ADMC Program “may be accomplished either through actual or constructive notice” and “actual notice may be accomplished by any means” (emphasis added). Here, the IAP found that the Appellant was advised orally of the information relating to the opening of the B Sample. Without a specific requirement in the Rules that such notice be provided in writing (such as for an ECM Notice itself under Rule 3345), this finding was clearly in compliance with the Rules.

Third, HIWU met its burden to the comfortable satisfaction of the hearing panel that Appellant violated Rule 3312 with respect to the Class B Controlled Medication that was detected in his Covered Horse’s Sample. (See Rule 3121(a)). Appellant provided no evidence below to establish that he should have the default sanctions under Rule 3323 reduced to the standards for No Fault or Negligence (Rule 3324) or No Significant Fault or Negligence (Rule 3325). In addition, at the hearing, Appellant provided no evidence challenging the Presence of Capsaicin in the Covered Horse’s Sample or the actual integrity of the Sample. As a result, the IAP properly imposed the default sanctions against Appellant.

In sum, Appellant has not identified any new supplemental evidence which he was prohibited from submitting or which the IAP failed to consider, and the appropriate legal standards

