

INTERNATIONAL SKATING UNION

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ISU Disciplinary Commission

Case No. 2012-09

Decision of the ISU Disciplinary Commission

Panel: Volker Waldeck (Chair)
Dr. Egbert Schmid
Susan Petricevic

In the matter of

International Skating Union, Chemin de Primerose 2, 1007 Lausanne,
represented by its Legal Advisor, Dr. Béatrice Pfister

- Complainant-

against

1. Simon Cho,
USA

- Alleged Offender 1 -

2. Jae Su Chun,
USA

- Alleged Offender 2 -

and

US Speedskating, 5662 South Cougar Lane,
Kearns, UT 84118, USA

- Interested ISU Member

Concerning the alleged violation of the ISU Code of Ethics

I. History of the Procedure

1. On November 6, 2012, the ISU filed a complaint against the Alleged Offenders together with seven exhibits.

The disciplinary/ethical offenses in question had happened on March 19-20, 2011, during the 2011 World Short Track Team Championships in Warsaw, Poland. The Complainant learnt about them through an article in the Chicago Tribune of September 14, 2012 and from the article "Speedskater Alleges Coach Told Him To Tamper With Competitor's Skates" online at www.webhncws.org of September 20, 2012.

On October 5, 2012, the Interested Member released a press conference statement that the Alleged Offender 1 had confessed to tampering with the skates of the Canadian competitor Olivier Jean at the 2011 ISU World Short Track Speed Skating Team Championships 2011. This confession was repeated by the Alleged Offender 1 in a press conference on October 6, 2012, (see video on <http://www.cbc.ca/sports/speedskating/video/#id=2287680660>).

By email of October 30, 2012, US Speedskating informed the ISU that the law firm White & Case was mandated to perform an independent investigation of whether or not USS athletes and/or coaches had tampered with a Canadian competitor's equipment during the 2011 World Short Track Speedskating Team Championships in Warsaw, Poland.

Therefore the ISU moved to stay the present proceedings pending the report of White & Case.

2. On November 12, 2012, the ISU Disciplinary Commission ordered a stay of the proceedings pending either the report of the law firm White & Case being issued, or the decision of the US Speedskating Appeals Commission being rendered, until June 30, 2013 at the latest.

3. On December 31, 2012 White & Case issued a "Report of Special Investigative Counsel Regarding an Allegation of Tempering with a Competitor's Skate at the 2011 World Short-Track Speedskating Team Championships in Warsaw, Poland and Allegations of Abuse by Coaches at U.S. Speedskating". The ISU Legal Advisor forwarded the report to the Disciplinary Commission and moved to lift the stay of the proceedings. Further the ISU Legal Advisor extended the accusations against the Alleged Offender 2 to include that he allegedly encouraged his team to be "obnoxious", "disruptive" or "destructive" to the Canadian Team, that he said to a Canadian skater before the race "I hope you lose" and that he wished the Canadian Team bad luck. The ISU Legal Advisor asked for an oral hearing and called Mr. ... as witness.

4. On January 21, 2013, the Disciplinary Commission panel ("the panel") resumed the proceedings, provided the alleged offenders with the report of White & Case and invited them to file a statement of reply regarding the complaint and the White & Case report.

5. The Alleged Offenders filed their statements of reply on February 11, 2013.

The representative of the Alleged Offender 1 requested a hearing to be conducted in Salt Lake City and that the following witnesses be questioned at the hearing:

He further moved to request from USSpeedskating all documentation underlying the USS Report White & Case, all internal communications between USSpeedskating officials, employees, staff, attorneys and White & Case attorneys, and video footage related to Simon Cho and around the time of the skate-tampering incident at Warsaw.

The Alleged Offender 2 filed his statement of reply together with four exhibits on February 11, 2013 and added three further exhibits on February 12.

By email of February 21, 2013, the representative of the Alleged Offender 1 requested testimonies, either in-person, by phone or by affidavit, from the Canadian Men's Team, Canadian Women's Team, Canadian Team Staff, U.S. Men's Team and U.S. Women's Team.

6. By order of May 16, 2013, the Disciplinary Commission set up an oral hearing, including evidence from the witnesses Mr. ...and Mr.

Upon approval of the panel Mr. ... testified by written affidavit instead of giving in-person *viva voce* testimony.

7. By email of May 22, 2013, the representative of the Alleged Offender 1 informed the panel, that he no longer acted for the Alleged Offender 1, and that he would now be represented by

8. The hearing was held on June 13, 2013, at the Sheraton Airport Hotel in Frankfurt, Germany,

II Complaints and Statements of Reply

A. Complaint against the Alleged Offender 1, Mr. Simon Cho

1. The Complainant accuses the Alleged Offender 1, Mr. Simon Cho, of having damaged the skate of the Canadian competitor on March 20, 2011 by bending it before the final race at the 2011 World Short-Track Speedskating Team Championships in a bending-machine.

2. In his statement of reply of February 11, 2013, Mr. Simon Cho admitted that he had damaged the Canadian skater's blade, but alleged that he did it on request of his coach Mr. Chun. At the oral hearing, Mr. Cho explained that the coach had become angry about "team-skating" by the Canadian team on the second day of the competition to prevent the US team from making the final. The coach had told Mr. Cho that the US teams were acting liked elementary school students, while the Canadians were acting like professionals. The coach blamed Mr. Cho for not leading the US team. Formerly Apolo Ohno was the undisputed leader of the US team. Coach Chun expected Mr. Cho to fill this gap as he was the most successful skater in the US team. The coach reproached him that if he had been the team leader, and rallied the US squad, then the Canadians would never have behaved this way towards them. The coach encouraged the US team and especially Mr. Cho to be obnoxious, disruptive and destructive to the Canadians. He told them to play loud music, sit in one of the Canadian skater's spots, and to get into the Canadian's heads. He told them that the U.S. team should not lose their races in the locker room.

The coach approached Mr. Cho three times with the request to tamper with the skates of the Canadians. He said that a team leader should be able to do things like this – referencing skate tampering. The first time, when the witness Mr. ... was beside Mr Simon Cho, the coach asked him in English "to mess up their blades". The second time when he was alone with the coach at the ice rink, Mr. Chun spoke in Korean and reiterated his request with sincerity. Simon Cho refused again. However, the coach did not give up and asked him a third time. Finally Simon Cho decided that he would do it and told Mr. Chun "OK I'll do it".

Mr Simon Cho's evidence was that the only reason he did it was because the coach had incited him to tamper with the skate. He had not acted on his own. Further, he would not have gained any competitive advantage by damaging the Canadian skate as the American team had already been eliminated from the finals. He said that he did not have negative feelings for the Canadian team, and only did it because the coach incited him to do so.

B. Complaint against the Alleged Offender 2, Mr. Jae Su Chun

1. The Complainant accused the Alleged Offender 2, Mr. Jae Su Chun, of having incited Simon Cho to tamper with the skate of the Canadian skater.

2. Further, the Complainant extended their accusations against Mr. Chun to include that he also encouraged his team to be "obnoxious", "disruptive" or "destructive" against the Canadian Team, that he told the Canadian skater before the race "I hope you lose" and that he wished the Canadian team bad luck.

3. Mr. Chun replied that he had a very good relationship with the Canadian team, especially with Mr. He had coached them until 2006 when he went to the U.S. He also had a good relationship with the Canadian team at the event in Warsaw. However, it was his opinion that the Canadians definitely tried to make the US team drop out from the 3000 meter race by team skating. He didn't like this and spoke with Mr. ... about team-skating by the Canadian team. He told Mr ... that he did not want the sport going that way, especially with the top countries. Mr Chun denied saying "I wish you lose, or I wish you bad luck". He described his own reaction as disappointed but not angry.

Mr. Chun stated that in the locker room shared between the Canadian and U.S. teams at Warsaw, the Canadian team was very loud while the U.S. team was quiet. He told the U.S. team that they needed team leadership, team chemistry, and team spirit. The U.S. skaters should, amongst other things, react by putting their massage table in the middle of the room and be more like a football or soccer team. He told the U.S. men to "be more proud for your country", "I want a strong team. If your opponent is nice, be nicer, if they are aggressive, you be aggressive." Coach Chun suggested that the team needed a leader to stand up for them and that the U.S. skaters should not lose their races in the locker room. But Mr. Chun denied having encouraged his team to be "obnoxious", "disruptive" or "destructive" to the Canadian team.

Mr. Chun denied having asked the skaters Mr Simon Cho and Mr ... to tamper with the Canadian's skates. He also denied asking Simon Cho alone to tamper with skates to prove leadership.

C. Testimonies

1. Evidence of Mr ...

Mr. ... testified that he was never asked by the coach Chun to interfere with skates. He never heard Mr Chun say anything to Mr Simon Cho about tampering with skates. He was not with the coach and Simon Cho when there was a conversation about interfering with skates. However he thought that the decision to tamper with the skate wasn't Simon Cho's own decision. He based this on years of involvement with Mr Chun as his coach since 2007 and on several instances of abuse to

skaters and manipulation of athletes. He thought coach Chun put the skater Mr Cho up to it and that there would be repercussions on Mr Cho's career as an athlete if he didn't comply.

Mr ...'s evidence was that the coach Chun asked the U.S. team as a whole to be obnoxious and disruptive towards the Canadian team. The coach had asked him personally to spill soup and sharpening oil in spots where the Canadian team was, to leave equipment all over the locker room and to sleep on the massage table. He heard the coach Chun tell the Canadian skater "normally I don't say this but I hope you do bad".

Evidence of Mr. ... by affidavit

Mr ...'s evidence was that, when referencing the 3000 m Men's final repechage, the coach Chun aggressively explained how he perceived that the Canadian skaters deliberately skated in such a way as to disfavour the U.S. team overall. He remarked: "if Canada wants to use dirty tactics, as a Korean, I know worse dirty tactics to make someone lose." Coach Chun's final words to him before they parted ways were: "I wish you bad luck; I hope you lose the race".

After the race Mr. ... entered the shared locker room with the damaged skate. His team mates were already there, as was Mr. Chun. There was already arguing going on between members of the Canadian team and Mr. Chun. It was very heated and Mr. Chun's tone was escalating. At some point Mr. Chun said to Canadian team members: "I am not proud to have coached you". When Mr. Chun was asked why he tampered with the skate he answered: "You deserved the broken blade, you deserve what's happening to you". Throughout this period his tone was completely out of control, and was unlike anything Mr. ... had ever seen from him previously. Mr. Chun was then forced to exit the room.

III. Law

A. The Statement of Complaint is admissible.

1. The Complaint was filed to the Disciplinary Commission within the time limit of 60 days according to Article 24 Paragraph 6a) of the ISU Constitution and General Regulations 2010. The 60 days deadline started from the learning of an article in the Chicago Tribune of September 14, 2012, where the Complainant became aware of the facts or events which constitute the disciplinary offence.

2. Only the incidents on March 19-20, 2011, during the ISU World Short Track Team Championships in Warsaw, Poland are subject to the jurisdiction of the ISU Disciplinary Commission. Regarding this ISU event, three items have to be evaluated:

- Mr. Simon Cho tampered with the skates of Mr. ... (an admitted fact)
- Did the coach Jae Su Chun direct Mr. Cho to damage the skate or did Mr. Cho do it on his own initiative?
- Was the coach Mr. Chun "obnoxious", "disruptive" or "destructive" against the Canadian team?

The Alleged offenders have presented numerous documents to the panel which do not refer to the Warsaw event, *inter alia*: the Athletes' Grievance before the US Grievance Committee, the US Speedskating by laws, the balance sheets and budgets of US Speedskating, allegations of physical and mental or emotional abuse of the coaches during practise and at competitions other than Warsaw. These documents and allegations are not subject to the jurisdiction of the Disciplinary Commission, as they do not arise from an ISU event. Hence, they have not formed part of the hearing.

3. The Alleged Offenders have presented numerous witnesses and email and Twitter correspondence to testify about the incidents in Warsaw. The panel has summoned only two witnesses who were present in Warsaw. It is the opinion of the panel that all the other persons requested were "hearsay" witnesses, who had been told about the incidents by the alleged offenders or by email or Twitter correspondence after the Warsaw event.

4. The alleged offenders have applied for witnesses testify under oath. The ISU Rules of Procedure do not provide a deposition. The Disciplinary Commission is not a public court and has no right of prosecution in case of a perjury.

B. The Statement of Complaint is justified.

1. Simon Cho

It is uncontested that Mr. Simon Cho intentionally damaged the skate of Mr. ... before the last race at the 2011 World Short Track Team Championships in Warsaw. Mr. Cho has confessed it at a press conference of October 6, 2012, in interviews with White & Case and finally at the hearing of the ISU Disciplinary Commission on June 13, 2013.

In dispute is only whether the coach Mr. Chun has incited Mr. Cho to tamper with the skate of Mr. Mr. Cho alleges that he was directed to damage the skate by the coach Chun, and coach Chun denies it. It is one person's word against another's. Mr. Cho alleges that the coach not only asked him but also the witness Mr. ... to damage the skate but Mr. ... denies that. The witness is very sure that he never heard Mr. Chun say anything to Simon Cho about interfering with skates and he personally was never asked by the coach Chun to tamper with skates. But the witness also thinks that it was not Simon Cho's own decision, based on years of involvement with the coach Chun since 2007 and several instances of abuse to skaters and manipulation of athletes.

Based upon the statements of Mr. Cho and Mr. Chun and on the testimony of Mr. ... the panel has not sufficient evidence to conclude that Mr. Chun incited Mr. Cho to damage the skate of a Canadian skater.

Although there is no conclusive proof that the coach expressly incited Mr. Cho to tamper with the skate, the coach Mr. Chun acted like an "agent provocateur". Mr. Chun urged the skater to become the leader of the team. He regretted that since Apolo Ohno has quit there was no real leader in the U.S. team and Mr. Cho should fill the gap. The coach talked him into this position which means to be a strong skater and a strong person on the ice and in personal life. It would also mean acting to be disruptive and disrespectful to the Canadian team with whom they shared a locker room. Mr. Chun created an atmosphere in which Mr. Cho felt obliged to fulfil the demands of his coach and thought that it was appropriate to tamper with the skates of a Canadian competitor.

The action of Mr. Cho is an offence against the ISU Code of Ethics 2006 Paragraph 4 c), which reads as follows:

“I will not cause damage to persons or property, or engage in illegal activity, recognizing that all such activities bring disrepute to the skating sports and the ISU, and, in certain cases, may result in criminal charges and ISU action against me.”

The action of Mr. Cho was a malicious damage to property, which constitutes the elements of a crime.

Furthermore the damaged skate prevented the Canadian skater from performing in his race in an optimal way. This is a breach of the rules of “fair play” as stated in the ISU Code of Ethics 2006 Paragraph 4 b):

*“I further agree to advocate and practice “fair play”, as defined below:
Fair play is defined as much more than playing within the rules. It incorporates the concepts of friendship, respect for others and always playing within the right spirit. Fair play is defined as a way of thinking, not just a way of behaving. It incorporates issues concerned with the elimination of cheating, gamesmanship, doping, violence (both physical and verbal), exploitation, unequal opportunities, excessive commercialization and corruption.”*

The influence of his coach does not exculpate Mr. Cho completely. His action remains an unprecedented breach of the rules of “fair play”.

Based on the above considerations the Disciplinary Commission find Mr. Cho guilty of misconduct and of violation of the ISU Code of Ethics. A sanction of a two years suspension is imposed on Mr. Cho. The panel has considered in mitigation that the coach Mr. Chun has created an atmosphere in which Mr. Cho wanted to prove his leadership and thought it was appropriate to tamper with the skate of a Canadian skater.

Further, the panel considered in mitigation that Mr. Cho had shown remorse and confessed his misconduct on his own initiative in press and TV-interviews and apologized for his actions towards the Canadian skater.

Evaluating the sanction, it does not make a difference whether the coach Mr. Chun incited Mr. Cho to tamper with the skate or whether Mr. Cho did it on his own initiative. Either Mr. Chun verbally requested him to do so or he set the skater under psychological pressure so that Mr. Cho felt obliged to comply with the requests of his coach. In both cases the coach Mr. Chun has set the cause for the action of Mr. Cho. The sanction for Mr. Cho would not be lower if there were sufficient evidence to conclude that the coach Mr. Chun incited Mr. Cho to tamper with the skate.

The period of two years suspension for Mr Simon Cho commences on the date of the press conference on October 5, 2012, and will end on October 4, 2014.

2. Jae Su Chun

The Complainant accuses Mr. Jae Su Chun, of having incited Simon Cho to tamper with the skate of the Canadian skater. As stated above, the panel does not have sufficient evidence to conclude that Mr. Chun asked Mr. Cho to damage the skate of a Canadian skater.

Further the Complainant accuses Mr. Chun of having encouraged his team to be “obnoxious”, “disruptive” or “destructive” to the Canadian Team and to have said to a Canadian skater before the race “I hope you lose” and to have wished the Canadian team bad luck. Mr. Chun denies these accusations.

Both witnesses, Mr. ... and Mr. ..., confirm the unacceptable demeanour of the coach Mr. Chun. Mr. ... said, that the coach asked the team as a whole to be obnoxious and disruptive towards the Canadian team; for example to spill soup and sharpening oil in spots where the Canadian team was and to leave equipment all over the locker room. Mr. ... felt there would be repercussions if he and the team did not comply with the request of the coach.

The witness Mr. ... testified that the coach Mr. Chun was aggressive against the Canadian team (see above, page 5).

The testimonies of both witnesses agree regarding the behaviour of Mr. Chun. The panel is convinced that the coach was obnoxious and disruptive towards the Canadian team and that he has given unsportsmanlike instructions to the US team. The demeanour of Mr. Chun is an offence against the ISU Code of Ethics 2006 Paragraph 4 d), which reads as follows:

“d) I acknowledge that the ISU sports include among the competitors, young boys and girls seeking to attain a high level of sport achievement and recognition. I acknowledge that opportunities exist for sexual and commercial exploitation. I understand that young skaters may be highly successful athletes and at the same time immature and vulnerable to deceit and promises of fame. I agree to maintain the highest level of personal behaviour and respect for all skaters, officials, volunteers and employees including the young and vulnerable, and agree to protect them, to the best of my ability, from exploitation of any kind.”

Instead of being a role model of sportsmanship for his team, Mr. Chun encouraged his skaters to be disruptive and disrespectful to the Canadian team. Mr. Chun abused his authority as coach. For some of the skaters, especially for Simon Cho he was a “father figure”. His influence on his skaters, especially on a skater with the same Korean roots, was enormous. But instead of guiding the skaters responsibly Mr. Chun abused the skaters mentally and emotionally. The panel is convinced that Mr. Chun has created an atmosphere which led to the tampering action of Mr. Cho.

The coach not only misguided the skaters of the U.S. team, especially one with the same Korean origin, but behaved unfairly towards the skaters of the Canadian team. According to the witness Mr. the coach Chun said to him:

- *“If Canada wants to use dirty tactics, as a Korean, I know worse dirty tactics to make someone lose.”*
- *“I wish you bad luck, I hope you lose the race.”*
- *“You deserved the broken blade, you deserve what’s happening to you.”*

This is a breach of the rules of “fair play” as stated in the ISU Code of Ethics 2006 Paragraph 4 b).

Based on the above considerations the Disciplinary Commission find Mr. Chun guilty of misconduct and of violation of the ISU Code of Ethics. A sanction of a two years suspension is imposed on Mr. Chun. The period of the suspension of two years starts with the date of this decision.

IV. Decision in the case ISU versus Simon Cho

1. Simon Cho is guilty of misconduct and of violation of the ISU Code of Ethics 2006.
2. A two years suspension from participation in all ISU activities is imposed on Simon Cho, beginning on October 5, 2012, and ending on October 4, 2014.
3. The Complainant and Simon Cho shall bear their own costs.
4. The costs of the hearing (room and travel expenses of the panel and the witness) are imposed on the ISU.

V. Decision in the case ISU versus Jae Su Chun

1. Jae Su Chun is guilty of misconduct and of violation of the ISU Code of Ethics 2006.
2. A two years suspension from participation in all ISU activities as a coach is imposed on Jae Su Chun, beginning on August 26, 2013, and ending on August 25, 2015.
3. The Complainant and Jae Su Chun shall bear their own costs.
4. The costs of the hearing (room and travel expenses of the panel and the witness) are imposed on the ISU.

August 26, 2013



Volker Waldeck (Chair)



Dr. Egbert Schmid



Susan Petricevic