

of certain semiconductor chips with minimized chip package size and products containing same. 65 FR 25758 (May 3, 2000). The complaint alleged that three firms had infringed at least claims 6 and 22 of U.S. Letters Patent 5,679,977 (the '977 patent) and claims 1, 3, and 11 of U.S. Letters Patent 5,852,326 (the '326 patent) held by complainant Tessera, Inc. of San Jose, California. The notice of investigation named the following respondents: Texas Instruments of Dallas, Texas ("TI"); Sharp Corporation of Osaka, Japan; and Sharp Electronics Corporation of Mahwah, New Jersey (collectively, "Sharp"). On March 2, 2001, the Commission determined not to review an initial determination ("ID") of the presiding administrative law judge ("ALJ") granting Tessera's motion to withdraw the complaint allegations as to TI, and to terminate the investigation as to TI. An evidentiary hearing commenced April 5, 2001 and concluded on April 19, 2001. On June 1, 2001, the ALJ issued Order No. 33, denying Sharp's motion to reopen the hearing record.

On September 25, 2001, the presiding ALJ issued his final ID, finding that the Sharp respondents violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by infringing the asserted claims of the '977 and '326 patents. On October 1, 2001, the ALJ issued a recommended determination in which he recommended that, if the Commission finds a violation of section 337, it issue a limited exclusion order and a cease and desist order.

On October 9, 2001, Sharp appealed Order No. 33 and petitioned for review of the final ID. The Commission investigative attorney ("IA") did not file a petition for review. On October 16, 2001, complainant and the IA filed responses opposing Sharp's petition for review and its appeal of Order No. 33. On November 15, 2001, the Commission determined to affirm Order No. 33 and not to review the ALJ's final ID, and issued a notice to that effect. 66 FR 58524 (Nov. 21, 2001).

Having determined that a violation of section 337 has occurred in this investigation, the Commission sought comments on and considered the issues of the appropriate form of relief, whether the public interest precludes issuance of such relief, and the bond during the 60-day Presidential review period.

On January 25, 2002, Tessera and Sharp filed a joint motion with the Commission to extend the target date by 33 days, until February 27, 2002. The parties represented in the motion that they had settled their dispute, and

would file with the Commission a joint motion to terminate the investigation on that basis.

On January 30, 2002, Tessera and Sharp filed a joint motion to terminate the investigation by settlement, and attached copies of a Settlement and Release Agreement and an Immunity Agreement, dated January 24, 2002, between Tessera and Sharp. On February 8, 2002, the IA filed a response to the motion, stating that the motion and agreements meet the procedural requirements relating to termination by settlement under Commission rules.

Having considered the joint motion and the IA's response, the Commission determined to terminate the investigation on the basis of the settlement agreement.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.21(b) of the Commission's Rules of Practice and Procedure, (19 CFR 210.21(b)).

By Order of the Commission.

Issued: February 27, 2002.

Marilyn R. Abbott,

Acting Secretary.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Ethical Nutritional, L.L.C.; Denial of Application

On or about March 21, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Ethical Nutritional, L.L.C. (Ethical), located in Pomona, California, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated October 28, 1998, for a DEA Certificate of Registration as an importer of Schedule I controlled substances pursuant to 21 U.S.C. 952(a), proposing to import marijuana and peyote to manufacture and distribute homeopathic substances containing the Schedule I controlled substances for human consumption, a purpose not in conformity with the provisions of the Controlled Substances Act, pursuant to 21 U.S.C. 812(b)(1), 822(b), 823(f)(4), and 841(a)(1). The order also notified Ethical that, should no request for hearing be filed within 30 days the right to a hearing would be waived.

The OTSC was received on or about March 29, 2000, as indicated by the

signed postal return receipt. On or about April 25, 2000, Ethical, through counsel, filed with the Office of Administrative Law Judges (ALJ) a request for extension of time to respond to the OTSC; an extension was granted until May 25, 2000. On May 21, 2000, the Government filed a Motion for Summary Disposition. On May 26, 2000, Ethical, through counsel, filed a Memorandum stating that Ethical "no longer intends to pursue the importation of Peyote and Marijuana. Accordingly, no response to the Order to Show Cause * * * will be submitted." On June 8, 2000, the ALJ issued a Termination Order finding that Ethical had waived its right to a hearing. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no further request for a hearing having been received, concludes that Ethical is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(e) and 1301.46.

The Administrator finds that on or about May 28, 1998, Ethical was initially registered and issued DEA Certificate of Registration RE0235083, as a manufacturer of controlled substances in Schedules I-V. Ethical submitted an application, dated May 20, 1998, to be registered as an importer of *inter alia* the Schedule I controlled substances marijuana and peyote, pursuant to 21 U.S.C. 823(a). Ethical proposed to import these substances for the production of homeopathic remedies for human consumption. Ethical did not assert that the proposed importation of these substances was for any purpose authorized pursuant to 21 U.S.C. 952(a)(2).

The Administrator finds that Ethical's application is fundamentally incompatible with the Controlled Substances Act (CSA). Pursuant to the CSA, Schedule I controlled substances by definition have "a high potential for abuse," "no currently accepted medical use in treatment in the United States," and "a lack of accepted safety for use * * * under medical supervision." 21 U.S.C. 812(b). Accordingly, the CSA prohibits the use of Schedule I controlled substances for human consumption outside of research that has been approved by the Food and Drug Administration (FDA) and registered with DEA. 21 U.S.C. 822(b), 823(f), 841(a)(1); 21 CFR 5.10(a)(9),

1301.18, 1301.32. *See, e.g. Kuromiya v. United States*, 78 F.Supp. 2d 367 and 37 F.Supp. 2d 717 (E.D.Pa. 1999) (upholding constitutionality of CSA provisions prohibiting use of marijuana).

Ethical proposes to import marijuana and peyote to manufacture products that will be marketed for human consumption. This proposed use of Schedule I controlled substances is not permissible under the CSA.

Ethical does not attempt to show that it proposes to engage in FDA-approved research. Nor has Ethical attempted to establish the statutory elements required to become a registered importer of Schedule I controlled substances pursuant to 21 U.S.C. 952(a)(2). Further, the Administrator finds no evidence that allowing the proposed importer registration would be consistent with the public interest pursuant to 21 U.S.C. 958(a).

For the above-stated reasons, the application of Ethical must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Ethical Nutritional, L.L.C., be, and it hereby is, denied. This order is effective March 6, 2002.

Dated: February 22, 2002.

Asa Hutchinson,
Administrator.

[FR Doc. 02-5240 Filed 3-5-02; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Matthew D. Graham; Denial of Application

On or about December 21, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Matthew D. Graham (Graham), residing in Rosehill, Kansas, notifying him of an opportunity to show cause as to why the DEA should not deny his application, dated November 30, 1999, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine and pseudoephedrine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Graham that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received, as indicated by the signed postal return receipt that was returned to DEA on or about February 5, 2001. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Graham is deemed to have waived his right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substance Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Administrator finds that on November 17, 1997, a DEA Certificate of Registration was issued to John's Fashions of Augusta, Kansas. The owner of this establishment was John Snodell, Jr. (Snodell). Among the listed chemicals handled by John's Fashions were ephedrine and pseudoephedrine. These listed chemicals are precursors used in the illicit manufacture of methamphetamine.

A routine traffic stop on November 24, 1998, by the Pratt County (Kansas) Police Department resulted in the seizure of 16 cases of pseudoephedrine tablets from the trunk of a rental car bound for California. The pseudoephedrine had been obtained from a local business called Discount Smoke Mart, whose owner stated to Kansas State law enforcement personnel that he routinely purchased 16 cases of pseudoephedrine tablets at a time for cash from Snodell at John's Fashions. This individual further stated to Kansas State law enforcement personnel that Snodell was well aware of the arrangement whereby these 16 case shipments were routinely being sent to California in rental cars.

On December 16, 1998, DEA and Kansas Bureau of Investigation (KBI) agents observed a delivery of 64 cases of 60 mg. pseudoephedrine tablets to Snodell's residence. Several male

individuals were observed to assist in unloading the pseudoephedrine, including Snodell and an individual later identified as Matthew D. Graham.

On December 22, 1998, Snodell was observed by DEA and KBI agents to deliver 16 cases of pseudoephedrine 60 mg. tablets to Discount Smoke Mart. Pursuant to a Federal Search and Seizure Warrant, the 16 cases were seized by DEA and KBI. Subsequently, DEA and KBI agent seized 534,150 pseudoephedrine and 206,730 ephedrine tablets from Snodell's residence.

During a subsequent interview with DEA and KBI agents, Snodell admitted he sold cases of pseudoephedrine to individuals he considered "suspicious" but continued to do so because the profit he made on such cash sales was "too great an incentive to pass up." At the conclusion of this interview, Snodell surrendered his DEA Certificate of Registration.

On November 30, 1999, less than a year later, Matthew D. Graham submitted the subject application for registration as a distributor of the List I chemicals ephedrine and pseudoephedrine. In January of 2000, Graham informed a DEA investigator of his intention to sell from his residence certain sundry items, including List I chemical products. Graham further stated to the investigator that he "need[ed] the pills to sell * * * the other items." He also stated he learned about the business of distributing listed chemical products from friends who service convenient stores, and it was his intent also to supply convenience stores and smoke shops.

On May 22, 2000, Graham informed DEA that he intended to enter into a wholesale business arrangement with his friend Snodell. The DEA investigation revealed Graham is co-owner with Snodell of a wholesale business outlet called Retailers Wholesale, Inc. (RWI), located in Wichita, Kansas. Although Graham assured DEA investigators Snodell would not handle listed chemical products in the business, Graham did state Snodell would have contact with RWI customers and would be responsible for referring List I chemical orders to Graham. Graham further stated he planned to obtain List I chemical products from the same supplier previously used by Snodell and John's Fashions.

During the June 7, 2000, pre-registration inspection, Graham informed DEA investigators that RWI has established customer accounts with local convenience stores and smoke shops by selling lighters, gloves,