

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.

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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,

batteries, incense, and rolling papers. Graham reiterated that, in order to maintain business relations with these firms, he needed to supply List I chemical products in both single dose packets and 60 count bottles. He further stated that his customers were already requesting certain name-brand List I chemical products. DEA information reveals that the specifically-requested products mentioned by Graham are often diverted to the illicit manufacture of methamphetamine.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g.,* Energy Outlet, 64 FR 14269 (1999). *See also* Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Administrator finds factors one, four, and five relevant to this application.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate security arrangements for the proposed storage of listed chemical products, in that Graham was unable to satisfy DEA investigator's security concerns with his various suggested arrangements. Graham made no apparent provision for an alarm system, and no sufficient provision for a separate, locked storage enclosure for the List I chemical products. In

addition, the Administrator is concerned with Graham's business partnership with Snodell, and notes that Graham failed to explicate any arrangement at the business whereby Snodell's access to listed chemical products would be controlled.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that Graham has no previous experience related to handling or distributing listed chemicals. As set forth previously, however, his business partner Snodell surrendered a DEA registration because a DEA and KBI investigation revealed he was distributing large quantities of List I chemical products having reasonable cause to believe the chemical would be used to manufacture a controlled substance. Graham admitted to DEA investigators that Snodell was his source of information concerning the business of distributing listed chemicals.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that in response to DEA investigator requests, Graham provided proposed supplier and customer lists. The DEA investigation shows that of the two suppliers proposed, one is currently under investigation for diversion of listed chemicals, and the other had its application for DEA registration as a distributor of listed chemicals denied by DEA. Of the four proposed customers provided by Graham, one was closed, another would not respond to DEA inquiries, and only one of the remaining two was interested in List I chemical products. The Administrator finds this lack of a legitimate customer base, combined with insufficient security arrangements, lack of experience in handling listed chemicals, and a business partnership with an individual who in the recent past was the subject of a DEA investigation and who was forced to surrender his DEA registration as a result, creates an unacceptable risk of diversion and is contrary to the public interest.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Graham.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Matthew D. Graham be denied. This order is effective April 5, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Hadid International, Inc.; Denial of Application

On or about July 27, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Hadid International, Inc. (Hadid), located in Orlando, Florida, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated November 12, 1999, for a DEA Certification of Registration as a distributor of the List I chemicals pseudoephedrine, norpseudoephedrine, and phenylpropanolamine, pursuant to 21 U.S.C. 823(h) as being inconsistent with the public interest. The order also notified Hadid that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was returned, marked "Return to Sender—Unclaimed." In addition, on August 2, 2000, DEA investigators from the Orlando, Florida District Office traveled to Hadid's business premises and, when there was no answer to repeated knocking, affixed a copy of the OTSC to the front door. 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 Hadid 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 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 Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine, ephedrine, and phenylpropanolamine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely