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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Denver Wholesale; Revocation of Registration

On July 29, 2000, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Denver Wholesale, located in Denver, Colorado, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended Denver Wholesale's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Denver Wholesale and its owner, Hassan, Zaghmot (Zaghmot) of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 003378DHY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Denver Wholesale that, should no request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On August 9, 2000, a copy of the OTSC was served upon Zaghmot's attorney. No request for a hearing or any other response was received by DEA from Denver Wholesale or Zaghmot; nor anyone purporting to represent it in this matter. 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 Denver Wholesale 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 (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 is a List I chemical that is 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.

A "regulated person" is a person who manufactures, distributes, imports, or exports inter alia a listed chemical. 21 U.S.C. 802(38). A "regulated transaction" is inter alia a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The DEA investigation shows that at the time Denver Wholesale became registered with the DEA in July of 1998 as a distributor of List I chemicals, Zaghmot was personally served with the DEA notices informing him that ephedrine and pseudoephedrine are diverted for use in clandestine methamphetamine laboratories, as well as the notice informing him that possession or distribution of a listed chemical knowing or having reasonable cause to believe that the listed chemical will be used to manufacture a controlled substance is a violation of the Controlled Substances Act.

The DEA investigation shows Denver Wholesale has received millions of dosage units of pseudoephedrine from distributors nationwide since being registered with DEA. In calendar year 1999, Denver Wholesale received 18 million dosage units of 60 mg. pseudoephedrine from one of its six List I chemical suppliers alone.

During September, 1999, and on June 20, 2000, Denver Wholesale provided DEA with customer lists. The lists showed no customers in California, yet Federal Express records document numerous large shipments of pseudoephedrine from Denver Wholesale to California, several of which were tracked directly to methamphetamine laboratories. Zaghmot used fictitious and non-existent business names and addresses in shopping pseudoephedrine to California.

In March of 2000, in Denver, Colorado, Zaghmot and other individuals loaded approximately 55 boxes containing over 15,000 bottles of pseudoephedrine 60 mg. tablets from a storage locker into a rented van, that was then packed with furniture

obtained from thrift shops throughout the Denver area. The boxes were transported to a self-storage facility in California, from whence it was transported to several different locations at which laboratory equipment and chemicals consistent with the clandestine manufacture of methamphetamine were located. The individuals having access to the storage lockers were arrested and charged with conspiracy to manufacture methamphetamine. The rented van was stopped in Nevada, and a search revealed \$233,960 in United States currency. The passenger, who had been observed by investigators assisting Zaghmot loading pseudoephedrine into the van, stated that he had driven the van from Denver to Sacramento, California, with a load of pseudoephedrine, and was returning to Denver for another load of the chemical.

On July 20, 2000, an undercover DEA agent purchased 120 bottles of Denver Wholesale-labeled pseudoephedrine product for \$1000 in cash from a convenience store in Denver, Colorado. On July 25, 2000, the undercover agent returned for another purchase. In response to questioning from the convenience store owner, the undercover agent stated that he had used the previous purchase to manufacture methamphetamine. The convenience store owner sold the agent another 144 bottles of the same product, and informed the agent that he could provide as much as 100 cases (14,400 bottles) of pseudoephedrine. Larger quantities, however, would cost \$1,500 a case. The undercover agent left, and the convenience store owner was observed to drive to Denver Wholesale, where he met with Zaghmot. The next day, the undercover agent contacted the convenience store owner, who stated that since the supplier did not know the agent, the supplier would only provide two cases at a time until a relationship was built.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Denver Wholesale's DEA Certificate of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to section 824(d), these grounds also provide the basis for the revocation of Denver Wholesale's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as

determined under that section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

- (1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;
- (2) Compliance with applicable Federal, State, and local law;
- (3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;
- (4) Any past experience 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 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.*, 54 FR 16,422 (1989).

Regarding the first factor, maintenance of effective controls against diversion, the Administrator finds substantial evidence in the investigative file that Denver Wholesale and Zaghmot actively participated in the illegal diversion of pseudoephedrine knowing it would be used to manufacture methamphetamine.

Regarding the second factor, compliance with applicable Federal, State, and local law, the investigative file in this matter reveals that on July 27, 2000, a Federal Grand Jury in the District indicated Zaghmot and other individuals with violations of 21 U.S.C. 841(d)(2) (possession or distribution of a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance) and 846 (attempt or conspiracy to violate the Controlled Substances Act); as well as various money-laundering offenses. Zaghmot was arrested the next day. Search warrants were executed upon Denver Wholesale, a storage facility used by Zaghmot, and Zaghmot's residence. Totals of approximately 2,500 pounds of pseudoephedrine and \$668,000 in United States currency were seized from Denver Wholesale, Zaghmot, and his co-conspirators.

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or

chemicals, there is no evidence in the investigative file that Denver Wholesale or Zaghmot has any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds substantial evidence in the investigative file that Zaghmot actively participated in the illegal trafficking of pseudoephedrine, knowing that it was being diverted to the manufacture of methamphetamine. Denver Wholesale's customer list did not contain any customers from California. Yet DEA investigators observed Zaghmot and others loading pseudoephedrine into a rental van in Denver, Colorado, concealing the chemicals with thrift store furniture, and driving the van to a California self-storage facility. A search of the rental van as it was headed back to Colorado revealed \$233,960 in United States currency.

In addition, the investigative file contains information obtained from Federal Express showing Denver Wholesale shipping large quantities of pseudoephedrine to California. Zaghmot used fictitious business names and addresses in making these shipments. A number of these shipments were traced directly to clandestine methamphetamine laboratories.

Thus the Administrator finds Denver Wholesale and Zaghmot violated 21 U.S.C. 841(g)(1) (knowing distribution of a listed chemical in violation of the Controlled Substances Act); 841(g)(2) (possession of a listed chemical with knowledge that recordkeeping or reporting requirements not adhered to); and 830(b)(1)(a) (failure to report any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance the regulated person believes may indicate that the listed chemical will be used in violation of this subchapter). (Note: subparagraphs (d) and (g) of 841 have been redesignated as (c) and (f)). Therefore, the Administrator finds Denver Wholesale and Zaghmot significantly violated applicable federal law.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds substantial evidence that Denver Wholesale significantly violated applicable law by illegally trafficking thousands of pounds of pseudoephedrine knowing it was being diverted to the manufacture of methamphetamine and further by failing

to keep and maintain required records and failure to report suspicious listed chemical transactions. Zaghmot was indicated and arrested for various violations pertaining to controlled substances and listed chemicals.

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 DEA Certificate of Registration 003378DHY, previously issued to Denver Wholesale, be, and it hereby is, revoked; and any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,
Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Charles Trant, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Hassan Zaghmot, Denver Wholesale, 8200 East Pacific Place, Suite 103, Denver, Colorado 80231.

Karen C. Grant.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Daniel E. Epps, Jr., Denial of Application

On or about March 6, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Daniel E. Epps, Jr. (Epps), located in Matthews, North Carolina, notifying him of an opportunity to show cause as to why the DEA should not deny his applications, dated May 2, 2000, and July 26, 2000, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Mr. Epps that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.