

6(b) of the Act on December 8, 1998 (53 FR 49615).

The last notification was filed with the Department on June 8, 1999. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 21, 2000 (65 FR 15177).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01-6882 Filed 3-19-01; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on January 16, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3 DSP Corporation, Irvine, CA; Alatek, Inc., Las Vegas, NV; D.K. Arvind, Edinburgh, Scotland, United Kingdom; ASIC Alliance Corp., Woburn, MA; CG-CorEL Programmable Solutions Ltd., Bangalore, India; Edoardo Charbon, Berkeley, CA; EnThink, Inc., Santa Clara, CA; ETRI Microelectronics Technology Laboratory, Daejeon, Republic of Korea; Goya Technology, Inc., Hsin-chu, Taiwan; IMEC, Leuven, Belgium; Intensys, San Jose, CA; Kun-Bin Lee, Hsin-chu, Taiwan; Mysti Com Ltd., Mountain View, CA; Nogatech Ltd., Kfar-Saba, Israel; Silicon Design Solutions, Milpitas, CA; Simplex Solutions, Inc., Sunnyvale, CA; Synad Technologies Limited, Marlow, United Kingdom; SynTest Technologies, Inc., Sunnyvale, CA; and Tensilia, Inc., Santa Clara, CA have been added as parties to this venture. Also, Adaptec, Inc., Milpitas, CA; Arasan Chip Systems, San Jose, CA; Johan Cockx, Leuven, Belgium; Enabling Technology, Inc., Sunnyvale, CA; Nxtwave Communications, Inc., Newtown, PA; PIXIM, Inc., Mountain View, CA; Patrick Schaumont, Leuven, Belgium; Verysys Corp., Fremont, CA; Virage Logic Corp., Fremont, CA; and Voyager Technologies, Inc., Morgan Hill, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on October 26, 2000. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Payne Sales, Inc.; Denial of Application

On February 7, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Payne Sales, Incorporated (Payne Sales), located in Grand Haven, Michigan, notifying it on an opportunity to show cause as to why the DEA should not deny its application, dated August 24, 1999, for a DEA Certificate of Registration as a distributor of List I chemicals, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Payne Sales that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The DEA mailed the show cause order to Payne Sales by certified mail, and a return receipt, signed, "Fred Thornell" and dated February 18, 2000, was received by the DEA. No request for a hearing or any other response was received by DEA from Payne Sales or anyone purporting to represent it in this matter, however. Therefore, the Administrator of the DEA, finding that (1) thirty days have passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Payne Sales 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 (1999).

The Administrator finds that on August 24, 1999, an application was submitted to DEA on behalf of Payne Sales for DEA registration as a distributor of the List I chemicals pseudoephedrine, phenylpropanolamine, and ephedrine. The application was submitted by Peggy Joe Payne, President of Payne Sales, who was previously employed as an accountant for TNT Marketing, Incorporated (TNT) of Grand Haven, Michigan. Ms. Payne was also previously married to Frederick Thornell, President and CEO for TNT. The application lists Payne Sales address as 8 North Ferry, Grand Haven, Michigan, which is the same address as TNT.

The Administrator finds that on April 7, 1998, the Deputy Assistant Administrator, Office of Diversion Control of DEA issued an Order to Show Cause to TNT for the revocation of its DEA Certificate of Registration, 001291TEY as a distributor of List I chemicals pursuant to 21 U.S.C. 824(a)(4) and to deny any pending applications for modification or renewal of such registration pursuant to § 823(h). That order to Show Cause alleged in sum that TNT had, during the period of January through July, 1997, and encompassing several transactions, and in spite of DEA requests to discontinue, sold at least 5040 cases of a List I chemical to recipients for which TNT knew or had reasonable cause to believe would divert the listed chemical to the unlawful manufacture of methamphetamine, a Schedule II controlled substance, in violation of 21 U.S.C. 841(d)(2). In addition, the DEA investigation revealed that TNT failed to make required reports of these regulated transactions, in violation of 21 CFR 1310.05(a), and further failed to create proper invoice records for at least seven shipments totaling 2,760 cases of a listed chemical, in violation of 21 CFR 1310.06.

Peggy Joe Payne was employed by TNT during the time the firm engaged in the unlawful sales alleged in the April 7, 1998, Order to Show Cause. On September 2, 1998, TNT surrendered its DEA Certificate of Registration for cause.

In August 1998, in the United States District Court for the Western District of Michigan, Southern Division, TNT Marketing, Inc., and three of its representatives, including Frederick Thornell, were each indicted on one felony count of distribution of a listed chemical (pseudoephedrine) and conspiracy pursuant to 21 U.S.C.

841(d)(2) and 846. On December 7, 1998, TNT entered into a plea agreement with the United States in which it agreed to enter a guilty plea to the conspiracy count of the August 1998 indictment. Pursuant to the same plea agreement, Frederick Thornell and another TNT representative entered into an agreement with the United States in which they agreed to plead guilty to one felony count related to their failure to report regulated transactions involving extraordinary amounts of pseudoephedrine, pursuant to 21 U.S.C. 830(b)(1)(A) and 842(a)(10). The other indicted TNT representative pleaded guilty to one felony count of unlawful distribution of a listed chemical in violation of 21 U.S.C. 843(a)(7).

TNT, Frederick Thornell, and the two other convicted TNT representatives further agreed that they would not apply for registration as a distributor of controlled substances or listed chemicals, nor engage in such distribution, for a period of ten years from the date of the agreement. On April 23, 1999, Frederick Thornell and the two other convicted representatives on behalf of TNT were ordered to pay a fine of \$100,000, and Frederick Thornell was sentenced to two years probation and ordered to pay a fine of \$1,000.

On October 5, 1999, DEA investigators conducted a pre-registrant investigation of Payne Sales. The Administrator finds the investigation revealed that Payne Sales and TNT are virtually indistinguishable businesses. Specifically, DEA investigators discovered products belonging to Payne Sales were co-mingled with products belonging to TNT, including products containing listed chemicals, in violation of the above-referenced plea agreements. On several occasions during the investigation of Payne Sales, Ms. Payne directed queries by DEA investigators regarding products on hand to her former husband, Frederick Thornell. The DEA investigators also noticed Ms. Payne's frequent interaction with Frederick Thornell's two convicted co-defendants from TNT, all of whom continue to work for TNT on the premises. The DEA investigation further revealed TNT is the registered property owner of the premises at 8 N. Ferry, Grand Haven, Michigan. At that location, there is a sign identifying the business as TNT Marketing, Inc. The Ottawa County Registrar's Office indicates no business certification has been filed for Payne Sales as required by local law; there is a business certification on file for TNT, however. The Administrator also notes that the Order to Show Cause, addressed to

Payne Sales and sent certified mail, was signed for by Frederick Thornell.

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 14,269 (DEA 1999). *See also Henry J. Schwartz, Jr., M.D.*, 54 FR 14,269 (DEA 1989).

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the Administrator finds the DEA pre-registrant investigation shows that Payne Sales and TNT are co-located in an open warehouse and storage area, with no evidence of physical separation between the two businesses, and furthermore, that the products of the two entities were also co-mingled. Peggy Joe Payne stated to investigators that she conducted most of her business out of her home, and spent little time at the warehouse, where the products would be stored. As previously noted TNT pleaded guilty to the conspiracy count of the August 1998 indictment, to distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance. Additionally, the continued presence and interaction noted by DEA investigators of Payne's ex-husband Frederick Thornell and the two other convicted TNT employee co-defendants who pursuant to the August 1998

indictment pleaded guilty to felony counts regarding the violation of reporting and distribution requirements involving List I chemicals creates a grave risk of diversion of listed chemicals. Peggy Joe Payne also admitted to DEA investigators that Payne Sales has no policy for background checks for its customers. The Administrator finds that Ms. Payne provided little or no evidence that Payne Sales has or plans any controls whatsoever to protect against diversion of listed chemicals.

Regarding factor two, the applicant's compliance with applicable law, it does not appear that Peggy Joe Payne was named in the August 1998 indictment involving TNT. The Administrator notes, however, that she was employed as an accountant by TNT during the time the firm and its representatives engaged in the illicit conduct forming the basis for the August 1998 indictment. She was also married to Fred Thornell, president and chief executive officer for TNT.

Regarding factor three, there is no evidence that Peggy Joe Payne has a record of convictions related to controlled substances or to chemicals controlled under Federal or State law. As previously discussed, however, her firm is co-located with TNT and its representatives, which entity and representatives pleaded guilty to various felony counts listed in the August 1998 indictment involving the illicit distribution of listed chemicals.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the Administrator finds, as previously noted, Ms. Payne was employed as an accountant by TNT during the time the firm engaged in the illicit conduct forming the basis for the August 1998 indictment, and was married to TNT's President and Chief Executive Officer, Fred Thornell. TNT pleaded guilty to felony violations of 21 U.S.C. 841(d)(2) and 846, while Fred Thornell and another of TNT's representatives pleaded guilty to felony violations of 21 U.S.C. 830(b)(1)(A) and 842(a)(10), and another representative pleaded guilty to a felony violation of 21 U.S.C. 843(a)(7). As stated previously, the basis for the August 1998 indictment was the conduct by TNT and certain representatives in distributing over 5040 cases of a Listed I chemical, knowing or having reasonable cause to know that the listed chemical would be used to unlawfully manufacture a controlled substance, and further, failing to make required reports of such regulated transactions and failing to create proper invoice records of such regulated transactions.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator concludes, for the purposes of this application, that Payne Sales and TNT are effectively identical entities. The Administrator finds the DEA investigation reveals that the businesses share the same space, address, and telephone number; that there appears no evidence that the businesses are physically separated in any way; that TNT employees have equal and complete access to all of Payne Sales space and products; that the same TNT representatives who pleaded guilty to felony violations set forth in the August 1998 indictment are present within the shared Payne Sales/TNT space; Peggy Joe Payne maintains personal relationships with her convicted ex-husband Fred Thornell and the two other convicted representatives of TNT; she also relies on her ex-husband Fred Thornell regarding the business operation of Payne Sales; the only sign on the exterior of the building indicates "TNT Marketing Wholesale Novelities;" their products are co-mingled; their customer lists overlap; when the telephone number is dialed; the telephone is answered "TNT Marketing Payne Sales;" and there is no county business certification on file in the county records for Payne Sales as required by local law as there is for TNT. Therefore, the Administrator considers the past conduct of TNT to be relevant to Payne Sales' present application. As previously noted, listed chemicals were sold by TNT, despite DEA warnings, under circumstances that TNT knew or had reasonable cause to believe that the listed chemicals would be used to unlawfully manufacture a controlled substance. Evidence from the case file shows TNT attempted to conceal seven shipments totaling 2,760 cases of listed chemicals from DEA scrutiny by labeling the product shipped as "OTC (over the counter) vitamins." In addition, TNT failed to create proper invoice records for these shipments, in violation of 21 CFR 1310.06, and further failed to make any report to DEA of these regulated transactions, in violation of 21 CFR 1310.05(a). TNT pleaded guilty to a felony violation of 21 U.S.C. 841(d)(2) and 846, while Fred Thornell and another representative pleaded guilty to felony violations of 21 U.S.C. 830(b)(1)(A) and 842(a)(10) and another representative pleaded guilty to a felony violation of 21 U.S.C. 843(a)(7). TNT was required to pay \$100,000 in fines, and the three convicted TNT representatives were placed on two

years' probation. TNT and its convicted representatives were forbidden to apply for DEA registration, or to engage in the distribution of controlled substances or listed chemicals, for a period of ten years. Furthermore, Peggy Joe Payne stated to a DEA investigator that she conducted most of her business from her home; therefore, she would not be on the premises, leaving TNT's convicted representatives free reign over the shared business premises. As previously noted, there is no evidence in the DEA investigative file of effective controls against diversion.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Payne Sales. The applicant has failed to demonstrate that it has effective controls against the diversion of listed chemicals. Additionally, the evidence indicates that for the purposes of this application that Payne Sales and TNT are virtually indistinguishable, that Peggy Joe Payne continues to rely on her convicted ex-husband Fred Thornell to operate Payne Sales, and that the demonstrated record of felony violations of TNT and its representatives regarding the distribution of listed chemicals present a grave risk of future diversion.

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 Payne Sales be denied. This order is effective April 19, 2001.

Dated: March 8, 2001.

Donnie R. Marshall,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Frank R. Pennington, M.D.; Denial of Application

On February 2, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Frank R. Pennington, M.D., notifying him of an opportunity to show cause as to why the DEA should not deny his pending application, dated September 10, 1996, for a DEA Certificate of Registration as a practitioner, pursuant to 21 U.S.C. 824(a)(3), for the reason that he is not currently authorized to handle

controlled substances in the State of Tennessee. The order also notified Dr. Pennington that, should no request for hearing be filed within 30 days, his right to a hearing would be considered waived.

The DEA mailed the show cause order to Dr. Pennington by certified mail to two separate addresses, and received postal return receipts from each. No request for a hearing or any other response was received by DEA from Dr. Pennington or anyone purporting to represent him in this matter, however. Therefore, the Administrator of the DEA, finding that (1) thirty days have passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Dr. Pennington 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(1999).

The Administrator finds that on December 14, 1994, Dr. Pennington surrendered his previous DEA Certificate of Registration, Number AP7244445, following his felony conviction by the United States District Court for the Western District of Tennessee of obtaining controlled dangerous substances by fraud or deceit on October 27, 1994. Dr. Pennington's previously revoked medical license was reinstated by the Tennessee Board of Medical Examiners on November 20, 1996, pursuant to an application by Dr. Pennington dated September 10, 1996. On October 21, 1999, in the United States District Court for the Western District of Tennessee, Dr. Pennington pleaded guilty to a felony count of unlawful possession with intent to distribute a Schedule II controlled substance. By order dated November 9, 1999, the Tennessee Board of Medical Examiners revoked Dr. Pennington's license to practice medicine in the State of Tennessee. There is no evidence in the investigative file that Dr. Pennington's medical license has been reinstated since that time. Therefore, the Administrator finds that Dr. Pennington is not currently authorized to practice medicine in the State of Tennessee and as a result, it is reasonable to infer that he also is not authorized to handle controlled substances in that State.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f), and