

BEFORE THE ARKANSAS STATE BOARD OF PHARMACY

**IN THE MATTER OF
LANDMARK NETWORKS, INC.**

LIST I CHEMICAL WHOLESALER, No. C-00086

No. 2004-002

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

On June 10, 2004 the Arkansas State Board of Pharmacy (hereafter “the Board”) conducted a hearing in the above styled proceeding. After being duly served with notice thereof, Landmark Networks, Inc. (hereafter “Respondent”) appeared by Greg Gartner and by counsel Bettina Brownstein. From the testimony of witnesses, exhibits and other evidence of record, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Respondent holds a license as a Wholesale Distributor of List I Chemicals issued by and is subject to the jurisdiction of the Board.
2. At all times relevant herein, Respondent sold a variety of novelty type items and pseudoephedrine and/or ephedrine primarily to convenience stores and some truck stops and also to other types of outlets that generally do not sell over-the-counter pharmaceutical products (“non-traditional outlets”). Respondent sold products by a company representative calling upon individual customers and delivering products to those customers.
3. Based upon his sales of pseudoephedrine and/or ephedrine to said retailers, Respondent was required to maintain records of the chemical sales pursuant to Ark. Code Ann. § 5-64-1001 *et seq.*

4. Pseudoephedrine and ephedrine are List I Chemicals that are in great demand as ingredients to be used in the illicit manufacture of methamphetamine (“meth”), a Class II Controlled Substance. Specifically, single-ingredient, 60 mg pseudoephedrine is highly desired as an ingredient in manufacturing meth. Arkansas is well known to have a large number of illicit meth “labs” that manufacture meth.

5. Respondent has failed to report to the Board, or to the Drug Enforcement Administration, as a suspicious transaction any sale of pseudoephedrine to any of its customers.

6. Respondent sold primarily Max Brand 60 mg single-ingredient pseudoephedrine to its customers. The package of said pseudoephedrine was labeled as “Pseudo 60s”, a prominent display of the type of chemical and its strength.

7. In each of the transactions identified below, the circumstances of the sale would lead a reasonable person to believe that the substance was likely to be used for the purpose of unlawfully manufacturing a controlled substance in violation of the Uniform Controlled Substances Act based upon the factors set forth including without limitation the amount involved, the method of payment, the method of delivery, and past dealings with the customer including circumstances that Respondent’s agents knew or should have known:

- a. In individual transactions identified in Attachment A, incorporated by reference herein, the customer bought predominately or only listed chemicals. Each of said sales of pseudoephedrine and/or ephedrine was a suspicious transaction. Board Regulation 08-02-0008(a)(8).

- b. The Back Alley maintained pseudoephedrine located out-of-sight of customers and sold the packages at \$19.95, customers would learn of the availability of pseudoephedrine in the store by word of mouth, and the owner would state that his customers bought the pseudoephedrine to make meth. Each sale of pseudoephedrine to The Back Alley identified in Attachment A hereto, incorporated by reference herein, was a suspicious transaction. Ark. Code Ann. § 5-64-1006.
- c. Ladies World stored pseudoephedrine in an office so the product was not visible to customers, and Respondent's agent sold 4 cases of pseudoephedrine to Ladies World in a single transaction and wrote the sale up as only 2 cases of the product. Each of the sales of pseudoephedrine to Ladies World set out in Attachment A, incorporated by reference herein, was a suspicious transaction. Ark. Code Ann. § 5-64-1006.
8. From about May 2001 into mid-December 2003, Respondent maintained a storage facility located in North Little Rock, Arkansas where it maintained an inventory of List I chemicals on a continuing basis that its agent delivered to customers in Arkansas; Respondent has never held a license for this location issued by the Board. The Drug Enforcement Administration (DEA) gave written notice to Respondent that any such storage location must be separately registered with DEA, but Respondent has failed to obtain that registration.
9. During the period that Respondent has maintained the above described location in Arkansas, Respondent has continuously failed to maintain any type of alarm system to detect after-hours entry; any heating or air conditioning or other applicable

equipment to maintain a “controlled” temperature to help insure that the identity, strength, quality and purity of List I chemicals are not adversely affected; or manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs to document proper storage of List I chemicals.

CONCLUSIONS OF LAW

1. Each of Respondent’s sales of pseudoephedrine and/or ephedrine identified in paragraph 7 above was a suspicious transaction pursuant to Ark. Code Ann. § 5-64-1006.
2. Respondent’s failures to report the sales of pseudoephedrine identified in paragraph 7 above to the Board as suspicious transactions constitutes separate incidents, each of which violates Ark. Code Ann. § 5-64-1006 and for each of which the Board is authorized to impose a penalty not to exceed \$10,000 per violation.
3. Respondent’s maintaining a storage facility where it stored and distributed List I chemicals in Arkansas without holding a separate permit issued by the Board for said location violates Board Regulation 08-02-0002(a).
4. Respondent’s maintaining a storage facility where it stored and distributed List I chemicals in Arkansas without holding a separate registration for said location with the DEA violates 21 CFR § 1309.23.
5. Respondent’s failure to maintain an alarm system to detect after-hours entry as described above violates Board Regulation 08-02-0006(b).
6. Respondent’s failure to maintain any heating or air conditioning or other applicable equipment to maintain a “controlled” temperature to help insure that the

identity, strength, quality and purity of List I chemicals are not adversely affected as described above violates Board Regulation 08-02-0006(c).

7. Respondent's failure to maintain manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and /or logs to document property storage of List I chemicals as described above violates Board Regulation 08-02-0006(c).

8. Respondent's violations of Board regulations and DEA regulations as set forth above constitute grounds for the suspension or revocation of Respondent's Wholesaler of List I Chemicals Permit pursuant to Board Regulation 08-02-0002(e) and/or subjects Respondent to other disciplinary action pursuant to A.C.A. § 17-92-315 (Repl. 2002).

ORDER

IT IS THEREFORE ORDERED that the List I Chemical wholesalers license issued to Landmark Networks, Inc., Respondent, is hereby suspended for a period of three years.

IT IS FURTHER ORDERED that Respondent shall pay a monetary penalty of \$175,000.00 to the Board upon completion of said three-year suspension of Respondent's List I Chemical wholesalers license.

IT IS THEREFORE ORDERED this 13TH day of July 2004.

ARKANSAS STATE BOARD
OF PHARMACY

CHARLES CAMPBELL, PHARM. D.
EXECUTIVE DIRECTOR