

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN PRODUCTS ADVERTISED AS
CONTAINING CREATINE ETHYL ESTER

Inv. No. 337-TA-679

ORDER NO. 6: INITIAL DETERMINATION FINDING THREE RESPONDENTS IN
DEFAULT

(September 21, 2009)

On July 21, 2009, Complainant UneMed Corporation (“UNEMED”) filed a motion (679-003) seeking a determination that Respondents Bodyonics, Ltd. (“Bodyonics”); EST Nutrition LLC d/b/a/ Engineered Sports Technology (“EST”); NRG-X Labs (“NRG-X”); and Proviant Technologies, Inc. are in default based on these Respondents’ failure to respond to the complaint and notice of investigation. On July 31, 2009, the Commission Investigative Staff (“Staff”) filed a response opposing the motion for default, but supporting an order to show cause directed to Respondents Bodyonics, NRG-X and Proviant. With respect to Respondent EST, Staff opposed an order to show cause based on a lack of effective service of the complaint and notice of investigation on EST.

On September 2, 2009, pursuant to Rule 210.16 of the Commission’s Rules of Practice and Procedure, the undersigned issued Order No. 5, whereby Respondents Bodyonics, NRG-X and Proviant were ordered to show why they should not be found in default for failure to respond to the complaint and notice of investigation by the close of business on September 16, 2009. 19 C.F.R. § 210.16. No responses to Order No. 5 were filed by the deadline date.

Commission Rule 210.16 provides in pertinent part, as follows:

A party shall be found in default if it fails to respond to the complaint and notice investigation in the manner prescribed in § 210.13 or

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§ 210.59(c), or otherwise fails to answer the complaint and notice, and fails to show cause why it should not be found in default.

19 C.F.R. § 210.16(a)(1). The Commission's Rules further provide that "[a] party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation. *See* 19 C.F.R. § 210.16(b)(3).

Accordingly, it is the INITIAL DETERMINATION of the undersigned that Respondents Bodyonics, NRG-X, and Proviant be found to be in default. Consequently, these three Respondents have waived their right to appear, be served with documents, and to contest the allegations at issue in this investigation.

Pursuant to 19 C.F.R. § 210.42(h), this initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the initial determination or certain issues contained herein.

SO ORDERED.




Charles E. Bullock
Administrative Law Judge

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CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER NO 6: / INITIAL DETERMINATION** has been served upon, **Erin D.E. Joffre, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and air mail where necessary on September 21, **2009**.


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, S.W., Room 112A
Washington, DC 20436

FOR COMPLAINANT UNEMED CORPORATION:

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FOR RESPONDENT SAN CORPORATION:

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1875 Eye Street N.W. Suite 1100
Washington, DC 20006

() Via Hand Delivery
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RESPONDENTS:

BODYONICS, LTD.
140 Lauman Lane
Hicksville, NY 11801

() Via Hand Delivery
 Via Overnight Mail
() Via First Class Mail
() Other: _____

**ENGINEERED SPORTS
TECHNOLOGY, INC.**
7217 East Colonial Drive
Orlando, FL 32807

() Via Hand Delivery
 Via Overnight Mail
() Via First Class Mail
() Other: _____

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PROVIANT TECHNOLOGIES, INC.

309 West Hensley Road
Champaign, ILL 61822

- Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

NRG-X LABS

10636 West Highway 72 #1001
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- Via Hand Delivery
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PUBLIC MAILING LIST

Heather Hall

LEXIS - NEXIS

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