

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

Ma Labs, Inc.
2075 North Capitol Avenue
San Jose, CA 95113

and

IT Express Corporation
2077 North Capitol Avenue
San Jose, CA 95132

Respondents

ORDER RELATING TO
MA LABS, INC. AND IT EXPRESS CORPORATION

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Ma Labs, Inc. (“Ma Labs”), and IT Express Corporation (“IT Express”), both of San Jose, California, of its intention to initiate an administrative proceeding against Ma Labs and IT Express pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”),² through the issuance of a Proposed Charging Letter to Ma Labs

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2013). The charged violation occurred in 2009. The Regulations governing the violation at issue are found in the 2009 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2013 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 Fed. Reg. 49,107 (Aug. 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2006 & Supp. IV 2010).

and IT Express that alleges that Ma Labs and IT Express committed one violation of the Regulations. Specifically, the charge is:

Charge 1 15 C.F.R. § 764.2(k) – Acting Contrary to the Terms of a Denial Order

On or about February 1, 2009, Ma Labs and IT Express took action prohibited by a BIS denial order. Specifically, Ma Labs and IT Express took action that, contrary to the terms of a BIS denial order, facilitated the acquisition by Mahan Airways, an Iranian airline and a denied person since March 21, 2008, of the ownership, possession or control of approximately 2,300 computer motherboards, items subject to the Regulations, designated as EAR99,³ and valued at approximately \$130,000. The items were ordered from Ma Labs by a trading company in the United Arab Emirates (“UAE”), which had opened an account with Ma Labs. IT Express, which handles international sales and order fulfillment for Ma Labs, was given the order to fulfill by Ma Labs. IT Express was instructed by the UAE trading company to ship the items to the UAE, with Mahan Airways as the ultimate consignee. . IT Express shipped the items via freight forwarder to Mahan Airways in the UAE. Ma Labs advanced the shipping cost, subject to reimbursement by IT Express following its receipt of payment by the UAE trading company. After the items arrived in the UAE, they were transshipped from the UAE to Iran via Mahan Airways.

Mahan Airways was named as a Denied Person in a temporary denial order (“TDO”) issued by BIS effective on March 21, 2008, and subsequently renewed by BIS and in force and effect at all pertinent times hereto.⁴ Under the TDO, all persons, including Ma Labs and IT Express, were prohibited from exporting or reexporting to or on behalf of Mahan Airways any item subject to the EAR, and were further prohibited from taking any action “that facilitates the acquisition or attempted acquisition by the Denied Person [Mahan Airways] of the ownership, possession, or control of any item subject to the EAR that has been . . . exported from the United States”

In acting contrary to the terms of a BIS denial order, as alleged above, Ma Labs and IT Express violated Section 764.2(k) of the Regulations and are jointly and severally liable for that violation.

³ EAR99 is the designation for items subject to the Regulations but not included on the Commerce Control List. See 15 C.F.R. § 774.1 (2009).

⁴ The initial TDO was issued by BIS on March 17, 2008, and was effective upon publication in the Federal Register on March 21, 2008. 73 Fed. Reg. 15,130. The TDO was renewed for 180 days on September 17, 2008, by order effective upon issuance on that date. 73 Fed. Reg. 57051 (Oct. 1, 2008). The TDO remains in effect today against Mahan Airways, having been renewed most recently on July 31, 2013. 78 Fed. Reg. 48,138 (Aug. 7, 2013).

WHEREAS, BIS, Ma Labs and IT Express have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

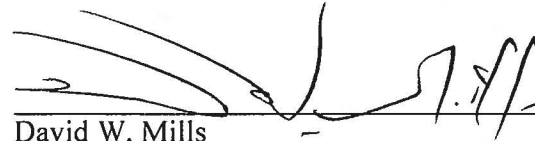
FIRST, Ma Labs and IT Express shall be assessed a total civil penalty in the amount of \$55,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order. Ma Labs and IT Express are jointly and severally liable for the payment of this civil penalty.

SECOND, that the full and timely payment of the civil penalty in accordance with the payment schedule set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Ma Labs and/or IT Express. Accordingly, if Ma Labs and IT Express should fail to pay the civil penalty in a full and timely manner, the undersigned may issue an order denying all of Ma Labs' and/or IT Express' export privileges under the Regulations for a period of one year from the date of failure to make such payment.

THIRD, neither Ma Labs nor and IT Express shall take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Ma Labs' and/or IT Express' testimonial obligations in any proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

FOURTH, that the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



David W. Mills
Assistant Secretary of Commerce
for Export Enforcement

Issued this 18th day of November, 2013.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

Ma Labs, Inc.
2075 North Capitol Avenue
San Jose, CA 95113

and

IT Express Corporation
2077 North Capitol Avenue
San Jose, CA 95132

Respondents

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Ma Labs, Inc. (“Ma Labs”), and IT Express Corporation (“IT Express”), both of San Jose, California, and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (the “Act”).²

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2013). The charged violation occurred in 2009. The Regulations governing the violation at issue are found in the 2009 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2013 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of Notice of August 8, 2013 (78 Fed. Reg. 49,107 (Aug. 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2006 & Supp. IV 2010).

WHEREAS, BIS has notified Ma Labs and IT Express of its intention to initiate an administrative proceeding against Ma Labs and IT Express, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a Proposed Charging Letter to Ma Labs and IT Express that alleges that Ma Labs and IT Express committed one violation of the Regulations, specifically:

Charge 1 15 C.F.R. § 764.2(k) – Acting Contrary to the Terms of a Denial Order

On or about February 1, 2009, Ma Labs and IT Express took action prohibited by a BIS denial order. Specifically, Ma Labs and IT Express took action that, contrary to the terms of a BIS denial order, facilitated the acquisition by Mahan Airways, an Iranian airline and a denied person since March 21, 2008, of the ownership, possession or control of approximately 2,300 computer motherboards, items subject to the Regulations, designated as EAR99,³ and valued at approximately \$130,000. The items were ordered from Ma Labs by a trading company in the United Arab Emirates (“UAE”), which had opened an account with Ma Labs. IT Express, which handles international sales and order fulfillment for Ma Labs, was given the order to fulfill by Ma Labs. IT Express was instructed by the UAE trading company to ship the items to the UAE, with Mahan Airways as the ultimate consignee. IT Express shipped the items via freight forwarder to Mahan Airways in the UAE. Ma Labs advanced the shipping cost, subject to reimbursement by IT Express following its receipt of payment by the UAE trading company. After the items arrived in the UAE, they were transshipped from the UAE to Iran via Mahan Airways.

Mahan Airways was named as a Denied Person in a temporary denial order (“TDO”) issued by BIS effective on March 21, 2008, and subsequently renewed by BIS and in force and effect at all pertinent times hereto.⁴ Under the TDO, all persons, including Ma Labs and IT Express, were prohibited from exporting or reexporting to or on behalf of Mahan Airways any item subject to the EAR, and were further prohibited from taking

³ EAR99 is the designation for items subject to the Regulations but not included on the Commerce Control List. See 15 C.F.R. § 774.1 (2009).

⁴ The initial TDO was issued by BIS on March 17, 2008, and was effective upon publication in the Federal Register on March 21, 2008. 73 Fed. Reg. 15,130. The TDO was renewed for 180 days on September 17, 2008, by order effective upon issuance on that date. 73 Fed. Reg. 57051 (Oct. 1, 2008). The TDO remains in effect today against Mahan Airways, having been renewed most recently on July 31, 2013. 78 Fed. Reg. 48,138 (Aug. 7, 2013).

any action “that facilitates the acquisition or attempted acquisition by the Denied Person [Mahan Airways] of the ownership, possession, or control of any item subject to the EAR that has been . . . exported from the United States”

In acting contrary to the terms of a BIS denial order, as alleged above, Ma Labs and IT Express violated Section 764.2(k) of the Regulations and are jointly and severally liable for that violation.

WHEREAS, Ma Labs and IT Express have reviewed the Proposed Charging Letter and are aware of the allegations made against them and the administrative sanctions that could be imposed against them if the allegations are found to be true;

WHEREAS, Ma Labs and IT Express fully understand the terms of this Agreement and the Order (“Order”) that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, Ma Labs and IT Express enter into this Agreement voluntarily and with full knowledge of their rights;

WHEREAS, Ma Labs and IT Express state that no promises or representations have been made to them other than the agreements and considerations herein expressed;

WHEREAS, Ma Labs and IT Express neither admit nor deny the allegations contained in the Proposed Charging Letter; and

WHEREAS, Ma Labs and IT Express agree to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over Ma Labs and IT Express, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanction shall be imposed against Ma Labs and IT Express in complete settlement of the alleged violation of the Regulations relating to the transaction specifically detailed in the Proposed Charging Letter:

a. Ma Labs and IT Express shall be assessed a total civil penalty in the amount of \$55,000, the payment of which shall be made to the U.S.

Department of Commerce within 30 days of the date of the Order. Ma Labs and IT Express are jointly and severally liable for the payment of this civil penalty. Payment shall be made in the manner specified in the attached instructions.

b. The full and timely payment of the civil penalty agreed to in Paragraph 2.a is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Ma Labs and/or IT Express. Failure to make full and timely payment of the civil penalty as set forth above may result in the denial of all of Ma Labs' and/or IT Express' export privileges under the Regulations for one year from the date of the failure to make such payment.

4. Neither Ma Labs nor IT Express shall take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Ma Labs' or IT Express' testimonial obligations in any proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

5. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a, BIS will not initiate any further administrative proceeding against

Ma Labs and/or IT Express in connection with any violation of the Act or the Regulations arising out of the transaction specifically detailed in the Proposed Charging Letter.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

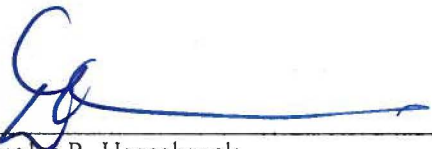
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.


9. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

10. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY MA LABS, INC.
U.S. DEPARTMENT OF COMMERCE



Douglas R. Hassebrock
Director of Export Enforcement

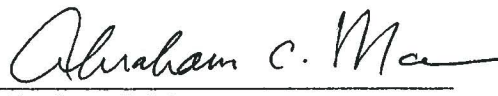


Abraham C. Ma
President

Date: 11/14/2013

Date: 11/08/13

IT EXPRESS CORPORATION



Abraham C. Ma
President

Date: 11/08/13

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ma Labs, Inc.
2075 North Capitol Avenue
San Jose, CA 95113

and

IT Express Corporation
2077 North Capitol Avenue
San Jose, CA 95132

Attn: Abraham Ma, CEO, Ma Labs, Inc. and IT Express Corporation

Dear Mr. Ma:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Ma Labs, Inc. (“Ma Labs”), acting in conjunction with IT Express Corporation (“IT Express”), committed one violation of the Export Administration Regulations (the Regulations),¹ which issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS charges that Ma Labs and IT Express, which have common ownership and are located in San Jose, California, committed the following violation:

Charge 1 15 C.F.R. § 764.2(k) – Acting Contrary to the Terms of a Denial Order

On or about February 1, 2009, Ma Labs and IT Express took action prohibited by a BIS denial order. Specifically, Ma Labs and IT Express took action that, contrary to the terms of a BIS denial order, facilitated the acquisition by Mahan Airways, an Iranian airline and a denied person since March 21, 2008, of the ownership, possession or control of approximately 2,300 computer motherboards, items subject to the Regulations, designated as EAR99,³ and valued at

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2013). The charged violation occurred in 2009. The Regulations governing the violation at issue are found in the 2009 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2009)). The 2013 Regulations set forth the procedures that currently apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 8, 2013 (78 Fed. Reg. 49,107 (Aug. 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701 *et seq.*) (2006 & Supp. IV 2010).

³ EAR99 is the designation for items subject to the Regulations but not included on the Commerce Control List. *See* 15 C.F.R. § 774.1 (2009).

approximately \$130,000. The items were ordered from Ma Labs by a trading company in the United Arab Emirates (“UAE”), which had opened an account with Ma Labs. IT Express, which handles international sales and order fulfillment for Ma Labs, was given the order to fulfill by Ma Labs. IT Express was instructed by the UAE trading company to ship the items to the UAE, with Mahan Airways as the ultimate consignee. IT Express shipped the items via freight forwarder to Mahan Airways in the UAE. Ma Labs advanced the shipping cost, subject to reimbursement by IT Express following its receipt of payment by the UAE trading company. After the items arrived in the UAE, they were transshipped from the UAE to Iran via Mahan Airways.

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In acting contrary to the terms of a BIS denial order, as alleged above, Ma Labs and IT Express violated Section 764.2(k) of the Regulations and are jointly and severally liable for that violation.

* * * * *

Accordingly, Ma Labs and IT Express are hereby notified that an administrative proceeding is instituted against them pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation;⁵
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If Ma Labs and/or IT Express fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default.

⁴ The initial TDO was issued by BIS on March 17, 2008, and was effective upon publication in the Federal Register on March 21, 2008. 73 Fed. Reg. 15,130. The TDO was renewed for 180 days on September 17, 2008, by order effective upon issuance on that date. 73 Fed. Reg. 57051 (Oct. 1, 2008). The TDO remains in effect today against Mahan Airways, having been renewed most recently on July 31, 2013. 78 Fed. Reg. 48,138 (Aug. 7, 2013).

⁵ International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

See 15 C.F.R. §§ 766.6 and 766.7. If Ma Labs and/or IT Express defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Ma Labs and/or IT Express. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Ma Labs and IT Express are further notified that they are entitled to an agency hearing on the record if Ma Labs and/or IT Express files a written demand for one with their answer. *See* 15 C.F.R. § 766.6. Ma Labs and IT Express are also entitled to be represented by counsel or other authorized representative who has power of attorney to represent them. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Ma Labs and/or IT Express have a proposal to settle this case, it should be transmitted to the attorney representing BIS named below.

Ma Labs and IT Express are further notified that under the Small Business Regulatory Enforcement Flexibility Act, Ma Labs and/or IT Express may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Ma Labs and IT Express must file an answer in accordance with the instructions set forth in Section 766.5(a) of the Regulations with the:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, Ma Labs and IT Express must serve a copy of any answer on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Eric Clark, Esq.
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

IT Express Corporation/Ma Labs, Inc.
Proposed Charging Letter
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Eric Clark is the attorney representing BIS in this case; any communications that Ma Labs and/or IT Express may wish to have concerning this matter should occur through him. Mr. Clark may be contacted by telephone at (202) 482-5301.

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement