COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6291
WWW.COV.COM

WASHINGTON
NEW YORK
SAN FRANCISCO
LONDON
BRUSSELS

PETER O. SAFIR
TEL 202.662.5162
FAX 202.778.5162
PSAFIR@COV.COM

September 26, 2003

Dockets Management Branch
Food and Drug Administration
Room 1061
5630 Fishers Lane
Rockville, MD 20852

Re: Citizen Petition filed by Mattingly, Stanger & Malur, P.C., FDA Docket No. 2003P 0366

Dear Sir or Madam:

In this letter, Procter & Gamble ("P&G"), through its undersigned counsel, responds to the Citizen Petition filed August 12, 2003, FDA Docket No. 2003P-0366/CP 1 ("Mattingly Citizen Petition"). FDA has granted approval for the over-the-counter ("OTC") marketing of Prilosec OTC for the treatment of frequent heartburn – heartburn occurring two or more days a week (NDA 21-229).[1] The Mattingly Citizen Petition requests that FDA amend this approval "to require that Prilosec OTC be sold under a different brand name in order to reduce otherwise inevitable consumer confusion and decrease the potential for misuse of Prilosec OTC."[2]

As set forth in more detail below, FDA already has considered the concerns raised by the petitioner. The NDA underwent significant FDA review, including consideration by two joint sessions of the Nonprescription Drugs Advisory Committee and the Gastrointestinal Advisory Committee (the "Advisory Committee"). As a result of this review, FDA has determined that the product's labeling, which includes the trade name used on the packaging and in promotions, is not likely to mislead consumers or to lead to misuse of the product.

---

1 *See* Approval Letter from Jonca Bull, M.D. and Florence Houn, M.D., to The Procter and Gamble Co.

2 Mattingly Citizen Petition at 1.

2003P-0366 C1

In addition, the Mattingly Citizen Petition revisits issues raised in the Citizen Petition filed November 21, 2002 on behalf of Andrx Pharmaceutical Corp., FDA Docket No. 02P-0493/CP 1 ("Andrx Citizen Petition"). The Andrx Citizen Petition asserted that the NDA should be denied because the product had not been shown to be safe and effective for OTC use. The Mattingly Citizen Petition advances many of the arguments made in the Andrx Citizen Petition. The Memorandum regarding the Andrx Citizen Petition, sent by Dr. Charles Ganley to Jonca Bull, M.D. and Florence Houn, M.D. on June 20, 2003 (the "Ganley Memorandum"), addressed each of these issues and concluded that because the product's safety and efficacy has been sufficiently proven, the Andrx Citizen Petition should be denied. The pending Mattingly Citizen Petition should be similarly denied.

Discussion

The Mattingly Citizen Petition asserts that the name Prilosec OTC will lead to confusion with the prescription product Prilosec®, as the similarity of the two names suggests that the two products are the same. Such a suggestion would be inaccurate, misleading, and dangerous, according to the Petition, because Prilosec OTC is approved solely for the treatment of frequent heartburn occurring two or more days a week, while Prilosec® is approved for the treatment of a variety of gastrointestinal diseases, including gastroesophageal reflux disease ("GERD") and associated symptoms. As a result, consumers could mistakenly self-diagnose and self-treat conditions that should only be diagnosed and treated by a medical professional.

FDA considered the Prilosec OTC labeling in its determination that the product is safe and effective for OTC use. In support of its NDA, P&G submitted the data from five actual use studies and five label comprehension studies,[3] including Study 22103, one of the largest labeling comprehension studies ever requested by FDA. Study 22103 tested labeling comprehension using the name Prilosec OTC. In this study, consumer comprehension of all warning statements was 92-99% across all of the labels tested, including the label that most closely resembles the approved label.[4] This data strongly supports a conclusion that consumers understand when they should not use the product, and when they should contact a doctor prior to use. The petitioner has not presented any data to refute this conclusion. The Ganley

---

[3] While the proposed name of the product was Prilosec 1 when most of these studies were conducted, Prilosec 1 raises the same possibility of confusion with Prilosec®, and therefore the study results and the Advisory Committee's comments and conclusions remain relevant to the name Prilosec OTC.

[4] The scores ranged from 74-77% on one question regarding whether frequent heartburn was considered to be a serious condition, but the study sponsors concluded that this response rate reflected a problem with the study question, rather than with the labeling.

Memorandum also pointed to this data in concluding that consumers are able to self-select and de-select appropriately.

The Advisory Committee considered the risks associated with unsupervised use of the OTC product in deciding to support the approval of Prilosec OTC. The Advisory Committee made a number of specific recommendations for labeling changes to address its concerns regarding consumer behavior. None of these recommendations related to the proposed product name. Given the specificity and comprehensiveness of the Advisory Committee's recommendations, it surely would have commented on the name, had the name raised any problems.

The Mattingly Citizen Petition also asserts that the use of the same trade name could lead to an increase in disease-state morbidity. Specifically, the Petition asserts that consumers will use Prilosec OTC to treat more serious conditions such as GERD, for which the product is not approved. This use, the Petition argues, may result in a worsening of the consumer's heartburn condition or the development of other diseases, including erosive esophagitis and esophageal cancer. However, the Advisory Committee and the Ganley Memorandum considered this possibility, and both determined that it is not a major concern. The Ganley Memorandum expressed the view that the labeling is appropriate to inform consumers of the product's proper use. Furthermore, Prilosec® is approved to treat erosive esophagitis and Barrett's esophagus, two diseases which potentially could result from the masking of heartburn symptoms. Therefore, continued use of Prilosec OTC, which includes an equal or lower dose of the active ingredient in Prilosec®, has the potential to help treat the more severe resulting disease even if it were to mask the symptoms. While neither Prilosec® nor Prilosec OTC is labeled to treat esophageal cancer, the Advisory Committee and the Ganley Memorandum both concluded that masking of this disease is not a major concern because the disease is relatively rare.

In addition, according to the Petition, the confusion resulting from the use of the same trade name will increase healthcare costs. To the contrary, Prilosec OTC will lower overall healthcare costs by allowing patients to self-diagnose and self-treat their frequent heartburn symptoms, rather than visiting a physician and filling a prescription each time the symptoms recur. While healthcare costs could theoretically increase in the few individual cases in which the symptoms of esophageal cancer might be briefly masked, the use of the trade name "Prilosec" in both the prescription and OTC product will not result in an overall cost increase.

The Petition asserts that the potential for confusion is compounded because of the previous direct to consumer ("DTC") promotion of Prilosec®. The Petition alleges that because Prilosec® was heavily promoted, consumers will remember the approved uses for Prilosec® when purchasing Prilosec OTC. However, no DTC advertisements for Prilosec® have been broadcast since March of 2001 or printed after December 2001. nearly two years prior to the approval of Prilosec OTC. In the intervening time, consumers are likely to have forgotten the

specific and detailed labeling information included in the ads, even though they may remember the product's name.

In addition, P&G is launching an extensive DTC advertising campaign to support Prilosec OTC. These advertisements include, as part of the approved labeling, the information that the product is to be used for frequent heartburn. This campaign will eliminate from viewers' minds any lingering memory of the Prilosec® ads, as well as any confusion about the proper use of Prilosec OTC. As the petitioner notes, DTC advertising has been proven effective in informing consumers about the advertised medicine's indicated uses. P&G is also placing a "new" flag on the packaging of OTC Prilosec to further emphasize to consumers that this product is new to the market. The Mattingly Citizen Petition next argues that the use of the tagline "The New Purple Pill" creates confusion with the prescription product Nexium, which is approved to treat GERD. The Petition asserts that the tagline draws an inappropriate connection between the products. This argument is unrelated to the product's name, and therefore is inapposite to the Petition's request that the NDA be amended to require use of a name other than Prilosec OTC. Prilosec OTC is not a purple pill, and is not so advertised.

The Petition argues that FDA's established precedents allowing OTC products to use the same trade name as prescription products in certain circumstances are no longer relevant, as these all date from the period before mass media DTC advertising was permitted. The Petition implies that DTC advertising has such power to affect consumers' perceptions of drug products that FDA's considerations in approving products such as Tagamet and Advil for OTC use are no longer relevant. To the contrary, the major concerns remain the same. The consumers most likely to misuse an OTC product are not those who have merely seen an advertisement for the related prescription product, but those who are more familiar with the prescription product because they or people close to them have taken it. These patients are likely to know that Prilosec® is approved to treat GERD and other more serious diseases. Consumers who have never taken Prilosec®, however, are far less likely to be aware of these additional indications. As discussed above, the details of past DTC ad campaigns are unlikely to linger in consumers' minds – particularly for consumers who don't have the condition treated by the Rx product, and therefore the group of consumers at greatest risk of misusing the product remains the same despite the existence of DTC advertising. Accordingly, the existing precedents retain their relevance today. The approval of the name Prilosec OTC is consistent with these precedents.

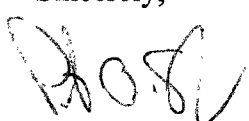
Finally, the Citizen Petition argues that the use of the name Prilosec OTC raises exactly the type of medication error risks that FDA seeks to eliminate through its sound-alike/look-alike review. However, as noted in the Ganley Memorandum, the Division of Medical Errors and Technical Support had no objections to the name Prilosec OTC after reviewing it for potential confusion. The Mattingly Citizen Petition presents no data to support its claim or to refute the Division's conclusions. Furthermore, this argument does not raise serious concerns. Because Prilosec OTC contains the same dose of the active ingredient in the

typical Prilosec®, the consequences of supposed confusion are not as significant as when two different drugs are confused in the Rx world. . .

Conclusion

As demonstrated above, every issue raised in the Mattingly Citizen Petition has been addressed fully by FDA in its consideration of the NDA and in its response to the Andrx Citizen Petition. In considering the safety and efficacy of the product for OTC use, FDA considered the proposed labeling, including the product name. The Advisory Committee made specific recommendations for changes to the proposed labeling, but did not express any concerns about the name. Ultimately, FDA determined that the Prilosec OTC, including the labeling, is safe, effective, and appropriate for OTC use for the treatment of frequent heartburn. Because the Mattingly Citizen Petition presents no new relevant arguments or new relevant data, it should be denied in its entirety.

Sincerely,



Peter O. Safir
Counsel to Procter & Gamble

cc. Paul Franz, Esq.