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Dockets Management Branch (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Rm. 1061
Rockville, MD 20852

1537

RE: Docket No. 00D-1357: Draft Guidance for Industry: Referencing Discontinued Labeling For Listed Drugs in Abbreviated New Drug Applications (October 2000)

Ladies and Gentlemen:

Teva Pharmaceuticals USA, Inc. ("Teva USA") respectfully submits these comments on the above-referenced Draft Guidance. This Draft Guidance is aimed at addressing a significant and growing problem in the approval of generic drugs under the Hatch-Waxman amendments: the use by branded drug companies of the patent and exclusivity provisions of Hatch-Waxman to protect post-approval changes in the labeling of their reference listed drug ("RLD") products so as to delay generic competition to these drug products altogether. Teva USA shares FDA's evident frustration with this tactic, and applauds FDA's apparent desire to do something about it. Unfortunately, however, in Teva's view the Draft Guidance is the wrong solution both from a safety standpoint as well as from a practical standpoint.

Background

Over the past several years there have been many strategies employed by the brand drug companies to exploit the provisions of Hatch-Waxman. These strategies were likely not foreseen by its authors, since the intent of the authors was to provide a balance between true innovation and cost savings to the ultimate benefit of the consumer. The strategies have resulted in significant delays of generic alternatives for changes that are not always true and useful innovations. One of the strategies that has plagued both FDA and the generic industry of late is the replacement of labeled directions (other than the addition of an indication) with a new, proprietary set of directions thus leaving the generic applicants without a usable labeling option.

In one recent example of this approach, a drug sponsor obtained FDA approval of an sNDA to alter the dosing instructions in its labeling. The old labeling recommended titrating a new patient onto the drug over a three-day period; the new dosing instructions permitted the patient to reach higher dosage levels of the drug sooner. The change was afforded three-year statutory exclusivity based in part upon FDA's determination that new clinical studies had been essential to its approval. As a result, generic applicants may not receive final approval of an ANDA for a drug whose labeling includes the new dosing instructions for three years from the date of approval of the RLD sponsor's sNDA. From information available, no new clinical studies were performed and thus it is questionable whether the brand should have received exclusivity.

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The Problem

The problem results from: first, the unabashed misuse of the Hatch-Waxman amendment provisions by the brand drug companies to delay generic approval and second, the lack of awareness and sensitivity on the part of the new drug review divisions for the impact of what they do to the American consumer by allowing brand companies to distort the intent of the Hatch-Waxman amendment.

The Solution

Again, while Teva fully appreciates the agency's frustration with the problem and applauds the agency's willingness to find a solution, the provisions of the Draft Guidance do not appear to offer the best answer. The agency has spent the past several years seeking to implement ways to make labeling more available and easier to understand for both professionals and consumers. The Draft Guidance is contrary to these efforts by permitting the use of old and antiquated labeling that may not represent state of the art information.

If exclusivity for a labeling change is granted, the assumption is that the information in the new labeling is important and useful. Theoretically, if the information is important and useful enough to merit exclusivity, then previous labeling should not be permitted. On the other hand, if the new, protected information is of such little value that previous labeling could be used in its place, perhaps exclusivity should not have been awarded in the first place. Therefore, if the Draft Guidance is implemented it will serve more as a vehicle to create confusion than as a solution to the problems. If not by changes in dosing instructions then by other means, abuse of the statute will continue unless something is done directly to curtail it.

A good first step in this direction is to raise the bar on the granting of exclusivity for supplemental NDA changes such that exclusivity is not awarded with little or no merit. Additionally, the downstream impact of exclusivity must be assessed. A minor change can easily result in years of delay in the availability of a lower cost generic alternative. The cost to the U. S. consumer MUST be considered against the value of the supplemental change, i. e., does the change offer significant benefit to the patient to justify the continued high cost of the brand and the absence of a lower cost generic alternative.

Teva understands that these are difficult solutions to implement. However, interim solutions such as the Draft Guidance, while they may address the short term dilemma, do nothing toward the long term issues and, in fact, create other problems in their wake. We urge the agency to reconsider the advisability of the Draft Guidance and to focus on the root causes of the problems when striving toward a solution. Teva appreciates this opportunity to comment.

If there are any further questions, please do not hesitate to contact me at (215)591-3142 or via facsimile at (215)591-8812.

Sincerely,

Deborah Jaskot

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