Boehringer Ingelheim
Ben Venue Laboratories

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May 14, 2003

Ben Venue Laboratories, Inc.

Dockets Management Branch
Food and Drug Adminstration (HFA-305)
5630 Fishers Lane
Room 1061
Rockville, MD 20852

RE: Docket 01P-0574/CP1

To Whom It May Concern:

The undersigned submits comments to the above referenced petition. The original petition was submitted on December 2001. The purpose of this submission is to respond to comments submitted by Novartis on November 19,2002 and March 26, 2003.

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Novartis stated in their November 2002 comments that Ben Venue has submitted an ANDA seeking approval of the currently marketed formulation of Sandostatin and that neither Ben Venue nor any other firm should market both products.

We would like to clarify that Ben Venue did not submit an ANDA for the currently marketed product. Ben Venue submitted an ANDA for the discontinued formulation of Sandostatin. The formulation of the product may be changed as allowed under 21 CFR 314.94 to contain a different buffer system. Whether that system is a lactic acid, acetic acid or a different system is an issue that should be limited to the review of the Agency in conjunction with an ANDA. The generic applicant bears the burden of supporting the appropriateness of the buffer system within the confines of the ANDA; not in a petition process according to regulations. The purpose of this petition is to determine that the discontinued formulation was not withdrawn for reasons of safety or efficacy. Ben Venue has no intention of marketing both formulations.

Novartis stated in their March 2003 comments that Ben Venue bears the burden of demonstrating that the acetic acid formulation was not withdrawn for safety or efficacy and the Ben Venue has failed in this regard. The approval by the FDA of the original formulation as safe and effective and the fact that this formulation was never recalled or brought to the attention of the consumers as an unsafe product, is evidence that the older formulation does

01P-0574

RC 7

not present a safety risk to the public health. In rebuttal to those March 2003 comments, we feel that it is Novartis who has failed to prove that the older formulation is "less safe" as they have not produced any data to support such claims. The comments submitted to this petition by Novartis claim that the safety risk is not in the drug product itself, but in patient compliance and continued use of the product. Novartis has never stated that the old formulation is not safe. Novartis has not submitted any substantial evidence showing a lack of safety and cannot substantiate these conjectures with any data on patient non-compliance due to injection site pain. In fact, comments submitted by both Mitchell Burger (dated October 16, 2002) and Mary Ann Hicks (dated October 3, 2002), patients currently using Sandostatin, claim quite the contrary. Both patients provided comments that the price of Sandostatin is a significant cause of patient noncompliance with prescribed dosing regimens and that the injection site pain (which is found with any subcutaneous injection including the currently marketed formulation as provided in Novartis' own clinical reports) is not the leading cause of patient noncompliance. Using Novartis' own logic and argument, perhaps there is some grounds to state that the currently marketed Sandostatin may be less safe than a generic version based on patient noncompliance if the generic version provides a significant reduction in price. Although this argument is unsubstantiated, it is as equally plausible as the one presented by Novartis concerning non-compliance due to injection site pain. Novartis has not submitted any data showing the rates of patient non-compliance due to injection site pain and has not proven that the older formulation is "less safe" based on those assumptions. Without any data to support such claims, this claim by Novartis is groundless.

Novartis goes on to state in both comments that others can pursue a duplicate version of the currently marketed product and that generics of the currently marketed product will be available to all patients when FDA completes its review. However, what Novartis neglected to mention concerning generic products which are a duplicate of the current formulation is the fact that these generic products will not be eligible for final FDA approval until the expiration of the current patent which extends until 2015, regardless of the review status by the FDA. Any generic applications that are based on the currrently marketed formulation could not be approved by the FDA until the expiration of the patent, and would give Novartis an opportunity for litigation against any application that seeks approval prior to the patent expiration.

Again, we would like to reiterate that there has not been any evidence presented which concludes that the discontinued formulation is not safe or

effective. Based on the past marketing of the product by Novartis without any notice of safety risks, recalls, or requests from the Agency to reformulate due to safety reasons, we feel that the use of the old formulation does not jeopardize the safety or health of the public. This stance by Novartis would allow a company to make minor changes to a formulation which have no true therapeutic benefit while loudly proclaiming the discontinued formulations to be "less safe" without any supportive proof, gaining additional years of patent protection; all the while keeping generic alternatives from the public for years with each modification.

We believe that adequate information should be in the possession of the Agency concerning these issues based on the Agency's original approval of the product using the acetic acid buffer system and the submitted comments. We respectfully request that the Agency take immediate action on this petition, in consideration of the 18 month time period it has been pending, and that the determination be forthcoming.

Respectfully submitted,

Molly Rapp
Manager of Regulatory Affairs
Ben Venue Laboratories, Inc.

CC: Mr. Gary Buehler, Director, Office of Generic Drugs (HFD-600)
Dr. David Orloff, Director, Division of Metabolic and Endocrine Drug Products (HFD-510)