CENTER FOR DRUG EVALUATION AND RESEARCH

APPLICATION NUMBER:NDA 19-983/S-012

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December 22, 1998

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CONFIDENTIAL
This letter is confidential under 21 C.F.R. § 20.61 (trade secrets and confidential commercial information) and § 314.430 (d)(1) (information contained in new drug application prior to approval)

Attention: Indira Kumar

Re: NDA #19-983, S012, Prostep® (Nicotine Transdermal System)
OTC Switch Supplement

Dear Dr. McCormick:

In accordance with our telephone conversation today about the Draft version of the labeling review faxed to Elan at about 2:30 pm, I am writing on behalf of my client, Elan Pharmaceutical Research Corporation, to state their commitments, as follows:

Specific Commitments

General Commitments

1. Elan has reviewed the Draft and will carry out the changes noted therein.

Elan specifically notes that the agency has agreed that the Draft will be revised so that the established name required to be disclosed in item I.A.1 (pages 1-2) will be used throughout the Draft and throughout the labeling, rather than the brand name.

Phase IV Commitments

Again, thanks for your prompt and helpful responses on these labeling issues.

Sincerely,

Nancy L. Buc

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December 21, 1998

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Attention: Indira Kumar

Re: NDA #19-983, S012, Prostep® (Nicotine Transdermal System)
OTC Switch Supplement

Dear Dr. McCormick:

Thank you for discussing with me and representatives of my client, Elan Pharmaceutical Research Corporation, various aspects of the labeling of Elan's proposed OTC nicotine transdermal system in our telephone call on Friday. As I understand it, your Division has been considering whether to require that a proprietary name, such as "Prostep," appear on the sealed pouch in which each patch is packaged, the inner carton, and, perhaps, other labeling as well. In our phone call, I explained why this proposal presents practical problems for Elan, and also explained why I don't believe the Food, Drug, and Cosmetic Act requires a proprietary name on such labels and labeling. You suggested that I present these views in writing, and I am pleased to do so. I also want to express Elan's appreciation for your willingness to consult so quickly on these and other issues and for the agency's efforts to finish the review of Elan's OTC nicotine transdermal patch before the end of the year; as you know, a decision in 1998 is very important to the company.

Let me begin by noting that the Food, Drug, and Cosmetic Act specifically requires that every drug, whether prescription or OTC, whether it is the subject of an NDA or ANDA or neither (such as grandfathered drugs), or marketed pursuant to the OTC review, must carry its "established name." § 502(e)(1)(A)(i). Established names can come from several different sources, and in this case the established name comes from the USP. The official USP name for this product is "nicotine transdermal system," which became effective November 15, 1996. See generally USP 23-NF 18, Supplement 5, pages 4584-86.

The statute requires that the drug's established name appear on the label, § 502(e), and in labeling and advertising, § 502(n)(1). FDA's regulations likewise require use of the

established name in prescription drug labeling, 21 C.F.R. § 201.50(b), and the labeling of OTC drugs must also include the established name, 21 C.F.R. § 201.61(b).

However, there is no requirement in the Food, Drug, and Cosmetic Act or any of FDA's regulations that a drug even have a proprietary name (sometimes called a brand name or trade name). Instead, the emphasis is on the established name. In fact, both the FDCA and FDA's regulations frame all references to the proprietary name in the conditional: if there is a proprietary name in the labeling or advertising of a prescription drug, for example, then the established name must be "printed prominently and in type at least half as large as that used for any trade or brand name," § 502(n)(1) and 21 C.F.R. § 201.10(g)(2). See also 21 C.F.R. § 201.10 (g)(1) (if the label or labeling includes a proprietary name, established name must also be disclosed in accordance with detailed requirements). To underscore the point, § 201.10(a) of the regulations for prescription drugs says only that the proprietary name of a drug "may" be included with the established name, and the corresponding provision for OTC drugs, 21 C.F.R. § 201.61, explains the relationship of the established name to the proprietary name if there is one, but does not require one. In short, there is simply no requirement that a drug have a proprietary name, and no requirement to disclose it at all, much less in any particular location, if it does have one.

For these reasons, Elan believes that it would be entirely consistent with the law for the Division to approve labels and labeling for Elan's OTC nicotine patch which do not have a proprietary name but have only the established name (nicotine transdermal system) wherever the law requires the name of the product to appear. There are also important practical reasons for this request. As we mentioned on the phone, Elan will be manufacturing these patches, but it will not be marketing them because the company has no presence or expertise in the OTC commercial market. Many of the patches will be marketed in the "private label" market. In that marketplace, different retailers will sell the patch under their store names. Thus, a hypothetical drug store chain, such as "Smith," may sell the drug just under the established name, e.g., "Smith's Nicotine Transdermal System," or Smith may chose to adopt a proprietary name as well, e.g. "Smith's Proprietary Name Nicotine Transdermal System." It is entirely possible, indeed likely, that some retailers will chose to use their own proprietary name, while others will be content to use only the established name of the drug. In addition, there may be one or more branded versions of the product, for example, "Prostep Nicotine Transdermal System."

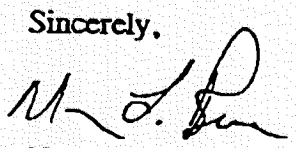
As soon as a nicotine patch is made, it is placed into a sealed pouch. At the time the patches are pouched, Elan will not know which retailer will be selling them, much less whether the retailer will be using a proprietary name or not. Thus, Elan's manufacturing is based on a system where it manufactures the patches, places them in a sealed pouch, places the patches in "seven-packs" inside an inner carton, and then sends the inner cartons to its distributor, which will put the inner cartons into outer cartons that contain the information specific to the particular retailer. As discussed above, some retailers might choose to use a proprietary name in their store brands while others may not, and some will order a product with only the Prostep brand, but the common denominator of all the patches is their established name, which will be included on the pouch, the inner carton, and any other labeling, such as instructional brochures.

If Elan had to place a proprietary name on each pouch, inner carton, or other labeling it would have to compel retailers to use a proprietary name even when they did not want to, and also have different pouches, inner cartons, and other labeling for each retailer. This would require Elan to create different sets of labels and labeling, and would force the company into separate packaging runs for each retailer. Each packaging run would then become a separate batch, with all the accompanying recordkeeping, reserve sample, and other requirements mandated under the GMP regulations. The addition of the proprietary name on the pouch, inner carton, and other labeling would also require a level of commercial forecasting that would be expensive and imprecise, resulting in the wastage of significant quantities of manufactured drugs.

Because the law does not require use of a proprietary name on labels and in labeling, and because the practicalities described above make such use extremely difficult, if not impossible, Elan asks the Division not to request such use.

As I said on the phone, I am available to meet or talk by phone with you and your colleagues, with the hope that we can resolve this matter this week and get Elan's product approved.

Sincerely,



Nancy L. Buc