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E-ALERT | Food & Drug

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SUMMARY OF FDA ADVERTISING AND PROMOTION ENFORCEMENT ACTIVITIES

AUGUST 2013

This e-alert is part of a series of monthly e-alerts summarizing publicly-available FDA enforcement letters (i.e., warning letters and untitled letters) relating to the advertising and promotion of prescription drugs, medical devices, and biologics.

In August 2013, FDA's Office of Prescription Drug Promotion (OPDP) posted the following enforcement letter on FDA's website[1]:

- Untitled letter to Merz Pharmaceuticals, LLC, re: NDA #019599 Naftin® (naftifine hydrochloride) Cream, 2% MA #109 (July 31, 2013) ("Merz Untitled Letter")

The Office of Compliance in FDA's Center for Devices and Radiological Health (CDRH) posted the following enforcement letter on FDA's website:

- Untitled letter to Wonjin Mulsan Co., Ltd. re: POWER-Q1000 Compressible Limb Therapy System (Model WHF-3114) (July 31, 2013) ("Wonjin Warning Letter")

The Office of Compliance and Biologics Quality (OCBQ) in FDA's Center for Biologics Evaluation and Research (CBER) did not post any enforcement letters relating to advertising and promotion on FDA's website.

This alert merely summarizes the allegations contained in FDA's letters. It does not contain any analysis, opinions, characterizations, or conclusions by or of Covington & Burling LLP. As a result, the information presented herein does not necessarily reflect the views of Covington & Burling LLP or any of its clients.

LETTER ISSUED BY OFFICE OF PRESCRIPTION DRUG PROMOTION (OPDP)

Merz Untitled Letter

OPDP alleged that webpages for Naftin, including two online banners, were false or misleading because they omitted and minimized risk information, included unsubstantiated efficacy and superiority claims, overstated Naftin's efficacy, and included "other misleading claims." Naftin is indicated for the treatment of interdigital tinea pedis, tinea cruris, and tinea corporis caused by the organism *Trichophyton rubrum* in adult patients.

[1] Only enforcement letters posted to FDA's website in August 2013 are included herein. Letters issued in August but not posted to the website by August 31, 2013 will be summarized in our alerts for the months in which those letters are posted.

Omission and Minimization of Risk Information: Two online banner advertisements for Naftin contained the statements "Twice as Strong Half as Long" and "Once a day for 2 weeks." OPDP contended that though the banners included these efficacy claims, the banners misleadingly failed to provide any risk information. Further, OPDP stated that including the statement "Visit www.NAFTIN.com for full Prescribing Information" at the bottom of each banner did not mitigate the misleading omission of risk information.

In addition, OPDP claimed that another statement of Naftin's webpage, "Proven safety established from naftifine hydrochloride for over 20 years," minimized risk information by implying Naftin has a longer record of safety than has been established. Though OPDP acknowledged that a formulation containing naftifine hydrochloride (Naftin's active ingredient) was initially approved in 1988, OPDP stated that this formulation had a different strength and usage than the naftifine hydrochloride used in Naftin (approved in 2012) and could not be used to establish Naftin's safety record.

Unsubstantiated Efficacy Claims: Naftin's webpage also stated that Naftin had "8X greater clinical success vs vehicle at Week 4" and "2X greater clinical success vs vehicle at Week 6." OPDP alleged that the studies cited in support of these claims failed to substantiate the claims because the primary endpoint of the studies was complete cure, and not "clinical success." OPDP acknowledged that an endpoint termed "clinical success" was described in the studies' protocol, but OPDP contended the endpoint was not controlled for multiplicity. Further, OPDP claimed that "clinical success" is not a clinically meaningful endpoint because it may represent symptomatic improvements rather than demonstrating a mycological effect of the active ingredient.

Unsubstantiated Superiority Claims: Referring again to the claim "Twice as Strong Half as Long," OPDP stated that adequate, well-controlled, head-to-head clinical studies that demonstrate Naftin's superior efficacy were required to support this claim, but none were cited.

Overstatement of Efficacy: The webpage also included the claim "Improvement in results **continues** 2-4 weeks after treatment."[2] OPDP contended that this claim misleadingly implied that Naftin is effective prior to weeks 4 and 6 for the treatment of tinea cruris and tinea pedis, which OPDP alleged was not established by Naftin's pivotal studies. Although Naftin's normal dosage is for two weeks, OPDP stated that the primary endpoints for Naftin's pivotal studies for tinea cruris and tinea pedis were complete cure at 4 and 6 weeks, respectively, and did not support any efficacy claims before 4 weeks of treatment for these indications.

Misleading Claim: The webpage stated that "**[m]ore than 90% of patients were able to adhere to the full course of treatment**."[3] According to OPDP, this claim was misleading because the studies cited in support of the claim did not include primary or secondary endpoints designed to evaluate the claimed outcome of patient adherence. Further, although OPDP acknowledged that these studies included results from patient diaries that were cited in support of the adherence claims, OPDP alleged that there was no evidence suggesting patient diaries were "well-defined and reliable" indicators of patient adherence.

LETTER ISSUED BY OFFICE OF COMPLIANCE (OC) IN CDRH

Wonjin Warning Letter

Based on an inspection of the Wonjin Mulsan Co., Ltd.'s facility in South Korea, OC issued a letter with several allegations related to compliance with FDA's quality system regulation (QSR) and

[2] Emphasis provided by OPDP.
[3] Emphasis in webpage.

promotion of the firm's device, the POWER-Q1000 Compressible Limb Therapy System (Model WHF-314) ("POWER-Q1000"). With respect to promotional issues, OC alleged that the user manual for the device indicated that Wonjin was marketing the POWER-Q1000 for uses outside those cleared by FDA, thereby misbranding and adulterating the device.[4] The POWER-Q1000 was cleared as substantially equivalent to previously approved powered inflatable tube massagers under the Section 510(k) clearance process. According to OC, the user manual makes claims regarding the prevention of limb paralysis, limb convulsion, fat dissolution, rheumatoid arthritis, improvement of intestines, and management of limbs in pregnant women. OC stated that these claims were new indications that were not consistent with recognized uses for other legally marketed power inflatable tube massagers, and thus required approval of a premarket approval application (PMA).

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[4] FDA's letter alleged that the promotions violated 21 U.S.C. §§ 351(f)(1)B), 360j(g), 352(o), 360(k).