Procter & Gamble Co

Department of Health and Human Services

Public Health Service
Food and Drug
Administration
Silver Spring, MD 20993

OCT 14 2009

WARNING LETTER

Mr. Robert McDonald
President and Chief Executive
Procter and Gamble
One Procter and Gamble Plaza
Cincinnati, Ohio 45202

Dear Mr. McDonald:

This letter concerns "VICKS DayQuil Plus Vitamin C" and "VICKS NyQuil Plus Vitamin C."
These products are marketed by your firm as combination over-the-counter (OTC) drug - dietary
supplement products. According to the package labeling, each caplet (tablet) of "VICKS
DayQuil Plus Vitamin C" contains, among other ingredients, 325 mg of acetaminophen, 10 mg
of dextromethorphan HBr, 5 mg of phenylephrine HCl, and 50 mg of vitamin C (ascorbic acid);
and each caplet (tablet) of "VICKS NyQuil Plus Vitamin C" contains, among other ingredients,

325 mg of acetaminophen, 15 mg of dextromethorphan HBr, 6.25 mg of doxylamine succinate,
and 100 mg of vitamin C (ascorbic acid). These products are prominently labeled as containing
these ingredients and each is also clearly labeled as a "Cold & Flu Medicine / Vitamin
Supplement." The labeling also prominently describes these products as effective for "COLD &
FLU Multi-Symptom Relief."
According to the "Supplement Facts" panels appearing on the carton labeling for both of these
products, "2 Caplets" is identified as the "Serv. Size," i.e., serving size, for "12 years and above"
and the product is to be used "as directed in Drug Facts." The "Supplement Facts" panel for
"VICKS DayQuil Plus Vitamin C" states that the serving size of 2 caplets provides 167% of the
"DV," i.e., daily value, of vitamin C. The "Supplement Facts" panel for "VICKS NyQuil Plus
Vitamin C" states that the serving size of 2 caplets provides 333% of the "DV," i.e., daily value,
of vitamin C.
In addition, the carton labeling for "VICKS DayQuil Plus Vitamin C" bears a "Drug Facts" panel
stating that this product is to be used to "temporarily relieve[ ] common cold/flu symptoms: •
nasal congestion • cough due to minor throat and bronchial irritation • sore throat • headache •
minor aches and pains [and] • fever," and it provides directions for those uses, i.e., "Directions

...• do not exceed 6 doses per 24 hours ... adults and children 12 years and over ... 2 caplets
with water every 4 hours ...." The carton labeling for "VICKS NyQuil Plus Vitamin C" also
bears a "Drug Facts" panel stating that this product is to be used to "temporarily relieve[ ]
common cold/flu symptoms: • cough due to minor throat and bronchial irritation • sore throat •
headache • minor aches and pains • fever [and] • runny nose and sneezing," and it provides directions for those uses, i.e., "Directions ...• do not exceed 4 doses per 24 hours ... adults and children 12 years and over ... 2 caplets with water every 6 hours ...."

Your Internet website at www.vicks.com includes similar statements and other statements related to these products' intended uses, such as:

> "Combining the powerful multi-symptom relief of DayQuil with more than 150% of the recommended value of vitamin C."
>
> "VICKS NyQuil Cold & Flu Symptom Relief Plus Vitamin C provides multi-symptom cold and flu relief so you can get the sleep you need to enjoy an even sweeter tomorrow. Plus, you'll also replenish your body with 150% of the daily value of vitamin C."
>
> "Fortify Your Household for the Cold and Flu Season ....• Vitamin C: It won't cure a cold, but vitamin C can help blunt its effects. Aim for 500 mg a day."
>
> "Fighting Cold and Flu Season .... Don't forget to take your daily vitamins. Consider taking extra vitamin C, vitamin A, and zinc, all of which may help you."

Statements like these have also been included in recent print advertisements.

As labeled, "VICKS DayQuil Plus Vitamin C" and "VICKS NyQuil Plus Vitamin C" are "drugs" under section 201 (g)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the Act) (21
U.S.C. § 321 (g)(1)(B)), because they are intended to treat or mitigate colds and

flu, and under section 201 (g)(1)(C) of the Act (21 U.S.C. § 321(g)(1)(C)) because they are intended to affect the structure or function of the body. Notwithstanding your attempt to market each of these products as a combination drug-dietary supplement, the presence of acetaminophen and dextromethorphan HBr, along with phenylephrine HCl ("VICKS DayQuil Plus Vitamin C") or doxylamine succinate ("VICKS NyQuil Plus Vitamin C"), with the intended uses of these ingredients as, respectively, pain reliever/fever reducer, cough suppressant, nasal decongestant, and antihistamine, render the **entire** product a drug in both cases. The vitamin C in these products could be marketed separately as a dietary supplement. However, where, as here, drug and dietary ingredients are combined into a single dosage form, the combination becomes a "drug" under section 20 I(g) of the Act (21 U.S.C. § 321(g)). There is no provision in the Act, as amended by the Nutrition Labeling and Education Act of 1990 (NLEA) or by the Dietary Supplement Health and Education Act of 1994 (DSHEA), that exempts any part of "VICKS DayQuil Plus Vitamin C" or "VICKS NyQuil Plus Vitamin C" from the scope of section 201(g) of the Act (21 U.S.C. § 321(g)).1 Under section 201 (g)(1)(D) of the Act (21 U.S.C. § 321(g)(1)(D)), the vitamin C used in combination with the other active ingredients listed in the "Drug Facts" panels for these products is also a drug because the vitamin C is a component of these finished

drug products.
See 21 C.F.R. § 210.3(b)(3). The vitamin C is also an "active ingredient" under 21 C.F.R.
§ 201.66(b)(2) because, based on representations on your website (e.g., "Vitamin C: It won't
cure a cold, but vitamin C can help blunt its effects" and "Fighting Cold and Flu Season ....
Consider taking extra vitamin C ... which may help you") and on the product labels (e.g., the
juxtaposition of "Vitamin C" in the product names to the label claim "COLD & FLU Multi-Symptom
Relief"), it is intended to furnish pharmacological activity or other direct effect in the
mitigation and treatment of cold and flu symptoms. The vitamin C is also an "active ingredient" in that it is intended to affect the structure or function of the human body, based on website and print advertising claims that the products replenish the body. Finally, the directions next to the
"Supplement Facts" panel to "Use as directed in Drug Facts" suggest that the vitamin C is
intended for the same cold and flu symptom relief uses listed in the "Uses" section of the "Drug
Facts" panel.
Products containing combinations of the active ingredients acetaminophen, dextromethorphan
HBr, phenylephrine HCl, and doxylamine succinate, and intended for the treatment of cold and
flu symptoms, are subject to the final monograph for Cold, Cough, Allergy, Bronchodilator, and
Antiasthmatic Drug Products for Over-the-Counter Human Use (final monograph for OTC Cold-Cough Drug Products). (*See* 21 C.F.R. part 341.) That final

monograph does not allow for the combination of vitamin C with any of the other active ingredients in "VICKS DayQuil Plus Vitamin C" and "VICKS NyQuil Plus Vitamin C." Therefore, because these combination OTC drug products do not comply with the final monograph for OTC Cold-Cough Drug Products, these combination OTC drug products lack general recognition of safety and effectiveness.

The use of vitamin C for the treatment or prevention of the "common cold" was specifically
evaluated under FDA's OTC Drug Review and was not included in the final monograph for OTC
Cold-Cough Drug Products because the evidence was insufficient to classify vitamin C as safe
and effective for such OTC use. In the 1976 Advance Notice of Proposed Rulemaking for OTC
Cold-Cough Drug Products, the Food and Drug Administration (FDA or agency) published the
recommendations of the Advisory Review Panel on Over-the-Counter Cough, Cold, Allergy,
Bronchodilator and Antiasthmatic Drug Products. In those recommendations, the Advisory
Review Panel stated the following with respect to the use of vitamin C for treatment or
prevention of the "common cold":

> The Panel is cognizant of the popular use of vitamin C (ascorbic acid) for the prevention or treatment of the "common cold." The Panel has reviewed the available data for the ingredient as a single entity and finds that the data are insufficient to permit final classification as safe and effective for OTC use in the prevention or treatment of the cold ....
>
> The Panel found no study which demonstrated that vitamin C is unequivocally effective for the prevention or treatment of the "common cold" although some

data tended to favor effectiveness for treatment of cold symptoms. Since no conclusive data on the dose or dosage schedule are available on vitamin C used alone or in combination products with other ingredients for prevention or treatment of the cold, the Panel is unable to propose adequate labeling with a dosage regimen and has therefore classified such labeling as Category II. In summary, the Panel has reviewed vitamin C and has classified the "ingredient" as Category III and any "labeling" for the prevention or treatment of the cold as Category II.2

With regard to combination products, the Panel further notes that the use of vitamins in CCABA [cold, cough, allergy, bronchodilator and antiasthmatic] combination products for the prevention of colds is irrational since the other ingredients in these products should only be used when the symptoms of the "common cold" are present. It is difficult for the Panel to rationalize the use of vitamin C or any other vitamin for the treatment of the "common cold" in combination products which are to be used only for a short duration while symptoms persist. It would be illogical for a consumer to take a cold combination product to prevent a cold. The Panel has therefore placed the labeling claims of combination products containing vitamins including vitamin C for prevention of the "common cold" in Category II.

41 FR 38312 at 38324 (Sept. 9, 1976).

In the 2002 final monograph for OTC Cold-Cough Drug Products, FDA stated that:

The agency has determined that the submitted studies do not contain sufficient detail to assess their value in establishing the effectiveness of ascorbic acid in reducing the duration or symptoms of the common cold.... Thus, the agency is not including ascorbic acid in this final monograph.

67 FR 78158 at 78159 (Dec. 23, 2002).

Accordingly, based on the combination of active drug ingredients (i.e., vitamin C, acetaminophen and dextromethorphan HBr along with phenylephrine HCl or doxylamine succinate) and their combined labeled uses to treat or mitigate cold

and/or flu symptoms, "VICKS DayQuil Plus Vitamin C" and "VICKS NyQuil Plus Vitamin C" are new drugs within the meaning of section 201(p) of the Act (21 U.S.C. § 321(p)) because they are not generally recognized as safe and effective for their intended uses. Thus, the current marketing of these two products violates section 505(a) of the Act (21 U.S.C. § 355(a)), because they are new drugs and neither is the subject of an approved new drug application.

"VICKS DayQuil Plus Vitamin C" and "VICKS NyQuil Plus Vitamin C" are misbranded under

section 502(e)(1)(A)(ii) of the Act (21 U.S.C. § 352(e)(1)(A)(ii)) because their respective

labeling fails to identify vitamin C (ascorbic acid) as an active drug ingredient. See 21 CFR

§§ 201.10 and 201.66(c)(2). Furthermore, the labeling for these products is false and misleading,

and therefore they are misbranded under section 502(a) of the Act (21 U.S.C. § 352(a)), because vitamin C is included in the list of "Inactive ingredients" in the "Drug Facts" panel. Because the vitamin C in these products is an active drug ingredient, it is therefore both false and misleading to state that it is an inactive ingredient in these drug products. Additionally, listing vitamin C as an inactive ingredient, while at the same time listing it in the "Supplement Facts" panel as a dietary ingredient, is misleading and likely to confuse consumers, because it suggests both that the vitamin C is active and that it is inactive.

Finally, "VICKS DayQuil Plus Vitamin C" and "VICKS NyQuil Plus Vitamin C" are misbranded under section 502(a) of the Act (21 U.S.C. § 352(a)), because they falsely and misleadingly include the acetaminophen, dextromethorphan HBr, and phenylephrine HCl or doxylamine succinate in the list of "other ingredients" under the "Supplement Facts" panel. The acetaminophen, dextromethorphan HBr, and phenylephrine HCl or doxylamine succinate are active drug ingredients, and are listed as such in the "Drug Facts" panel. The simultaneous inclusion of them in the list of "other ingredients" is misleading and likely to confuse consumers,

because it suggests both that these ingredients are active ingredients, and that they are something "other" than active ingredients. Furthermore, it is also false to state that these active drug ingredients are "other ingredients." Under FDA's regulations at 21 C.F.R. § 210.3(b), drug components are either active ingredients or inactive ingredients; the term "other ingredients" is neither applicable nor allowable with respect to components of a drug product.

The violations cited in this letter are not intended to be an all-inclusive list of deficiencies regarding your products, nor are the arguments raised here regarding them exhaustive. You are responsible for investigating and determining the causes of these violations and for preventing their recurrence and the occurrence of other violations. It is also your responsibility to assure that your firm complies with all requirements of federal law and FDA regulations.

You should take prompt action to correct the violations cited in this letter. Failure to promptly correct these violations may result in legal action without further notice, including, without limitation, seizure and injunction. Other federal agencies may take this Warning Letter into account when considering the award of contracts.

Within fifteen working days of receipt of this letter, please notify this office in writing of the specific steps that you have taken to correct the referenced violations. Include an explanation of each step being taken to prevent the recurrence of violations, as well as copies of related documentation. If you cannot complete corrective action within fifteen working days, state the reason for the delay and the time within which you will complete the correction. Furthermore,

please advise this office of what actions you will take to address product that you have already
distributed. If another firm manufactures the products identified above, your reply should
include the name and address of the manufacturer. If the firm from which you receive the
products is not the manufacturer, please include the name of your supplier in addition to the manufacturer. Your reply should be directed to Kevin M. Budich, Compliance Officer, at the following address:

Food and Drug Administration
CDER/Office of Compliance
Division of New Drugs & Labeling Compliance
OTC Drugs Team
10903 New Hampshire Ave.
WO51-5174
Silver Spring, MD 20993

If you have any questions about the content of this letter, you may contact Mr. Budich at 301-796-3304 or kevin.budich@fda.hhs.gov.

Sincerely,

/S/

Deborah M. Autor, Esq.
Director
Office of Compliance
Center for Drug Evaluation and Research

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1 In addition, the presence of acetaminophen in these products excludes them from the definition of a "dietary supplement" under section 201(ff)(3)(B) of the Act (21 U.S.C. § 321(ff)(3)(B)), because a new drug application for acetaminophen

was approved under section 505(a) of the Act (21 U.S.C. § 355(a)) before any marketing of acetaminophen as a dietary supplement or as a food. FDA approved a new drug application for acetaminophen in April 1950. To the best of FDA's knowledge, acetaminophen has not been marketed as a dietary supplement or other food to date.

2 Throughout the conduct of the OTC Drug Review and pending a final monograph, the terms "Category I," "Category II," and "Category III" are used to describe the status of the review of the safety and effectiveness of a particular ingredient for a particular use. "Category I" means that, based on the data reviewed, an Advisory Review Panel and/or FDA is proposing that the ingredient is generally recognized as safe and effective and not misbranded; "Category II" means that the Panel and/or FDA is proposing that the ingredient is not generally recognized as safe and effective and is misbranded; and "Category III" means that the Panel and/or FDA is proposing that the available data are insufficient to classify the ingredient as safe and effective, and further testing is required. Upon publication of a final monograph or rule, the terminology "Category I" is replaced with "monograph conditions" to describe an ingredient as generally recognized as safe and effective for a particular use, and the "Category II" and "Category III" classifications are replaced with the terminology "non-monograph conditions."