

# The Proprietary Association

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February 1, 1979

Donald Kennedy, Ph.D.  
 Commissioner of Food and Drugs  
 Office of the Hearing Clerk  
 Food and Drug Administration  
 5600 Fishers Lane  
 Rockville, Maryland 20857

EXECUTIVE SECRETARIAT Food and Drug Administration			
Routing	Action	Info	Court
<u>HEA-305</u>	✓		
HED-1		✓	
GCF-1		✓	
HFC-1		✓	
HE-1		✓	
HEJ-20		✓	
Prepare for	File		
Signature of	Date		
			<i>Direct</i>

RE: Over-the-Counter Drugs: Proposed Establishment of a Monograph for Skin Bleaching Drug Products for Over-the-Counter Human Use, 43 Fed. Reg. 51546 et seq. November 3, 1978, Docket No. 78N-0065

Dear Sir:

The above-captioned proposal was published in the Federal Register of November 3, 1978 (43 Fed. Reg. 51546 et seq.). The publication consists of a Report and Proposed Monograph of the Advisory Review Panel on OTC Miscellaneous External Drug Products (hereinafter the Panel) convened by the Food and Drug Administration (FDA) under its review of nonprescription medications (the OTC Review). Interested persons were invited to submit written comments regarding this proposal on or before February 1, 1979.

These comments are filed, in quintuplicate, on behalf of The Proprietary Association, a 98-year-old trade association the active members of which are engaged in the manufacture and distribution of nonprescription medicines. Many of the Association's members manufacture and distribute products within the purview of the Panel Report. Members of The Proprietary Association are subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and are interested in, and affected by, this proposal.

The Association's comments submitted herewith are not intended to be considered to the exclusion of the views of its individual member companies, some of whom will be filing comments separately.

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The Proprietary Association agrees with the underlying premise of the FDA's OTC Review that "self-medication is essential to the nation's health care system" (37 Fed. Reg. 85). It is the hope of the Association and its members that these comments may lead to revision of this proposal so as to enable industry and FDA to attain a degree and quality of cooperation which will make it possible for them to accomplish their jointly held goal of assuring every consumer who purchases an OTC medication that he is receiving a medicine which is safe and effective for its labeled purpose.

The Association has specific comments to make on various aspects of the Panel's Report and Proposed Monograph. These comments are listed in numerical order with an appropriate reference to particular sections of the Proposed Monograph and the Panel's Report to which the comments are directed. The fact that the Association does not comment on any particular aspect of the proposed regulation should not be construed to the prejudice of companies who may choose to comment on those aspects. The Association strongly urges the agency to review comments submitted by the manufacturers themselves; particularly since a number of them may be offering comments concerning sections as to which the Association itself is not commenting.

1. Legal Status of the Monograph. The Proprietary Association continues to urge that OTC Drug Monographs be issued as clearly interpretive, as distinguished from substantive, regulations. The Association incorporates herein by reference and refers the Commissioner to (a) comments submitted by the Association dated March 4, 1972, on the Proposed Procedural Regulations governing the OTC Review and to (b) comments dated June 4, 1973, on the Proposed OTC Antacid Monograph.

2. Statement of Identity (Section 358.50, page 51554). The Association recommends that the term "skin bleaching agent" not be specified as the statement of identity for this class of OTC drugs. The Panel's Report makes reference to bleaching, lightening, depigmentation, and other terms, to describe the effect of this class of drug. While the term "bleaching" is used along with other terms, in the scientific literature, the general public recognizes the term primarily in the context of caustic laundry chemicals. The Association suggests that the terms "skin color toner" and "skin depigmenting agent" are equally justified as scientific usage, and recommends that they be designated as approved statements of identity.

3. Labeling: Indications for Use (Section 358.50(b), page 51554). The Association again notes its disagreement with the agency's policy of specifying a limited list of terms as the only permissible expressions of indications for use. Specifically, the Association maintains that, so long

as an OTC Drug Product's indications are accurately described on the labeling, the product cannot be deemed to be "misbranded" simply because the labeling terms depart from those specifically approved by the Panel. The Association at this point incorporates by reference its comments to the Commissioner, dated November 22, 1978, concerning the proposed establishment of a Monograph for OTC Sunscreen Drug Products; specifically, numbered paragraph 2, pages 2-3.

For reasons set forth at greater length in the above referenced comments, the Association renews its objection to the undesirable, and legally unjustified, restrictive policy as again enunciated in the report which is the subject of these comments. The Association agrees that the labeling of all OTC drug products should accurately and clearly set forth the indications for their use, but cannot agree that any departure from specific language set forth as Category I is ipso facto inaccurate so as to render the product misbranded. The Association recommends therefore, that, Section 358.50(b) be revised to read as follows:

"Indications. The labeling of the product contains a statement of the indications under the heading "Indications" making use of one or more of the following phrases, or similar terms conveying substantially the same meaning.

4. Specific Indications for Use (Section 358.50(b)(1) and (2): In addition to the above general comment concerning the restrictive interpretation placed upon the stated indications, the Association offers the following specific comments on the indications listed in the Proposed Monograph. The Association does not take exception to the phrases listed, but recommends that additional appropriate descriptive phrases be added to this section. Specifically, the Association recommends that the following new subsections be added to section 358.50(b):

- (3) "Lightens skin tone."
- (4) "Evens out skin tone."
- (5) "Fades dark areas, or blotches, on the skin."
- (6) "For fading hyperpigmented areas of the skin."
- (7) "Helps produce even tone of the skin."

5. Warnings (Section 358.50(c), page 51555): For reasons already stated, the Association believes that the term "skin bleaching agent" is inappropriate for this category of OTC drug. For the same reasons, the Association recommends that the term "bleached skin" be deleted from the warning

statement set forth in Section 358.50(c)(1). The Association also notes that indefinite avoidance of sun exposure is unrealistic. Furthermore, since the effect of these products is not permanent, even such total avoidance of sun exposure will not prevent skin darkening from reoccurring. Finally, insofar as the statement would advise the consumer to make use of a sunscreen agent, it is inappropriate as to combination products which already contain a sunscreen ingredient. Literal compliance with the admonition by consumers would result, in the case of such a combination product, in the needless purchase and application of an additional sunscreen product. The Association recommends the following alternative language for single ingredient products:

"To help prevent reversal of the affects of this product avoid overexposure to sunlight by using a sunscreen agent, a sun blocking agent, or protective clothing.

For the reasons stated above, the Association recommends that no statement be required for products containing a sunscreen ingredient. If a statement is required, it should read as follows:

"To help prevent reversal of the affects of this product, avoid overexposure to sunlight."

By way of explanation, inasmuch as the statement recommended by the Panel enumerates sun blocking agents, protective clothing, or sunscreen agents as equally acceptable alternatives for avoiding sun exposure, the presence of a sunscreen agent in a combination product obviates the need to caution the consumer regarding sun avoidance.

As to the format in which the above statement is to be contained in labeling, the Association objects to the extraordinary and unprecedented requirement that the statement be "conspicuously boxed and in red letters." The subject matter of the statement, i.e., an accelerated reversal of the skin lightening effect of the product, does not justify the prominent display recommended by the Panel. Such a statement would be predictably misunderstood by consumers as indicating some degree of hazard in connection with the use of the product.

Moreover, the content of the statement itself does not appear to constitute a warning as that term is contemplated by Section 502(f)(2) of the Food, Drug and Cosmetic Act. If the statement, despite its designation as a "warning" by the Panel, is interpreted as constituting an adequate direction for use under Section 502(f)(1), of the Act, it is subject to the proviso also contained in Section 502(f) which calls upon the Secretary to promulgate regulations exempting a

drug from the requirement to carry such a statement if it is "not necessary for the protection of the public health." The statement recommended by the Panel does not appear to qualify under this definition. The statement merely seeks to caution the consumer that the subsiding of the skin lightening effect of the drug will be accelerated by over-exposure to sunlight. While the Association, therefore, wishes to direct its primary objection to both the content and format of the Panel's recommended warning statement, as indicated above, it does not waive thereby any objections to the legal authority of the agency to impose a requirement for a labeling statement of this nature.

In Section 358.50(c)(1)(iii), the following warning statement is specified:

"If skin irritation develops, use of this product should be discontinued or a physician should be consulted."

This requirement seems somewhat inconsistent with the observations of Arndt and Fitzpatrick (Panel Reference No. 6) who observed:

"The occurrence of inflammation makes subsequent lightening more likely."

The warning statement should not apply to mild and transitory irritations which may occur in some consumers. It is therefore recommended that the warning statement be changed to read as followed:

"If skin irritation persists, discontinue use or consult a physician."

The warning statement specified by Section 358.50(c)(1)(vi) cautions that the lightening effect of the product may not be noticeable on dark skin. This statement does not appear justified and should be deleted. It is this type of skin, particularly hyperpigmented patches or blotches, which is most susceptible to this treatment, as indicated by the paper by F. Hu (Panel Reference 19):

"...it appeared that the pigmented cells were more susceptible to the effect of hydroquinone than the non-pigmented cells...."

6. Warning Statements for Combination Products (Section 358.50(c)(2), page 51555. This warning again contains reference to the word "bleach," which should be deleted for reasons given above. It is recommended that the warning statement read:

"This product is not for use for the prevention of sunburn."

7. Directions (Section 358.50(d), page 51555).

The Association suggests that the directions would be better understood if the wording were as follows:

"For adults, apply twice daily to the affected areas or as directed by a physician. For children under 12, it should only be used on the advice or direction of a physician."

8. Permitted Combinations (Section 358.20, page 51554).

This section of the proposed Monograph specified that hydroquinone may be combined with any generally recognized safe and effective sunscreen "provided that the product is labeled only as identified in Section 358.50." No similar phrase appears in Section 358.10 covering products containing hydroquinone alone. In order to avoid any confusion that non-medical claims not prohibited with respect to products containing hydroquinone alone are prohibited as to hydroquinone-sunscreen combination products, the Association recommends that the above quoted phrase be deleted from Section 358.20.

9. Category II Labeling (pages 51553 et seq.)

Under paragraph (a) the Panel would proscribe all claims "implying that the use of a skin bleaching agent results in healthier, younger, or rejuvenated skin." Some of the examples quoted as illustrative are cosmetic claims which should not be included in this Category. Since the products are used by consumers to improve the appearance of the skin, cosmetic claims which merely refer to this effect should not be proscribed as Category II.

For the same reason, the Association recommends the deletion from the proposed Category II labeling of those claims described under paragraph (c) (page 51554) which would proscribe such terms as "skin discolorations," "hand spots," "blotches," and "blotchy skin." The Association believes these terms are understandable and commonplace to most consumers and completely consistent with similar terminology approved by the Panel for inclusion in Category I labeling (see Section 358.50(a)(1) "for the gradual fading of 'age spots,' 'liver spots,' freckles....").

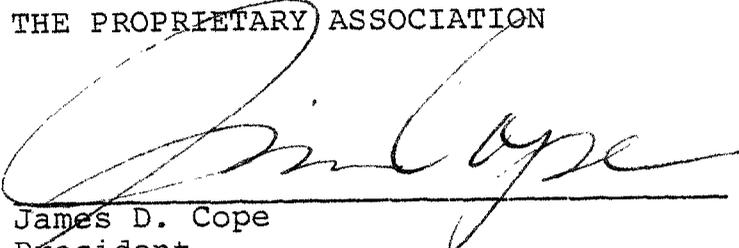
CONCLUSION

The Association submits these comments in a spirit of cooperation with the Food and Drug Administration in the conduct of its review of over-the-counter drugs. The Association and its members ask that these comments be read

with that thought in mind. The Association reiterates its position that if the public interest is truly to be served, then out of the total review of over-the-counter drugs -- all categories taken together -- must come a sound, sensible and coordinated policy, with a clear rationale for difference in the treatment of different categories of products. The Association appreciates the opportunity to submit these comments and hopes that the Food and Drug Administration will find them useful.

Sincerely,

THE PROPRIETARY ASSOCIATION



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James D. Cope  
President