



ANDA 091087

ANDA APPROVAL

Sandoz Inc.
100 College Road West
Princeton, NJ 08540
Attention: Gregory Seitz
Executive Director, Regulatory Affairs

Dear Gregory Seitz:

This letter is in reference to your abbreviated new drug application (ANDA) received for review on November 21, 2008, submitted pursuant to section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) for Brimonidine Tartrate and Timolol Maleate Ophthalmic Solution, 0.2%/0.5%.

Your product is a combination product as defined by 21 CFR 3.2(e) and is comprised of drug and device constituent parts.

Reference is also made to the tentative approval letter issued by this office on February 21, 2014, the complete response letter issued by this office on March 18, 2021, and to any amendments thereafter.

We have completed the review of this ANDA and have concluded that adequate information has been presented to demonstrate that the drug meets the requirements for approval under the FD&C Act. Accordingly, the ANDA is **approved**, effective on the date of this letter. We have determined your Brimonidine Tartrate and Timolol Maleate Ophthalmic Solution, 0.2%/0.5%, to be bioequivalent and therapeutically equivalent to the reference listed drug (RLD), Combigan Ophthalmic Solution, 0.2%/0.5%, of Allergan, Inc. (Allergan).

The RLD upon which you have based your ANDA, Allergan's Combigan Ophthalmic Solution, 0.2%/0.5%, are subject to periods of patent protection. The following patents and expiration dates are currently listed in the Agency's publication titled *Approved Drug Products with Therapeutic Equivalence Evaluations* (the "Orange Book"):

<u>U.S. Patent Number</u>	<u>Expiration Date</u>
7,030,149 (the '149 patent)	April 19, 2022
7,320,976 (the '976 patent)	April 19, 2022

7,323,463 (the '463 patent)	January 19, 2023
7,642,258 (the '258 patent)	April 19, 2022
8,133,890 (the '890 patent)	April 19, 2022
8,354,409 (the '409 patent)	April 19, 2022
8,748,425 (the '425 patent)	April 19, 2022
9,474,751 (the '751 patent)	April 19, 2022
9,770,453 (the '453 patent)	April 19, 2022
9,907,801 (the '801 patent)	April 19, 2022
9,907,802 (the '802 patent)	April 19, 2022

With respect to: each of these patents¹ (for the '149, '976, '258, '890, '409, '453, '801, and '802 patents, only those portions that do not pertain to use in patients with glaucoma), your ANDA contains paragraph IV certifications under section 505(j)(2)(A)(vii)(IV) of the FD&C Act stating that the patents are invalid, unenforceable, or will not be infringed by your manufacture, use, or sale of Brimonidine Tartrate and Timolol Maleate Ophthalmic Solution, 0.2%/0.5%, under this ANDA. You have notified the Agency that Sandoz Inc. (Sandoz) complied with the requirements of section 505(j)(2)(B) of the FD&C Act. Litigation was initiated within the statutory 45-day period against Sandoz for infringement of the '149 and '976 patents in the United States District Court for the Eastern District of Texas [Allergan, Inc. v. Sandoz Inc., Civil Action No. 2:09-cv-97]. You also have notified the Agency that the district court in 2:09-cv-97 entered a final judgment and injunction, which states that the “effective date of any approval of Sandoz’s [ANDA] No. 91-087 under §505(j) of the Federal Food, Drug & Cosmetic Act (21 U.S.C. §355(j)) for the drug products described therein shall be a date not earlier than the latest of the expiration dates of the '149, '976, '463, and '258 patents, plus any exclusivities afforded under the statute[.]”² You have further notified the Agency that the case was appealed to the United States Court of Appeals for the Federal Circuit, and on May 1, 2013, the court determined the asserted claims of the '463 patent are invalid.³ You further notified the Agency that after the final judgment and injunction was entered in Civil Action No. 2:09-cv-97, Sandoz amended its ANDA and Allergan initiated another litigation against Sandoz for infringement of the '149 and '976 patents in the United States District Court for the Eastern District of Texas [Allergan Sales, LLC v. Sandoz Inc., Civil Action No. 15-cv-347]. You have also notified the Agency that the district court in Civil Action No. 15-cv-347 entered an Opinion and Final Judgment, which states that the product described in Sandoz’s amended ANDA 091087 does not infringe the asserted claims of the '149 and '976 patents.⁴

With respect to the '149, '976, '258, '890, '409, '453, '801, and '802 patents (only those portions pertaining to use in patients with glaucoma) your ANDA contains statements under section 505(j)(2)(A)(viii) of the FD&C Act that these are method-of-use patents that do not claim any indication or other conditions of use for which you are seeking approval under your ANDA.

With respect to 180-day generic drug exclusivity, we note that Sandoz was the first ANDA applicant to submit a substantially complete ANDA with a paragraph IV certification for Brimonidine Tartrate and Timolol Maleate Ophthalmic Solution, 0.2%/0.5%. Therefore, with this approval, Sandoz is eligible for 180 days of generic drug exclusivity for Brimonidine Tartrate and Timolol Maleate Ophthalmic Solution, 0.2%/0.5%. FDA notes that after issuance of this approval letter, eligibility for 180-day exclusivity is subject to future events that may result in forfeiture of exclusivity under section 505(j)(5)(D) of the FD&C Act. This exclusivity, which is provided for under section 505(j)(5)(B)(iv) of the FD&C Act, will begin to run from the date of the commercial marketing identified in section 505(j)(5)(B)(iv). Please submit correspondence to this ANDA notifying the Agency within 30 days of the date of the first commercial marketing of this drug product or the RLD. If you do not notify the Agency within 30 days, the date of first commercial marketing will be deemed to be the date of the drug product's approval. See 21 CFR 314.107(c)(2).

Under section 506A of the FD&C Act, certain changes in the conditions described in this ANDA require an approved supplemental application before the change may be made.

Please note that if FDA requires a Risk Evaluation and Mitigation Strategy (REMS) for a listed drug, an ANDA citing that listed drug also will be required to have a REMS. See section 505-1(i) of the FD&C Act.

REPORTING REQUIREMENTS

Postmarketing reporting requirements for this ANDA are set forth in 21 CFR 314.80-81 and 314.98 and at section 506I of the FD&C Act. The Agency should be advised of any change in the marketing status of this drug or if this drug will not be available for sale after approval. In particular, under section 506I(b) of the FD&C Act, you are required to notify the Agency in writing within 180 days from the date of this letter if this drug will not be available for sale within 180 days from the date of approval. As part of such written notification, you must include (1) the identity of the drug by established name and proprietary name (if any); (2) the ANDA number; (3) the strength of the drug; (4) the date on which the drug will be available for sale, if known; and (5) the reason for not marketing the drug after approval.

Your product is a combination product as defined by 21 CFR 3.2(e) and is comprised of drug and device constituent parts; therefore, we remind you that you must comply with the postmarketing safety reporting requirements for an approved combination product (21 CFR Part 4, Subpart B). Additional information on combination product postmarketing safety reporting is available at <https://www.fda.gov/combination-products/guidance-regulatory-information/postmarketing-safety-reporting-combination-products>

PROMOTIONAL MATERIALS

You may request advisory comments on proposed introductory advertising and promotional labeling materials prior to publication or dissemination. Please note that these submissions are voluntary. To do so, submit, in triplicate, a cover letter requesting advisory comments, the proposed materials in draft or mock-up form with annotated references, and the package insert (PI), Medication Guide, and patient PI (as applicable) to:

OPDP Regulatory Project Manager
Food and Drug Administration
Center for Drug Evaluation and Research
Office of Prescription Drug Promotion
5901-B Ammendale Road
Beltsville, MD 20705

Alternatively, you may submit a request for advisory comments electronically in eCTD format. For more information about submitting promotional materials in eCTD format, see the draft Guidance for Industry (available at: <https://www.fda.gov/media/128163/download>).

You must also submit final promotional materials and package insert(s), accompanied by a Form FDA 2253, at the time of initial dissemination or publication [21 CFR 314.81(b)(3)(i)]. Form FDA 2253 is available at <https://www.fda.gov/media/73013/download>. Information and Instructions for completing the form can be found at <https://www.fda.gov/media/132152/download>. For more information about submission of promotional materials to the Office of Prescription Drug Promotion (OPDP), see <https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/opdp-ectd>.

ANNUAL FACILITY FEES

The Generic Drug User Fee Amendments of 2012 (GDUFA) (Public Law 112-144, Title III) established certain provisions⁵ with respect to self-identification of facilities and payment of annual facility fees. Your ANDA identifies at least one facility that is subject to the self-identification requirement and payment of an annual facility fee. Self-identification must occur by June 1st of each year for the next fiscal year. Facility fees must be paid each year by the date specified in the *Federal Register* notice announcing facility fee amounts.

All finished dosage forms or active pharmaceutical ingredients manufactured in a facility that has not met its obligations to self-identify or to pay fees when they are due will be deemed misbranded. This means that it will be a violation of federal law to ship these products in interstate commerce or to import them into the United States. Such violations can result in prosecution of those responsible, injunctions, or seizures of misbranded products. Products misbranded because of failure to self-identify or pay facility fees are subject to being denied entry into the United States.

CONTENT OF LABELING

As soon as possible, but no later than 14 days from the date of this letter, submit, using the FDA automated drug registration and listing system (eLIST), the content of labeling [21 CFR 314.50(l)] in structured product labeling (SPL) format, as described at <http://www.fda.gov/ForIndustry/DataStandards/StructuredProductLabeling/default.htm>, that is identical in content to the approved labeling (including the package insert, and any patient package insert and/or Medication Guide that may be required). Information on submitting SPL files using eLIST may be found in the guidance for industry titled "SPL Standard for Content of Labeling Technical Qs and As" at <https://www.fda.gov/media/71211/download>. The SPL will be accessible via publicly available labeling repositories.

We remind you that you must continually monitor available labeling resources such as DRUGS@FDA for changes to your reference listed drug's labels and labeling and make any necessary revisions to your labels and labeling. More information on post-approval labeling changes may be found in the guidance for industry titled "Changes to an Approved NDA or ANDA" at <https://www.fda.gov/media/71846/download>.

Sincerely yours,

{See appended electronic signature page}

For Edward M. Sherwood
Director
Office of Regulatory Operations
Office of Generic Drugs
Center for Drug Evaluation and Research

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- ¹ The Agency notes that the '463, '258, '890, '409, '425, '751, '453, '801, and '802 patents were submitted to the Agency after submission of your ANDA. Litigation, if any, with respect to these patents would not create a statutory stay of approval.
 - ² *Allergan, Inc. v. Sandoz Inc.*, Civil Action No. 2:09-cv-97, Doc. 262 (E.D. Tex., filed Aug. 25, 2011). The district court in Civil Action No. 2:09-cv-97 entered a Stipulation and Order to Modify Injunction, which states that "the Final Judgment and Injunction issued . . . (D.I. 262) shall be modified to (i) remove any reference to the '258 patent, (ii) remove the '258 patent from forming any basis for enjoining the FDA from approving Sandoz's ANDA No. 91-087 . . ." *Id.*, Civil Action No. 2:09-cv-97, Doc. 320 (E.D. Tex., filed Oct. 31, 2016).
 - ³ *Allergan, Inc. v. Sandoz Inc.*, 726 F.3d 1286 (Fed. Cir. 2013).
 - ⁴ *Allergan Sales, LLC v. Sandoz Inc.*, Civil Action No. 15-cv-347, Doc. 51 (E.D. Tex., filed Dec. 30, 2016).
 - ⁵ Some of these provisions were amended by the Generic Drug User Fee Amendments of 2017 (GDUFA II) (Public Law 115-52, Title III).



Catherine
Poole

Digitally signed by Catherine Poole

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