

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

CENTER FOR INQUIRY, INC.,)	
1012 14th St., NW, Suite 205, Washington,)	
DC, on behalf of the general public,)	No.
)	
Plaintiff,)	
)	
v.)	
)	
Walmart, Inc.,)	
702 S.W. 8th Street, Bentonville, AR)	
72176;)	
Defendant.)	

COMPLAINT

Plaintiff Center for Inquiry, Inc. (“Plaintiff”), by and through its counsel, brings this action against Defendant Walmart, Inc. (“Defendant”) on behalf of the general public, and alleges the following based upon information, belief, and the investigation of counsel:

NATURE OF THE CASE

1. Plaintiff brings this action on behalf of the general public of the District of Columbia to seek to redress a continuing pattern of fraudulent, deceptive, and otherwise improper marketing practices engaged in by Defendant in the District of Columbia, both through its physical, bricks and mortar stores, and through its online sales presence, regarding the marketing and sale of homeopathic products. Defendant uses marketing, labeling, and product placement to falsely present homeopathic products as equivalent alternatives to science-based medicines, and to represent homeopathic products as effective treatments for specific diseases and symptoms.

JURISDICTION

2. This Court has subject matter jurisdiction over this action and venue is appropriate in this Court pursuant to D.C. Code § 11-921 and § 28-3905(k)(1).

3. This Court has personal jurisdiction over Defendant pursuant to D.C. Code § 13-423. This Court has personal jurisdiction over the parties because, *inter alia*, Defendant markets and retails products in Washington, D.C. and is engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in Washington, D.C.

4. Plaintiff maintains an Executive Office and a membership branch in Washington, D.C.

5. A substantial part of the actions that give rise to Plaintiff's causes of action occurred in this jurisdiction.

PARTIES

6. Plaintiff, The Center for Inquiry, Inc. (CFI) is a New York non-profit organization, authorized to do business in Washington, D.C., headquartered in the State of New York. The Center for Inquiry has over 30,000 members across the nation who have subscribed to its publications or donated to the organization. The Center for Inquiry operates an active branch in Washington D.C., holding regular meetings and events for its members and others. The Center for Inquiry operates an executive office in Washington, D.C., located at 1012 14th St. N.W., Suite 205, Washington, D.C. 20005.

7. Plaintiff's mission is to foster a secular society based upon science, reason, freedom of inquiry, and humanist values. Plaintiff's vision is a world where people value evidence and critical thinking, where superstition and prejudice subside, and where science and compassion guide public policy.

8. Plaintiff has long worked to counter the negative impact of pseudoscientific alternative medicine upon society. In the area of homeopathic products, Plaintiff has sought to ensure that such products are effectively tested to ensure consumer safety; that manufacturers and retailers are prevented from making claims as to the products' effectiveness without scientific evidence to support such claims; and that labeling and marketing materials properly inform customers of the nature of the products.

9. Defendant Walmart, Inc. ("Walmart") is a corporation incorporated in Delaware, with its headquarters at 702 S.W. 8th Street, Bentonville, AR 72716.

10. Defendant Walmart operates more than 5,300 stores across the United States,¹ with 3 retail stores within the District of Columbia.²

11. Defendant Walmart operates a website, <https://www.walmart.com/>, through which products including homeopathic products are marketed and sold direct to customers, including those within the District of Columbia.

THE INTERESTS OF CFI & THE GENERAL PUBLIC

12. Defendant deceptively marketed homeopathic products, including both their own line of homeopathic products and those manufactured and sold under the labels of other producers to District of Columbia residents by deliberately fostering the impression through display and placement that they are effective to treat particular complaints, and that they are comparable in efficacy, and regulation to science-based medical products.

13. Upon information and belief, Defendant has caused damage and adverse effects to residents of this District.

¹ <https://corporate.walmart.com/our-story/locations/united-states#/united-states>.

² <https://corporate.walmart.com/our-story/locations/united-states#/united-states/district-of-columbia>.

14. Plaintiff acts for the benefit of the General Public as a Private Attorney General pursuant to District of Columbia Code §28-3905(k)(1).

15. CFI has worked diligently to promote accurate labeling and marketing of homeopathic products as part of its campaign to ensure that homeopathic products and other pseudoscientific alternative medical products are not presented to the public in a false and misleading manner.

16. CFI has petitioned the Food and Drug Administration (FDA) to better and more effectively regulate the trade in homeopathic products in the United States.³

17. CFI has repeatedly submitted comments to both the FDA⁴ and the Federal Trade Commission (FTC)⁵ regarding the regulation, testing, marketing, and labeling of homeopathic products.

18. In April 2015, CFI delivered invited testimony regarding homeopathy to the FDA.⁶

19. In regard to this specific matter, contacted Defendant in an attempt to resolve the matter through discussions. As of the date of this complaint, no response has been received. CFI also filed an official complaint with the D.C. Department of Consumer Protection.

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https://centerforinquiry.org/news/cfi_and_csi_petition_fda_to_take_action_on_homeopathic_drugs/.

⁴ <https://goo.gl/CajXaN>.

⁵ https://centerforinquiry.org/docs/opp/CFI_RDF_FTCCComments_Homeopathy.pdf.

⁶ <https://www.fda.gov/downloads/Drugs/NewsEvents/UCM443495.pdf>.

FACTUAL ALLEGATIONS

A: Homeopathy is a Pseudoscience

20. Pseudoscience is defined as “a system of theories, assumptions, and methods erroneously regarded as scientific.”⁷

21. Homeopathy is an alternative medical idea of treatment developed in the 18th century in Germany.

22. Central to the idea of homeopathy is the concept that “like treats like.” If something can be shown to cause a symptom in an individual, homeopathy holds that the same substance can be used to treat the symptom.⁸

23. Further to this notion is homeopathy’s belief in the supposed “law of minimum (or infinitesimal) dose.” Under this belief, the power of a substance in a homeopathic preparation is increased the greater the level of dilution.⁹

24. For this reason, homeopathic products are often massively diluted with water or other inert substances, often to the level where no molecules of the original substance can be found in the final product.

25. An example of a homeopathic product is Oscilloccinum, produced by the French company Boiron, which claims that it “relieves flu-like symptoms such as body aches, headache, fever, chills, and fatigue.”¹⁰

⁷ <https://www.merriam-webster.com/dictionary/pseudoscience>.

⁸ National Center for Complementary and Integrative Health, *Homeopathy* (April 2015), <https://nccih.nih.gov/health/homeopathy#hed8>.

⁹ <https://medical-dictionary.thefreedictionary.com/law+of+minimum+dose>.

¹⁰ <https://www.oscillo.com/about/facts-about-oscillo/>.

26. On Boiron's corporate website, the 'active ingredient' of Oscillococcinum is listed as "Anas barbariae 200CK HPUS."¹¹

27. This ingredient, in a form which can be understood by those without knowledge of the details of homeopathy, is the heart and liver of the Muscovy duck.

28. The notation '200CK' refers to the level of homeopathic dilution – a 200C dilution constitutes one part duck offal to 10⁴⁰⁰ water.

29. To place this level of dilution in an understandable perspective, current estimates place the number of atoms in the known universe at up to 10⁸².¹²

30. According to homeopaths, the potency of a particular product is preserved even at these staggering levels of dilution through the process of 'succussion.'

31. In succussion, after each dilution, the resulting solution is shaken vigorously, and hit against an elastic surface, such as a leather covered book.¹³

32. In addition, homeopaths rationalize the extreme dilutions (to the extent of there not being sufficient atoms in the entire universe for a single trace of the original allegedly active ingredient to remain in the diluted product) through the concept of 'water memory,' or the idea that water can "physically remember the chemical properties of substances that have been diluted

¹¹ *Id.*

¹² John Carl Villanueva, *How Many Atoms are there in the Universe?* (December 24, 2015), <https://www.universetoday.com/36302/atoms-in-the-universe/>.

¹³ Judith Reichenberg-Ullman, *Homeopathy: The Unique Preparation of Homeopathic Medicines*, http://www.healthy.net/Health/Article/The_Unique_Preparation_of_Homeopathic_Medicines/664.

in it,” even after the dilution is such that not a single molecule of the original substance remains.¹⁴

33. Homeopathy is a pseudoscience because, despite dressing itself in the clothing of scientific language, there is not a shred of credible scientific evidence that it works, or indeed could possibly work.

34. The concepts on which homeopathy is based contradict the most fundamental understanding of science that is known.

35. Individual refutations of the notions of the law of minimum dose, of homeopathic succession, and of water memory can be found throughout scientific literature. They are no more accepted by the scientific community than the notion of a flat Earth.

36. The National Center for Complementary and Integrative Health (NCCIH), a part of the National Institutes of Health and a federal body that researches alternative medicine,¹⁵ notes on its website that “[t]here is little evidence to support homeopathy as an effective treatment for any specific condition.”¹⁶

37. An exhaustive meta-study performed by Australia’s National Health and Medical Research Council (NHMRC) in 2015 assessed more than 1,800 papers on homeopathy, finding 225 of them to meet the criteria for inclusion in the study.¹⁷

¹⁴ Steven Novella, *The Memory of Water*, *Skeptical Inquirer* Vol. 35.3 (May/June 2011), https://www.csicop.org/si/show/the_memory_of_water.

¹⁵ <https://nccih.nih.gov/about>.

¹⁶ National Center for Complementary and Integrative Health, *Homeopathy* (April 2015), <https://nccih.nih.gov/health/homeopathy#hed8>.

¹⁷ National Health and Medical Research Council, *NHMRC releases statement and advice on homeopathy* (March 11, 2015), <https://www.nhmrc.gov.au/media/releases/2015/nhmrc-releases-statement-and-advice-homeopathy>.

38. The study “found no good quality, well-designed studies with enough participants to support the idea that homeopathy works better than a placebo, or causes health improvements equal to those of another treatment.”¹⁸

39. The study’s conclusion was blunt. “There are no health conditions for which there is reliable evidence that homeopathy is effective.”¹⁹

40. In the United Kingdom, a 2010 House of Commons Science and Technology Committee report on homeopathy noted that homeopathic remedies performed no better than placebos, and concluded that “[t]he [British] government should stop allowing the funding of homeopathy on the NHS [National Health Service].”²⁰

41. In July 2017, NHS England, the state provider of health care, announced it would no longer fund homeopathic prescriptions.²¹

42. Multiple U.S. governmental bodies have recognized the failure of homeopathy to provide effective treatment for specific conditions.

43. The NCCIH warns people that they should not “use homeopathy as a replacement for proven conventional care or to postpone seeing a health care provider about a medical problem.”²²

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ House of Commons, *Science and Technology Committee Fourth Report: Evidence Check 2 – Homeopathy* (Feb 8, 2010), <https://publications.parliament.uk/pa/cm200910/cmselect/cmsctech/45/4502.htm>.

²¹ Nicola Davis and Denis Campbell, ‘*A misuse of scarce funds*’; *NHS to end prescription of homeopathic remedies*, *The Guardian* (July 21, 2017), <https://www.theguardian.com/lifeandstyle/2017/jul/21/a-misuse-of-scarce-funds-nhs-to-end-prescription-of-homeopathic-remedies>.

44. The Food and Drug Administration (FDA) has issued warnings about the dangers of relying on homeopathic products to deal with serious conditions.

45. For example, in 2015, the FDA warned against over-the-counter homeopathic asthma products.²³

46. More recently, the FDA announced it would crack down on “situations where homeopathic treatments are being marketed for serious diseases and/or conditions but where the products have not been shown to offer clinical benefits.”²⁴

47. In October 2016, the Federal Trade Commission (FTC) issued an Enforcement Policy Statement Regarding Marketing Claims for Over-the-Counter Homeopathic Drugs, requiring that when a homeopathic product claims efficacy in particular medical situations without “competent and reliable scientific evidence” of such efficacy, such claims would be considered misleading in the absence of a warning informing consumers that “1) there is no scientific evidence that the product works; and 2) the product’s claims are based only on theories of homeopathy from the 1700s that are not accepted by most modern experts.”²⁵

²² National Center for Complementary and Integrative Health, *Homeopathy* (April 2015), <https://nccih.nih.gov/health/homeopathy#hed8>.

²³ U.S. Food and Drug Administration, *Over-the-Counter Asthma Products Labeled as Homeopathic: FDA Statement – Consumer Warning About Potential Health Risks* (Mar. 19, 2015), <https://www.fda.gov/Safety/MedWatch/SafetyInformation/SafetyAlertsforHumanMedicalProducts/ucm439014.htm>.

²⁴ U.S. Food and Drug Administration, *FDA proposes new, risk-based enforcement priorities to protect consumers from potentially harmful, unproven homeopathic drugs* (Dec. 18, 2017), <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm589243.htm>.

²⁵ Federal Trade Commission, *FTC Issues Enforcement Policy Statement Regarding Marketing Claims for Over-the-Counter Homeopathic Drugs* (Nov. 15, 2016), <https://www.ftc.gov/news-events/press-releases/2016/11/ftc-issues-enforcement-policy-statement-regarding-marketing>.

B: The Harm Caused by Homeopathy

48. Homeopathic products do not work and cannot work. There is no evidence they are any more effective than a placebo.

49. This ineffectiveness itself harms American consumers. They are paying money for products that do not effectively treat the ailments for which they are being taken.

50. Where those products are marketed as cures for illness, either directly or through suggestion, this is perpetrating a fraud on consumers.

51. The financial harm is far from *de minimis*. According to the *Economist* magazine in 2014, Americans spend \$3 billion annually on homeopathy.²⁶

52. Consumers suffer greater harm than this financial loss alone.

53. Homeopathic products may be tainted, or contain harmful ingredients. In its 2012 report, the American Association of Poison Control Centers noted that there were 10,311 reported cases of poison exposure related to ‘homeopathic agents,’ with 8,788 of those cases attributed to children aged 5 years or younger. Of these cases, 697 required treatment in a healthcare facility.²⁷

54. The FDA requested that Standard Homeopathic Company recall its Hyland’s Baby Teething Tablets after concluding that the products had “been found to contain inconsistent

²⁶ *Why Homeopathy is Nonsense*, The Economist (Apr. 2, 2014), <https://www.economist.com/blogs/economist-explains/2014/04/economist-explains>.

²⁷ James B Mowry, Daniel A. Spyker, Louis R. Cantilena, Jr., J. Elise Bailey, and Marsha Ford, *2012 Annual Report of the American Association of Poison Control Centers’ National Poison Data System (NPDS): 30th Annual Report* (2013), https://aapcc.s3.amazonaws.com/pdfs/annual_reports/2012_NPDS_Annual_Report.pdf.

amounts of belladonna alkaloids that may differ from the calculated amount on the products' labels."²⁸

55. Hundreds of adverse effects were reported.²⁹

56. Most recently, the FDA issued warnings to four companies regarding "significant violations of good manufacturing practice (CGMP) regulations" regarding their homeopathic products.³⁰

57. Homeopathy also harms consumers even when properly prepared, by encouraging them to rely on such products to the exclusion of proven scientific remedies.

58. As the Australian NHMRC study states, "[p]eople who chose homeopathy may put their health at risk if they reject or delay treatments for which there is good evidence for safety and effectiveness."³¹

59. By eschewing effective treatment in place of homeopathic products, sick people suffer symptoms unnecessarily for longer. They may suffer long-term consequences, up to and including death.

²⁸ U.S. Food and Drug Administration, *Standard Homeopathic Company Issues Nationwide Recall of Hyland's Baby Teething Tablets and Hyland's Baby Nighttime Teething Tablets Due to Mislabeling* (Apr. 13, 2017), <https://www.fda.gov/safety/recalls/ucm552934.htm>.

²⁹ Sheila Kaplan, *Hundreds of Babies Harmed by Homeopathic Remedies, Families Say*, *Scientific American* (Feb, 21, 2017), <https://www.scientificamerican.com/article/hundreds-of-babies-harmed-by-homeopathic-remedies-families-say/>.

³⁰ U.S. Food and Drug Administration, *FDA warns homeopathic firms for putting patients at risk with significant violations of manufacturing quality standards* (Apr. 1, 2019), <https://www.fda.gov/news-events/press-announcements/fda-warns-homeopathic-firms-putting-patients-risk-significant-manufacturing-quality>.

³¹ National Health and Medical Research Council, *NHMRC releases statement and advice on homeopathy* (March 11, 2015), <https://www.nhmrc.gov.au/media/releases/2015/nhmrc-releases-statement-and-advice-homeopathy>.

60. This is particularly true for children, who, importantly, do not make the decision to use homeopathic products themselves. Most parents have seen the pain that a child suffers with an ear infection; this can often be treated rapidly and safely through the use of antibiotics. When a parent instead relies on belladonna (also known as deadly nightshade),³² or through the use of the commercially sold homeopathic product Hyland's Baby Infant Earache Drops, as sold at Walmart stores,³³ not only does the child suffer unnecessarily, but the failure to properly treat may also result in long-term hearing damage or deafness.³⁴

61. Reliance on homeopathic products to the exclusion of science-based medicines can therefore have serious consequences for both children and adults.

62. The website *What's the Harm* details many of such cases.³⁵

63. For example, Isabella Denley, a toddler from Melbourne, Australia, was an epileptic whose neurologist prescribed her anti-convulsant medication; her parents, instead, chose to treat her with exclusively homeopathic products, and she died aged 13 months.³⁶

64. Lucille Craven of New Hampshire was diagnosed in 1997 with a small, pea-sized carcinomatous breast tumor. Her doctor recommended mastectomy and lymphectomy, but

³² Homeopathy Plus!, *Middle Ear Infection*, <https://homeopathyplus.com/middle-ear-infection/>.

³³ <https://www.walmart.com/ip/Hyland-s-Baby-Homeopathic-Infant-Earache-Drops-0-33-fl-oz/194243954>.

³⁴ American Academy of Otolaryngology-Head and Neck Surgery, *Middle Ear Infection (Chronic Otitis Media) and Hearing Loss* (2016), <http://www.entnet.org/content/middle-ear-infection-chronic-otitis-media-and-hearing-loss>.

³⁵ <http://whatstheharm.net/homeopathy.html>.

³⁶ Lucy Atkins, *When there's no real alternative*, *The Guardian* (Dec. 16, 2003), <https://www.theguardian.com/society/2003/dec/16/health.medicineandhealth>.

instead Lucille sought homeopathic and other alternative medical treatments. She died within 36 months.³⁷

65. Homeopathic products risk harming patients in three ways. Patients suffer a financial loss, by spending money on a product that does not perform in the way in which they have been lead to believe it will. They may suffer damage from adulterated and dangerously manufactured products. And they may suffer longer and greater harm from diseases that could have been adequately treated or cured by science-based medicine.

C: Walmart Retail Homeopathic Products Both Online and in its Physical Stores

66. Walmart operates over 5,300 physical stores nationwide, including 3 in the District of Columbia.³⁸

67. Within these stores, Walmart retails a significant range of over-the-counter pharmaceutical products, including both science-based remedies and alternative medicines, including homeopathic products.

68. These homeopathic products include both “name brand” products, such as Boiron Oscillococcinum, and Walmart “own-brand” products, sold under the “Equate” label, such as Equate Homeopathic Earache Drops.

69. Walmart also operates an internet site through which customers, including those in the District of Columbia, may order products for home delivery.³⁹

³⁷ Richard Craven, *My Wife's Death from Cancer* (Feb. 27, 2002), <https://www.quackwatch.org/01QuackeryRelatedTopics/Victims/craven.html>.

³⁸ *See supra* n. 1-2.

³⁹ <https://www.walmart.com/>.

70. This internet site also offers for sale to residents of the District of Columbia both science-based remedies and alternative medicines, including homeopathic products.

71. Residents of the District of Columbia may access the internet site and purchase both “name brand” products, such as Boiron Oscillococcinum,⁴⁰ and Walmart “own-brand” products, such as Equate Homeopathic Earache Drops.⁴¹

D: Walmart Places Homeopathic Products Alongside Science-Based, Tested Medicine

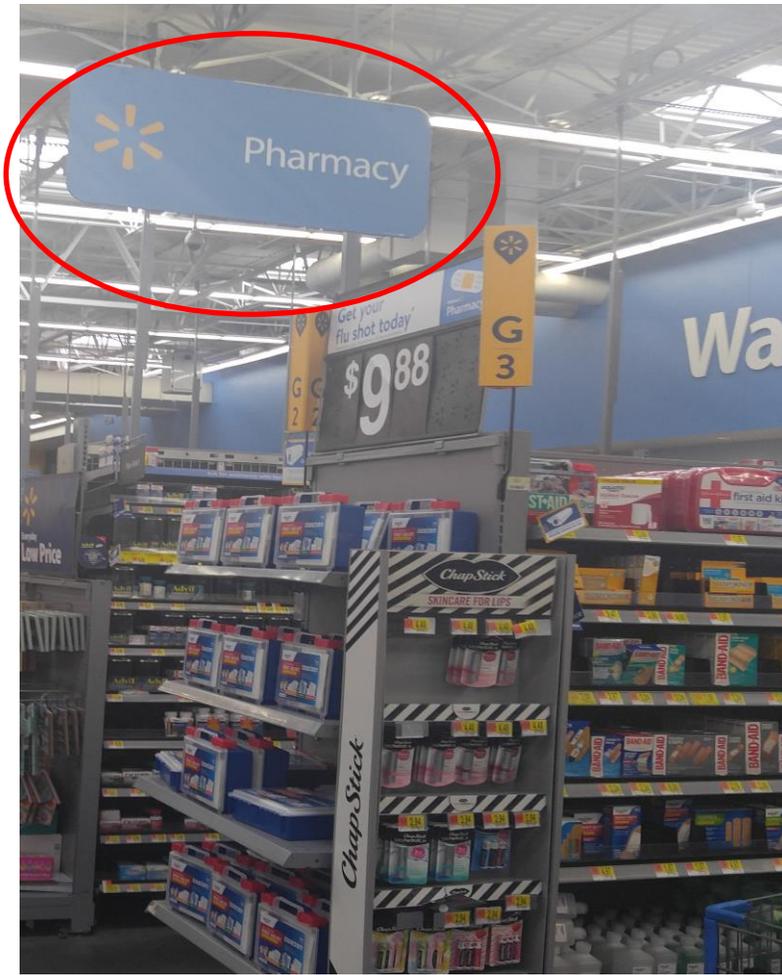
72. In a Walmart retail store, over-the-counter medical products are arranged in section labelled “Pharmacy,” within which the individual aisles will themselves be labelled, informing the customer of the symptoms and conditions for which that aisle contains relevant products.

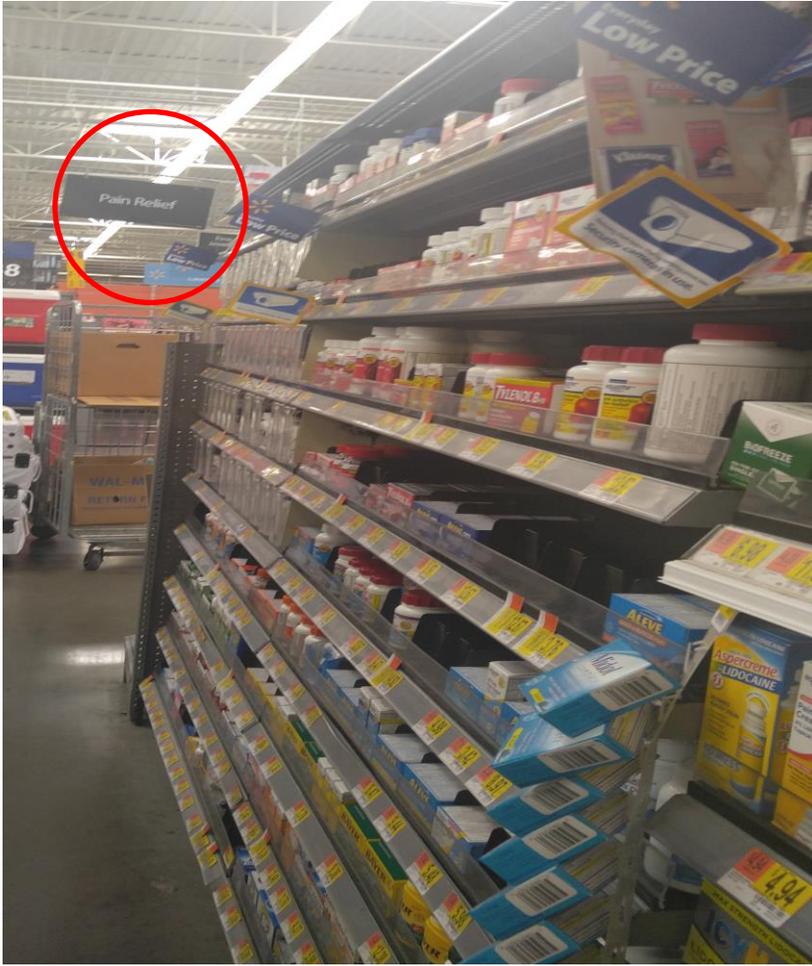
73. The individual aisles are then often broken down into individual sections.

74. For example, the Walmart store, Supercenter #5968, located at 5929 Georgia Ave. N.W., Washington, D.C. 20011 displays products in the following way:

⁴⁰ <https://www.walmart.com/ip/Boiron-Oscillococcinum-Flu-Like-Symptom-Relief-30-Ct/20526292>.

⁴¹ <https://www.walmart.com/ip/2-Pack-Equate-Homeopathic-Earache-Drops-0-33-Oz/502233599>.





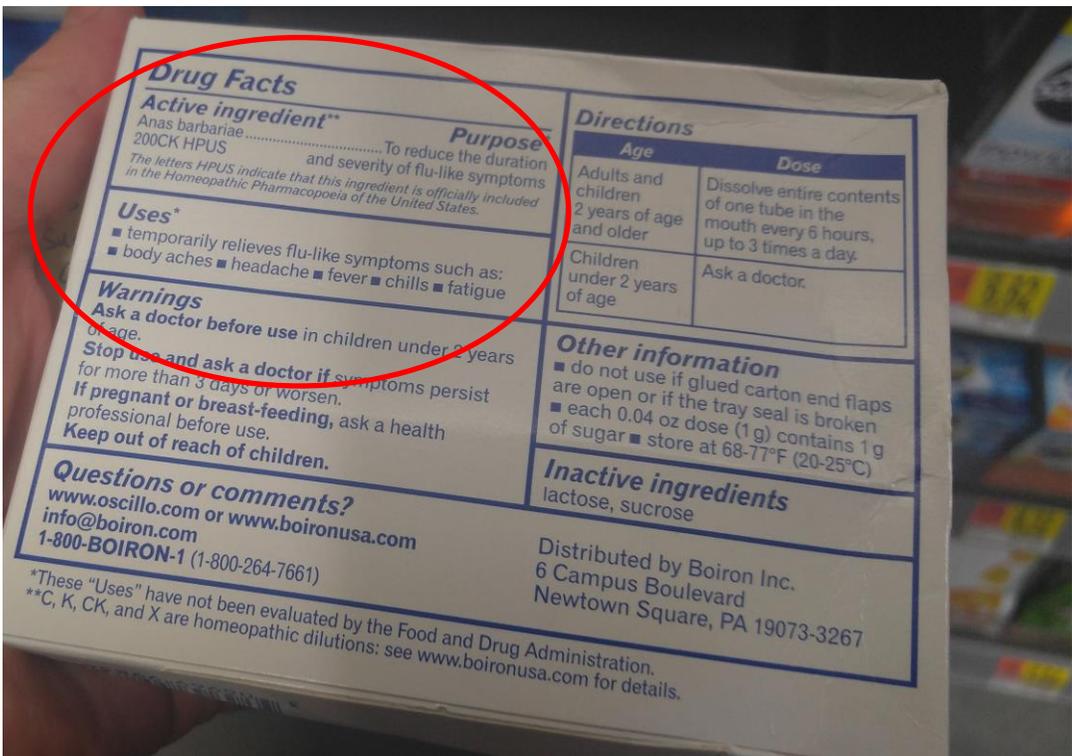
75. Within each individual section, homeopathic products are displayed alongside science-based medicines with no distinction drawn between them.

76. For example, in the ‘Cold, Cough & Flu Relief’ section, FDA approved and tested over-the-counter remedies such as Tylenol Sinus & Headache are not separated nor distinguished from homeopathic remedies such as Oscillocoquinum.

77. Oscillocoquinum can be seen amid science-based medicines such as Mucinex and Alka Seltzer.⁴²



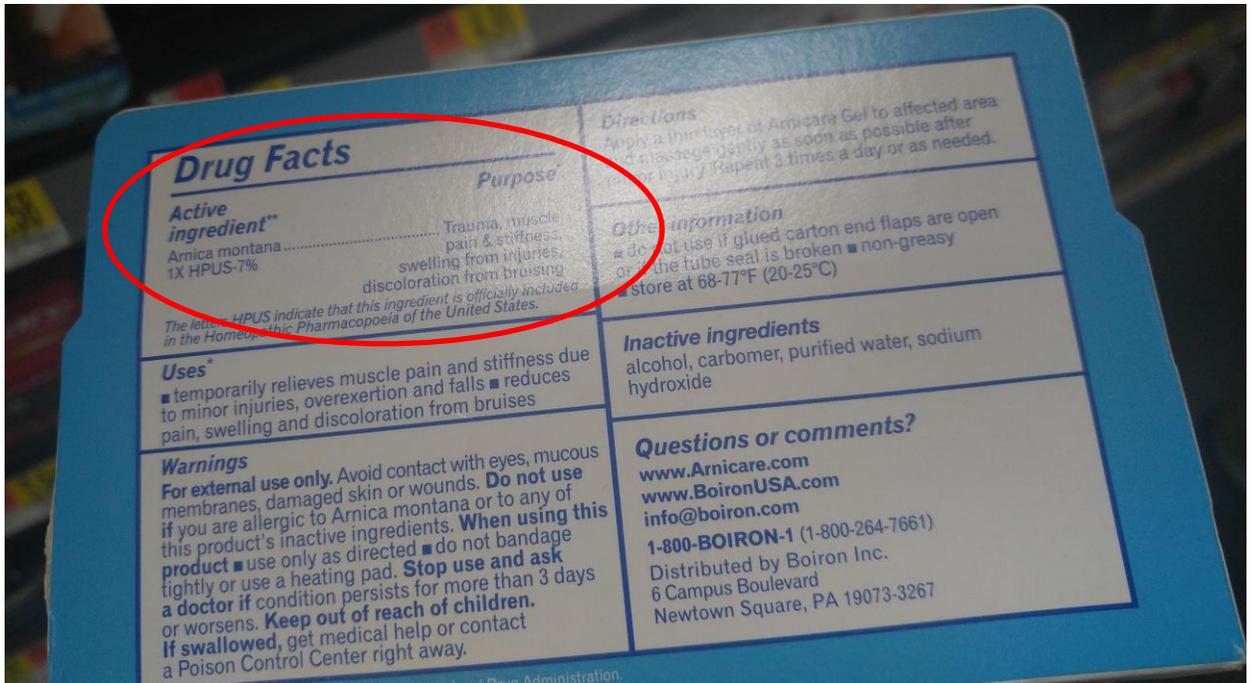
⁴² Unlike other photographs, this picture was taken in Walmart Superstore #5117. Superstore 5968 sold Oscillocoquinum in similar product placement (alongside Vicks’s DayQuil and NyQuil combination pack, as part of the “Cough, Cold & Flu Relief” section), but the product was out of stock.



78. The same situation can be found in the pain relief section of Walmart stores.

79. Science-based remedies such as Icy Hot, containing Lidocaine and Aleve, containing Naproxen Sodium, both ingredients proven by science to provide pain relief are found alongside homeopathic products including Arnicare, which contains multiple homeopathic claimed active ingredients (see back of box, below) without any indication to the potential consumer of the difference between the products.





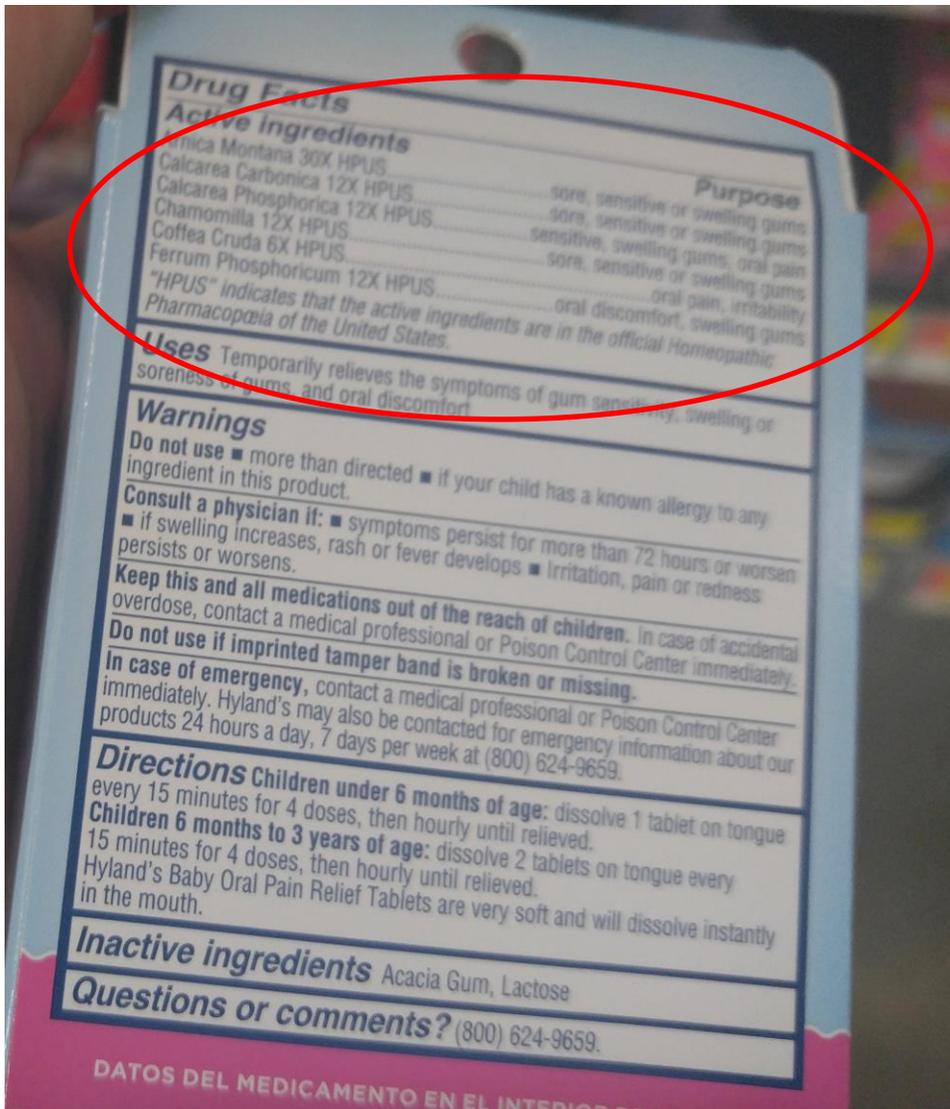
80. Similarly, in Children’s Pain Relief, homeopathic products such as Hyland’s Baby Oral Pain relief, which are claimed to include such homeopathic ingredients as Arnica Montana, better known as Wolf’s Bane or Mountain Tobacco (described in its Wikipedia entry as “moderately toxic”),⁴³ and Calcarea Carbonica, made from the “middle layer of shells,”⁴⁴ are placed directly next to products such as Children’s Motrin, a product containing the science-proven drug ibuprofen.⁴⁵

⁴³ https://en.wikipedia.org/wiki/Arnica_montana.

⁴⁴ <https://www.encyclopedia.com/medicine/encyclopedias-almanacs-transcripts-and-maps/calcarea-carbonica>.

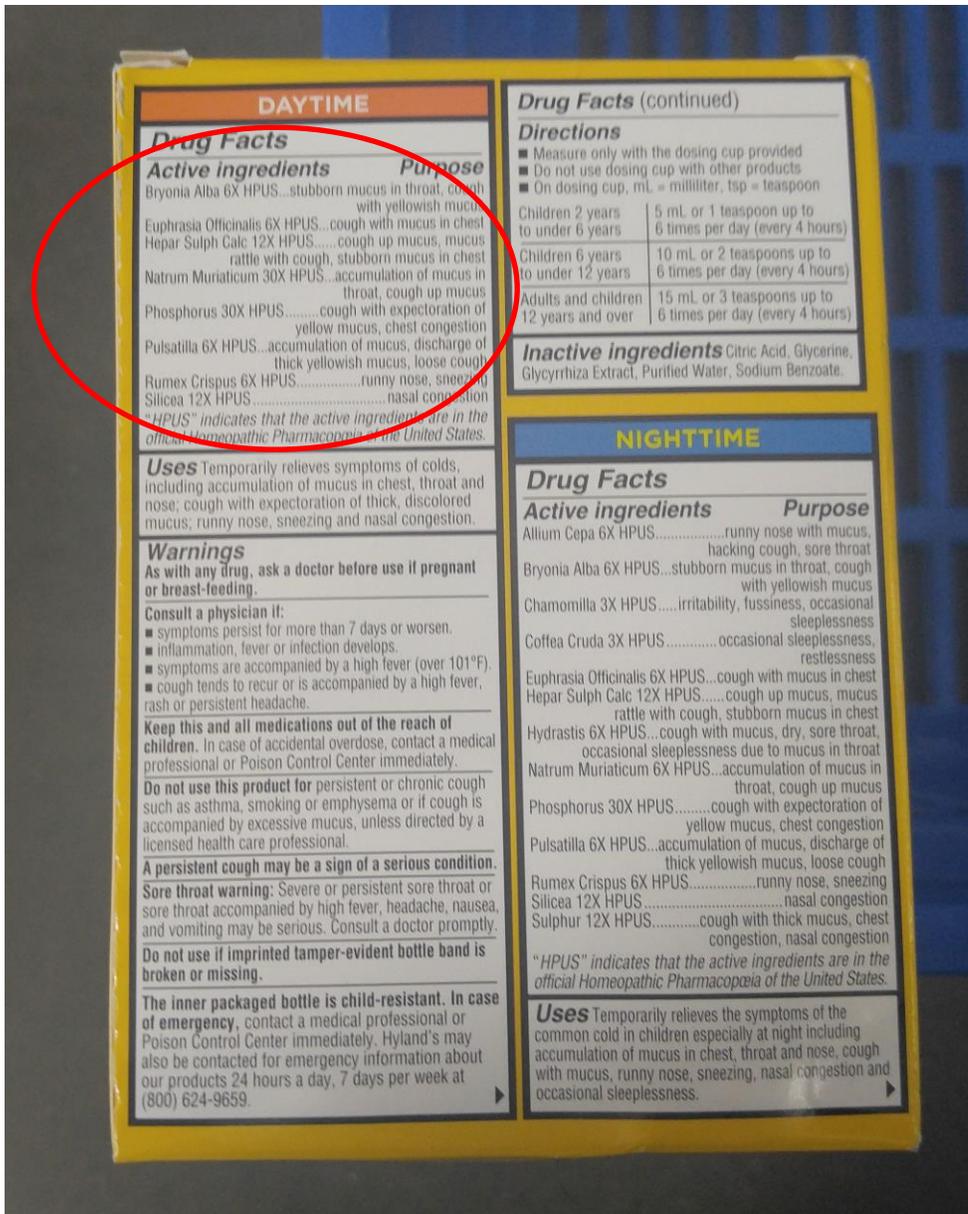
⁴⁵ https://www.motrin.com/products/childrens-motrin?utm_source=google&utm_medium=cpc&utm_campaign=GO-USA-ENG-PS-Motrin+Childrens-BC-EX-RN-Childrens+Core&utm_content=Core&utm_term=childrens+motrin&&gclid=EA1aIQobChMIiKy-0P6Y4gIVi1YNCh2b0gQWEAAYASAAEgLzt_D_BwE&gclsrc=aw.ds.



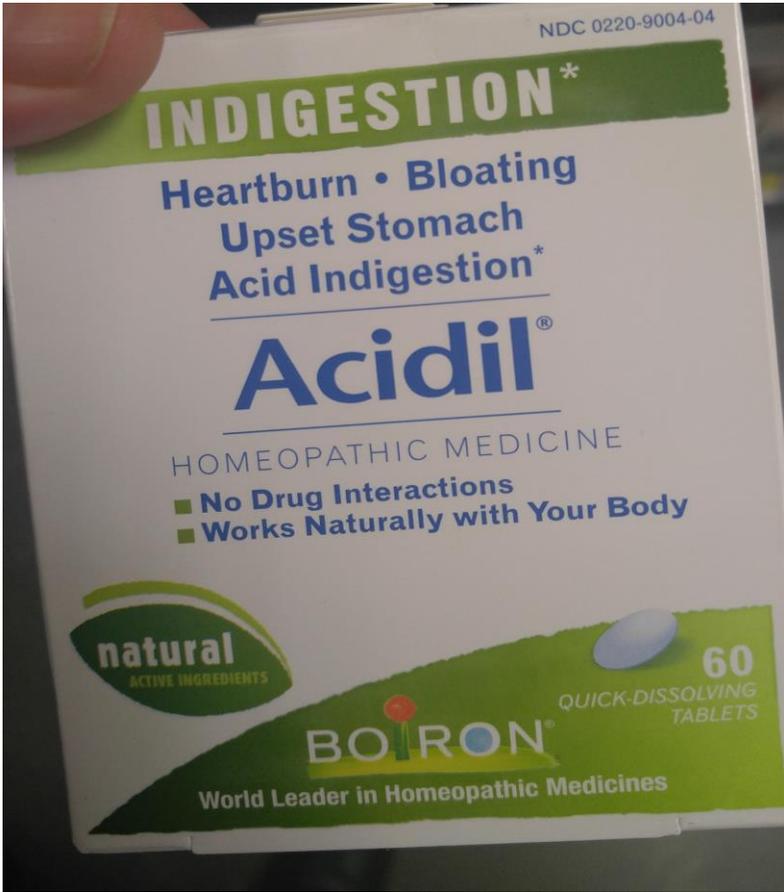
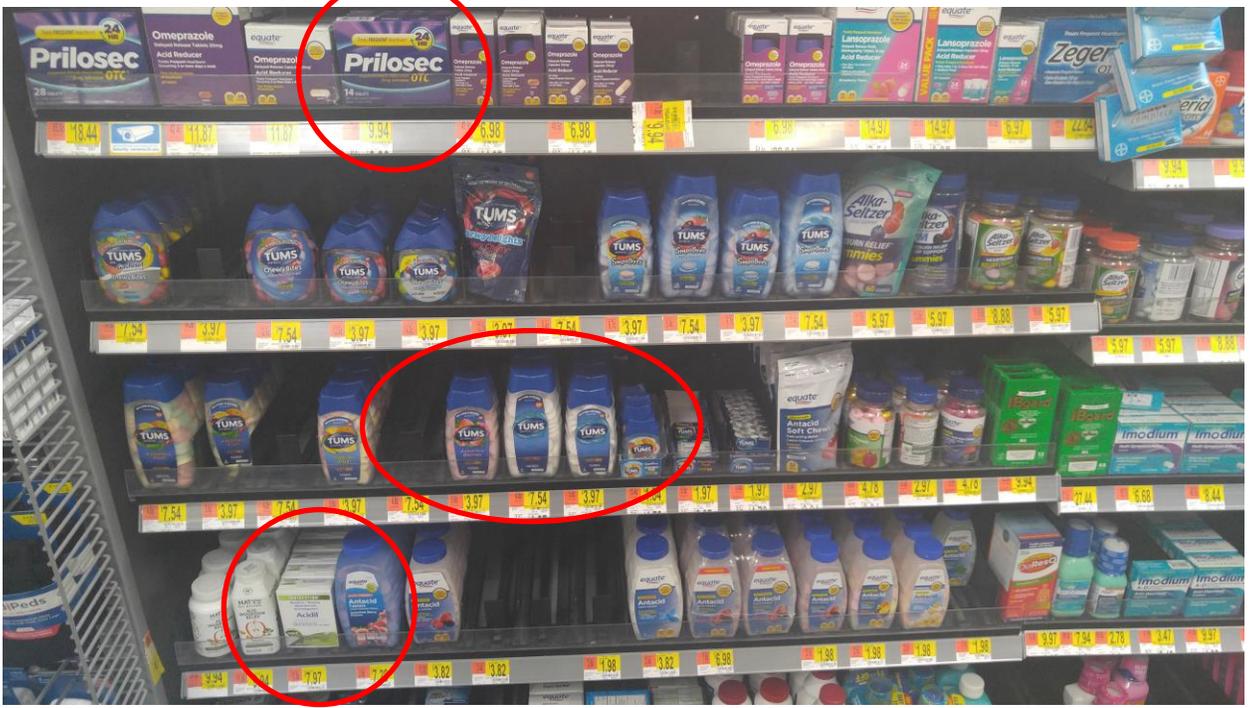


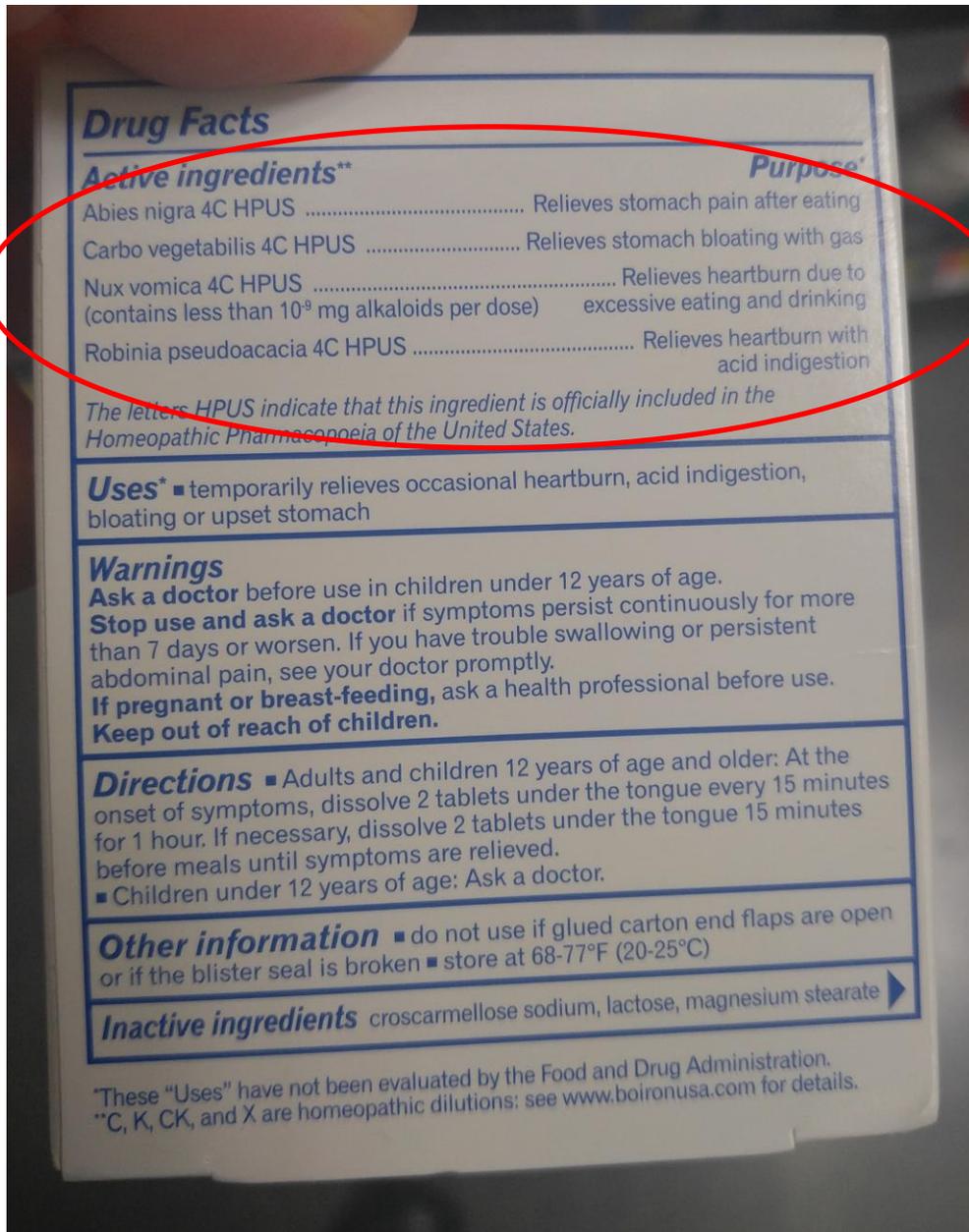
81. Once again, the same pattern can be seen with Children's Cough and Allergy Medicines. Science-based products such as Mucinex Multi Symptom Cold, and Tylenol Cold and Flu, sit alongside Hyland's 4 Kids Cold 'n Mucus, which purports to treat children with microscopic quantities of a series of homeopathic ingredients.





82. Even those suffering from indigestion are not exempt from the attempt to pass off homeopathic products as effective, science-based remedies. In the Heartburn section, Acidil, a homeopathic dilution of, *inter alia*, Nux Vomica, better known as the Strychnine Tree, is sold alongside such proven remedies as Prilosec and Tums.





83. The situation is as bad, if not worse, on Walmart's website which offers homeopathic products for sale and delivery to residents of the District of Columbia.

84. The homeopathic products Oscillococcinum Quick Dissolve Pallets is nested for sale under the following category path: Health/Vitamins & Supplements/Homeopathic Remedies/Homeopathic Immunity Support.⁴⁶

85. Oscillococcinum is not a “remedy,” nor can homeopathy provide “immunity support.”

86. Worse, when a customer arrives at Walmart’s internet site, and types “flu remedy” or “flu relief” into the search bar, Oscillococcinum returns as a front page result.⁴⁷

87. Similarly, Similasan Kids Cold and Mucus Relief,⁴⁸ a homeopathic product, is listed under Health/Cold Cough and Flu/Children’s Cold Cough and Flu/Children’s Cough Remedies.

88. Like all other homeopathic products, there is no evidence that this product is a remedy for anything.

89. Moreover, the product is a first page result for a search for the term “child cough remedy.”⁴⁹

90. Not only is Walmart actively marketing these products to customers as treatments for specific conditions without any scientifically valid evidence of their efficacy as such treatments, a customer in the Similasan example does not even receive an indication in the path that the product is homeopathic rather than science-based.

⁴⁶ <https://www.walmart.com/ip/Boiron-Oscillococcinum-Flu-Like-Symptom-Relief-30-Ct/20526292>.

⁴⁷ [https://www.walmart.com/search/?cat_id=0&query=Flu+remedy](https://www.walmart.com/search/?cat_id=0&query=Flu+remedy;);
https://www.walmart.com/search/?cat_id=0&query=Flu+relief.

⁴⁸ <https://www.walmart.com/ip/Similasan-Kids-Cough-Mucus-Relief-Syrup-4-oz-Pack-of-4/48652515>.

⁴⁹ https://www.walmart.com/search/?cat_id=0&query=child+cough+remedy.

D: Walmart’s Product Placement of Homeopathic Products Makes Material False and Misleading Claims Regarding the Effectiveness of Those Products

91. Walmart’s own marketing indicates it views itself as a provider of good value and quality products.

92. Walmart’s advertising slogan since 2007 has been “Save Money – Live Better.”⁵⁰

93. Walmart also sees itself as providing advice to customers regarding their health care decisions.

94. Walmart’s website includes a “Health and Wellness Center” providing tips and advice to customers on health care matters.⁵¹

95. According to its website, Walmart’s health department provides customers with a place to “[f]ind everything you need to get healthy and stay healthy. From fitness essentials to over the counter solutions for whatever ails you, you can find everything you need to stock your house for health and happiness.”⁵²

96. Walmart’s role in assisting customers with health decisions goes far beyond filling prescriptions. It is also a major retailer of over-the-counter medicines, for which no prescription is required.

97. When a person is suffering an ailment and does not wish to go to the doctor, they will often turn to the pharmacy section of their neighborhood Walmart for relief, whether it is from headaches, cold and flu symptoms, indigestion, or childhood ailments.

98. In all of these categories and many more, Walmart offers a wide range of products to treat the problem or relieve the symptoms, both on its internet site and in its physical stores.

⁵⁰ <https://www.supermarketnews.com/retail-amp-financial/wal-mart-rolls-out-new-ad-slogan>.

⁵¹ <https://www.walmart.com/cp/health-wellness/1776938>.

⁵² <https://www.walmart.com/cp/health/976760>.

99. In its physical stores, Walmart displays products in aisles and sections broken down by the symptoms to be treated.

100. On its website, Walmart organizes its products in categories, nested according to the symptoms to be treated, as well as providing search results for individuals entering a particular disease or symptoms.

101. Through its marketing and product placement, Walmart is sending a clear and false message to its customers.

102. This message is that homeopathic products are no different to science-based medicines.

103. Walmart is announcing that if a customer has flu like symptoms, Tylenol Cold and Flu medicine, containing acetaminophen, a medicine tested and approved by the FDA, is an equivalent solution to Oscillococcinum, which contains the organs of a Muscovy duck, diluted to the power of 10^{400} .

104. By displaying the product Oscillococcinum under a sign reading “cold & flu” and alongside science-based remedies for cold and flu symptoms, Walmart is actively claiming to customers that Oscillococcinum treats cold and flu symptoms.

105. Oscillococcinum does not provide relief for cold and flu symptoms at any level greater than a placebo.

106. For relief for the oral pain of a baby, Walmart’s marketing and product placement indicates to customers that ibuprofen, listed on the World Health Organization’s Model List of Essential Medicines,⁵³ is no more effective than Hyland’s Baby Oral Pain Relief.⁵⁴

⁵³ *World Health Organization, WHO Model Formulary (2008)*, <https://apps.who.int/medicinedocs/documents/s16879e/s16879e.pdf>.

⁵⁴ <https://www.hylands.com/products/hylands-baby-oral-pain-relief-tablets>.

107. By displaying Hyland's Baby Oral Pain Relief under a sign reading "pain relief" and alongside science-based remedies for children's pain, Walmart is actively claiming that Hyland's Baby Oral Pain Relief provides relief for pain in infants.

108. Hyland's Baby Oral Pain Relief does not provide relief for pain at any level greater than a placebo.

109. Similar comparisons can be made for each homeopathic product sold by Walmart both in its physical stores and on its internet site.

110. Walmart's own marketing indicates it views itself as a partner in the health care decisions of its customers.

111. When a customer enters a Walmart store in the District of Columbia, or visits Walmart's internet site, he or she is relying on Walmart to provide adequate and accurate information about the products on display.

112. By intermingling homeopathic products, which have no scientific basis and no demonstrable efficacy, with science-based medicines, Walmart is deliberately sending a message that they are equally efficacious in the treatment of the conditions for which Walmart labels that section of the store or internet site.

113. Walmart is advertising and presenting homeopathic products to the public as effective treatments for particular symptoms and diseases but is failing to inform the public that there is no scientific evidence that the products have any value in treating those symptoms and diseases.

114. In both its physical stores in the District of Columbia and its online presence, Walmart is marketing homeopathic products to customers as being treatments for specific conditions.

115. There is no scientific evidence that these homeopathic products have any beneficial effect on these conditions, and Walmart is aware of this.

116. Absent this credible scientific evidence, Walmart is not permitted to make such claims regarding the efficacy of homeopathic products for particular uses.

117. Walmart, by its marketing and placement of these products, is deceiving customers and deliberately creating the impression that homeopathic products can be used interchangeably with science-based medicines for the treatment of specific conditions.

118. This violates D.C. customers' "enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia." D.C. Code § 280-3901(c). Walmart retails homeopathic products in both its physical stores and its internet site to residents of the District of Columbia.

119. There is no scientific evidence that these homeopathic products have any effect above that of a placebo

120. Defendant is aware, or should be aware, that there is no scientific basis to claim that these products are effective for the treatment of specific symptoms and diseases.

121. Despite this, Walmart displays homeopathic products both in their physical stores and on their internet site underneath signs listing specific symptoms and diseases, and alongside science-based remedies containing active ingredients tested by the FDA and scientifically demonstrated to have beneficial effects.

122. A reasonable consumer would purchase these homeopathic products believing that they were equally as effective for the treatment of the listed symptoms or diseases as the science-based remedies displayed beside them.

123. Defendant deliberately takes advantage of the reputation and effectiveness of the science-based medicines to imply to customers that the homeopathic products have a similar efficacy.

124. There is no scientific evidence of efficacy of homeopathic products.

CAUSE OF ACTION

D.C. CONSUMER PROTECTION ACT – D.C. OFFICIAL CODE §§ 28-3901, *et seq.*

125. Plaintiff incorporates by reference and realleges all previous paragraphs.

126. This Count is brought pursuant to the District of Columbia Consumer Protection Procedures Act (CPPA). D.C. Code § 28-3901 *et seq.* This Count is alleged against the Defendant on behalf of the General Public of the District of Columbia pursuant to District of Columbia Code § 28-3905(k)(1)(A)-(D).

127. Defendant is a “person” within the meaning of D.C. Official Code § 28-3901(a)(1), and provides “goods” within the meaning of § 28-3901(a)(7).

128. Plaintiff is a “non-profit organization” within the meaning of § 28-3901(a)(14) and a “public interest organization” within the meaning of § 28-3901(a)(15).

129. D.C. Code § 28-3904 makes it an “unlawful trade practice ... whether or not any consumer is in fact misled, deceived or damaged thereby,” to, among other things:

- (a) Represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;
- (b) Represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;
- (e) Misrepresent as to a material fact which has a tendency to mislead;
- (f) Fail to state a material fact if such failure tends to mislead;
- (f-1) Use innuendo or ambiguity as to a material fact, which has a tendency to mislead; and

(u) Represent that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

130. Defendant violated these provisions by, *inter alia*, intentionally representing homeopathic products, including those listed *supra*, as medicines that can treat and improve specific diseases and symptoms by displaying them in sections labelled for those diseases and symptoms.

131. Defendant violated these provisions by deliberately and intentionally placing homeopathic products in the same sections as science-based medicines, thereby implying to customers there is no difference between them.

132. Defendant knew or should have known that its placement of homeopathic products beside science-based medicines and under labels referring to specific diseases and symptoms would result in consumers considering the products to be equivalents.

133. Defendant knew or should have known that no scientific evidence exists to show homeopathic remedies have any effect on specific diseases or symptoms other than those of a placebo.

134. Defendant knew or should have known that consumers would be led to believe by its product placement and shelf labelling that homeopathic products were effective in the treatment of specific diseases and symptoms.

135. Defendant knew or should have known of the likelihood of confusion created by its product placement and labeling between homeopathic products and science-based medicines.

136. Defendant knew or should have known that the organization of its internet site, and the results provided by its search function, would create the same effects as listed *supra*, creating confusion among customers between homeopathic and science-based medications and

creating a false impression that homeopathic products are efficacious in the treatment of specific diseases and remedies.

137. Although reliance is not required by the CPPA, customers in the District of Columbia have nevertheless reasonably relied on Defendant's misrepresentations and omissions when purchasing healthcare products from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grants judgment against the Defendant, and in favor of the Plaintiff and the District of Columbia General Public, and grant the following relief:

- a. Declaring that Defendant's conduct is in violation of the D.C. Consumer Protection Procedures Act;
- b. Enjoining Defendant's conduct found to be in violation of the D.C. Consumer Protection Procedures Act and ordering corrective advertising, marketing, labeling and product placement;
- c. Granting Plaintiff and the General Public of the District of Columbia restitution, treble damages or statutory damages in the amount of \$1,500 per violation, whichever is greater;
- d. Granting Plaintiff its costs of prosecuting this action, including attorneys' fees, experts' fees and costs together with interest; and
- e. Granting such other relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted this 20th day of May, 2019.

s/Nicholas J Little

Nicholas J. Little, Esq. (Bar No. 979725)

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