

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

CENTER FOR INQUIRY, INC.,
individually and on behalf
of consumers and the general public,
1629 K Street NW, Suite 300
Washington, DC 20006,

Plaintiff,

v.

BOIRON, INC.,
a Pennsylvania corporation,
4 Campus Boulevard
Newtown Square, PA 19073,

and

AMAZON.COM, INC.,
a Delaware corporation,
410 Terry Avenue North,
Seattle, WA 98109,

Defendants.

CASE NO.: 2022 CA 1610 B
JUDGE: Shana Frost Matini

FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE
CONSUMER PROTECTION PROCEDURES ACT¹

In response to the unfair and deceptive trade practices regularly utilized in the marketing and sale of homeopathic products by Defendants Boiron, Inc. (“Boiron”) and Amazon.com, Inc., (“Amazon”) (“Defendants”), Plaintiff Center for Inquiry, Inc. (“Plaintiff” or “CFI”) brings this action on behalf of itself, consumers and the general public of the District of Columbia.

¹ This Court verbally granted Plaintiff leave to amend its Complaint during a status hearing held March 24, 2023.

Defendants repeatedly violated, and continue to operate in violation of the Consumer Protection Procedures Act. (“CPPA”) D.C. Code §§ 28-3901, *et seq.* Through a carefully crafted scheme of misrepresentation, obfuscation, ambiguity, innuendo and falsities, Boiron and Amazon offload otherwise worthless products upon the unwitting, the ill-informed and the vulnerable. Upon the investigation of counsel, information and belief, Plaintiff alleges the following in support of its claims:

INTRODUCTION

1. Homeopathy is Pseudoscience; Quackery.
2. Homeopathic products are health fraud; faux medicine prettily packaged and pushed upon the public for a hefty profit.
3. Defendant Boiron boasts that it is the world leader in “homeopathic medicines.” The homeopathic products Boiron manufactures are wholly based in fiction—a centuries old confidence scheme long past its shelf life.
4. Defendant Amazon is a massive e-commerce business. With a market cap of over one trillion dollars and upwards of 1.5 million employees, it touts a desire to be “Earth’s most customer-centric company”—to its customers, Amazon delivers danger.
5. Together and separately, Defendants prey upon consumers and the universal desire to simply feel better. Amazon and Boiron put profits before people; they ignore all notions of ethics and decency; they openly flout the law.
6. Equipped with an inventory in excess of one thousand various items—including toxic plants, animal venom, noxious gasses, controlled substances, heavy metals, radioactive materials, bacteria, parasites, virus particles, excretions, and urethral secretions of persons infected

by a sexually transmitted disease—proponents of homeopathy peddle potions they claim will treat and cure all medical conditions.

7. Homeopathy does not heal. Homeopathy does not cure. Homeopathy is snake oil, expensive but worthless, nothing more.

8. Defendants recommend and sell a variety of Boiron-branded homeopathic products (“Boiron product”); each Boiron product is marketed with claims it will specifically and successfully treat a plethora of particular conditions. Yet each Boiron product is materially identical in content and effect—each indistinguishable but for the promises made by Defendants and the prices paid by their customers.

9. From a child’s nosebleed caused by trauma,² to hiccups after a large meal³ or those triggered by stress;⁴ whether for shingles with bluish-white vesicles⁵ or shingles worsened by touch or jolts,⁶ Defendants promise Boiron products will remedy myriad ails, illnesses and injuries. Defendants market, recommend, sell and deliver these items, and in so doing, Defendants cheat consumers.

10. Defendants routinely engage in deceptive and unfair trade practices. As part of a scheme to induce consumers to purchase Boiron products, Defendants make representations that

²<https://www.boironusa.com/mf/?category=Children&mainsymptom=Nosebleeds&addsymptom=From%20trauma> (last visited Apr. 13, 2023).

³<https://www.boironusa.com/mf/?category=Digestive%20Problems&mainsymptom=Hiccups&addsymptom=After%20a%20large%20meal> (last visited Apr. 13, 2023).

⁴ *Id.*, <https://www.boironusa.com/mf/?category=Digestive%20Problems&mainsymptom=Hiccups&addsymptom=Triggered%20by%20stress> (last visited Apr. 13, 2023).

⁵ <https://www.boironusa.com/mf/?category=First%20Aid%20%20Skin&mainsymptom=Shingles%20or%20Zoster%20pain&addsymptom=With%20bluish-white%20vesicles> (last visited Apr. 13, 2023).

⁶ <https://www.boironusa.com/mf/?category=First%20Aid%20%20Skin&mainsymptom=Shingles%20or%20Zoster%20pain&addsymptom=Worsened%20by%20touch%20or%20jolts> (last visited Apr. 13, 2023).

are false, misleading or omit crucial information; they utilize omissions, innuendo and ambiguities to further the deception. Defendants repeatedly misrepresent the uses, benefits, approval, characteristics and ingredients of Boiron products.

11. To consumers, Defendants deceptively holds out Boiron products as medicine. They deceive the ill and injured into believing the “active ingredient” in each Boiron product will directly treat the etiological aspect of a particular condition. Defendants falsely convey to consumers that each Boiron product is proven safe and effective.

12. Absent Defendants’ deception, consumers would not purchase Boiron products. A reasonable consumer would not and does not purchase “medicine” that is not actually medicine; they would not and do not willingly spend significantly more money to purchase an item that could be had for pennies on the dollar; they would not and do not purchase multiple products when each is materially and functionally identical.

13. Defendants utilize carefully crafted marketing and packaging to convince consumers that Boiron products will treat injuries, reduce muscle stiffness, disappear bruises, assuage poor concentration and irritability due to overwork and even heal surgical wounds. They convince consumers to buy these goods, at a premium, with no intent to deliver the items as promised.

14. Through their statements, acts and omissions; through innuendo and ambiguity, Defendants dupe consumers.

15. Defendants’ deception deprived Plaintiff, consumers and the general public of the right to truthful information. Separately and together, they violated and continue to violate the CPPA.

16. To hold Defendant Boiron and Defendant Amazon accountable, and to end their unmitigated use of unfair and deceptive trade practices, Plaintiff brings this suit and seeks civil penalties, restitution, injunctive relief and any other relief this Court deems necessary, appropriate and proper.

JURISDICTION AND PARTIES

17. This Court has jurisdiction over the matter pursuant to D.C. Code §§ 11-921 and 28-3905.

18. This Court has personal jurisdiction over the parties pursuant to D.C. Code § 13-423.

19. The proper venue for this matter is the District of Columbia. Defendants market, sell and deliver products to consumers within the District of Columbia (“District”), including Plaintiff, via brick-and-mortar stores and the internet. Defendants’ use of unlawful deceptive and unfair trade practices occurred within the District and caused injury and damages therein.

20. Plaintiff, Center for Inquiry, Inc., is a 501(c)(3) nonprofit, public interest organization with a headquarters in the State of New York.

21. Plaintiff’s Executive Office is located in the District of Columbia at 1629 K Street NW, Suite 300, Washington, DC 20006. Plaintiff operates an active branch, CFI DC, in the District of Columbia and regularly holds meetings and events in the District for its members and the general public.

22. On July 1, 2021, from its office in the District,⁷ Plaintiff viewed various advertisements and marketing materials for Boiron products and purchased a sampling of four Boiron products offered for sale as follows:

- i. Boiron Oscillococcinum 0.04 Ounce 6 Doses Homeopathic Medicine for Flu-like Symptoms⁸ (“Oscillo”),
- ii. Boiron Staphysagria 30C, 80 Pellets, Homeopathic Medicine for Surgical Wounds⁹ (“Staphysagria”),
- iii. Boiron Phosphoricum Acidum 30C, 80 Pellets, Homeopathic Medicine for Concentration¹⁰ (“Phosphoricum”); and,
- iv. Boiron Arnica Montana 30C 3 Tubes (80 Pellets per Tube) Homeopathic Medicine for Pain Relief¹¹ (“Arnica”).

23. On July 7, 2021, the purchased products were delivered to Plaintiff’s office in the District.¹²

24. Plaintiff purchased the Boiron products in order to evaluate and test the items. In particular, as it pertains to the use for personal, household and family purposes, CFI tested and evaluated the qualities, characteristics and contents of the products. CFI utilized an independent advanced materials science and analytical services platform to conduct Fourier transform infrared

⁷ At the time of purchase and delivery of the items, Plaintiff’s Executive Office was located at 1012 14th Street NW, Suite 205, Washington, DC 20005.

⁸ <https://www.amazon.com/gp/product/B006H9THXY> (sold and shipped by Amazon.com) (when last visited Apr. 13, 2023, the item is now offered for sale as “Boiron Oscillococcinum for Relief from Flu-Like Symptoms of Body Aches, Headache, Fever, Chills, and Fatigue - 6 Count”).

⁹ <https://www.amazon.com/gp/product/B00028O0T2> (sold and shipped by Amazon.com) (last visited Apr. 13, 2023).

¹⁰ <https://www.amazon.com/gp/product/B000FJ2NWO> (sold and shipped by Amazon.com) (last visited Apr. 13, 2023).

¹¹ <https://www.amazon.com/gp/product/B013JKW8Z2> (sold and shipped by Amazon.com) (when last visited Apr. 13, 2023, this item is now offered for sale as “Boiron Arnica Montana 30C Homeopathic Medicine for Relief from Muscle Pain, Muscle Stiffness, Swelling from Injury, and Discoloration from Bruises - 3 Count (Pack of 1)”).

¹² Footnote 6, *supra*.

spectroscopy and scanning electron microscopy and energy dispersive X-ray spectroscopy on each product.

25. Plaintiff brings this action pursuant to the Consumer Protection Procedures Act, D.C. Code §§ 28-3905(k)(1)(A), (B), (C) and (D), as a nonprofit and public interest organization and as a consumer.

26. The Center for Inquiry is dedicated to making a better world through critical thinking and reason, guided by compassion and respect for the dignity of every individual. It stresses evidence-based inquiry into science, pseudoscience, medicine and health, religion, and ethics. Since its very beginning through the present, CFI regularly investigates, educates, advocates and litigates issues related to all forms of pseudoscience and confidence schemes.

27. Through its Office of Consumer Protection from Pseudoscience, CFI addresses the financial and physical harms of unproven healthcare products and treatments; with particular regard to protecting vulnerable populations such as children, the chronically ill and pets.

28. From regulatory submissions to the Food and Drug Administration¹³ and the Federal Trade Commission,¹⁴ to amicus briefs,¹⁵ the publication of *Skeptical Inquirer*¹⁶ magazine and *Quackwatch*—an online “guide to quackery, health fraud, and intelligent decisions”¹⁷—quackery has long been a focus of CFI.

¹³ Citizen Petition to Require all OTC Homeopathic Drugs to be Tested for Effectiveness and Labeled Accurately, (submitted Aug. 26, 2011) (available at https://centerforinquiry.org/news/cfi_and_csi_petition_fda_to_take_action_on_homeopathic_drugs (last visited Apr. 13, 2023)).

¹⁴ Comment #00517 to FTC for the Homeopathic Medicine & Advertising Workshop (Nov. 2015).

¹⁵ Brief for Scientists, Science Educators, Skeptics, the Center for Inquiry, and the Richard Dawkins Foundation for Research and Science as Amicus Curiae, *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582 (2016).

¹⁶ An Introduction to Homeopathy, *Skeptical Inquirer*, Vol. 38, No. 5 (Oct. 2014) (available at <https://skepticalinquirer.org/2014/09/an-introduction-to-homeopathy> (last visited Apr. 13, 2023)).

¹⁷ <https://quackwatch.org> (last visited Apr. 13, 2023).

29. Quackery, a particularly pernicious form of pseudoscience, by definition includes the fraudulent trade of healthcare-related services and goods, commonly referred to as “snake oil.”¹⁸

30. Relevant here, homeopathy is quackery; combating quackery is protecting consumers; Boiron products are one example of the snake oil from which CFI has consistently worked to protect consumers, including those within the District of Columbia.

31. Defendant Amazon.com, Inc., is a corporation organized under the laws of the State of Delaware. It maintains one headquarters in the State of Washington and one in Arlington, Virginia. Several Amazon subsidiaries are registered to, and regularly do, conduct business within Washington, DC, including Amazon.com Services, LLC. Amazon also maintains a physical retail presence in the District through the operation of seven Whole Food Market locations, 20 Amazon Hub Lockers and an Amazon Fresh store located at 1733 14th St NW, Washington, DC 20009.

32. Defendant Boiron, Inc., is a corporation organized under the laws of the Commonwealth of Pennsylvania where it maintains an office in Newton Square, Delaware County. Boiron is registered to, and regularly does, conduct business within Washington, DC.

33. By, with and through branches, affiliates, associates, partners and its parent company, Defendant Boiron manufactures, markets, sells, distributes and delivers homeopathic products to and within the District. By, with and through branches, affiliates, subsidiaries, associates and partners, Defendant Amazon markets, sells, distributes and delivers homeopathic products to and within the District.

¹⁸ One of the most well-known quacks of the 19th and early 20th centuries was Clark Stanley. Clark Stanley’s Snake Oil Liniment, faux medicine advertised as a powerful painkiller, gave rise to the familiar term “snake oil salesmen.”

34. At all times material to this Complaint, Defendants, individually and together, marketed, sold, distributed and delivered Boiron products to consumers, including Plaintiff, in Washington, DC.

FACTUAL BACKGROUND

Homeopathy: Faux Medicine Founded upon a Flub.¹⁹

35. The theories that would later be called “homeopathy” were concocted by Christian Samuel Hahnemann beginning in the late 18th century—shortly before he was caught using deceptive trade practices to sell his own products.²⁰

36. At that time, doctors predominantly employed “heroic medicine;” a practice that used aggressive and dangerous treatments such as bleeding, blistering, purging, and large doses of medicines based on arsenic or mercury. These treatments were, understandably, often worse for the patient than the condition for which they sought help.

37. Hahnemann received a degree in medicine but was disillusioned by the state of the field and instead worked as a translator. He was perpetually destitute.²¹

38. In 1790, while translating a medical book,²² Hahnemann came across a passage that discussed cinchona bark,²³ a source of quinine that was used to effectively treat malaria. The book’s author theorized the bark worked due to its astringency. Hahnemann doubted this since, he thought, if other astringent items did not treat malaria, the curative effect of cinchona must be some other factor.

¹⁹ Homeopathy, its origins and tenants, underlie a significant and substantial portion of Plaintiff’s claims and Defendants’ deceptive conduct. In order to provide the proper context and basis of the claims herein, Plaintiff includes this brief, relevant recitation of homeopathy’s development.

²⁰ See, Remarks on the Character and Writings of Hahnemann, 1847 New-York J. Med.

²¹ See, e.g., Anthony Campbell. Homeopathy in Perspective (2014).

²² The translated work, A treatise of the materia medica, was written by Dr. William Cullen in 1789.

²³ Also commonly referred to as “Peruvian bark,” “Jesuit’s bark” and “China bark.”

39. To investigate his supposition, Hahnemann consumed a large amount of cinchona bark. He documented the effects as follows:

I took for several days, as an experiment, four drams of good china daily. My feet and finger tips, etc., at first became cold; I became languid and drowsy; my pulse became hard and quick; an intolerable anxiety and trembling (but without rigor); trembling in all limbs; then pulsation in the head, redness in the cheeks, thirst; briefly, all those symptoms which to me are typical of intermittent fever, such as the stupefaction of the senses, a kind of rigidity of all joints, but above all the numb, disagreeable sensation which seems to have its seat in the periosteum²⁴ over all the bones of the body—all made their appearance. This paroxysm²⁵ lasted for two or three hours every time, and recurred when I repeated the dose and not otherwise. I discontinued the medicine and I was once more in good health.²⁶

40. Hahnemann continued this practice and after six years of his “experiments,” decided that his physical reaction to the bark must be key—thus cementing a foundational principle of homeopathy. Put simply, Hahnemann believed that (a) cinchona cures malaria, (b) cinchona causes “malaria symptoms” in healthy individuals, therefore (c) all items that cause illness in a healthy person will cure a similar illness.²⁷

41. Notwithstanding the blatant logical fallacies behind Hahnemann’s conclusion, what he experienced were not the symptoms of malaria (nor symptoms of cinchonism, an overdose of the bark). Rather, Hahnemann likely had an allergic reaction to cinchona.

42. Hahnemann’s reaction and subsequent mistaken belief is confirmed by the fact that not one person was able to replicate the results of his many years of experiments with cinchona.²⁸

²⁴ A membranous tissue covering the outer surface of most bones.

²⁵ Sudden attack or intensification.

²⁶ Campbell, *supra*.

²⁷ See, Irvine Loudon, A Brief History of Homeopathy, 99 J. Royal Soc’y Med. 607-10 (2006).

²⁸ Remarks on the Character and Writings of Hahnemann, *supra*.

43. Nevertheless, in 1796, Hahnemann published his new theory in “*Essay on a New Principle for Ascertaining the Curative Power of Drugs.*” Today, the theory is commonly referred to as the “law of similars.”²⁹

44. In 1800, for the equivalent of approximately \$90.00, Hahnemann advertised and sold a medicinal product he named “*alkali pneum.*” The Society for the Promotion of Natural Sciences tested Hahnemann’s product and discovered it was actually just a common borax. The following year, for the same cost, Hahnemann sold what he claimed was a new “infallible preventive of scarlet fever.” The product was simply extract of Belladonna, Deadly Nightshade.³⁰

45. Hahnemann developed additional components of his theory, including the need to conduct “provings.” These provings, he claimed, would determine the particular symptoms an item would elicit in healthy individuals which could then cure the same.

46. The provings process and cataloguing of the results were neither standardized nor adequately controlled. For example, an early proving of *Arnica montana*—one of the items Plaintiff purchased—lists, among many more, the following:

- Sensation of coldness on a small spot on the forehead, as if he were touched there by a cold thumb.
- The scalp down to the eyebrows lies closely attached to the skull, and is almost immovable (aft. 6 h[ours].).
- On the side of the forehead pimples, partly filled with pus (aft. 3 d[ays].).
- Dry heat in the face towards evening to behind the ears, without thirst, with very cold nose (aft. 24 h[ours].).

²⁹ The phrase is often written as either “*similia similibus*” or “*similia similibus curentur.*” In 1899, the American Institute of Homeopathy “redefined homeopathy’s law of similars as ‘let like be cured by like,’ and made it ‘less a law than a guide to therapy.’” Suzanne White Junod, An Alternative Perspective: Homeopathic Drugs, Royal Copeland, and Federal Drug Regulation, 55 Food Drug L.J. 161-83, 167 (2003).

³⁰ Remarks on the Character and Writings of Hahnemann, *supra*.

- The border of the upper eyelid, where it touches the eyeball internally, is painful when the eyeball is moved, as if it were too dry and somewhat sore.
- After eating a kind of suppressed incomplete hiccup.
- She wants always to drink, and knows not what, because everything is repugnant to her.
- After the (evening) meal she weeps, is peevish, will listen to nobody, and will not hear of anything.
- On reading for a long time he grows giddy and sick.³¹

47. Hahnemann relied upon the myriad provings to pick and choose among the myriad reactions to decide the particular uses for an item. For example, he decided that *Arnica montana* “is very beneficial in the most severe wounds by bullets and blunt weapons, and also in the pains and other ailments consequent on extracting the teeth, and in other surgical operations whereby sensitive parts have been violently stretched, as also after dislocations of the joints, after setting fractures of the bones, &c” but it should never be used “in purely inflammatory acute diseases, with general heat, chiefly external, nor in diarrheas.”³²

48. Hahnemann was aware that the items remained dangerous. Because they “aggravated” symptoms—i.e., were harmful—he recommended that dilutions should be used instead. For *Arnica montana*, he professed that the best for “internal use is the decillionth [1 part to 99 parts dilutant] development of power.”³³ This use of heavily diluted substances gave rise to what is now commonly referred to as the “law of infinitesimal doses.”

³¹ Samuel Hahnemann, *Materia Medica Pura* (1880), 93-97.

³² *Id.* at 89-90.

³³ *Id.*

49. By 1810, Hahnemann compiled his theories into *Organon of the Medical [Healing] Art*, the so-called “bible” of homeopathy in which he used the term “homeopathy” for the first time. He published several more editions, changing and adding to his theories in response to criticism and the inherent failures of the existing theories.

50. For instance, in the fourth edition of his *Organon*, Hahnemann introduced his theory of miasm—that is, he declared 7/8 of all chronic disease are caused by *psora* (itch) and the remaining by “wart-disease” (syphilis).³⁴ In the following edition, Hahnemann included for the first time his theory of “dynamization”—or, the highly diluted homeopathic ingredients are (only) able to maintain their “curative effects” as a result of a precise, exacting number of ritual “shakings.”

51. Contrasted with the heroic medicine of the time, the infinitely diluted homeopathy products were necessarily “safer” as the practitioners were providing to their customers placebo pills and potions and used simple suggestion.

52. Accordingly, homeopathy was conceived of as a particularly individualized approach and was intended to be utilized as such—“[f]rom its beginning homeopathy always began with a long consultation, lasting at least an hour, in which all aspects of the patient's illness and life were discussed...”³⁵

53. Homeopathy was eventually imported to the United States, where it “underwent considerable modifications at the hands of its most influential adherents.”³⁶ The early 20th century saw the rise of “classical homeopathy” that is “not only a considerable modification of

³⁴ Remarks on the Character and Writings of Hahnemann, *supra*.

³⁵ Loudon, *supra*, at 607-09; in other words, talk therapy.

³⁶ Anthony Campbell, The Origins of Classical Homoeopathy?, 7 *Complementary Therapies Med.* 76-82 (1999).

Hahnemann's teaching, but it fails to take account of Hahnemann's late ideas which he developed in his Paris years and incorporated in the sixth edition of 'The Organon', published posthumously in 1920.”³⁷

54. At the same time, medical education and practice were modernized while homeopathy began to languish—indeed, the products “enjoyed only a limited market.”³⁸ As government oversight turned to medicinal drugs, homeopathy was mostly overlooked “under the continuing assumption that homeopathy was a dying specialty.”³⁹ During the 1960s and 70s, homeopathy saw a resurgence.

55. Homeopathy eventually grew into the commercialized, multi-billion-dollars industry of today. And while it lacks its original individualized nature and the means and mechanisms of production, homeopathy continues to be peddled without evidence of effectiveness.

Boiron’s Pills and Powders: Promised Panacea based on Homeopathic Hokum.

56. Defendant Boiron manufactures, markets, distributes and sells homeopathic products directly to consumers via a variety of outlets, including retailers such as Defendant Amazon. Through the use of marketing materials, endorsements, training materials, product descriptions, webinars, mobile apps, social media posts and websites, the same message is conveyed to consumers: when you purchase a particular Boiron product, the active ingredient will treat or heal your specific health condition.

57. On the website boironusa.com, Defendant Boiron markets and sells Boiron products directly to consumers, with some “medicines” ranging from \$8.49 to \$11.99 depending

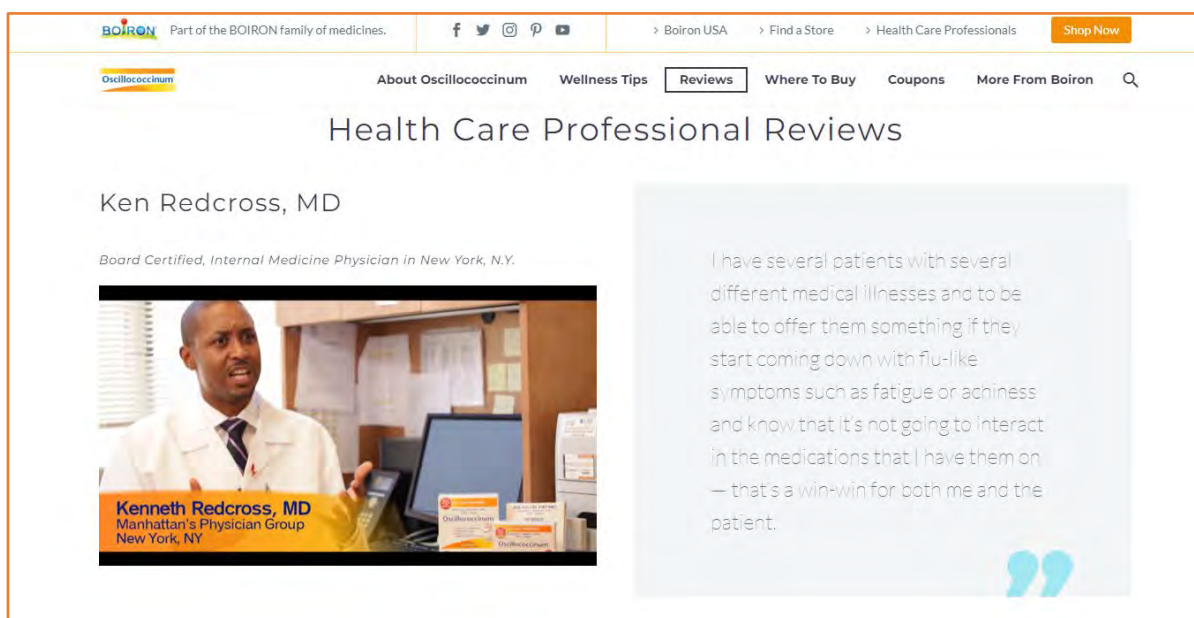
³⁷ *Id.*

³⁸ Junod, *supra*, at 179.

³⁹ *Id.*

upon which of the multitude of available “dilutions” is sold to a consumer.⁴⁰ Retailers, wholesalers, Boiron Partners and resellers also use the website to obtain Boiron products.⁴¹

58. Some Boiron combination products, like Oscillo⁴² and ColdCalm,⁴³ have individual websites. Here, additional representations about the products are made including, for instance, “Health Care Professional Reviews”—videos of Physicians recommending Boiron products.



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“I have several patients with several different medical illnesses and to be able to offer them something if they start coming down with flu-like symptoms such as fatigue or achiness...that’s a win for both me and the patient.”

59. The product specific websites direct consumers to boironusa.com where one can purchase Boiron products for upwards of \$32.99.⁴⁵

⁴⁰ <https://www.boironusa.com/product/arnica-montana> (16 total dilutions; 10m is \$11.99, 30c \$8.49) (last visited Apr. 14, 2023).

⁴¹ <https://www.boironusa.com/retailers> (last visited Apr. 13, 2023).

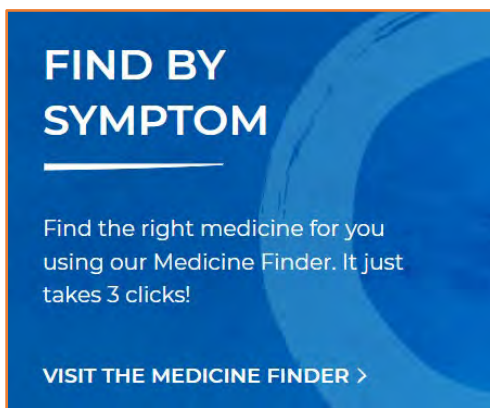
⁴² <https://www.oscillo.com> (last visited Apr. 10, 2023).

⁴³ <https://coldcalm.com> (last visited Apr. 10, 2023).

⁴⁴ <https://www.oscillo.com/testimonials> (last visited Apr. 10, 2023).

⁴⁵ <https://www.boironusa.com/product/oscillo> (last visited Apr. 10, 2023).

60. Defendant Boiron also, in an app available for iOS and Android devices⁴⁶ and on its website, explicitly recommends medicines to consumers for use based upon the symptoms suffered by the consumer.



“Find the right medicine for you using our Medicine Finder.”⁴⁷

61. No matter the Boiron product, consumers are informed that the “active ingredient” of each product has a particular medicinal use or purpose.

62. Boiron products are either a “single medicine”⁴⁸ or “combination medicine,”⁴⁹ which are placed into categories, each broadly corresponding to the type of injury, medical or health issues the items are represented to treat or heal. The categories include, among others, “Circulatory,” “First Aid – Skin,” “Joint and Muscle Pains,” “Motion Sickness and Nausea.”⁵⁰

⁴⁶ See, <https://www.boironusa.com/download-the-new-boiron-medicine-finder-app> (last visited Apr. 10, 2023).

⁴⁷ <https://www.boironusa.com> (last visited Apr. 10, 2023).

⁴⁸ <https://www.boironusa.com/product-category/all-products/single-medicines> (last visited Apr. 13, 2023).

⁴⁹ See, e.g., Chestal® Cold & Cough, “all-in-one day & night formula” to “relieve nasal and chest congestion, dry fitful cough, sneezing, minor sore throat, and runny or stuffy nose” contains *Dulcamara*, *Ferrum phosphoricum*, *Hydrastis canadensis*, *Kali bichormicum* and *Nux vomica* (<https://www.oscillo.com/cough-cold-flu/chestal-cold-cough> (last visited Apr. 13, 2023)); Cyclease® PMS, “works to relieve minor aches, lower back pain, bloating, water retention, discomfort, emotional changes, and irritability” contains *Folliculinum*, *Natrum muriaticum* and *Sepia*. (<https://www.boironusa.com/product/cyclease-pms> (last visited Apr. 13, 2023))).

⁵⁰ Boiron Homeopathic Medicine Finder, <https://www.boironusa.com/mf> (last visited Apr. 10, 2023).

63. The Boiron products are further differentiated as to a specific type of injury, medical or health issue the item is represented to treat or heal. For instance, the Boiron product *Arnica montana* 6C is marketed for the “circulatory” injury “nosebleeds” “from trauma”⁵¹ while if the nosebleed occurred “during or just after a cold,” Boiron *Ferrum phosphoricum* 6C is represented to be the cure.⁵²

64. Boiron products are also marketed for use by a particular category of person, such as those for “Children and Baby”—products which are said to “Help [a consumer’s] child the natural way with gentle, worry-free formulas for the littlest ones in [their] family.”⁵³ For baby colic, the Boiron product *ColicComfort* is marketed for babies 1 month or older⁵⁴ while Boiron *ColdCalm Kids* is marketed for babies 6 months or older to treat “sneezing, runny nose, and nasal congestion.”⁵⁵

65. Consumers are assured that the Boiron product’s “Benefits and Features [include] A single active ingredient for highly targeted relief”⁵⁶ that “do[es] not mask symptoms...”⁵⁷

⁵¹ <https://www.boironusa.com/mf/?category=Circulatory&mainsymptom=Nosebleeds&addsymptom=From%20trauma> (last visited Apr. 10, 2023).

⁵² <https://www.boironusa.com/mf/?category=Circulatory&mainsymptom=Nosebleeds&addsymptom=During%20or%20just%20after%20a%20cold> (last visited Apr. 10, 2023).

⁵³ <https://www.boironusa.com/product-category/all-products/children-and-baby-products> (last visited Apr. 10, 2023).

⁵⁴ <https://www.boironusa.com/product/coliccomfort> (last visited Apr. 12, 2023); <https://www.amazon.com/Boiron-ColicComfort-Single-Use-Symptoms-Bloating/dp/B07HRRP6MW> (last visited Apr. 12, 2023).

⁵⁵ <https://www.boironusa.com/mf/?category=Children&mainsymptom=Runny%20Nose> (last visited Apr. 10, 2023); <https://www.amazon.com/Boiron-Coldcalm-Single-Use-Liquid-Doses/dp/B07HLB4V6M> (last visited Apr. 12, 2023).

⁵⁶ Boiron product page for Belladonna, <https://www.boironusa.com/product/belladonna> (last visited Apr. 12, 2023) (represented it “relieves high fever (up to 102°F) of sudden onset with perspiration).

⁵⁷ Boiron, Inc., Easy Guide to Homeopathic Medicines (2021), 2.

Arnica montana

★★★★★ 4.8 (8) [Write a review](#)

Customize your care with Boiron single medicines for highly targeted relief. Arnica Montana is a homeopathic dilution of Arnica Montana that relieves muscle pain, stiffness, swelling from injuries, bruises. The pellets melt in your mouth and can be taken on the go, no food or water needed.

Benefits and Features:

- ✓ A single active ingredient for highly targeted relief.



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66. Boiron single medicines are sold in “Boiron blue tubes;” they are materially identical across the entirety of the product line but for the name of the item and the purported active ingredient it is said to contain.

67. On the front of each Boiron blue tube, consumers are informed of the product’s use and the healing effects it will bring about:



Items purchased by Plaintiff, from top to bottom:

Staphysagria: “Relieves promotes healing of surgical wounds”

Phosphoricum: “Relieves poor concentration due to overwork”

Arnica: “Relieves muscle pain and stiffness, swelling from injuries, discoloration from bruising”

68. If a consumer happens to peel-back the Boiron blue tube wrapper, they will find “Drug Facts.” Here, the consumer is informed that the “Active ingredient” is whatever the name

⁵⁸ <https://www.boironusa.com/product/arnica-montana> (last visited Apr. 13, 2023).

⁵⁹ <https://www.amazon.com/gp/product/B00028O0T2> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

of the Boiron product is on the front of the blue tube, and that the “Uses” of the product are the “symptoms on the front” of the blue tube.



69. The product’s “active ingredient,” a homeopathic preparation of a particular “source item,” is represented to treat, heal or cure the injury, illness or condition listed on the Boiron product. Accordingly, consumers are informed that the source item is curative and homeopathic preparation of the source item has cause-in-fact curative effect.

70. Consumers, irrespective of age, illness, injury or symptoms, are instructed to “dissolve 5 pellets [of the Boiron product] under the tongue 3 times a day until symptoms are relieved or as directed by a doctor.”

71. Whether a Boiron “single medicine” or “combination medicine,” whether represented to treat “canker sores”⁶¹ or “treat acne on the face & body [of] adults and children with breakouts from puberty, menstrual periods, or oily skin,”⁶² not one Boiron homeopathic product

⁶⁰ Left: Defendants’ representations; Right: picture of same product purchased by Plaintiff; <https://www.boironusa.com/product/staphysagria> (last visited Apr. 13, 2023); <https://www.amazon.com/Boiron-Staphysagria-Homeopathic-Medicine-Surgical/dp/B00028O0T2> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

⁶¹ <https://www.boironusa.com/product/borax> (last visited Apr. 13, 2023); <https://www.amazon.com/Boiron-Borax-Homeopathic-Medicine-Canker/dp/B004LFG3JW> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

⁶² <https://www.amazon.com/Boiron-Relief-Blackheads-Skins-Whiteheads/dp/B0B9HHKQ3Q> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

is approved by FDA as to safety or effectiveness, not one provides cause-in-fact healing, treatment or relief, and not one is marketed and sold without the use of unfair or deceptive practices.

Amazon.com: Selling Pricey Pseudoscience with a Smile (Logo).

72. Defendant Amazon markets, sells, distributes and delivers homeopathic products to consumers, including Boiron products purchased by Plaintiff.

73. Defendant Amazon stocks tens of millions of products on “virtual shelves” in an online storefront, Amazon.com. The megacorporation aggressively drives consumers to this store and induces product purchases through the use of advertisements, sponsored brand and products targeting, special events and discounts, sophisticated consumer tracking, affiliate marketing programs like Amazon Associates and Amazon Influencers,⁶³ and product recommendations such as “Amazon’s Choice,” “frequently bought together,” “featured brands” and “featured products.”

74. Of the more than 10,000 homeopathic “health care products” Defendant Amazon places on its shelves,⁶⁴ not one is approved by FDA as to safety and effectiveness—not one is sold lawfully. Yet, Amazon not once informs consumers.

75. Defendant Amazon chooses to market its products to consumers by categorizing the items into specific departments, such as “Health Care,”⁶⁵ which it further separates into more specific categories and subcategories. There, Amazon represents to consumers the particular type of injury, medical and health issues it is selling and distributing products to treat and heal.

76. For instance, Defendant Amazon markets:

- i. “Boiron Arnica Montana 30X Homeopathic Medicine for Relief from Muscle Pain, Muscle Stiffness, Swelling from

⁶³ <https://affiliate-program.amazon.com> (last visited Apr. 13, 2023).

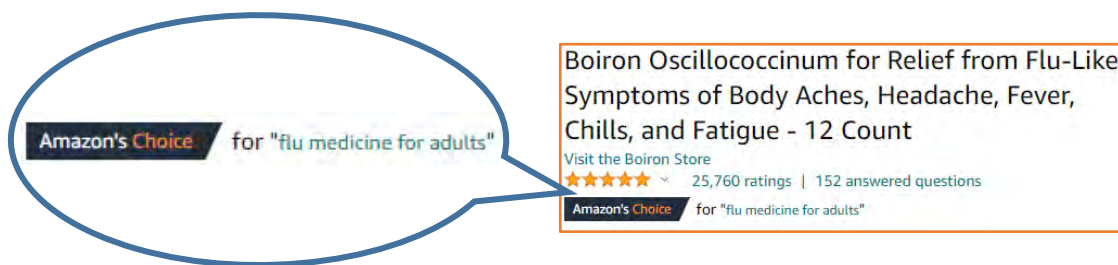
⁶⁴ https://www.amazon.com/s?k=homeopathic&rh=n%3A3760941&ref=nb_sb_noss (search for “homeopathic” in “health care products” category as of Apr. 10, 2023).

⁶⁵ <https://www.amazon.com/gp/browse.html?node=3760941> (last visited Apr. 13, 2023).

Injury, and Discoloration from Bruises” as “Pain Relief Medication & Treatments;”⁶⁶

- ii. “Boiron Arnica Bruise - Arnica Montana 30C for Relief of Pain, Swelling, and Discoloration from Bruises⁶⁷” as “OTC Medications & Treatments” “Pain Relievers” and,
- iii. “Arnica Montana 30C Homeopathic Medicine for Relief from Muscle Pain, Muscle Stiffness, Swelling from Injury, and Discoloration from Bruises.”⁶⁸

77. Similarly, Defendant Amazon markets Defendant Boiron’s Oscillococcinum to consumers as “Cold & Flu Medicine.”⁶⁹ Carrying a list price of \$19.99,⁷⁰ Amazon recommends Oscillo to consumers as its choice for “flu medicine for adults” and represents the product will effectively treat body aches, headache, fever, chills and fatigue.



78. Defendant Amazon also sells “Contac Cold + Flu”—a product that, like Oscillo, represents it will treat body aches, pain, fever as well as nasal congestion, sinus pressure, sore

⁶⁶ <https://www.amazon.com/Boiron-Montana-Homeopathic-Medicine-Stiffness/dp/B07KL2BD2P> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

⁶⁷ <https://www.amazon.com/Boiron-Arnica-Bruise-Swelling-Discoloration/dp/B0B7TNMH82> (sold by and ships from Amazon.com for \$15.46) (last visited Apr. 13, 2023).

⁶⁸ <https://www.amazon.com/gp/product/B013JKW8Z2> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

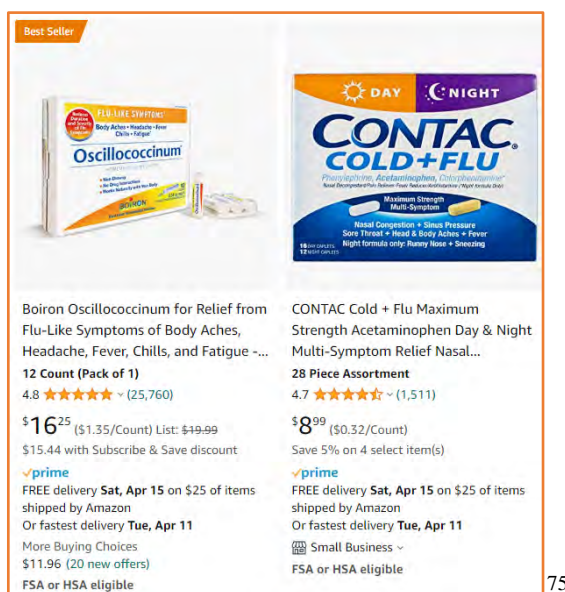
⁶⁹ https://www.amazon.com/b?node=3761171&ref=sr_nr_n_2

⁷⁰ <https://www.amazon.com/Boiron-Oscillococcinum-Flu-like-Symptoms-Count/dp/B000M256NW> (last visited Apr. 13, 2023).

⁷¹ *Id.*

throat, runny nose and sneezing.⁷² Unlike Oscillo, however, Contac costs over 122 percent less at \$8.99,⁷³ and unlike Oscillo, Contac is an FDA monographed drug that is recognized as safe and effective.⁷⁴

79. In addition to explicitly recommending and representing to consumers that Boiron Oscillo is effective medicine, by labeling it a best seller and placing Oscillo directly next to, but before Contac, Defendant Amazon conveys to consumers that its choice for the treatment of cold and flu is “better than” Contac—and is worth the much, much higher cost.



80. In addition to the specific uses of the products it sells, Defendant Amazon also specifically markets products to and for use by a particular category of person.

⁷² <https://www.amazon.com/Contac-Strength-Multi-Symptom-Relief-Night/dp/B0096DWI1G> (last visited Apr. 13, 2023).

⁷³ *Id.*

⁷⁴ 21 CFR § 341.1, *et seq.*

⁷⁵ https://www.amazon.com/gp/browse.html?rw_useCurrentProtocol=1&node=3761171&ref_=amb_link_fyVTmWrmP3amqmwulO7jUQ_10 (as of Apr. 9, 2023).

81. For “Menopause,”⁷⁶ in “Women’s Health,” there’s “Boiron Cyclease Menopause Tablets for Relief of Hot Flashes, Night Sweats, Irritability, and Mood Swings;”⁷⁷ and “Baby & Child [Health Care] Products”⁷⁸ include “Boiron ColdCalm Baby Single-Use Drops for Relief from Cold Symptoms of Sneezing, Runny Nose, and Nasal.”⁷⁹

82. While Defendant Amazon stocks and sells products on its own behalf, many of the products marketed on Amazon.com come from what Amazon calls “third-party sellers,” or “3P.”⁸⁰ 3P includes “independent selling partners, entrepreneurs and small businesses.”⁸¹

83. Defendant Amazon requires payment of either a monthly or per-item seller plan before it markets 3P products to consumers.⁸² For each item sold, Amazon takes a “referral fee” based on the total price of the item, inclusive of the shipping cost⁸³ and add-on charges. As a result, Amazon’s cut may be as high as 45% of the gross sale.⁸⁴

84. Defendant Amazon, for an additional fee, “stores, picks, packs, and ships orders” on behalf of nearly half of all 3P.⁸⁵

⁷⁶ https://www.amazon.com/b/ref=HPC23_5?pf_rd_r=SY9FSPAR03M5RYK5RKHH&pf_rd_p=a5a9e805-6fd9-4e4d-b916-666c517ec78d&pf_rd_m=ATVPDKIKX0DER&pf_rd_s=merchandised-search-2&pf_rd_t=&pf_rd_i=3760901&node=3760941 (as of Apr. 9, 2023).

⁷⁷ <https://www.amazon.com/Boiron-Cyclease-Menopause-Relief-Tablets/dp/B089BHX7L5> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

⁷⁸ https://www.amazon.com/gp/browse.html?rw_useCurrentProtocol=1&node=10787321

⁷⁹ <https://www.amazon.com/Boiron-Congestion-Non-drowsy-Single-use-Ingredient/dp/B06Y14SZNM> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

⁸⁰ <https://www.aboutamazon.com/news/small-business/celebrating-a-record-breaking-holiday-season-for-amazon-with-customers-purchasing-more-items-than-ever-before-from-our-selling-partners> (last visited Apr. 10, 2023).

⁸¹ *Id.*

⁸² <https://sell.amazon.com> (last visited Apr. 10, 2023).

⁸³ For those that do not pay a monthly plan, Amazon dictates the charged shipping cost even if it is lower than the actual cost.

⁸⁴ <https://sell.amazon.com/pricing#referral-fees>

⁸⁵ <https://sell.amazon.com/blog/grow-your-business/amazon-stats-growth-and-sales>

85. One such product is “Psorinum 30C Homeopathic Remedy - 200 Pellets” (“Psorinum”).⁸⁶ Psorinum, offered under the brand name Urenus®, is a nosode derived from fluid taken from blisters or skin lesions caused by the mite *Sarcoptes scabiei*; better known as, Scabies.

86. Plaintiff purchased Psorinum from Defendant Amazon who picked, packaged and shipped the product to Plaintiff with the purchased Boiron products.

87. Neither Psorinum, nor the over 1,000 homeopathic products listed under the Urenus® name on Amazon.com, are approved by FDA as safe or effective.

88. Defendant Amazon also markets products on Amazon.com through the use of “Brand Stores” that exclusively offer a particular brand’s products.⁸⁷

89. In order to maintain a brand store, a 3P or vendor must first be approved by Defendant Amazon to join the Amazon Brand Registry (“Registry”). Once a vendor joins the Registry, Defendant Amazon provides to it the ability to create a Store and also provides “benefits and features that help... protect [the] brand.”⁸⁸

90. The Boiron Brand Store exclusively markets Boiron products that are sold and shipped by Defendant Amazon, sold and shipped by 3P, and sold by 3P and picked, packed and shipped by Defendant Amazon.⁸⁹

⁸⁶ www.amazon.com/gp/product/B07DCC7DHB/

⁸⁷ <https://advertising.amazon.com/solutions/products/stores> (last visited Apr. 10, 2023).

⁸⁸ *Id.* (Defendant Amazon noting some of the “most popular features” of the Registry, including “Automated Protections,” reporting tool and access to support from “real people.”)

⁸⁹

91. In the Boiron Brand Store, Boiron products are marketed according to the specific type of injury, medical or health issue the item is represented to treat or heal:



92. Here, and throughout Amazon.com, there are more than 2,000 listings for Boiron products.⁹¹ On each Boiron product page, Defendants inform consumers that the homeopathic active ingredient has particular uses and purposes and will, in fact, cause the injury, medical or health issue to improve.

⁹⁰ <https://www.amazon.com/stores/page/F67475D8-8C7E-439D-ABE2-51D1C9E7EF95> (last visited Apr. 13, 2023).

⁹¹ https://www.amazon.com/s?k=boiron&i=hpc&rh=n%3A3760901%2Cp_89%3ABoiron&dc&crd=2XFKPNRKHU8LL&qid=1681399533&rnid=2528832011&sprefix=boiron%2Caps%2C265&ref=sr_pg_1 (last visited Apr. 10, 2023).

Boiron Euphrasia Officinalis 30C Homeopathic Medicine for Eye Discharge - 80 Pellets

Visit the Boiron Store

★★★★★ 125 ratings

Amazon's Choice for "euphrasia officinalis 30c"

Save 50% Lowest price in 30 days

List Price: \$12.99 / Count) Get Fast, Free Shipping with Amazon Prime

FREE Returns

You Save: \$1.15 (15%)

Save 3% on any 4 or more. Shop qualifying items.

Get \$60 off instantly. Pay \$0.00 \$6.54 upon approval for the Amazon Prime Store Card. No annual fee.

Flavor: 30c

Size: 80 Count (Pack of 1)

Boil over image to zoom in

CLAIMS BASED ON FDA NOT ACCEPTED MEDICATION

Euphrasia 30c

Boiron

prime

Enjoy fast, FREE delivery, exclusive deals and award-winning movies & TV shows with Prime. Try Prime and start saving today with Fast, FREE Delivery

Delivery Pickup

One-time purchase: \$6.54 (80 Count) Get Fast, Free Shipping with Amazon Prime FREE Returns

FREE delivery Wednesday, April 19 on \$25 of items shipped by Amazon

Or fastest delivery Tomorrow, April 14. Order within 1 hr 59 mins

Select delivery location

In Stock

Qty: 1

Add to Cart

Buy Now

Secure transaction

Ships from Amazon.com

Compare with similar items

- A homeopathic medicine that works naturally
- No side effects, no drug interactions, no contraindications, and no "masking" of symptoms
- Regulated as a drug by the FDA
- This medicine uses highly diluted natural substances to relieve symptoms.
- This medicine comes in quick-dissolving pellet form

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93. Defendants each have the ability to manage which of Defendant Boiron's products are sold by Defendant Amazon and its virtual shelves; each has the power (if not also the obligation) to prevent 3P from selling the items; each has the ability to choose which representations to make or not make to consumers about Boiron products.

Defendants' Deception Detailed.

94. The basis of traditional homeopathy holds two central claims as absolute: (1) an item that harms will cure similar harms and, (2) the more dilute that source item is, the more powerful its curative effects will be.

95. For each Boiron product marketed, sold or delivered, Defendants represent to consumers, or leave them to believe, that:

- (i) the *source item* is an effective, cause-in-fact treatment for a specific injury, illness or medical condition;

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<https://www.amazon.com/Boiron-Euphrasia-Officinalis-Homeopathic-Discharge/dp/B000FJ2MHA> (Boiron Euphrasia Officinalis 30C Homeopathic Medicine for Eye Discharge) (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

- (ii) the *active ingredient*, made from the source item, is an effective, cause-in-fact treatment for a specific injury, illness or medical condition; and,
- (iii) the *product*, containing the active ingredient made from the source item, will treat or heal a specific injury, illness or medical condition and is the cause-in-fact of such treatment or healing.

96. Defendants’ representations, individually and together, are deceptive and are made by each defendant, jointly and independently.

97. Consumers are misled, or left with the false impression, that Defendants’ claims regarding the purposes, uses, benefits and effects of each Boiron product are credible; supported by substantial and reliable scientific evidence. They are not; they cannot be.

98. Defendants do not substantiate any representation that a source item is actually effective for its purported uses; nor can they;⁹³ nor do Defendants qualify their claims—or even attempt to—such that consumers would be fully informed. The same is true of active ingredients, and each Boiron product as a whole, since both are built on this same failure.

99. And, even if there were reliable evidence that a source item has the claimed curative effect, Boiron products contain ingredients so diluted that no molecules of the source item remain.

100. Indeed, according to Defendant Boiron, it is not possible for Defendants to even identify the presence of the item in each Boiron product, let alone substantiate its curative properties:

⁹³ See, e.g., Gerald Gartlehner et al., Assessing the Magnitude of Reporting Bias in Trials of Homeopathy: A Cross-Sectional Study and Meta-Analysis, 2022 BMJ Evidence-Based Med. (meta-analysis finding those studies which support homeopathic efficacy are biased and unreliable).

Work solution : What test should be performed on our Ophthalmic preparation, at release ?

- ✓ ■ Pharmaceutical dosage form tests
 - Appearance of solution
 - pH
 - NaCL content : Isotonicity similar to lacrymal fluide
 - Control of sterility
- ✗ ■ Main compounds-> Too low to be identified or quantified in drug product.

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“Main compounds-> Too low to be identified or quantified in drug product.”

101. Still, and despite no material differences among Boiron products, Defendants represent to consumers that

- i. each homeopathic dilution of the active ingredient in each Boiron product (e.g., “6C,” “30C”) is specifically and uniquely tailored to successfully treat a particular issue;
- ii. the uses and purposes of each active ingredient and each Boiron product (e.g., Magnesia phosphorica for the treatment of “writers cramp,”⁹⁵ but Arnica for the treatment of “musician cramps”⁹⁶) is specifically and uniquely tailored to successfully treat a particular issue; and,
- iii. each individual Boiron product is specifically and uniquely tailored to successfully treat a particular issue.

102. Through exacting differentiation of Boiron products, and that each has explicit doses and directions, Defendants deceive consumers by representing that there is a legitimate, proven basis for the claims and promises associated with each product.

⁹⁴ “Moves toward FDA requirements: Establishing homeopathic finished products specification and shelf life,” presentation by Boiron Regulatory Affairs Officer Fanny Guillot at AHHP Summit on Challenges & Solutions in Quality & Safety of Homeopathic Drug Products (2019).

⁹⁵<https://www.boironusa.com/mf/?category=Joint%20and%20Muscle%20Pains&mainsymptom=Writers%20cramp&addsymptom=With%20shooting%20pain> (last visited Apr. 13, 2023).

⁹⁶ <https://www.boironusa.com/mf/?category=Joint%20and%20Muscle%20Pains&mainsymptom=Musician%20cramps> (last visited Apr. 13, 2023).

103. For instance, to treat dizziness, Defendants recommend the “Homeopathic Medicine for Dizziness,” Chininum Salicylicum 30C.⁹⁷ Defendants also market:

- for dizziness “Triggered by Moving The Head,” Conium Maculatum 3C;⁹⁸
- for dizziness “associated with Motion Sickness Due to Travel, Amusement Rides, and Video Games or VR,” MotionCalm;⁹⁹
- for dizziness with headaches, Chenopodium Anthelminticum 9C;¹⁰⁰
- for dizziness “with Headaches in The Back of The Head,” Iberis Amara 30C;¹⁰¹
- for dizziness or headaches, Cyclamen EUR 15C;¹⁰²
- for dizziness “Worsened by Damp Weather,” Salicylicum Acidum 6C;¹⁰³
- for dizziness “& Fatigue Improved by Fresh Air,” Viscum Album 30C.¹⁰⁴

104. Defendants’ deception, achieved through falsities, omission, ambiguity and innuendo, induces consumers to purchase one or more materially identical items. And, whether a consumer uses one pellet of one Boiron product, three bottles of three different Boiron products, or no Boiron products at all, each has the same cause-in-fact effect: none.

⁹⁷ <https://www.amazon.com/Boiron-CHININUM-SALICYLICUM-30C-MD/dp/B00IZ0NMX4> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

⁹⁸ <https://www.amazon.com/Boiron-CONIUM-MACULATUM-3C-MD/dp/B00IZ0SRK2> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

⁹⁹ <https://www.amazon.com/Boiron-MotionCalm-Dizziness-associated-Amusement/dp/B09RC6TX7H> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

¹⁰⁰ <https://www.amazon.com/Boiron-CHENOPODIUM-ANTHELMINTICUM-9C-MD/dp/B00IZ0NH34> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

¹⁰¹ <https://www.amazon.com/Boiron-Iberis-Amara-30C/dp/B0006ONEOY> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

¹⁰² <https://www.amazon.com/Boiron-Cyclamen-Europaeum-15c-Count/dp/B07N11X7JM> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

¹⁰³ <https://www.amazon.com/Boiron-Salicylicum-Acidum-6C-pellets/dp/B0006ONGHO> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

¹⁰⁴ <https://www.amazon.com/Boiron-VISCUM-ALBUM-30C-MD/dp/B00IZKRH2G> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

105. Indeed, that Defendants recommend Boiron products for the treatment of self-limiting conditions highlights the deception since, by their very nature, these maladies resolve on their own, often after a short period of time.¹⁰⁵

106. Alternatively, to the extent Defendants do not make specific claims as to the uses, purposes and effects of each Boiron product, Defendants nevertheless deceive consumers. Defendants do not effectively dissuade consumers—or even attempt to—from the belief that the items actually do what they are represented to do.

107. In the event a consumer is left with the impression a Boiron product, let alone its active ingredients, somehow brought about a promised result, Defendants’ deception is not lessened. Irrespective of the product, uses, purposes or the claims, the active ingredient or source item is not the mechanism of any healing, treatment, remedy or relief; nor do Defendants have a credible basis for so claiming.

108. Whatever the cause may be—the self-limiting-nature, placebo effect, increased attention, suggestion, change in harmful or unpleasant external factors or simply a difference in the perception of reality—the purchase and use of a Boiron product was not it. A perceived outcome does not erase Defendants’ prior deceit since, simply, a Boiron product is neither medicine nor treatment.

109. Further, Boiron products are said to be “based on traditional homeopathic practice.”¹⁰⁶ Therefore, Defendants necessarily represent to consumers that the product’s purposes and uses are supported by “provings” conducted by Defendants, or they have credible evidence of the same.

¹⁰⁵ See, Footnote 65, *infra*. (study noting that perceived effects are “not surprising since the disease lasts only 5-10 days even without medication.”)

¹⁰⁶ See ¶147, *infra*.

110. Since Defendants claim one of the active ingredients in Boiron ColdCalm, *Gelsemium sempervirens*, “relieves headaches associated with colds,” either Defendants simply chose the claim arbitrarily, or they administered the other source items along with yellow jessamine—the source plant that contains deadly strychnine-related toxins—to children and determined it causes headaches (associated with colds).

111. This feature of “traditional homeopathy” highlights the arbitrary nature of Defendants’ representations. Absent the provings—that is, administering toxic plants, animal venom, noxious gasses, controlled substances, heavy metals, radioactive materials, bacteria, parasites, virus particles, excretions, and even urethral secretions of persons infected by a sexually transmitted disease, or combinations thereof, to healthy individuals—Defendants must simply make it up as they go.

112. The resulting arbitrariness means that, to a consumer who suffers a sty on the upper eyelid, Defendant Boiron recommends and sells Optique 1® Eye Drops¹⁰⁷ and Staphysagria 6C (highly toxic Lice-bane).¹⁰⁸ But if the same consumer has a recurrent sty, Boiron recommends and sells Optique 1® Eye Drops and Silicea 6C (silica).¹⁰⁹

¹⁰⁷ Optique 1® is an unapproved homeopathic eye drop that contains: *Calcarea fluorica* 10X (claims to relieve eyestrain and fatigue characterized by flickering light); *Calendula officinalis* 4X (claims to relieve eye dryness associated with smoke or other airborne irritants); *Cineraria maritima* 6C (claims to soothe sensitivity to light and glare); *Euphrasia officinalis* 4X (claims to relieve burning, irritated eyes); *Kali muriaticum* 10X (claims to alleviate gritty sensation (feeling of sand in the eye)); *Magnesia carbonica* 10X (claims to relieve sharp and brief eye irritation associated with eye fatigue); *Silicea* 10X (claims to relieve tired eyes) (<https://www.boironusa.com/product/optique-1-eye-drops/>).

¹⁰⁸ <https://www.boironusa.com/mf/?category=Eye%20care&mainsymptom=Stye&addsymptom=On%20upper%20eyelid> (Defendant Boiron claims Staphysagria 6C “relieves nodes, chalazia and styes on the eyelids.”) (last visited Apr. 13, 2023).

¹⁰⁹ <https://www.boironusa.com/mf/?category=Eye%20care&mainsymptom=Stye&addsymptom=Recurrent> (last visited Apr. 13, 2023).

113. Defendants represent that Optique 1 will also treat “Dry Eyes, Allergy Symptoms, Itchy, Red, Burning Eyes, [and] Computer Eye Strain¹¹⁰ but that Staphysagria 6C is instead “Medicine for Surgical Wounds”¹¹¹ while Silicea 6C is “Medicine for Fatigue.”¹¹²

114. To further Defendants’ deception, each “active ingredient” is referred to solely in its “Latinized” designation, not its commonly used name; this is a choice, not a requirement.

115. Consumers are left with the false impression that the source article is or was transformed into an ingredient that actively serves the uses or purposes for which it is marketed and sold, rather than the ordinary item they would recognize and understand.

116. For instance, the Boiron product *Saccharum officinale* is marketed for “nervous agitation in children after overindulgence.”¹¹³ Consumers would recognize, and fully understand, what *Saccharum officinale* actually is if Defendants disclosed its common name: “table sugar.”

117. Aware of the truth, no reasonable consumer would purchase heavily diluted sugar in the form of a pellet, which itself is entirely made of sugar. Particularly when Defendants sell the 30C dilution for between \$8 and \$9 and the 200CK dilution for upwards of \$11.99.¹¹⁴

118. Along with the active ingredient, on Boiron products and related marketing materials, Defendants represent that “[t]he letters ‘HPUS’ indicate that the component in this product is officially monographed in the Homeopathic Pharmacopeia of the United States.”

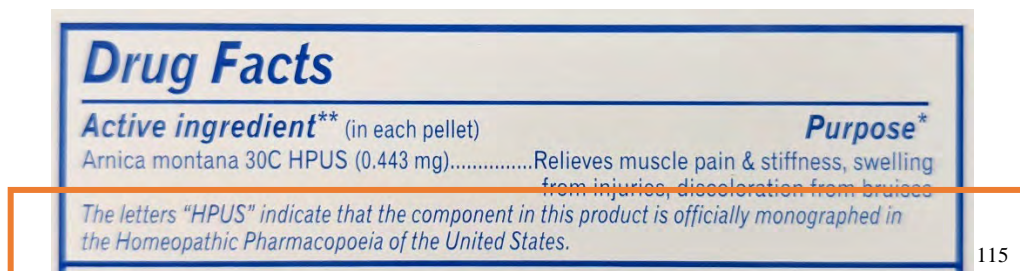
¹¹⁰ https://www.amazon.com/s?k=optique+1&i=hpc&crd=193IHMEXC0AHI&srefix=optique+1%2Chpc%2C166&ref=nb_sb_noss_2 (sold by and ships from Amazon.com) (last visited Apr. 10, 2023).

¹¹¹ <https://www.amazon.com/Boiron-Staphysagria-Homeopathic-Medicine-Surgical/dp/B000FJ1EP6> (sold by and ships from Amazon.com) (last visited Apr. 10, 2023).

¹¹² <https://www.amazon.com/Boiron-Silicea-Homeopathic-Medicine-Fatigue/dp/B078WB6S78/>

¹¹³ <https://www.boironusa.com/product/saccharumofficinale> (last visited Apr. 13, 2023); <https://www.amazon.com/Boiron-SACCHARUM-OFFICINALE-30C/dp/B001ZKZUVG> (an Amazon’s Choice product) (sold by and ships from Amazon.com) (last visited Apr. 14, 2023).

¹¹⁴ *Id.*



“The letters ‘HPUS’ indicate that the component in this product is officially monographed in the Homeopathic Pharmacopoeia of the United States.”

119. The statement and Defendants’ use of it are deceptive. Defendants represent to consumers, or leaves them to believe, that the ingredient was evaluated and approved by a governmental, regulatory body. So too do Defendants falsely represent that inclusion in the HPUS is a precursor to the sale such that no other “official” approval is required.

120. In reality, the HPUS is owned by a private organization—the Homœopathic Pharmacopœia Convention of the United States (“HPCUS”)—which is left free to operate without oversight and works hand-in-hand with manufactures like Defendant Boiron.¹¹⁶

121. Defendants’ representation and omission leave consumers with the false and mistaken impression that items in the HPUS are included only after their effectiveness is proven; confirmed by rigorous scientific examination supported by substantial, compelling and reliable evidence.

122. Indeed, manufacturers like Defendant Boiron are able to simply provide their product’s “in-house monograph” to HPCUS for inclusion in the HPUS—the tail wagging a pretend dog.

¹¹⁵ Photo of a box of Arnica purchased by Plaintiff. Boiron single products contain a materially similar statement: “The letters ‘HPUS’ indicate that the component(s) in this product is (are) officially monographed in the Homeopathic Pharmacopoeia of the United States.”

¹¹⁶ <https://www.hpus.com> (last visited Apr. 13, 2023).

123. Defendants deceive consumers, through omission, innuendo or ambiguity, into the belief that an HPUS monograph sets out the use, purpose, symptoms, appropriate dosage and conditions that the ingredients and product as a whole are able to treat.

124. By representing to consumers that they have been officially approved, Defendants lend undeserved, unearned credibility to their claims. They leverage the fact that consumers recognize and are familiar with FDA OTC monographed medicines¹¹⁷—items such as Tylenol and Contac that *have been* shown to be safe and effective.¹¹⁸ Mimicking the information these science-backed items must convey, Defendants represent and compel the mistaken belief that the HPUS monograph is equal to an FDA monograph; that it carries the same assurances of effectiveness.

125. HPUS monographs essentially just state how a homeopathic item should be prepared, e.g., how much of the purulent secretion from a gonorrhea infected person should be added to distilled water to end up with *Medorrhinum*. Defendants rely on consumers’ universal lack of knowledge about, and access to, the HPUS to induce the purchase of Boiron products.

126. As Defendants cultivate and abuse the false impressions, they withhold from consumers a materially significant conflict of interest between HPCUS and Defendant Boiron—that is, the chairman of the HPCUS Monograph Review Committee, Mark Land, is Boiron’s Vice President of Government and Regulatory Affairs.¹¹⁹ The HPUS official monograph, therefore, would more accurately be described as an “HPUS monograph by Boiron.”

¹¹⁷ For a list of current FDA OTC Monographs, see <https://www.accessdata.fda.gov/scripts/cder/omuf/index.cfm>

¹¹⁸ See ¶78, *supra*.

¹¹⁹ HPCUS “Service to Homeopathy Award” Presented to Mark Land, Chain Drug Rev., May 8, 2020 (accessible at <https://www.chaindrugreview.com/hpcus-service-to-homeopathy-award-presented-to-mark-land> (last visited Apr. 13, 2022)). Land is also the current President of the homeopathy industry trade and lobbying group, American Association of Homeopathic Pharmacists—a partner organization of HPCUS. Board of Directors, <https://www.theaahp.org/who-is-aahp/#board> (last visited Apr. 13, 2022).

127. And, should the rare consumer actually search for an ingredient’s “official monograph,” the consumer will find that the HPUS is not even published in hardcopy, rendering it nearly impossible to learn the truth about the product. In order to consult the HPUS, a consumer must access an online database. But first, the consumer would be forced to pay HPCUS \$2,000 for the privilege of learning about an \$8.49 Boiron product—a fact Defendants know or should know.¹²⁰

128. Defendants represent to consumers that Boiron products have “no known drug interactions.” They deceive consumers regarding the safety of homeopathic ingredients by conveying that they and the items they include are inherently safe and are a safe alternative to FDA approved medicine. Consumers are led to believe that homeopathic products are risk-free when, in reality, adverse effects can and do occur,¹²¹ and the lack of a corresponding FDA monograph (or NDA approval) means the agency has not confirmed the products are effective and safe.

129. On Boiron products, the inactive ingredients are listed, in order, as “lactose, sucrose.” Consumers are informed that that Boiron products’ “pleasant taste comes from very small amounts of lactose and sucrose — inactive ingredients that are essential to the medicine’s quality.”¹²²

¹²⁰ What is the HPUS Online Database?, <https://www.hpus.com/what-is-the-hpus-online-database.php> (last visited Apr. 10, 2023). HPCUS states it will allow limited, no cost access to an “educator, student or researcher,” https://www.hpus.com/online_database/register_action.php, but does so at its sole discretion. HPCUS denied CFI’s request for access.

¹²¹ *See, e.g.,* Trine Stub et al., Adverse Effects of Homeopathy, What Do We Know? A Systematic Review and Meta-Analysis of Randomized Controlled Trials, 26 *Complementary Therapies Med.* 146-63 (2016)

(Meta-analysis of homeopathic trials finding 68% of trials reported adverse effects).

¹²² Easy Guide to Homeopathic Medicines, *supra* at 9.

130. Yet, this is deception wrought through falsity, misrepresentation and ambiguity, about the contents of Boiron products.

131. At the outset, traditional homeopathy mandates, or places a premium, on the use of lactose (i.e., milk sugar) to which Boiron products do not adhere:

THE PREPARATION OF DRUGS—TRITURATIONS.
Trituration is that process by which the drug particles are still further broken up and isolated. This is accomplished by means of an inert substance, viz., sugar of milk, it being mainly employed in the case of metals, a majority of chemical salts and dried vegetable substances.

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132. This is due, in part, to the fact that Boiron products do not contain “very small amounts” of sugar as claimed. Instead, they are mostly, if not entirely, sugar.

133. While Boiron products list lactose in the inactive ingredients section as the first ingredient, and Defendants represent as such, the products contain no, or almost no, lactose—the cost and value of lactose being substantially greater than that of sucrose (i.e., table sugar).

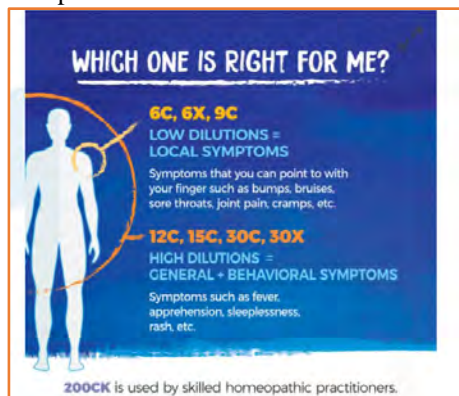
134. Defendants represent false and deceptive statements to consumers and deprive them of the Boiron product as advertised, instead delivering a lesser item.

135. Defendants also rely on consumers’ common understanding that inactive ingredients are listed in descending order of predominance. Accordingly, consumers believe Boiron products contain more valuable and favored lactose than common sucrose when they do not.

¹²³ The United States Homœopathic Pharmacopœia (1 ed. 1878), 24, 27.

136. Boiron products are marketed with various “dilutions.” Defendant Boiron explicitly represents, albeit with some inconsistency, that different dilutions will be “right” for a particular condition:

Compare:

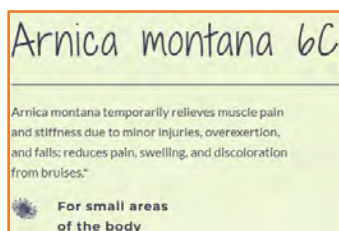


9C for symptoms “you can point to with your finger”¹²⁵

with:

Here's a quick guide to using homeopathic medicines: Low dilutions, such as 6X or 6C, will relieve local symptoms — a symptom you can point a finger at (e.g., an insect bite or bruise). Medium dilutions, such as 12X, 9C or 12C, will relieve general symptoms — more than one symptom in more than one location (e.g., muscle aches and pains). High dilutions, such as 30X or 30C, will relieve general symptoms — more than one symptom in more than one location with possible behavioral or emotional symptoms (e.g., a very high fever and chills, accompanied by agitation or sleeplessness).

6X or 6C for symptoms “you can point a finger at” and 9C “will relieve general symptoms”¹²⁴



126

“small areas of the body”



127

“large areas of the body”



128

“multiple areas of the body”

137. Consumers are charged a significantly greater monetary amount for more highly diluted items. For instance, Defendants sold the 30C dilution of Staphysagria to Plaintiff for \$7.49 while the 1M dilution costs \$12.34¹²⁹—a nearly 65% increase.

¹²⁴ What is the difference in dilution levels?, <https://www.boironusa.com/faq/what-is-the-difference-in-dilution-levels> (last visited Apr. 3, 2023).

¹²⁵ Footnote 57, *supra*.

¹²⁶ <https://www.arnicare.com/about/arnica-pellets/arnica-montana-6c> (last visited Apr. 3, 2023).

¹²⁷ <https://www.arnicare.com/about/arnica-pellets/arnica-montana-30c> (last visited Apr. 3, 2023).

¹²⁸ <https://www.arnicare.com/about/arnica-pellets/arnica-montana-200ck> (last visited Apr. 3, 2023).

¹²⁹ <https://www.amazon.com/Staphysagria-1M-Boiron-80-Pellet/dp/B0006NYJ4Y> (sold by and ships from Amazon.com) (last visited Apr. 13, 2023).

138. Defendants represent to consumers, or leave them to believe, that there is a material difference between each dilution. After all, there must be a legitimate reason for the recommendations or there would not be so many options. Once again, the arbitrary nature of Defendants' claims about Boiron products, specifically the product's dilutions, is laid bare.

139. Defendants' explicit recommendations of which product a consumer should use to treat a particular ailment, coupled with the specific differentiations, are used to convince, or leave consumers with the mistaken belief, that each Boiron product, through its ingredients, will actually achieve the promised results. However, the uses and recommendations for each product are no more than arbitrarily chosen marketing.

140. Defendants also deceptively charge a premium for a higher dilution Boiron product, even though it is in all material aspects identical to a less expensive item. Purchasing and using either product will result in the same outcome—but for its effect on a consumer's bank account—since each dilution contains the same amount of detectable source item (that is, none).

141. More so, Defendants market and sell Boiron products without knowing that the product actually contains the claimed dilution. Boiron products are represented as having a specific ratio of source item to dilutant. As Defendants are confined to the physical realities of the universe, they cannot state with any amount of confidence, let alone certainty, that the promised ratio is correct.¹³⁰

¹³⁰ Oscillo is sold at the 200C dilution—1 part *Anas barbariae* to 99 parts dilutant, the result of which is added as 1 part to 99 parts dilutant and repeated so that there are 200 total sequential dilutions. The final ratio of *Anas barbariae* to dilutant is represented as 1:10⁻⁴⁰⁰ (10 followed by 400 zeros). By comparison, a ratio of one molecule of Oscillo to the entirety of the universe would equate to about a 40C dilution, which is significantly less dilute than the Boiron product. *See*, Park, R. L., *Superstition: Belief in the Age of Science*. Princeton University Press, 2008, at 146.

142. Defendants represent that each Boiron product is “medicine.”¹³¹ On marketing materials for, and on Boiron products themselves, the word is not used colloquially or metaphorically but explicitly, with deceptive intent to deceptive effect. Defendants do not use the word to convey to consumers what the Boiron product “is,” but rather to mislead consumers about what the product “does.”

143. That the term “homeopathic” is included along with “medicine” neither lessens nor negates the deception. At the outset, the term is ambiguous and Defendants make no effort to elucidate consumers as to its meaning, or what they intend it to mean.¹³²

144. Defendants also know, or should know, that even were a consumer aware of the term “homeopathy,” the vast majority of them do not understand it. Further still, for a significant number of consumers, the term does not even register.

145. Indeed, recent data collected by the homeopathy industry indicates that:

- Of those who purchased a brand of homeopathic products, 85% did not know it was homeopathic;
- While just 15% of women consumers believed they purchased homeopathic products, 37% actually did—an 84% difference between aware and unaware purchasers; and,
- Although 91% of purchasers are aware of the term “homeopathic,” the same consumers do not know what homeopathy is or how it works.

¹³¹ “Medicine” is defined as “[t]he science and art of diagnosing and treating disease or injury and maintaining health. The branch of this science encompassing treatment by drugs, diet, exercise, and other nonsurgical means,” while “treatment” is defined as “[t]he use of an agent, procedure, or regimen, such as a drug, surgery, or exercise, in an attempt to cure or mitigate a disease, condition, or injury. The agent, procedure, or regimen so used.” The American Heritage® Medical Dictionary (2007).

¹³² See ¶53, *supra*.

Awareness is Growing... SHOPPER "BUYING" NATURAL, SAFE, AND EFFECTIVE

- 91% of purchasers are aware of the term *homeopathic* by word of mouth... but they don't know what it is or how it works!

Natural, Safe, Effective

- of those buying the brand only 15% know it's homeopathic!
- 20% of those buying OTC cold remedies buy BOTH homeopathic & allopathic while only 9.2% buy homeopathic only
- 15% of all women believe they have purchased a homeopathic treatment in the last 24 months...37% DID!

The Emerson Group
A Consumer Products Company

*WSL Survey 3,092 Respondents. *National Consumer Panel IR Total US All Outlets

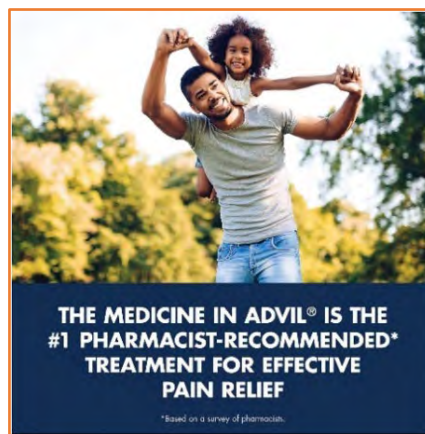
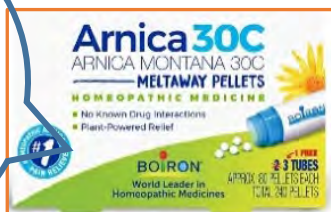
AMERICAN ASSOCIATION of HOMEOPATHIC PHARMACISTS
Protecting Integrity • Doubling Impact • 2020

146. In addition to using consumers' confusion to their detriment, Defendants represent that Boiron products are no different from science-based medicine; clinically proven safe and effective by substantial competent evidence; capable of treating health conditions, illness and injury.

147. From the declaration that the Boiron products are medicine, to endorsements by medical professionals,¹³⁴ to the use of familiar terms from approved, science-based medicines and monographs, Defendants spins a tale intended to mislead and deceive:

¹³³ The State of Homeopathy, The Emerson Group and American Association of Homeopathic Pharmacists (2020).

¹³⁴ See, ¶58, *supra*.



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Drug Facts	
Active ingredient** Arsenic trioxide (0.0001 g) To reduce the duration and severity of flu-like symptoms	Purpose* To reduce the duration and severity of flu-like symptoms
The letters HPUS indicate that this ingredient is officially included in the Homeopathic Pharmacopoeia of the United States.	
Uses* temporarily relieves flu-like symptoms such as: body aches • headache • fever • chills • fatigue	
Warnings Ask a doctor before use in children under 2 years of age. Stop use and ask a doctor if symptoms persist for more than 3 days or worsen. If pregnant or breast-feeding, ask a health professional before use. Keep out of reach of children.	
Directions Adults and children 2 years of age and older: Dissolve entire contents of one tube in the mouth every 6 hours, up to 3 times a day. Children under 2 years of age: Ask a doctor.	
Other information Do not use if glued carton end flaps are open or if the tray seal is broken. Each 0.04 oz dose (1 g) contains 1 g of sugar. Store at 59-77°F (50-25°C).	
Inactive ingredients lactose, sucrose	
Questions or comments? www.oscillo.com or www.boironusa.com info@boiron.com 1-800-BOIRON-1 (1-800-264-7661) Distributed by Boiron Inc., 6 Campus Boulevard, Newtown Square, PA 19073-3267	

*These "Uses" have not been evaluated by the Food and Drug Administration.
**C, K, CK, and X are homeopathic dilutions: see www.boironusa.com for details.

Drug Facts	
Active ingredients (in each gram) Bacitracin Zinc (400 units) Neomycin Sulfate (3.5 mg) Polymyxin B Sulfate (15,000 units)	Purpose First aid antibiotic First aid antibiotic First aid antibiotic
Use first aid to help prevent infection in minor: cuts • scrapes • burns	Warnings For external use only. Do not use: • if you are allergic to any of the ingredients • in the eyes • over large areas of the body Ask a doctor before use if you have: • deep or puncture wounds • animal bites • serious burns Stop use and ask a doctor if: • you need to use longer than 1 week • condition persists or gets worse • rash or other allergic reaction develops
Drug Facts (continued) Keep out of reach of children. If swallowed, get medical help or contact a Poison Control Center right away. Directions Clean the affected area. Apply a small amount of this product (an amount equal to the surface area of the tip of a finger) on the area 1 to 3 times daily. May be covered with a sterile bandage. Other information Store at 20° to 25°C (68° to 77°F). Inactive ingredients Petrolatum, Gossypium Herbaceum (Cotton Seed Oil), Olea Europaea (Olive Fruit Oil), Theobroma Cacao (Cocoa Seed Butter), Sodium Pyruvate, Tocopheryl Acetate. Questions? Call Toll Free 800-222-9182 or Outside US, dial collect 215-773-9755. *Formulated with a unique base of cocoa butter, cottonseed oil, olive oil, sodium pyruvate, vitamin E (tocopheryl acetate), and petrolatum.	

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- HEAD + BODY ACHES
- FEVER + SORE THROAT
- COUGH
- NASAL CONGESTION
- MUCUS + CHEST CONGESTION

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¹³⁵ Advil Pain Reliever and Fever Reducer, Pain Relief Medicine with Ubuprofen 200mg for Headache, Backaches, Menstrual Pain and Joint Pain Relief, <https://www.amazon.com/Advil-Reliever-Reducer-Ibuprofen-Temporary/dp/B0000VLK4O> (last visited Apr. 13, 2022).

¹³⁶ Neosporin, First Aid Antibiotic Ointment, <https://www.walmart.com/ip/Neosporin-Faster-Result-Antibiotic-Original-Ointment-0-5-Oz/125597456> (last visited Apr. 13, 2022).

¹³⁷ Neosporin, First Aid Antibiotic Ointment, <https://www.walmart.com/ip/Neosporin-Faster-Result-Antibiotic-Original-Ointment-0-5-Oz/125597456> (last visited Apr. 13, 2022).

¹³⁸ Tylenol Cold + Flu Severe Medicine Caplets for Fever, Pain, Cough & Congestion, <https://www.amazon.com/TYLENOL-Symptom-Relief-Caplets-Acetaminophen/dp/B009ITR4EY> (last visited Apr. 13, 2022).



148. Tucked away on various webpages, marketing materials and products, Defendants utilize what the homeopathy industry generally refers to as the “AAHP Disclaimer:”¹³⁹



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“Claims based on traditional homeopathic practice, not accepted medical evidence. Not FDA evaluated”

¹³⁹ <https://www.theaahp.org/compliance/testing-the-new-aahp-disclaimer-for-effectiveness> (last visited Apr. 13, 2022) (AAHP, the American Association of Homeopathic Pharmacists, is an industry trade and lobbying group to which Boiron belongs. The current President of AAHP is Mark Land, Boiron’s Vice President of Government and Regulatory Affairs and chairman of the HPCUS Monograph Review Committee).

¹⁴⁰ Photo of three Boiron Blue Bottles of Arnica 30C purchased by Plaintiff, arranged so that text that wrapped around the bottles is visible in its entirety.

149. Defendants do not utilize this statement as a warning to consumers nor intend it to be one. Instead, they palter and equivocate. The statement is intentionally misleading, replete with omission, innuendo and ambiguity intended to deceive.¹⁴¹

150. The representation “Not FDA evaluated” is by all accounts true but it is not the whole truth and it is deceptive.

151. Consumers are left to guess what the FDA did not evaluate. Whether it refers to a Boiron product’s claimed purposes or uses, or to the product in its entirety, the FDA did not evaluate any of the foregoing.¹⁴²

152. Boiron products were not evaluated because they are not approved—no Boiron product has passed through the requisite FDA approval process and therefore no Boiron product has been proven safe and effective, nor its quality assured.¹⁴³ Nevertheless, Defendants market the products as direct replacements for approved OTC products, both implicitly and explicitly.

153. The partly true statement is intended to obfuscate and avoid the disclosure of relevant, material facts.

154. Defendants lead consumers to believe that it was not required to have each Boiron product evaluated and approved by the FDA and it deprives consumers of the full truth—Boiron

¹⁴¹ See, Health Products Compliance Guidance, Federal Trade Commission’s Bureau of Consumer Protection (2022) (available at https://www.ftc.gov/system/files/ftc_gov/pdf/Health-Products-Compliance-Guidance.pdf) (last accessed Apr. 14, 2023).

¹⁴² See, ¶155, *infra*.

¹⁴³ “Protect Your Family From Fraudulent Flu Products,” <https://www.fda.gov/consumers/consumer-updates/protect-your-family-fraudulent-flu-products> (stating “[t]here are no FDA-approved homeopathic products. Homeopathic products sold in the U.S. have not been approved by the FDA for any use and may not meet modern standards for safety, effectiveness, and quality.”) (last visited Apr. 13, 2023).

products are not proven safe or effective, on their own or relative to products that passed through the New Drug Application (“NDA”) process.¹⁴⁴

155. Boiron products are themselves, or they contain, items defined by federal law as “drugs”¹⁴⁵ and therefore are required to obtain FDA approval through the NDA process.¹⁴⁶

156. An NDA is used, in part, to approve “drugs shown to be safe and effective” and entails the evaluation by the FDA of substantial scientific support.¹⁴⁷ Since each Boiron product states that the item was not evaluated by the FDA, Defendants admit, or must admit, that no Boiron product is approved by the FDA.¹⁴⁸

157. This means, but consumers do not know, that the FDA and an expert panel of chemists, statisticians, microbiologists, pharmacologists and medical doctors did not determine Boiron products are safe and effective.

158. There was no authoritative confirmation of Boiron products’ behavior in the body; no authoritative confirmation that any of the product’s labeling is accurate; no authoritative confirmation that any of the product’s benefits outweigh the risks of use; no authoritative confirmation that Boiron products are adequately manufactured to maintain strength, quality and purity; no authoritative confirmation that any of the products are safe and effective; and, no authoritative confirmation that the claims made about Boiron products are backed by clinical trials supported by substantial, competent evidence.¹⁴⁹

¹⁴⁴ See, 21 C.F.R. §§ 314.1, *et seq.*

¹⁴⁵ See, 21 U.S.C. § 321

¹⁴⁶ See, 21 C.F.R. §§ 314.1, *et seq.*

¹⁴⁷ 21 C.F.R. § 314.50

¹⁴⁸ Whether or not Defendants are in violation of federal law is not at issue. The fact that Boiron products are not evaluated and not approved renders Defendants’ statements deceptive.

¹⁴⁹ See, e.g., 21 C.F.R. §§ 314.1, *et seq.*

159. Reasonable consumers would not knowingly purchase Boiron products, while eschewing approved products, especially at a much greater cost, if they were aware of the complete truth. These crucial facts are omitted, while consumers are distracted with a deceptive “disclosure.”

160. Defendants misrepresents that Boiron products are based on traditional homeopathic practice.¹⁵⁰

161. Defendant Boiron declares,

“With a rigorous scientific approach, Samuel Hahnemann – the doctor behind the advent of homeopathy - precisely defined the various phases in the manufacturing process. Today, the quality of homeopathic medicines still depends on compliance with this unique process, which we master every step of the way.”¹⁵¹

162. Defendants attempt to launder the otherwise worthless Boiron products by attaching the term “rigorous scientific approach” to the vagaries of “homeopathy”—a term that carries little if any meaning to the majority of consumers.¹⁵²

163. Still, Boiron products are a far cry from Hahnemann’s theories and, to the extent they do actually follow Hahnemann’s orthodoxy, Defendants obscure the overwhelming number of fallacies inherent in his theories.

164. Nevertheless, by referring to Boiron products as being based on “traditional...practice,” Defendants represent that Boiron products are time-tested to be effective. They are not. Consumers would not purchase Boiron products if they were made fully aware of

¹⁵⁰ See, FTC’s Health Products Compliance Guidance, 28 (declaring that “claims for products based on traditional use are subject to the same requirement of substantiation in the form of competent and reliable scientific evidence as any other product [and i]f there is a significant difference between the traditional use of the product and the marketed product, a ‘traditional use’ claim isn’t appropriate.”).

¹⁵¹ Boiron, Inc., Reliability of Homeopathic Medicine, An Essential Requirement, 5.

¹⁵² See ¶144, *supra*.

what homeopathy really is, how it was created, and that it, and Boiron products, are based on unproven theories no different from magic.¹⁵³

165. Defendants double down on the deception by stating “claims ... not [based on] accepted medical evidence.”¹⁵⁴ This message is not that Boiron products are unproven, pseudoscientific panacea. Rather, it represents to consumers that there is scientific evidence of the truthfulness of the claims; it just is not accepted by “the others,” those who do not adhere to homeopathy’s theories.

166. More so, Defendants again tell consumers only a part of the truth. AAHP well states the message Boiron intentionally obscures and fails to disclose to consumers:

“the homeopathic product claim was not based on science.”¹⁵⁵

167. The listing for Boiron Arnica in the National Drug Code Directory,¹⁵⁶ but not used by Defendants, further rounds out the truth withheld from consumers,

“This homeopathic product has not been evaluated by the Food and Drug Administration for safety or efficacy. FDA is not aware of scientific evidence to support homeopathy as effective.”¹⁵⁷

¹⁵³ See, e.g., ¶144, *supra*.

¹⁵⁴ See, FTC’s Health Products Compliance Guidance, 29 (declaring that “[a] claim that suggests a health-related benefit for which there isn’t competent and reliable scientific evidence must clearly communicate the lack of scientific evidence” and “shouldn’t undercut a disclosure about the lack of science with additional positive statements, consumer endorsements, images, or other elements of the ad suggesting the product is effective.”); *see, also*, Footnote 140, *supra*.

¹⁵⁵ Testing the New AAHP Disclaimer for Effectiveness, <https://www.theaahp.org/compliance/testing-the-new-aahp-disclaimer-for-effectiveness> (last visited Apr. 13, 2023) (emphasis added).

¹⁵⁶ National Drug Code Directory, <https://www.fda.gov/drugs/drug-approvals-and-databases/national-drug-code-directory> (last visited Apr. 13, 2023).

¹⁵⁷ National Institutes of Health DailyMed, Label: ARNICA- arnica montana pellet, <https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=1ce3fd1f-24f8-491c-a0ae-087ea3d20040&audience=consumer> (last visited Apr. 14, 2023).

Analyses of Purchased Products Confirm Defendants' Deceit.

168. Plaintiff purchased four Boiron products marketed and sold by Defendants: Oscillo, Staphysagira, Phosphicum and Arnica. Two samples of each item were analyzed using Fourier transform infrared spectroscopy ("FTIR") and scanning electron microscopy and energy dispersive X-ray spectroscopy ("SEM-EDS"). The analyses, respectively, were used to determine the organic and inorganic compounds within each sample.

169. The results of the analyses confirm Defendants' deceptive acts.

170. Specifically, the FTIR measurements for each sample, and therefore the samples' components, indicate a greater than 99% match to sucrose, common table sugar.

171. No lactose was found in any sample despite Defendants' representation that lactose was an ingredient and, as explained above,¹⁵⁸ would be found in greater quantities than sucrose.

172. Further, no trace of any active ingredient or source item was found.

173. In addition, the SEM-EDS results for Arnica indicate the sample contained 24.3% of the chemical element silicon. Therefore, in addition to not containing the promised ingredients, Boiron's product also contained a significant amount of an ingredient it failed to disclose to consumers.

Defendants' Deceptive Practices Particular to Boiron's Oscillococcinum Product.¹⁵⁹

174. In addition to the deceptive practices employed in the marketing and sale of Boiron single medicine products, Defendants violated the CPPA in ways particular to Oscillo.

¹⁵⁸ See ¶188, *supra*.

¹⁵⁹ "Oscillo is made by mixing one percent *Anas Barbariae Hepatis et Cordis Extractum*—that is, duck hearts and livers—with 99 percent water, repeating the dilution process 200 times, and then selling the result in pill form. The repeated dilutions render the finished product nothing more than a placebo. Boiron's claim that Oscillo has a therapeutic effect on flu symptoms is thus highly doubtful." *Conrad v. Boiron, Inc.*, 869 F.3d 536, 538 (7th Cir. 2017) (emphasis added).

175. Oscillococcinum is marketed and sold as an effective treatment for influenza.¹⁶⁰ The listed active ingredient is “*Anas barbariae*,” “200CK HPUS” the purpose of which is “to reduce the duration and severity of flu-like symptoms.”

176. The “inactive ingredients” are also listed as “lactose, sucrose.”

177. As with the single medicines, FTIR and SEM-EDS results show Oscillo did not contain any detectable lactose, any active ingredient or any source item.

178. Defendants charge \$13.46 for 6 doses of Oscillo,¹⁶¹ and upwards of \$33.99 for a box of 30 doses.¹⁶² The Boiron product is recommended for “everyone ages 2 and up” and consumers are directed, irrespective of age, to use one dose per every six hours, up to three times a day.

179. A “dose” of Oscillo is said to be “0.04 oz each,” and “each 0.04 oz dose (1 g) contains 1 g of sugar.” In the same standard of weight used on the on the front of the Oscillo package, which deceptively is not used on the rear of the package, each dose in a six dose box costs about \$2.25.

180. Each \$2.25 dose of Oscillo contains less than one half of one percent of the advertised active ingredient,¹⁶³ a material fact obscured by Defendants.

181. Defendants induce consumers to purchase Oscillo by assuring them that it “won’t mask symptoms,” it “works naturally with [the consumer’s] body”¹⁶⁴ to “temporarily relieve

¹⁶⁰ See ¶77, *supra*.

¹⁶¹ <https://www.boironusa.com/product/oscillo>

¹⁶² <https://www.amazon.com/Boiron-Oscillococcinum-Flu-like-Symptoms-Pellets/dp/B0078W0QOI> (last visited Apr. 13, 2023) (sold by and ships from Amazon.com).

¹⁶³ .04 oz [dose] = 1.133981 g; 1.133981-1 g [sugar]; .133981 g [active ingredient] = .004726041 oz active ingredient per dose. Each dose is .4158 % active ingredient.

¹⁶⁴ About Oscillococcinum®, <https://www.oscillo.com/about> (last visited Apr. 13, 2022).

fatigue, headache, body aches, chills & fever” and it will “reduce[] both the duration & severity of flu-like symptoms.”¹⁶⁵

182. Defendants’ claims are grounded in neither fact nor competent, reliable scientific evidence. As done with the single medicine products, Defendants misrepresent the uses and benefits of Oscillo and *Anas barbariae* 200CK HPUS. Affirmatively or through innuendo or ambiguity, Defendants mislead consumers about the product dose, directions, purposes and uses of Oscillo as well as the miniscule amount of active ingredient and complete absence of the source item.

183. Defendants represent that Oscillo “has been shown in clinical trials to both reduce the severity and shorten the duration of flu-like symptoms.^{2,3}” (superscript in original)¹⁶⁶ It is asserted to consumers that the “medicine works rapidly, with 63 percent of patients showing ‘complete resolution’ or ‘clear improvement’ at 48 hours.^{†2}” and that in a “double-blind, placebo-controlled clinical trial, the recovery rate within 48 hours of treatment was significantly greater in the group that received Oscillococcinum than in the placebo group.^{‡3}” (superscripts in original).¹⁶⁷

¹⁶⁵ <https://www.amazon.com/gp/product/B006H9THXY> (sold by and ships from Amazon.com) (last visited Apr. 13, 2022).

¹⁶⁶ Clinical Studies on Oscillococcinum®, <https://www.oscillo.com/about/clinical-studies> (last visited Apr. 13, 2022) (superscript 2 cites to, Rosemarie Papp et al., Oscillococcinum® in Patients with Influenza-Like Syndromes: A Placebo-Controlled Double-Blind Evaluation, 87 Brit. Homoeopathic J. 67-76 (1998) (“Papp article”); superscript 3 cites to, JP Ferley et al., A Controlled Evaluation of a Homoeopathic Preparation in the Treatment of Influenza-Like Syndromes., 27 Brit. J. Clinical Pharmacology 329-35 (1989) (“Ferley article.”)); <https://www.amazon.com/Boiron-Oscillococcinum-Homeopathic-Medicine-Flu-Like/dp/B07P9WFL2J> (“Oscillococcinum has been shown in clinical studies to help reduce both the duration and the severity of flu-like symptoms.”) (sold and shipped by Amazon.com) (last visited Apr. 13, 2023).

¹⁶⁷ *Id.*



184. Defendants’ claim that “the recovery rate within 48 hours of treatment was significantly greater in the group that received Oscilloccinum than in the placebo group” is deceptive.

185. The significance of the study is misrepresented and leads consumers to believe that Oscillo was scientifically proven to be effective.

186. Defendants obscure or fail to state that the “results” from the 1989 Ferley article were based on admittedly unreliable data.¹⁶⁸ In fact, the study did not even contain anyone with a confirmed case of influenza.¹⁶⁹

¹⁶⁸ Ferley et al., *supra*, at 334 (“The patients were the main source of information in that they themselves recorded the clinical data twice a day. It might be suggested that physicians would have been more reliable observers.”)

¹⁶⁹ *Id.* (“Another weakness stems from the choice of criteria for the influenza-like syndrome. The definition was purely clinical and probably lacked specificity.”).

187. Similarly, the claim that “63 percent of patients show[] ‘complete resolution’ or ‘clear improvement’ at 48 hours” is deceptive.

188. Defendants fail to disclose,

- that one of the researchers, Philippe Belon, was a Boiron employee;
- that the article is based on an attempt to replicate the admittedly faulty study from the Ferely article;
- that the study was based out of Boiron’s headquarters;
- that nearly a third of participants in the group using Oscillo also used additional medication; and,
- that the study declares the results are “not surprising since the disease lasts only 5-10 days even without medication.”¹⁷⁰

189. Defendants repeat the deception on Oscillo packaging. Consumers are assured the product is effective since it “has been shown in clinical studies to help reduce both the duration and the severity of flu-like symptoms.”



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190. Defendants misrepresent the results of clinical studies, fail to state material facts and mislead consumers regarding the existence of competent, reliable scientific evidence of the benefits and effectiveness of Oscillo and *Anas barbariae* 200CK. Defendants’ deception is self-evident.

191. In *toto*, the standard business practices Defendants use to market, sell and distribute Boiron products is to mislead and deceive. Each deceptive and unfair act stated herein, together or

¹⁷⁰ Papp et al., *supra*.

¹⁷¹ Photo of Oscilloccinum purchased by Plaintiff.

separately, was material or pertained to a material fact and had or would have a material effect on consumers.

192. Reasonable consumers, aware of Defendants' deception or the truths it obscures, would not purchase Boiron products.

CAUSE OF ACTION

Unfair and Deceptive Trade Practices
in Violation of the Consumer Protection Procedures Act
by Defendant Boiron & Defendant Amazon, individually and jointly

193. Plaintiff realleges and incorporates by reference all preceding paragraphs.

194. This Count is brought under the Consumer Protection Procedures Act ("CPPA"), D.C. Code §§ 28-3901, *et seq.* The CPPA is a remedial statute that is to be broadly construed.

195. The allegations herein are alleged against each Defendant pursuant to D.C. Code §§ 28-3905(k)(1)(A), (B), (C) and (D). Plaintiff proceeds as a consumer and as a nonprofit, public interest organization on behalf of itself, consumers and the general public of the District of Columbia.

196. The Boiron products are sold for personal, household or family purposes and are consumer goods. D.C. Code § 28-391(a). Defendants offer to and do sell, transfer or supply consumer goods and are merchants.

197. It is a violation of the CPPA for any person to engage in deceptive or unfair trade practices, "whether or not any consumer is in fact misled, deceived, or damaged," by, *inter alia*,

- i. "represent[ing] that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have," D.C. Code § 28-3904(a);
- ii. "represent[ing] that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another," D.C. Code § 28-3904(d);

- iii. “misrepresent[ing] as to a material fact which has a tendency to mislead,” D.C. Code § 28-3904(e);
- iv. “fail[ing] to state a material fact if such failure tends to mislead,” D.C. Code § 28-3904(f);
- v. “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead,” D.C. Code § 28-3904(f-1);
- vi. “advertis[ing] or offer[ing] goods or services without the intent to sell them or without the intent to sell them as advertised or offered,” D.C. Code § 28-3904(h);
- vii. “represent[ing] that the subject of a transaction has been supplied in accordance with a previous representation when it has not,” D.C. Code § 28-3904(u).

198. As detailed in this Complaint, Defendants’ marketing, sale, distribution and transfer of Boiron products violated the above enumerated provisions of the CPPA.

199. Defendants’ representations, including that: (i) each Boiron product, each product’s active ingredient and each source item upon which an active ingredient is based is cause-in-fact effective, or so proven, for the purposes or uses claimed; (ii) each Boiron product contains the amount of active ingredient, source item and inactive ingredient as claimed; (iii) the dosage of and directions for use of each Boiron product is necessary, accurate or substantiated; (iv) each dilution of each Boiron product is uniquely suited to and cause-in-fact effective for a particular use or purpose; (v) each Boiron product is and was proven safe; (vi) each Boiron product is medicine; (vii) Oscillococcinum was clinically proven to be cause-in-fact effective; and, (viii) the active ingredient in Oscillococcinum is cause-in-fact effective for the uses and purposed claimed—misrepresent as to a material fact which has a tendency to mislead and are representations that goods have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have, therefore they are deceptive trade practices that violate the CPPA, D.C. Code § 28-3904(e),(a).

200. Defendants' representations, including that: (i) each dilution of each Boiron product contains the amount of active ingredient, source item and inactive ingredient as claimed; (ii) each dilution of every Boiron product is uniquely or specifically suited to the claimed uses and purposes; (iii) each dilution of a particular Boiron product is uniquely or specifically suited to the claimed uses and purposes; (iv) each Boiron product is materially different from other Boiron products; and, (v) each Boiron product contains the claimed dilution—misrepresent as to a material fact which has a tendency to mislead and are representations that goods are of particular standard, quality, grade, style, or model, if in fact they are of another, therefore they are deceptive trade practices that violate the CPPA, D.C. Code § 28-3904(e),(d).

201. Defendants' omissions, including the: (i) failure to disclose, for each Boiron product, that it is an unapproved drug for which the FDA did not confirm its behavior in the body, accuracy of its labeling, that its benefits outweigh the risks of use, that it was manufactured in a way to maintain strength, quality and purity, that it is safe and effective or that the uses and purposes are backed by clinical trials supported by substantial, competent evidence; (ii) failure to disclose that the active ingredient, purposes, uses, safety, effects or effectiveness of each Boiron product are not based on science or accepted by modern medical experts; (iii) failure to disclose the actual, accurate amount of active ingredient, source item or inactive ingredient in each Boiron product; (iv) failure to disclose the true nature and source of each active ingredient and source item in each Boiron product; (v) failure to disclose that the injury, illness or condition for which the Boiron product was marketed would resolve at the same rate without the purchase or use of the product; and, (vi) failure to disclose Arnica montana contains silicon—are failures to state material facts which tends to mislead and are deceptive trade practices that violate the CPPA, D.C. Code § 28-3094(f).

202. Defendants’ use of, among others: (i) explicit reference to the HPUS in connection with each active ingredient; (ii) the term “medicine” on each Boiron product; (iii) the term “homeopathic medicine” on each Boiron product; (iv) the “AAHP disclaimer;” (v) the order of the listed inactive ingredients on each Boiron product; (vi) the uncommon name of each active ingredient; (vii) the listed dilution on each Boiron product; (viii) the stated amount of active ingredient on each Boiron product; (ix) results of studies performed on Oscillococcinum; and, (x) the specific purposes, uses and effects for each Boiron product—are innuendo or ambiguity as to a material fact, which has a tendency to mislead and are deceptive trade practices that violate the CPPA, D.C. Code § 28-3094(f-1).

203. Defendants marketed each Boiron product knowing that, among others: (i) the product is an unapproved drug that did not pass through the NDA process; (ii) the uses, purposes, effects and dilutions are arbitrarily chosen by Defendants or are chosen without the support of scientific evidence or medical experts; and, (iii) the product does not contain the correct or verifiable amount of active ingredient, source item, dilution or inactive ingredient or the same were not verified by Defendants—thereby advertising or offering goods without the intent to sell them or without the intent to sell them as advertised or offered and representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not, which are deceptive trade practices that violate the CPPA, D.C. Code § 28-3904(h),(u).

204. Accordingly, pursuant to D.C. Code § 28-3905(k)(2), Plaintiff seeks, individually and on behalf of consumers and the general public of the District of Columbia, and is entitled to all damages available at law, including the greater of treble damages or statutory damages in the amount of \$1,500 per violation, restitution, attorney’s fees, injunctive relief from further violations and any other relief this Court deems proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Center for Inquiry, Inc., individually and on behalf of consumers and the general public of the District of Columbia, respectfully requests this Court enter a judgment in favor of Plaintiff and grant relief against Defendants, individually or jointly and severally, as follows:

- (a) Declare Defendant Boiron's and Defendant Amazon's conduct is in violation of the CPPA;
- (b) Enjoin Defendants from violating the CPPA and order all other appropriate remedial and corrective actions necessary to protect the interests of Plaintiff, consumers and the general public of the District of Columbia;
- (c) Award damages, including the greater of treble damages or statutory damages in the amount of \$1,500 per violation, punitive damages and restitution;
- (d) Award Plaintiff the costs and fees of prosecuting this action, including attorney's fees;
- (e) Award pre-judgment and post-judgment interest to the extent allowable; and,
- (f) Award any other relief this Court deems proper.

Respectfully submitted this 14th day of April, 2023.

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