Thomas B. Pahl  
Acting Director  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580

June 26, 2017

Dear Acting Director Pahl,

I am writing to you as Vice President and General Counsel of the Center for Inquiry (CFI). CFI is a 501(c)(3) educational nonprofit organization dedicated to the promotion of a secular society based upon reason, science, freedom of inquiry, and humanist values. As part of our mission, we seek to ensure that public policy is based upon sound science, and that pseudoscience is challenged. In particular, we have worked consistently to ensure the general public is not harmed by pseudoscience.

In that capacity, we have submitted comments and testified before both the Federal Trade Commission (FTC) and the Federal Drug Administration on the matter of the regulation of over-the-counter (OTC) homeopathic products. It has been our consistent opinion, backed by all credible research available, that such products have no demonstrable benefit to those who take them over and above a placebo effect, and that these products are regularly labeled and marketed such as to suggest to the consumer that they possess a healing capacity which cannot be demonstrated by scientific research, and, in fact, which has been demonstrated not to exist by such research. We have therefore repeatedly requested that over the counter homeopathic products be more strictly regulated as to the information they must provide to the public.

We were therefore delighted on November 15, 2016, when the FTC issued its Staff Report on the Homeopathic Medicine & Advertising Workshop, which had been held on September 21, 2015, and at which CFI had testified at the invitation of the FTC. Accompanying
the Staff Report was an Enforcement Policy Statement (EPS).\textsuperscript{1} The EPS noted that the Federal Trade Act “does not exempt homeopathic products from the general requirement that objective product claims be truthful and substantiated.”\textsuperscript{2} The EPS continues to note that “the promotion of an OTC homeopathic product for an indication that is not substantiated by competent and reliable scientific evidence may not be deceptive if that promotion effectively communicates to customers that: (1) There is no scientific evidence that the product works and (2) the product’s claims are based only on theories of homeopathy from the 1700s that are not accepted by most modern medical experts.”\textsuperscript{3}

As the EPS makes clear “for the vast majority of OTC homeopathic drugs, … there are no valid studies using current scientific methods showing the product’s efficacy.”\textsuperscript{4} In situations where OTC homeopathic products are being promoted as beneficial for particular ailments, they must therefore include the above disclaimer or be considered deceptive promotion.

In the time since the EPS was released, CFI has monitored the promotion of such products. Visits to retailers of homeopathic products have shown no indication that the manufacturers and retailers of these products have changed their promotion methods since the issuance of the EPS. Homeopathic products do not carry the required EPS disclaimer, nor is it present in the stores.

Homeopathy is, without a doubt, a huge business in the United States. By 2012, US sales of homeopathic and herbal ‘remedies’ had reached over $6.4 billion annually,\textsuperscript{5} a growth rate of 16% over the previous 5 years, and there is no indication that this upward trend has altered. An earlier report by the National Center for Complementary and Integrative Health noted that in 2007, Americans spent $3.1 billion out of pocket on homeopathic ‘medicine.’\textsuperscript{6} While homeopathic products may be purchased from homeopaths, or online, they are largely purchased from regular retail outlets, in particular food and drug stores.

Drug stores, in particular, have a special position of responsibility towards their customers. Drug stores are where individuals go to fill prescriptions, and to receive medication from trained professionals. They are also the primary source for OTC remedies for the general public, and the dual role of being the source of both prescription and OTC medication creates a bond of trust between the customer and the store. Members of the public will ask the pharmacist

\textsuperscript{2} id.
\textsuperscript{3} id.
\textsuperscript{4} id.
\textsuperscript{5} http://www.pharmacymtimes.com/publications/issue/2013/september2013/homeopathic-products-a-growing-segment-in-otc
for advice regarding OTC products, and will see the range of OTC products offered by the store as in some real sense endorsed and promoted by the store.

Drug stores, such as CVS, promote OTC homeopathic products by their placement within the store, and also on their online retail presence. When a customer walks into a CVS store looking for a cold or influenza remedy, he or she is presented with an aisle of products. Those products range from the tested and scientifically based remedies to all sorts of untested, unproven alternative medicines, including homeopathic products. Homeopathic flu treatments, such as Boiron’s Oscillococcinum (a product whose alleged active ingredient is the liver of a Muscovy duck, but which is diluted to such a high level that no active ingredient is detectible), sit alongside Tylenol on shelves labeled “Cold and Flu”) in CVS stores. CVS is thereby promoting Oscillococcinum as a treatment for influenza. There exists “no valid studies using current scientific methods showing the products efficacy” for the treatment of influenza. Yet CVS not only promotes a product which does not carry the FTC’s required disclaimer for that purpose, it does not display the disclaimer itself. CVS, like other drug stores, also carries its own brand of homeopathic products. These products also do not carry the required disclaimer.

CFI has, since the issuance of the EPS, sought to work with CVS stores to rectify this mistake on their part. CFI has requested that CVS separate out homeopathic products from science-based medicine, both online and in their brick and mortar stores, and clearly display the required disclaimer as demanded by the FTC in the EPS in the separate homeopathic section. CFI has also requested that on its website, CVS displays this required disclaimer when a customer seeks to purchase a homeopathic product. Currently, customers see homeopathic products nested into the categories of, for example, cold remedies, without any indication from CVS that these products are not science based medicine that can be relied upon to be backed up by credible scientific research as to its efficacy. CVS has, however, failed to do this, and has failed to respond to more recent inquiries from CFI about their intentions.

I am therefore writing to you to request that the FTC initiates an enforcement action against CVS for their continued, knowing refusal to bring their promotion of OTC homeopathic products into line with the clear requirements of the FTC as laid out in the EPS of November 2016. CFI will assist in such an enforcement action in whatever manner it is able.

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8 See, e.g., http://www.cvs.com/shop/health-medicine/cough-cold-flu/flu-remedies/oscillococcinum-quick-dissolve-pallets-prodid-1011994?skuId=926229&searchType=4&typeAheadTerm=Oscillococcinum. On this page, a customer is presented with the homeopathic product Oscillococcinum, under the categories “cough-cold-flu,” and “flu remedies.” The page promotes the product as “work[ing] naturally with your body to temporarily relieve flu-like symptoms.” At no point on the page does the required FTC disclaimer appear.
While the EPS represented an important step to reducing the ability of homeopathic producers and retailers to mislead consumers through deceptive promotion, it can do nothing if it is not enforced. Despite CFT’s repeated requests, CVS has refused to take action to end its policy of deceptive promotion. We therefore respectfully request that the FTC fulfills its mission of protecting consumers from deceptive business practices and takes action against CVS immediately.

Yours,

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