

## FEDERAL JURY CLEARS LEADING HOMEOPATHIC FLU REMEDY MANUFACTURER IN CLASS ACTION TRIAL

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On June 16, in a class action of importance to producers, marketers, and sellers of homeopathic products, a federal jury in the false advertising trial of *Lewert v. Boiron, Inc., et al.*, Case No. 2:11-cv-10803 (*Boiron*) rejected claims that Boiron Inc.'s homeopathic flu treatment was nothing more than a sugar pill, and ruled that Boiron did not mislead consumers into buying a remedy that did not provide relief as advertised.

Back in November 2014, a California federal district court judge certified a class of California residents accusing Boiron of continuing to make false claims about its homeopathic flu remedy despite a prior \$12 million settlement. The plaintiffs claimed Boiron persisted in misrepresenting the health benefits of its Oscillococcinum or Oscillo flu remedy after the 2012 settlement that required the company to insert packaging disclaimers saying the product is a "homeopathic dilution" unevaluated by the U.S. Food and Drug Administration (FDA).

Homeopathic products are derived from botanical, mineral, or biological substances and are classified as either over-the-counter (OTC) or prescription medicines. In contrast to conventional (allopathic) medicines, homeopathic remedies are predicated in part on the "principle of dilutions" under which active ingredients are thought to be more clinically useful or effective when they are significantly diluted, typically with purified water or an alcohol solution.

Homeopathic remedies and their packaging are not reviewed by the FDA. They are, however, classified as drugs under – and subject to – the Food, Drug, and Cosmetic Act, and thus, they must comply with the labeling requirements of the Act. The FDA has stated that it is not aware of any scientific evidence that homeopathic products are effective.

The *Boiron* jury's verdict is great news for the homeopathic industry that has seen an increasing number of class action lawsuits over the past few years seeking as much as \$350 million in damages. Whether the plaintiff's class action bar turns its focus in light of the outcome in cases like *Boiron* and *Allen, et al. v. Hylands, Inc., et al.* (where a jury recently took less than a day to find against a different putative class suing for false advertising of homeopathic products) remains to be seen.

### ADDITIONAL INFORMATION

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